

# What you need to know about being a representative in an enhanced representation agreement (section 9)



Part 2 of 3:  
A guide for people who have been asked to be legally appointed as a substitute decision maker in B.C.

This guide contains information for people who have been asked by a family member or friend in British Columbia, Canada, to be a representative or alternate representative, appointed in an **enhanced representation agreement** (sometimes called a section 9 representation agreement).

BC law also has a second type of representation agreement - standard representation agreements, or section 7 representation agreements. **This document does not include information about standard representation agreements (section 7).**

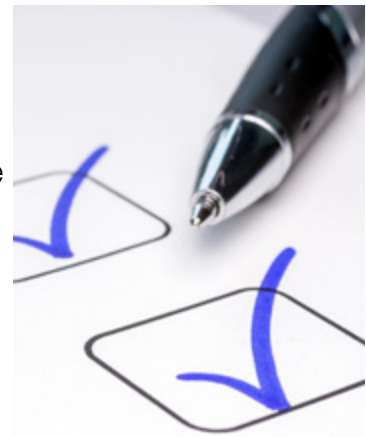
This guide includes information about:

- 1 Your role
- 2 Preparing for your role
- 3 Making decisions for the person
- 4 Your rights
- 5 Your responsibilities

*(Click above to jump straight to any question)*

This is a companion document to:

- **What you need to know about enhanced representation agreements** which explains enhanced representation agreements and how to make one.
- **A guided tour of the BC government's representation agreement (section 9) form** which explains each section of the form produced by the BC government, to help people complete the form.



## 1 Your Role

When appointed in a representation agreement, you are called a **“representative”**.

As a representative, you have the legal authority to make **health care and personal care decisions** for the person you are representing, if they are temporarily or permanently unable to make their own decisions.

**Health care decisions** are about tests, examinations, treatments and procedures related to a person’s health, such as surgery, medication and vaccines.

**Personal care decisions** are about a person’s daily life, such as where they live, diet, clothing, hygiene, and activities.

Further details of the decisions a representative can or cannot make is provided in the document [\*“What you need to know about enhanced representation agreements”\*](#).



Being unable to make decisions is called being incapable. It could be due to illness, injury or disability. It could be temporary or permanent.

Being **capable** means you understand the information provided, and can make a decision. A person is assumed to be capable unless there is reason to think otherwise. Incapability is determined by a health care provider. It is decision specific.

Please note: everyone has a right to support and assistance in communicating their health care decisions. *For example: if a person speaks a different language, assistance could be a language interpreter. If a person is non-verbal, they can communicate using head nodding and body language, assistance could be someone who understands how they communicate.*

Capability is not all or nothing. A person can have lessened or partial capability, and their capability can change. Someone with lessened capability may be able to make some decisions, but not others, depending on how much they understand.

An enhanced representation agreement includes decisions about life support and life-prolonging treatment. It does not let someone choose a person to make any financial or legal decisions. An enduring power of attorney or standard representation agreement can be used for this.

A representation agreement may name one Representative. Or it may name more than one representative, and the agreement can say how the representatives should work together. It can also name one or more alternate representatives, who will step in if the representative can no longer act.

*To perform your role, you should know the person's values, beliefs and wishes for their health and personal care.*

## 2 Preparing for your role

### Talk with the person about their wishes

This is a critical step to fulfilling your role as a representative. You should make sure you have conversations with the person who appointed you about their values, beliefs and wishes for health care and personal care.

[There are tools available to help you with these conversations.](#)

It may be helpful for the person you are representing to involve you in conversations with their health care providers, so you better understand their health.

### Continue the conversations

It is important to continue having conversations and to review the person's wishes at regular intervals (for example once a year), or more often if there are any changes in their health or personal circumstances.



### 3 Making decisions for the person

If the person requires health care or personal care but is incapable of making the decision, your role is to make these decisions on their behalf. Talk with their health care providers to make sure you understand the person's situation and the decisions that need to be made.

You should involve the person to the greatest extent possible. Depending on their capability this may mean helping them make decisions, or asking questions to work out their current wishes.

**If the person's wishes for a decision are known**, you must follow those wishes. A capable person's wishes remain valid even if they become incapable later on.

**If the person's wishes for a decision are not known**, you must consider their known beliefs and values. You may also need to consider whether the proposed care option is in their best interests. To do so, you should consider whether:

- their health or well-being is likely to be improved by the proposed care,
- their health or well-being is likely to improve without the proposed care,
- the benefit of the proposed care is greater than the risk of harm, and
- a less restrictive or less intrusive form of care would be just as beneficial.

*Remember: you don't have to do this alone. You have the option to talk to other people who also know the person's wishes. Ask for permission to consult with people you both trust.*



## 4 Your rights

As a representative, you have the right to:

- **Communicate with the person you represent.** You have a right to visit them and talk to them about what they want, and how they are doing.
- **Access information.** You have a right to the same information the person who chose you has a right to, as long as these are related to your area of authority. This means the adult's health care providers must answer your reasonable questions about health, prognosis and options. This allows you to make an informed decision.
- **Be paid for out-of-pocket expenses** by the person for whom you are Representative (or the person managing their finances). If you incur reasonable expenses carrying out your duties, you have a right to be refunded. Keep a record of expenses and payments.
- **Get help and advice.** You can use and hire help and advice to carry out your responsibilities.
- **Be protected from liability.** You may not be legally responsible for errors or damages as long as you follow your duties and any requirements stated in the representation agreement.
- **Resign from your role.** You can decide to resign as a representative or alternate. If you do, there are procedures you need to follow to make the resignation valid. This is done through a notice of resignation. You can find more information about [resigning as a representative or alternate here](#).

## 5 Your responsibilities

As a representative:

- **You must be accountable** to the person for whom you are a representative. You may also be accountable to official organisations who are responsible to safeguard adults who are incapable.
- **You must be able to exercise general duties** and act honestly, in good faith and within the law. Good communication skills will be an asset as you will be dealing with different people and situations.
- **You must be able to be the substitute decision maker for the person who chose you.** As representative, you must follow their wishes, including anything they said, wrote down or recorded when they were capable. If a decision is needed and they have limited capability, such as from dementia, you should still try to ask them about their wishes, keeping in mind how well they understand their situation. If their wishes are unknown, then you should make decisions according to their values and beliefs. You may also need to consider your opinion of their best interests.
- **You must keep records** of the decisions you made and actions you took while acting as a representative, for example in a document or notebook.
- **You shall not delegate your authority.** You cannot ask someone else to make decisions for the person who has appointed you. You can ask for support from other family members or the health care team.
- **You must keep the adult's information confidential.** You must keep the adult's personal information private except when necessary, such as to carry out your duties or provide information requested by a government official or court.



This document provides general information about enhanced representation agreements (section 9 agreements), and is specific to people living in British Columbia, Canada. The material presented here is not legal advice.

It is also available in [Traditional Chinese](#), [Simplified Chinese](#) and [Punjabi](#).

For more information about other planning tools, including standard representation agreements (section 7) and enduring powers of attorney, see this resource from the Public Guardian and Trustee of BC: [It's your choice - personal planning tools](#).

This document was developed by the BC Centre for Palliative Care, a non-profit organisation in British Columbia. Contact us at [office@bc-cpc.ca](mailto:office@bc-cpc.ca).

Reviewed for legal accuracy by Krista James, National Director, Canadian Centre for Elder Law and Staff Lawyer, BC Law Institute. March 2021.

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