Representation Agreement

Section 7 Standard Powers (RA7)

For adults whose cognitive capability to 'understand' is in question.



Adults may make an RA7 even if they are cognitively incapable to 'understand.' The RA7 has a different definition of capability than for other legal documents. The RA7 is about equity, inclusion & accessibility.

Please click to read the *Representation Agreement Overview fact sheet* for background on RA7.

What is a Representation Agreement?

A Representation Agreement is a legal document under the Representation Agreement Act of BC (RA Act). This law came into effect on February 28, 2000. There were some amendments (changes) to the law as of September 1, 2011.

A Representation Agreement is the only legal planning document in BC that covers health care and personal care matters.

For short-hand you will hear RA7 and RA9 to describe two types of Representation Agreements.

There are different approaches to capability for each type. Some adults will NOT meet the capability requirements to make the RA9; they will make the RA7.

REQUIREMENTS TO MAKE

Who may make a Representation Agreement?

Making a Representation Agreement depends on:

1. Age requirements—an individual must be **19 years** or older (adult in BC); and
2. Capability requirements—**BC has two approaches** to capability. The RA9 (like making types of Power of Attorney and a Will) is based on a traditional (cognitive) approach to capability; the RA7 takes a different approach. See next heading for details.

No legal professional is required for making any type of Representation Agreement.

No medical assessment is required.

An adult may make a RA7 even if a doctor or a psychiatrist thinks the adult is not capable of managing their finances or making health or personal care decisions.

Who is this RA7 fact sheet for?

This fact sheet discusses the Representation Agreement section 7 (RA7) **for an adult whose mental or cognitive capability to 'understand' is in question**. Forms for making RA7 are discussed on page 2.

The RA7 applies if:

1. You are helping an adult who has cognitive difficulties, and
2. There is no existing legal authority in place.

If you do NOT have cognitive difficulties, read about *RA9*.

AUTHORITIES OR POWERS IN RA7

What authorities are listed in section 7?

There are four authorities, also called standard powers, listed in section 7 of the RA Act.

- *Routine management of **financial affairs**,* such as banking, applying for and managing government benefits, dealing with the Canada Revenue Agency, and managing investments. *(Click to read the full definition of routine finances, it is part of the law.)*
- ***Legal affairs**,* which includes obtaining legal services, instructing a lawyer, settling a claim for compensation (perhaps due to abuse in residential school), going to small claims court.
- *Minor and major **health care**,* which includes decisions and consent about medications, tests, dental work, surgery, end-of-life comfort care, any treatment requiring a general anesthetic.
- ***Personal care**,* including consent about certain living arrangements, diet, exercise, taking part in activities, and personal safety issues. *(Note: there is separate legislation for admission to a long term care facility.)*

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RA7 FORMS

There is no required form for RA7. The RA7 forms may come from different sources. It is important to read the wording.

- The Nidus Resource Centre has led the education on Representation Agreements and provides free Basic RA forms for personal use at nidus.ca > Forms.

RA7ALL - is a Representation Agreement that includes **all** 4 authorities from section 7. (See 4 bullets on previous page.)

RA7H+P - is a Representation Agreement that includes 2 authorities from section 7: minor and major **H**ealth care and **P**ersonal care.

ABOUT CAPABILITY

In its education, the Nidus Resource Centre contrasts two approaches to capability:

1. The Traditional Approach, and
2. The RA7 Approach.

The traditional approach is the dominant approach, and the one most of us grew up with and accepted without question. The capability requirements for making a Will, a contract, types of power of attorney and other legal documents come from the traditional approach.

The **traditional approach** is based on cognitive ability to understand. The traditional approach discriminates against people with cognitive difficulties.

The **RA7 approach** is different. It helps us look at capability in new (non-cognitive) ways. See next headings in this section.

- The RA7 approach is still unique to BC. It is based on lived experience (real life experiences) and is the result of a grass-roots law reform.
- The RA7 approach gets its name from the new definition of capability in section 8 of the RA Act which says an adult may make a Representation Agreement with authorities from section 7, even if the adult has cognitive difficulties.
- There is still a lot of discrimination against people with cognitive difficulties. The law in BC is changed but it is taking longer to change attitudes and practices.

What is the RA7 approach to capability?

The RA7 approach to capability is unique because it recognizes that many factors are involved in being 'capable' and these may be different for different people.

The RA7 is not for 'incapable' adults. The important point is that **the RA7 definition views capability in a broad and inclusive way** and makes Representation Agreements accessible to adults even if they have cognitive difficulties.

What does the RA Act say?

Early on in sections 2 and 3 of the RA Act there are some over-arching statements or principles:

- Everyone is presumed capable of making their own decisions and of making a Representation Agreement, and
- The way an adult communicates does not prevent them from making a Representation Agreement. *(Some adults communicate through their behaviour.)*

The RA Act also says that one of the purposes of Representation Agreements is to allow adults to avoid guardianship. (*Adult guardianship* is often called Committeeship in BC and views adults with cognitive difficulties as a non-person.)

What are factors to consider for being capable to make a RA7?

The definition or capability requirements for making a Representation Agreement with authorities from section 7 of the RA Act are outlined in section 8 of the RA Act, which says:

- An adult may make a Representation Agreement with authorities from section 7 EVEN IF the adult can NOT make a contract.

This means an adult may make a RA7, EVEN IF the adult may not appear to cognitively 'understand' the RA7.

Section 8 also gives some examples (not criteria) of relevant factors to consider when thinking about capability to make a RA7:

- Does the adult communicate a desire to have a representative make, help make, or stop making decisions? or
- Does the adult demonstrate choices and preferences and can express feelings of approval or disapproval of others? or
- Is the adult aware that making the representation agreement or changing or revoking any of the provisions means that the representative may make, or stop making, decisions or choices that affect the adult? or
- Does the adult have a relationship with the representative that is characterized by trust?

NOTE: *Nidus encourages supporters to document the adult's communication and preferences. Click for specific ideas - Expressing Preferences.*

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Nidus is a Latin term for nest: a symbol of support and safety.

SOME EXAMPLES

Who makes the RA7?

Shaun is a middle-aged adult with a developmental disability. He **communicates in a non-traditional** way. Shaun needs help with banking, applying for benefits, dental work, consenting to medications, and taking directions from his physiotherapist.

Shaun's mother and brother can provide informal support but for many situations they require legal authority to help Shaun. For instance, the Canada Revenue Agency (CRA) cannot speak to Shaun's mother or brother about Shaun's income taxes unless a document is in place giving them legal authority. He is not capable to understand signing the CRA consent form. He may make a RA7.

A RA7ALL allows Shaun to give his personal supporters the legal authority to help with aspects of all four areas of life: financial, legal, health and personal. It protects his privacy, supports his self-determination, and keeps him safe.

The RA7 protects the liability of third parties like CRA, hospitals, dentists, community agencies, financial institutions, and government services.

Todd is **turning 19** in a few months. He needs some help managing his affairs and making decisions due to a disability at birth. His teacher has been talking with Todd's parents about how the parents can support Todd as needed when he becomes an adult. The teacher explained about the Representation Agreement section 7. The teacher has also been helping Todd with signing (making his mark). This is very important as Todd will sign (make his own mark) on his RA7ALL in front of two independent witnesses.

Cherry's speech and memory has been affected by a **brain injury**. The Public Guardian and Trustee (PGT) is managing her financial and legal affairs as the statutory property guardian, but nothing is in place for health and personal care. Cherry makes the RA7H+P and names her sister as her representative and her brother as the alternate to help her with health care and personal care decisions, such as decisions about rehabilitation and occupational therapy. Her representative will talk with the PGT to arrange for Cherry's money to pay for treatments and equipment needed to improve her quality-of-life.

Kam is a senior who had a **severe stroke**. He made a Will before his stroke, but he is not dead and the Will does not apply. Kam needs someone to arrange payment of the care facility bills from his bank account. With his nephew's help, Kam makes a RA7ALL that includes authority for routine management of financial affairs, which would give Kam's nephew the authority to pay Kam's bills from his bank account and arrange direct deposit of his pension benefits. The RA7ALL also covers health and personal care matters so Kam's nephew can help ensure Kam gets access to good care including rehabilitation services. Hopefully Kam will be able to leave the facility and resume his previous lifestyle (before the stroke).

When Joyce was first diagnosed with **Alzheimer Disease**, she met the capability requirements to make an Enduring Power of Attorney (EPA) and appointed her friend Barb in the EPA as her attorney. This allows Barb to manage financial matters, but, as Joyce's dementia has progressed, she now needs help with her health and personal care decisions. It is more difficult for her to remember important details. Naming Barb as her representative for health care and personal care matters in an RA7H+P gave Joyce peace of mind. Barb can be present during medical appointments to help Joyce speak up for her wishes. Barb can help by picking up medications at the pharmacy and accessing information and communicating with health care providers on Joyce's behalf.

OTHER EXAMPLES

Above are some examples to highlight the variety of situations where the RA7 is helpful to seniors as well as adults with a developmental disability. Some other situations include adults:

- With Fetal Alcohol Spectrum Disorder;
- With autism;
- With schizophrenia;
- Under the Mental Health Act...

An adult might not have any family members to be involved in their Agreement. The personal supporters might be former staff, a former teacher, friends who work at the local coffee shop... Creativity is required and can be very rewarding.

In one case, such supporters decided that they should each write about their involvement with the adult and the nature of the trusting relationship. The best part of this exercise was that it showed that the relationships were not just one-sided — each supporter talked about the benefits they received from their relationship with the adult.

Nidus has found that the process of making a RA7 and talking about capability is important for learning about and seeing the adult as self-determined. Pictures and videos are also helpful for these discussions.

The Nidus Resource Centre Association is a non-profit, charitable organization established in 1995.
The Resource Centre operates the online Nidus Registry service—secure storage of information and documents until needed.

FREQUENTLY ASKED QUESTIONS

What roles are available for RA7? Is a monitor required? Who to name?
Click to read about *roles and restrictions*.

Who gets copies of RA7?
Click to read about *where to keep original and who gets copies*.

Does adult sign the Agreement?
Yes, it is important the adult signs their own RA7. The order of signing matters. Get information and tips on *Signing RA7*.

What are the duties of a representative?
Read about *legal duties* of those named in the Agreement. See also *Role of Representative* and *Role of Monitor*

How is the RA7 used?
Depending on the authorities included in the RA7, following is more information and tips:

Using RA7 for financial and legal matters

Using RA7 for health care and personal care

Tips on access to information, delegation, when RA7 begins, when RA7 ends

How to register the RA7?
Do NOT send any paperwork to Nidus. The Nidus Registry is online for you to do it yourself.

Click to read *instructions on how to register*

What if there are changes?
Do NOT make any changes to the original of the RA7. Click to read *Making Changes*

Can I revoke the RA7?
Only the adult can revoke (cancel) their RA7. The law says if the adult is capable to make a RA7, they are capable to revoke it (remember the RA7 takes a different approach to capability).

Making a new Representation Agreement does NOT automatically revoke a previous one. Read the steps and see sample form *Revoking RA*

Can a representative resign?
Yes, a representative, alternate, or monitor may resign from the Agreement they are named in.

Sometimes this may require the adult to make a new Agreement. Click to read more:

Resigning as representative or alternate

Resigning as monitor

What is supported decision making?
You may hear the term supported decision making linked to the RA7. Supported decision making is a new concept that was first introduced in law with the RA Act—but it is part of a continuum.

Substitute decision making (which has been the norm), is where someone takes over the adult's decisions and rights. With supported decision making, it is about helping an individual to participate in decisions that affect them.

Just as people are different, the way they participate in decision making may be different. Some individuals communicate by blinking their eyes or squeezing a finger.

The concept of supported decision making is tied to new approaches and ways of thinking about capability. Some adults need more help with certain kinds of decisions and this can change depending on various factors.

Sometimes a representative has to act on the adult's behalf. The RA7 authorizes a representative to assist as well as to act on the adult's behalf. Think of a continuum that includes independent decision making (like when someone makes clear their preference for a certain colour or their preference to always wear a baseball cap). Also on the continuum is inter-dependent decision making (supported decision making) and for some things substitute decision making.

Where do I find other Nidus resources?
Click to read about *RA7 Safeguards*. The Nidus Resource Centre has lots of free information, stories and videos on its website at nidus.ca

Is personal help available?
Nidus resources are geared to self-help. The availability of personal help depends on funding.

To check on the availability of personal help, email info@nidus.ca

If you need help to print information from the Nidus Resource Centre website, ask at your public library or MLA office.

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