

Representation Agreement with Section 9 Broader Powers



“Making a Representation Agreement is about quality-of-life to the end-of-life. It gives us peace of mind.”

Please also read the fact sheet *Representation Agreement Overview*.

What is a Representation Agreement with Section 9 broader powers?

A Representation Agreement is a legal document available to adults in British Columbia for personal planning. It allows you to authorize one or more personal supporters to be your representative to help you manage your affairs and, if necessary, to make decisions on your behalf in case of illness, injury, or disability.

The purpose of the Representation Agreement with Section 9 broader powers is to enable adults to make legally enforceable arrangements for the most comprehensive coverage of health care and personal care matters. It is for people who are mentally capable now and want to plan for the future in case they become incapable.

For example, Geraldine was recently diagnosed with Alzheimer Disease and is concerned about her ability to make decisions and manage her affairs in the future. She recently learned about Representation Agreements through her support group and decided to make one with Section 9 broader powers. Geraldine decided to appoint her husband, Hank, and daughter, Sara, as her representatives. Geraldine feels better about her future, knowing that she has put legally enforceable arrangements in place and the people she trusts and who know her best will be able to help her manage her affairs, and if necessary to make decisions on her behalf.

What areas of authority are covered under Section 9 broader powers?

The areas of authority that can be included in a Representation Agreement with Section 9 broader powers are in two sections of the Representation Agreement Act. A Representation Agreement with Section 9 broader powers contains the authorities for minor and major health care and personal care from Section 7 standard powers. These areas of authority cover decisions about medications, tests, any treatment requiring a general anesthetic, living arrangements, diet, exercise, and personal safety issues. A Representation Agreement with Section 9 broader powers also allows you to add authorities from Section 9 of the Act.

These additional authorities are

- Refusing life-supporting care or treatment.
- Giving consent to less common medical procedures such as electroconvulsive ‘shock’ therapy (ECT), abortion, experimental treatments with no known benefit, psychosurgery, removal of tissue for implantation or medical education or research, participation in a health care or medical research program not approved in B.C., or any treatment, procedure or therapy that uses negative stimuli to produce a change in behaviour.
- Giving consent to health care you wanted when well, but you refuse at the time of illness because the illness has affected your perception and judgement. [This is sometimes called the Ulysses clause, a term used by people who suffer from episodic mental illness. It may also be relevant to other conditions such as dementia.]
- Consenting to physically restrain, move, or manage you or to authorize others to do so when necessary and despite your objections.
- Making arrangements for the temporary care and education of your minor children, and any other persons who are cared for or supported by you.

Including the Section 9 broader powers in your Representation Agreement does not mean your representative will act on all of them, it simply ensures that if you are incapable of giving or refusing consent, someone you trust will have legal authority to carry out your wishes.

For example, Geraldine includes all of these authorities in her Representation Agreement because she does not know what may happen in the future and wants her representative to have all the authority he or she may need in any circumstance. From the Alzheimer Society early stage support group, Geraldine is aware of ongoing research. Although the current research may only recommend medications for those in the early and middle stages of the disease, Geraldine wants her representative to be able to consent for her to continue taking the medication in the later stages if it appears to have some benefit. As well, having been a caregiver to her mother who also had Alzheimer Disease, Geraldine

realizes how important it is for her quality of life that someone who knows her well has the legal authority to access information and to make personal care as well as health care decisions, especially if she has to go into a facility.

What is not covered in a Representation Agreement with Section 9 broader powers?

A Representation Agreement with Section 9 broader powers cannot authorize your representative to do anything that is prohibited by law, such as euthanasia or assisted suicide.

Who can make a Representation Agreement with Section 9 broader powers?

To make a Representation Agreement with Section 9 broader powers, you must be 19 years of age or older (an adult). You must also be mentally competent of understanding the type of decisions covered by Section 9 broader powers and the possible effects of giving your representative the authority to make decisions about these.

If someone does not have the understanding required for making a Representation Agreement with Section 9 broader powers, they may make a Representation Agreement with Section 7 standard powers to cover most health care and personal care matters. See the Nidus fact sheet on *Section 7 Standard Powers*.

Some common examples of people who make Representation Agreements with Section 9 broader powers include Michael, a man who has an inoperable brain tumour. Michael made a Representation Agreement with Section 9 broader powers and appointed his friend, Gustav, as his representative. Although Michael took part in experimental therapy at an earlier stage of his illness, he has decided he does not want further treatments, however promising, and he wants to be sure Gustav can refuse these if he becomes mentally incapable even if the doctors believe it would have some benefit.

Tammy is a single mom with sole custody of her two young sons and was recently diagnosed with breast cancer. She is about to have surgery and wants to prepare for various situations that may arise. Tammy will be leaving her sons in the care of her partner Sandra but wants to ensure that Sandra has the legal authority to look after their well-being. From her lawyer, Tammy learned that a Representation Agreement with Section 9 broader powers can include the authority to make arrangements for the temporary care and education of an adult's minor children. Tammy decided that she would make a Representation Agreement with Section 9 broader powers and appoint Sandra as her representative.

She also made an Enduring Power of Attorney in case Sandra needs to use Tammy's money to cover the financial needs of her sons.

Do I include wishes in my Representation Agreement?

You may include wishes in your Representation Agreement to guide or instruct your representative if he or she has to make a decision on your behalf. Although they are non-binding on their own, you may also use a living will, advance directive, or advance care plan to give this guidance to your representative.

How do I make a Representation Agreement with Section 9 broader powers?

If you are interested in making a Representation Agreement with Section 9 broader powers, you must consult a lawyer who will sign a Certificate of Consultation. The lawyer will prepare the legal forms. To find a lawyer, call the Lawyer Referral Service at 604.687.3221 or 1.800.663.1919.

The provincial government will be changing the law to say that consultation with a lawyer will not be required for Representation Agreements with Section 9 broader powers. Unfortunately Nidus does not know when this change will take effect.

Can I use a Representation Agreement to cover financial and legal affairs?

Both the Representation Agreement and the Enduring Power of Attorney cover financial and legal affairs. There are some important differences between them with respect to mental capability requirements, safeguards, and the areas of authority that can be covered.

A Representation Agreement covers routine management of financial affairs, such as paying bills, applying for benefits or managing investments. An Enduring Power of Attorney provides the most comprehensive coverage for financial and legal affairs. It includes what is covered by the Representation Agreement under routine management of financial affairs and additional authorities such as dealing with real estate and looking after the financial needs of minor children or other dependants.

Many people will make an Enduring Power of Attorney to cover their financial and legal affairs and make a Representation Agreement to cover health care and personal care matters.

For more detail on Enduring Powers of Attorney, see the Nidus fact sheet on *Enduring Power of Attorney*. For more details on the authority for routine management of financial affairs see *the Nidus fact sheet on Representation Agreement with Section 7 Standard Powers*.