



**JUST SIGN HERE**  
New witnessing  
procedures, see  
pages 4 and 5

# agreements

# NOW!

News from the  
Representation  
Agreement  
Resource Centre  
FALL 2001



Board and staff of the Representation Agreement Resource Centre cheer the 12 year community effort that initiated and stayed true to the vision of Representation Agreements. From left to right are Christine Gordon, Jo Dickey, Pat Fulton, Gregg Schiller, Joanne Taylor, Tom Klopp, Helen Connolly, Margaret Birrell and Don Beddows. Absent are Laney Bryenton and Barbara Lindsay.

## FROM THE EDITOR

# Simpler and less costly to make

*Representation Agreements are a tool for planning your future now*



The Representation Agreement Act is a new BC law (as of February 2000) that offers a comprehensive, flexible and safer planning tool should you need help in the present or in the future. And the good news is Representation Agreements are now even simpler and less costly to make!

Amendments to the Act are in effect as of September 1, 2001 to

- reduce the cost of making an Agreement by reducing the number of witnesses required (see pages 4 & 5),
- ensure that financial powers in Representation Agreements are comparable to enduring powers of attorney (see Comparing Your Planning Options, page 2), and
- give you more flexibility in the duties you assign your Representative.

The following two amendments are being finalized to meet an early fall timetable. These will:

- allow notaries public to be legal consultants, and
- provide an optional 'fill-in-the blank' form to assist legal consultants and reduce time, cost and drafting errors.

Other amendments deal with technical matters, such as who your Representative or Monitor notifies if they resign. *Take Charge - It's Your Life: Make a Representation Agreement*, co-published by the Representation Agreement Resource Centre and People's Law School, will explain the amendments in a revised brochure, available mid-September 2001. See back cover.

For more details on the amendments and Representation Agreements, visit our website at [www.rarc.ca](http://www.rarc.ca). And watch for upcoming issues of *agreements NOW* for legal practice tips and more profiles of people who are making Representation Agreements a part of their lives right now.

*Joanne Taylor*



# true OR false?

## TEST YOUR FUTURE PLANNING KNOWLEDGE

**T F** Representative Agreements are for all adults in BC, 19 and older, not only for people with disabilities and for seniors.

**TRUE** Representation Agreements are for all BC adults. Accidents or illness can happen at any age and someone will need legal authority in order to make sure your bills get paid, or to make health care decisions if you can't give consent. By making an Agreement in advance, you stay in control of who will do these things for you, and you can avoid the need for government involvement in your affairs.

**T F** If my spouse and I have everything in joint names and I have a Will, I am already covered.

**FALSE** If you own property, such as a vehicle or house, as joint tenants you cannot sell it or re-mortgage it if the other owner becomes incapable, even if the other owner is your spouse. Your Will has no authority until your death. Representation Agreements are for a time before death when you may need assistance managing your property. Like Wills, each person needs to make their own agreement.

**T F** I can appoint someone to be a guardian for my adult child with a disability in my Will.

**FALSE** You can set up a Discretionary Trust to look after the financial needs of your adult child. However, you cannot appoint someone to be their "guardian" for other matters. Your adult child can make a Representation Agreement to say who will assist them and be their voice if they cannot speak for themselves.

**T F** I made a Living Will and gave it to my doctor. This way my wishes must be followed.

**FALSE** A Representation Agreement is the only way to make your Living Will legally binding.

### COMPARING YOUR PLANNING OPTIONS

	Representation agreement	Enduring power of attorney
Finances	✓	✓
Legal	✓	✓
Property	✓	✓
Health care	✓	✗
Living will	✓	✗
Personal care	✓	✗

**T F** Representation Agreements cover the same areas as enduring power of attorney PLUS health care and personal care matters.

**TRUE** Enduring power of attorney only covers finances, property and legal affairs.

**T F** It's not wise to use Representation Agreements for dealing with real estate property because the Land Title Registry is public.

**FALSE** Yes the Land Title Registry is public and people can view the documents. However, most people making Representation Agreements do not list personal and private information or wishes in their document. Rather, this is done on a separate sheet which is not filed in the Land Title Registry.

**T F** Representation Agreements are too complicated and costly.

**FALSE** Recent amendments make Representation Agreements simpler and less costly. And cost-conscious consumers can make a Representation Agreement to cover everything in ONE document.

## contact us!

Representation Agreement Resource Centre  
411 Dunsmuir Street, Vancouver, B.C. V6B 1X4  
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# Alternative to guardianship becomes real

## *New law means help from those you trust*

When Drew Dickey signed his Representation Agreement, his mother, Jo, hosted a “signing party” complete with champagne and chocolate cake. With the Representatives and Witnesses present, Drew’s support staff gave him the pen for signing. Drew transferred the pen from his right hand to his left and put his mark on the Agreement. (His support staff did not realize that Drew is left-handed.)

The signing of the Representation Agreement was also a celebration of the community effort to create alternatives to guardianship. For Jo Dickey, involved in the law reform for over 10 years, it is about Drew’s right to have help from those he knows and trusts. “My son can’t talk, but he is still able to make decisions about his life, like signing the Representation Agreement.”

While working on the new law, Drew’s family discovered that the Public Trustee was legal guardian of his finances through a procedure called “Certification of Incapability.”

Living in Woodlands had automatically made Drew a ‘ward’ of the government. When the institution closed, no letter of discharge was issued. With the help of his family and the cooperation of the Public Trustee and the Ministry for Children and Families, Drew was able to locate and have the Certificate of Incapability discharged. Now the long forgotten and once effective Certificate sitting in the files of the Office of the Public Guardian and Trustee, can not con-



Drew Dickey signs his Representation Agreement.

lict with the Representation Agreement, which ensures Drew will have assistance to make his own decisions.

Certificates of Incapability are still issued today by authorized health professionals. These result in the Public Trustee automatically taking over the person’s affairs and can also cancel an existing Power of Attorney. This may affect people with a mental illness or dementia (such as Alzheimer Disease) who are admitted to a hospital psychiatric unit or to a mental health facility. Sometimes it also affects those living in the community when assessed through the mental health unit. The good news is that Representation Agreements are an alternative for people who need some assistance – to get it from supporters they trust and who know them. Because a Certificate is difficult to discharge, it is important that people have the option to make Representation Agreements as a first resort!

## What is a Representation Agreement?

A Representation Agreement is a new legal way to name the people you want, to help you make or to make decisions on your behalf, if you need assistance, due to an accident, illness or disability.

The person you choose is called your Representative. You can have more than one. You can also have a back-up person called an Alternate Representative.

Anyone 19 years or older is presumed capable of making an Agreement. The way you communicate does not prevent you from making an Agreement. The law also says that people who cannot manage their own affairs may still make an Agreement with standard powers. Agreements with only standard powers do not require a lawyer or notary. You can make it on your own.

Standard powers can include:

- routine finances such as banking, paying bills, buying things you need, helping with benefits, and dealing with income tax,
- minor and major health care including medications, tests, surgery, dental work,
- personal care matters such as where you live, and
- hiring a lawyer for example to settle an accident claim.

Agreements with additional powers require consultation with a lawyer or (soon) a notary public. Additional powers include selling real estate, making arrangements for your minor children and refusing life support. The role of the legal consultant is to determine that you understand what you are signing.



# just sign here

## Agreements with only Standard Powers.

Standard powers include routine management of financial affairs, minor and major health care, personal care and obtaining legal services and instructing

counsel. This Agreement does not require legal consultation and does not have to be 'notarized'. You can make it on your own. You need two Witnesses. See below.

### STEP 1



Two Witnesses are required. They will watch you sign your Agreement. Signing means putting your mark on the Agreement (your signature, an X or other mark.) If you cannot sign the Agreement due to a PHYSICAL reason, then you can ask someone else to sign it for you. The person signing on your behalf must also complete a Certificate of a Person Signing for an Adult (Form 4).

Remember to put the DATE of signing on the Agreement.

### STEP 2



The two Witnesses must each sign the Representation Agreement and must complete a Certificate of Witnesses (Form 5). Only one Form 5 Certificate is needed for both Witnesses.

### STEP 3



Each Representative and Alternate must sign the Agreement. Signatures of Representative(s) and Alternate(s) do not have to be witnessed.

The Representative(s) and Alternate(s) may sign at different times and locations. Send the original Agreement for them to sign and return. Or, send a copy of your signed original. They sign on the copy and return it. Attach the signed copy to the original Agreement.

It is helpful if some of the people can sign at the same time. It cuts down on possible errors and allows people to demonstrate their commitment to the person and their responsibilities.

Each Representative and Alternate must also complete a Certificate of Representative/Alternate (Form 1).

**New certificates are in effect as of September 1, 2001. Certificates must be attached to the Agreement.**

# Witnessing requirements for Representation Agreements are now simpler. Follow the steps that apply to Agreements with only Standard Powers OR to Agreements with Additional Powers. The changes do not affect Agreements made before September 1, 2001.

## Agreements with Additional Powers.

Agreements with additional powers require consultation with a Lawyer or Notary Public. Examples of additional powers include selling real estate, refusing life support, managing your business,

making temporary arrangements for the needs of minor children. The role of the Consultant is to confirm that you understand the effect of giving these powers to your Representative.

STEP 1



Only one Witness is required for your Agreement if the Consultant (Lawyer or Notary Public) acts as that Witness. (If the Consultant does not act as the Witness, then two Witnesses are required.)

The Witness watches you sign your Agreement.

If you cannot sign the Agreement due to a PHYSICAL reason, then you can ask someone else to sign it for you. The person signing on your behalf must also complete a Certificate of a Person Signing for an Adult (Form 4).

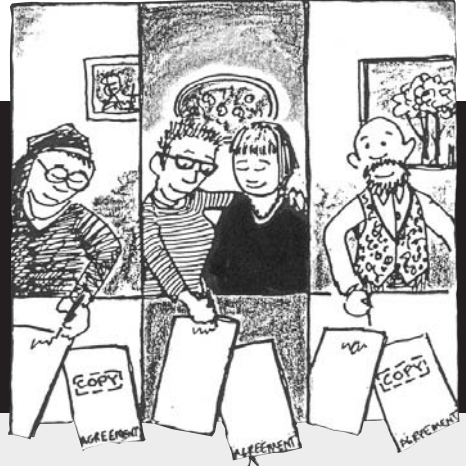
STEP 2



The Consultant who is also acting as the Witness, must sign the Agreement and complete a Certificate of Consultant/ Witness (Form 2).

For more information, contact the Representation Agreement Resource Centre at: 411 Dunsmuir Street Vancouver V6B 1X4 PHONE 604.408.7414 FAX 604.801.5506 E-MAIL info@rarc.ca

STEP 3



Each Representative and Alternate Representative must sign the Agreement. Signatures of Representative(s) and Alternate(s) do not have to be witnessed.

The Representative(s) and Alternate(s) may sign at different times and locations. Send the original Agreement for them to sign and return. Or, send a copy of your signed original. They sign on the copy and return it. Attach the signed copy to the original Agreement.

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# agreements NOW

NEWSLETTER OF THE REPRESENTATION  
AGREEMENT RESOURCE CENTRE

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## The Representation Agreement Resource Centre gratefully acknowledges funding from

The Law Foundation of B.C.  
The Notary Foundation of B.C.  
The Vancouver Foundation  
Legal Services Society of B.C.,  
Public Legal Education Program  
B.C. Gaming Commission

Tax deductible donations assist with  
reprinting and distributing materials  
and providing one-on-one information  
services.

The Representation Agreement  
Resource Centre is a non-government,  
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this newsletter must be obtained in  
advance.



Resource Centre  
volunteer, Tom  
Klopp, answers  
questions about  
Representation  
Agreements.

## Centre welcomes visitors

The Representation Agreement Resource Centre is located in the 411 Seniors Centre (411 Dunsmuir at Homer, Vancouver). On the second floor, you will find a comfortable, welcoming space where you can pick up information or sit down to discuss your Representation Agreement.

The Resource Centre also provides an information and referral service to individuals by phone (604-408-7414) or e-mail ([info@rarc.ca](mailto:info@rarc.ca)).

Specific questions and concerns may be discussed in confidence. Some one-on-one peer support is also available.

The Resource Centre has one full-time staff and a number of core volunteers. New volunteers are welcome. Please give Joanne Taylor a call to discuss your volunteer interests at 604-408-7414. Or use the reply form on page 8 to tell us how you'd like to be involved.

## Thanks for the support!

The Representation Agreement Resource Centre is grateful to the many individuals and organizations throughout the province that have contributed time, skills and in-kind support to assist the RARC in raising awareness, distributing information, making presentations and providing training workshops.

Thanks also to the following for donating furniture and equipment to the Resource Centre: **Peter Dartana, Betty Kelly, Jim Tildesley, the Public Health Association of B.C. and The Society of Notaries.**

Special thanks to **Ron Usher** for the set up, maintenance and hosting of our former website and to **Hugh McLellan** for his legal expertise.

Many thanks to the **BC Coalition of People with Disabilities** and its Executive Director, **Margaret Birrell**, for providing a home and considerable in-kind assistance to the Resource Centre in its early days.



## Enduring power of attorney extended to 2002

In April, the NDP government announced that BC citizens may still make or change an enduring power of attorney until September 1, 2002. (Enduring powers of attorney made anytime before this date will stay in effect as long as you are alive or until you cancel it.)

The new Attorney General, Geoff Plant, is conducting a review to consider what should happen after September 2002. Professor Albert McClean, a lawyer, has been appointed to look at:

- 1 Replacing enduring power of attorney with Representation Agreements as originally intended, or
- 2 Keeping enduring power of attorney as a parallel planning tool, and
- 3 Recommending changes to the Power of Attorney Act and the Representation Agreement Act as a result of the review.

Prof. McClean's report is due December 31, 2001. The Resource Centre will be closely monitoring the review.

### CAN YOU HELP?

The Resource Centre needs a laser fax machine, TV with built in VCR, overhead projector and screen, file cabinet and book shelf. Please call us at 604-408-7414 if you can help out.

## A new vision of capability

*The new law reflects both the best thinking and the best practice about capability*

Since the idea of Representation Agreements was first discussed over ten years ago, people have been devoted to examining what it means to be capable of decision-making. They recognized that being capable of making a decision depends upon a number of factors including the kind of decision being made, the nature of the support that is available to the individual who is making the decision and the various ways that people can demonstrate choices and preferences.

A broad community coalition, called the Project to Review Adult Guardianship, which included professionals like the Bar Association and the BC Medical Association as well as community groups like the BC Association for Community Living and the Alzheimer Society, agreed with government that the law should reflect this new vision of capability.

A Representation Agreement begins with the time-honoured common law assumption that everyone is capable. It acknowledges that decision-making of any importance is an interdependent not an independent activity by incorporating supported decision making into the Representation Agreement. It recognizes that the way a person communicates is not a factor in determining capability, and it sets out some broader criteria for assessing incapability if a Rep-

resentation Agreement with standard powers is challenged on the grounds that the maker was incapable.

The practical effect of these provisions is that a person can make a Representation Agreement with standard powers even if they cannot manage their personal affairs or make a traditional contract. It has been said that these provisions lower the "threshold of capability." What the Act really does is to raise the bar



**A person can make a Representation Agreement with standard powers even if they cannot manage their personal affairs**

for professional, judicial and community practice.

A stereotypical view, a checklist test for capability or a brief conversation will no longer suffice. Instead, all of the ways of knowing will have to be considered if someone is alleged to be incapable. This is in keeping with the fact that a judgement of incapability is usually irrevocable and leads to a loss of civil and human rights.

The Representation Agreement with standard powers is primary prevention against unnecessary loss of these precious rights by compelling all of us to realize that the demonstration of capability is as diverse as the uniqueness of the identity of each individual and of their life situation.

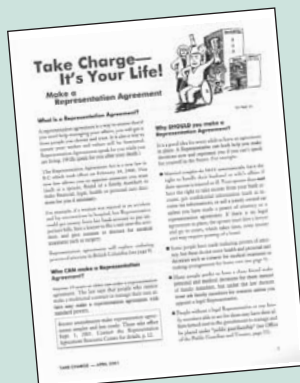
## RESOURCES

### FOR INDIVIDUALS

#### *Take Charge – It's Your Life: Make a Representation Agreement*

This publication is a resource for individuals who want to know more about Representation Agreements. It provides details on why making an Agreement is important; what an Agreement covers; the roles and responsibilities of Representatives; the steps for completing your own Agreement. This publication is co-published by the Representation Agreement Resource Centre and People's Law School.

Supplies may be limited, but you can photocopy for other family members or your group. Contact People's Law School by phone: 604-331-5400 or fax: 604-331-5401, or the Representation Agreement Resource Centre, see bottom of this page.



### FOR ORGANIZATIONS

#### *Representation Agreement Resource Guide for People Helping Others*

This publication, funded by the Law Foundation of B.C., is available to community organizations that want to assist its members and the community-at-large to learn about and make Representation Agreements. It will contain resources for raising awareness, making presentations, assisting one-on-one and involving the community in reaching out to those who are isolated. Contact the Representation Agreement Resource Centre to order your copy.

For convenient access to these and other resources, visit our web site.

[www.rarc.ca](http://www.rarc.ca)

## LEGAL PRACTICE TIPS

*The Representation Agreement Resource Centre has formed a Legal Practice Group. Members include lawyers and notary publics. The purposes of this group are to: be a resource for best practice, identify education opportunities and advise on issues related to the legislation. Tips from this Group will be featured in upcoming newsletters and will be posted on our website.*

**TIP** Make a list of other documents and agreements

When you are thinking of making a Representation Agreement, it's a good idea to make a list of other documents and agreements you have in place. For example, do you have a bank power of attorney? Do you have a living will? Do you own property with someone else as joint tenants or as tenants in common? This information will be important for deciding how to proceed. If you go to a Consultant (lawyer or notary public), they will ask you for these details. Be prepared. You can take the other documents with you.

# Yes! I want to support the ongoing work of the Representation Agreement Resource Centre.

- I wish to make a donation of \$ \_\_\_\_\_ (Donations of \$10 or more will receive a tax receipt.)
- I would like to learn more about Representation Agreements, please send me an information package.
- I would like to volunteer, please contact me at \_\_\_\_\_ (phone or e-mail)

NAME \_\_\_\_\_ ORGANIZATION \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY \_\_\_\_\_ PROVINCE \_\_\_\_\_ POSTAL CODE \_\_\_\_\_

PHONE \_\_\_\_\_ EMAIL \_\_\_\_\_

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