Role of the Monitor

The monitor role was first introduced in BC in the Representation Agreement Act (RA Act) to address concerns about financial abuse. It is a built-in safeguard for the RA7.

> The monitor role is a separate legal role from the legal role of the representative. The monitor does not have legal authority to make decisions or act on behalf of the adult.
>
> The monitor is not like an alternate representative, the monitor cannot move up to replace a representative.
>
> In practice, the monitor may be related to the representative. However, the monitor's loyalty is to the adult; the monitor role is not to automatically 'rubber-stamp' whatever the representative says or does.
>
> For more tips, click to read about roles in RA.

Why appoint a monitor in a Representation Agreement?

Benefits of the monitor role

One of the benefits of the monitor role is to help keep things on track. See next page under Responsibilities of Monitor.

For example, if a bank staff person or health care provider has a concern, they should speak to the monitor who can look into the issue.

The general policy of the Public Guardian and Trustee (government official) is to direct complaints to the monitor first (if one is named).

Having a monitor facilitates discussion at the local level with those most involved.

Another benefit of the monitor role is that it gives reassurance to professionals and institutions and to the adult, that there is oversight.

The monitor may take on other tasks such as doing an annual review of the Agreement.

The monitor may be required

If authority for routine financial affairs are included in a Representation Agreement (RA7), an extra safeguard is required.

Naming someone in the monitor role meets this extra safeguard requirement.

The extra safeguard requirement is only waived if the representative is the adult's spouse.

Even if the representative is the adult's spouse, an extra-safeguard is required if a non-spouse, such as another representative or alternate, is named in the RA7 in order for them to act for routine finances (if they have authority).

Choosing a monitor as an option

Most adults making the RA7 name a monitor for all areas of authority, not just for finances.

Naming a monitor has been the choice of adults in some other circumstances, such as when making a RA9 or RA7H+P, where a monitor is an option.

For example:

- *When there are a number of people named in the Agreement or involved in the adult's life. The monitor can help coordinate meetings and information-sharing.*
- *If there is existing conflict or tension among any parties involved. The monitor's involvement can keep things positive — 'outsiders' know there is oversight and know they have someone to talk to about any concerns or questions.*
- *In the case of a second marriage and a blended family, it can be helpful to have a monitor to assist with communication and to reinforce your wishes and preferences.*
- *To give support to representatives who are younger and may face challenging decisions.*

If the monitor is unable to act

If the monitor dies, becomes incapable, resigns or is unsuitable the most common and easiest solution is for the adult to revoke (cancel) the existing Agreement and make a new one and name a different monitor. Click related forms for more information and sample form on revoking.

There are some other legal remedies if a monitor is not able to act. These actions may cause delay and be more costly and may not be helpful. The RA Act says the Public Guardian and Trustee may name a replacement monitor. If the PGT declines to name a replacement, or the representative or other interested party disagrees with the PGT's choice, they can apply to the B.C. Supreme Court and request a judge to appoint a different monitor or to rule a monitor is not required.

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Responsibilities of the Monitor

The monitor's duties are outlined in section 20 of the RA Act.

Exercise general duties

As the monitor, you must act honestly and in good faith and use the care, attention and skill of a responsible person.

The monitor role is independent of the representative role. The monitor does not have legal authority to act on behalf of the adult.

Your legal duty as monitor is to try to make sure the representative is carrying out their duties. You act as a safeguard and support to ensure the Agreement is working for the adult.

Exercise problem-solving role

The most crucial role of the monitor is to help with communication and problem-solving.

If there is a concern that a representative might not be following their duties, according to the law, the monitor must:

- Let the adult and all representative(s) and alternate(s) named in the Agreement know about the concern.
- Try to resolve the problem.
  - This will require gathering information, getting clarification and discussing solutions with the representative.

If, after checking and discussion, you believe that the representative is not following their duties or is abusing the adult in any way, as the monitor, you are legally required to contact the Public Guardian and Trustee's Office and make an official complaint. The PGT staff must review the complaint in a timely manner.

Keep information confidential

The monitor must keep any personal information about the adult and the adult's affairs confidential except as required to carry out your duties.

Rights of the Monitor

Contact with the adult

No one can prevent the monitor from having contact with the adult. This might be necessary if the adult is in jail, in psychiatric care or other custody arrangement.

It might be important to check on the adult's health (physical and mental) and safety.

Request information from the representative

The monitor has a right to request information from the representative if the monitor believes there is a problem. This may be financial records (if finances are an authority included in the Agreement) or health and personal care records (if health care and personal care are authorities included in the Agreement) or records and information about other types of decisions or actions.

Be reimbursed for out-of-pocket expenses

As the monitor, you may be refunded for reasonable out-of-pocket expenses that relate to carrying out your duties. Keep a record of expenses and payments.

A monitor cannot be paid a fee for their time for any matters related to health care. For other matters, special wording is required in the Agreement and prior authorization of the B.C. Supreme Court.

Resign from your role

A monitor has a right to resign. Only the adult can revoke (cancel) the Agreement. Click for information and sample forms related to RAs.

Protection from liability

The monitor may not be liable (legally responsible) for actions you take or fail to take when carrying out your duties as outlined in the RA Act and any terms set out in the Agreement.

Best Practice Tip

To be pro-active, the monitor and representative should arrange between themselves to review information and records on a regular basis. This is good for communication and will prevent misunderstandings. It also strengthens the team.

Don't forget that everyone is accountable to the adult. The adult needs to be involved in discussions too.

It is also a good idea to include the alternate. The alternate(s) may have to take over at short notice.

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