

SIGNING YOUR REPRESENTATION AGREEMENT

You must sign (“execute”) your Representation Agreement according to the strict requirements established by the British Columbia *Representation Agreement Act*. The following is the correct procedure:

- Carefully review the Representation Agreement before signing it. Notify us immediately if there are any changes to be made.
- You and two witnesses must all be present in the same room at the same time and watch one another sign the Representation Agreement as described below. [For remote witnessing during the COVID-19 Pandemic, see below.]
- Only one witness is required if the witness is a lawyer or a notary.
- Some advise that a lawyer or notary should be used as the sole witness, to avoid any problems with doctors, hospitals, etc. accepting the document - these institutions are used to seeing RAs witnessed by lawyers or notaries.
- The following persons may not be a witness:
 - i. A person named in the Representation Agreement as a Representative or Alternative Representative;
 - ii. A spouse, child or parent of a person named in the Representation Agreement as a Representative or Alternative Representative;
 - iii. An employee or agent of a person named in the Representation Agreement as a Representative, unless the person named as a Representative is a lawyer, a notary, or the Public Guardian and Trustee of British Columbia.
 - iv. A person who is under 19 years of age;
 - v. A person who does not understand the type of communication used by the adult unless the person receives interpretive assistance to understand that type of communication.
- A witness should not witness the Representation Agreement, and should report their concerns to the Public Guardian and Trustee of British Columbia, if they have reason to believe that:

i. the adult is incapable of making, changing or revoking a Representation Agreement, or

ii. fraud, undue pressure or some other form of abuse or neglect was used to induce the adult to make the Representation Agreement, or to change or revoke a previous Representation Agreement.

- Insert the date in the space provided in the box at the bottom of the Representation Agreement.
- Sign your normal signature in the box provided in the Representation Agreement.
- Each witness must then sign in the boxes provided in the Representation Agreement and print his or her name and address in the spaces provided.
- Execute only the original of the Representation Agreement (no multiple signed copies).
- Having said this, you can (and should) make photocopies for your records.
- You can also provide copies for your Representative/alternate(s), caseworker and primary-care physician. Write or stamp "COPY" on the top.
- You can always change your mind and revoke or change your Representation Agreement. Contact us for more information.
- If you wish to revoke your Representation Agreement or make a new one, notify your Representative/alternate(s) immediately in writing. Contact us for more information.

SIGNING BY REPRESENTATIVE(S)

- Your Representative and any alternate(s) must sign the Representation Agreement before that person may exercise the authority of a representative granted in a representation agreement. Note that their signatures do not need to be witnessed.
- If your Representative lives out of town or is incapable of signing the original copy due to COVID-19, they can sign a photocopy/scan of the signature page once you and your witnesses have signed it (this is signing 'in counterpart'). They should then mail that signed photocopy to you so you can enclose it with your original.
- You can appoint multiple representatives who can act jointly or severally. This is separate from alternatives. The Act has specific provisions regarding multiple representatives:
 - if the representation agreement appoints more than one representative and the representatives must act jointly, each representative must sign;

- if the representation agreement appoints more than one representative but each may act independently, at least one representative must sign the representation agreement; and
- the multiple representatives need not be present together when they sign the representation agreement and any one or more of them may sign it in counterpart.

STORING YOUR REPRESENTATION AGREEMENT

Once you have correctly executed the Representation Agreement, keep it safe and accessible by your Representative, especially if she has not signed it yet.

- Store it with your other important documents and tell your Representative/alternate(s) where it is located.
- Ideal locations are a safety-deposit box at a bank, a safe in your own home, or a metal filing cabinet.
- If you keep it in a safety-deposit box, you should have your Representative co-sign for the box. This will allow them to easily access the box when necessary.
- If you keep it in a locked location, provide your Attorney with a key or the combination.
- Inform your Representative /alternate(s) of the location of the Representation Agreement and any other important documents.

REGISTERING YOUR REPRESENTATION AGREEMENT

- If you wish, you can register your Representation Agreement with the **Nidus Registry** (<https://www.nidus.ca/new-registry-users-steps-to-register/>). Nidus is a BC non-profit that acts as a personal-planning resource centre and registry. The fee is \$25 for the first registration and \$10 for subsequent registrations of all types.
- We have provided an information sheet from Nidus for your Representative with information about their roles and responsibilities.

COVID 19 PROCEDURES

Signing and witnessing a Representation Agreement could be a challenge when practicing physical distancing and isolation. The Representation Agreement might have to be signed with everyone masked and 6 feet apart and sliding the documents around a big table to each other (and all washing hands afterward). Witnessing through a window or glass door might also qualify as witnessing 'in the presence of' the others, with the adult

signing on one side of the window or door, and then passing the document along. There is no maximum distance specified in law for being “in the presence of” the other signers.

Proper Witnesses Not Available or No Witnesses

For adults unable to get out for a signing, this can be a problem if the only ones available around the house to act as witnesses are also the named representative(s), alternate(s), and/or a spouse, child or parent of a person named in the Representation Agreement. In these circumstances the adult might consider going ahead and using them as witnesses. Or alternatively, or if there is no one available to sign as witnesses, to have the Adult sign the Representation Agreement with no witnesses at all. The court can subsequently cure any defect in the signing of the Representation Agreement (see ss. 13(7) of the *Representation Agreement Act*.).

Skype or Zoom Witnessing

Remote Witness is Lawyer or Notary

During the State of Emergency in BC, there is a special Emergency Order regarding witnessing a Representation Agreement document remotely (adult and witness in two different locations, “electronically present” with each other. This applies both to witnessing of the signature of the Adult, and also to witnessing the signature of the Representative and/or the Alternate Representative. “Electronically present” is defined in the Order as being able through electronic means to “communicate simultaneously to an extent that is similar to communication that would occur if all the individuals were physically present in the same location.” A Representation Agreement may be signed by signing complete and identical copies of the Representation Agreement (called signing in counterpart). The copies of a Representation Agreement are identical even if there are non-substantive differences *in the format* (but not the substance) between the copies. A remote witness in this situation must be a lawyer or notary public. You could also have a second witness (not necessary when a lawyer or notary is a witness), but that other witness would have to be physically present with the Adult. A Representation Agreement made in accordance with this Emergency Order must include a statement that it was signed and witnessed in accordance with this Order.

Others As Remote Witnesses

You may not be able to, or be able to afford to, have a lawyer or notary witness your Representation Agreement signing remotely. While not provided for in the Order under the State of Emergency, another possibility would be a signing of the Representation Agreement over Skype or Zoom with others acting as remote witnesses. The adult and

the two witnesses would each have a copy of the Representation Agreement in front of them to sign. The clause below the witnesses' signatures should set out the special circumstances of the remote witnessing and signing in counterpart:

<Witness1>, **<Witness2>** and **<Adult>**, at the request of **<Adult>**, were all connected via videoconferencing, and **<Witness1>** and **<Witness2>** were both 19 years of age or older, when this Representation Agreement ('RA') was signed by **<Adult>**. We remained connected via videoconferencing while **<Adult>** signed this RA. **<Witness1>**, **<Witness2>** then each signed the RA in counterpart while remaining connected with each other and **<Adult>** via videoconferencing.

Signing with improper witness, no witness at all, or remote witnesses may be unacceptable to any 3rd parties (doctors, hospitals, etc.). Medical service providers would be required to rely on the Temporary Substitute Decision Maker provisions. But this type of signing and witnessing could be useful if the Adult subsequently loses capacity. As mentioned, the court can subsequently cure any defect in the signing of the Representation Agreement (see ss. 13(7) of the *Representation Agreement Act.*). A new RA could be done with proper witnessing after the COVID-19 distancing has been lifted or eased, assuming the Adult still has capacity.

Letter from Adult

For any of these special circumstances (no witnesses, improper witnesses, remote witnesses signing in counterpart), there would then be a letter like the following for the Adult to sign and include with their Representation Agreement, in support of any subsequent court application for curing deficiencies:

<NAME>
<ADDRESS>

<date>

TO: Whom it may concern

RE: The Execution of My Representation Agreement

My Representation Agreement dated <date> (my "RA") was signed by me during a global coronavirus pandemic. In response to extraordinary measures recommended to be taken during this time, and out of an abundance of caution for the health of myself and those around me, I have chosen to execute my RA by <describe procedure of execution>. I am advised by my Lawyer and acknowledge that my RA has not been executed in accordance with the formal requirements as set out in the *Representation Agreement Act* (British Columbia) (the "Act").

I am further advised by my lawyer that sub-section 13(7) of the Act permits an application by a named representative to the Supreme Court of British Columbia to make an order that my Representation Agreement is valid despite a defect in signing. I make this letter in support of any such court application after any subsequent mental incapacity on my part.

Sincerely,

<Name>

This handout includes 'work-arounds' suggested by the law firms of Clark Wilson LLP; Heritage Law; and, DLA Piper.