It's your choice

Personal planning tools

PGT Public Guardian and Trustee of British Columbia

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Adults and decision making

Most of us hope and expect to be able to make our own decisions throughout our lives, choosing where we live, managing our money, and making decisions about our health care. Yet, life is unpredictable. A sudden accident or illness can change everything. Sometimes, our ability to make decisions changes slowly, over time due to a variety of different medical reasons.

The best that we can do for ourselves and for those who care about us is to plan. In B.C., adults have a choice of several legal tools they can use to make sure their wishes are known and can be followed if the need arises.

These planning options are part of adult guardianship laws, which are designed to make sure the voice of adults in B.C. are heard, even when they are no longer able to speak for themselves. There are also a number of legal tools available, under the same laws, to support or protect someone who did not plan ahead.

The most appropriate option depends on your individual concerns, needs and circumstances. We hope this guide will answer many of your questions and help you plan a safe and secure future for yourself or for someone in need of assistance. For more information, see the following pages on our website:

- Personal Decision Services
- Helping an Adult Get Support and Reporting Abuse or Neglect
- Assessment and Investigation Services

Planning ahead, choosing others to assist

Personal planning options for adults

Before we explore the various planning options available to you, it is important to understand the adult guardianship framework that exists in B.C. A group of laws collectively known as the adult guardianship legislation governs the personal planning and legal options available for use. These laws also make sure that the voices of adults who can no longer speak for themselves are heard, respected and that their interests are safeguarded.

One such law is the Adult Guardianship Act (AGA). It provides legal tools to protect adults when they cannot seek help themselves, and outlines the principles that guide interventions in such cases. The AGA also sets out a presumption of capability (a legal presumption that all adults are able to make decisions no matter their age or health) that applies to all the other statutes.

Guiding principles of adult guardianship

- All adults are entitled to live in the manner they wish and to accept or refuse support, assistance or protection as long as they are capable of making decisions about those matters
- All adults should receive the most effective, but the least restrictive and intrusive, form of support, assistance or protection when they are unable to care for themselves or their financial affairs
- The court should not be asked to appoint, and should not appoint, a committee unless alternatives, such as provision of support and assistance, have been tried or carefully considered
- Until the contrary is demonstrated, every adult is presumed to be capable of making decisions about their personal care, health care and financial affairs
- An adult's way of communicating with others is not grounds for deciding that they are incapable of making decisions

Many people plan by making a will so that they can say who will look after their estate when they die and who should receive their assets. However, a will provides instructions about our wishes after our death; it does not allow someone to assist you with decision-making when you are alive. We do not always think about or know how to plan for a time when we may need someone to assist or make decisions for us or help make sure our wishes are carried out.

We encourage all adults to plan, to make sure their financial, legal, personal and health care decisions will be made by someone they trust and according to their previously expressed wishes.

These are some of the legal personal planning tools available to adults in B.C.:

- Enduring power of attorney (EPOA) to deal with your legal and financial affairs
- Representation agreement(RA):
  - Representation agreement for financial affairs (Financial RA7)
  - Representation agreement for financial affairs AND personal and health care decisions (Financial and Personal/Health Care RA7)
  - Representation agreement for personal and health care decisions (Personal/Health Care RA9)
- Advance directive for health care decisions
- Nomination of a committee to make financial, legal, personal and healthcare decisions

These options are based on the law that came into force on September 1, 2011. You may have legal planning documents that you completed prior to September 1, 2011. If you are concerned if your documents are still valid, you should obtain legal advice.

Summary chart of personal planning options

The following chart gives a general overview of the areas of decision making covered by the various planning tools. It is important to note that the scope of decision making varies depending on the option used. For example, a broader range of financial decisions can be covered in an enduring power of attorney (EPOA) than in a representation agreement for financial matters (Financial RA7).

Legal tools	**Manage your financial affairs**	**Address your legal affairs**	**Make personal care decisions on your behalf**	**Make health care decisions on your behalf**	**Make a decision to admit you to a care facility**
Enduring power of attorney (EPOA)	Yes	Yes	No	No	No
Representation agreement for financial affairs, or personal and health care decisions or all (Financial RA7)	Yes	Yes	Yes	Yes	Yes
Representation agreement for personal and health care decisions only (Personal/Health RA9)	No	No	Yes	Yes	Yes
Advance directive	No	No	No	Yes	No
Nomination of a committee of estate	Yes	Yes	No	No	No
Nomination of a committee of person	No	No	Yes	Yes	Yes

Please be aware that:

- A Financial RA7 is more limited than an EPOA
- A Personal/Health Care RA7 is more limited than a Personal/Health Care RA9

Enduring power of attorney (EPOA)

There are a number of rules about how an EPOA is made and how it can be used. You do not have to make an EPOA. It's your choice.

A power of attorney (POA) is a legal document that allows adults to name another person (the attorney) to manage their financial and legal affairs if they cannot do so on their own. The adult and the attorney must be capable when the POA is created.

In B.C., we have 2 kinds of power of attorney. These are created under the Power of Attorney Act. It is important to understand the difference.

1. **General power of attorney (POA):** A legal document that allows you to appoint a trusted person to look after your financial affairs at your direction or on your behalf when you are unavailable. A POA might be limited to a single bank account or an asset such as your house, or it may cover all financial and legal affairs for a period of time. A general power of attorney ends if you become incapable.
2. **Enduring power of attorney (EPOA):** A legal document that allows you to appoint a trusted person to manage your legal and financial affairs if you need help with decision-making or are incapable and can no longer make decisions.

If you made a valid EPOA before September 1, 2011, it is valid and can still be used. However, the rules regarding the making and use of an EPOA have changed significantly since September 1, 2011. For example, the attorney cannot make gifts, loans or donations unless the EPOA specifically states that the attorney may do so. Because of these rule changes, your attorney may not be able to carry out all of your wishes. You may want to review your existing documents and seek legal advice to see if you need to make a new EPOA.

Who can make an EPOA

If you are 19 years of age or older and you understand the nature and consequences of appointing an attorney, you can make an EPOA. This means that you, or the person you are assisting, understand all of the following:

- The property you own and its approximate value
- The obligations you have to your dependents. A dependent is a spouse or child of an adult
- You understand that your attorney will be able to do, on your behalf, anything in respect of your financial affairs that you could do when capable subject to the conditions and restrictions set out in the enduring power of attorney. Your attorney cannot make a will on your behalf
- You understand that unless the attorney manages the your business and property carefully, their value may decline
- That your attorney might misuse their authority as your attorney
- You may revoke (cancel) the EPOA at any time provided that you are capable to do so

What areas of decision making does an EPOA cover?

An EPOA can only deal with your legal and financial affairs.

Financial affairs include:

- Paying your bills
- Doing your banking
- Managing your investments
- Selling your assets
- Paying your taxes
- Looking after financial responsibilities to your dependents

Legal affairs include:

- Hiring a lawyer to start or defend a legal action

You can make an EPOA that is specific or broad. Many EPOAs are broad so that the attorney has the authority to deal with anything that may need attention. An EPOA does not cover decisions about your personal and health care. A representation agreement must be used if you want to choose someone to make your personal and health care decisions.

Making an EPOA

An EPOA must be in writing. There are legal requirements to ensure it is properly signed and witnessed. You are recommended to seek legal advice from your lawyer or notary, or a community legal clinic.

The Ministry of Attorney General has published an EPOA form that may be used to make an EPOA. It may or may not cover your circumstances or needs. It alerts you to some of the rules that must be followed for an EPOA to be valid.

Some of the rules to be aware of include:

- You and your attorney must sign in front of 2 witnesses either virtually or in person
- If you cannot sign, you may instruct someone to sign on your behalf
- Two witnesses are required unless the witness is a lawyer or notary in B.C.
- Your attorney cannot be a witness and a witness cannot be the attorney's spouse, child or parent
- If your EPOA covers real estate, such as a house or condo, a lawyer or notary must be the witness

When an EPOA starts

An EPOA can be effective as soon as you sign it or you can state when you want it to take effect. For example, you might want it to be effective if your family doctor signs a letter saying you are incapable.

While this ensures the attorney cannot act unless you are incapable, it also means they have no authority to speak for you or assist you while you are capable. For example, while capable, you may want assistance dealing with complex financial matters, dealing with investment advisors, or talking to the Canada Revenue Agency about your tax return. If you do not indicate when the authority is to take effect, you may want to discuss when and how your attorney should start to assist you. Remember, under the law, you are presumed to be capable and can continue to make decisions until it has been determined that you are incapable of making those decisions.

Changing or revoking an EPOA

You can change or revoke your EPOA if you are capable. It is your responsibility to ensure that the attorney and third parties such as your bank are properly notified of the change or revocation.

Important note: Making a new EPOA does not automatically revoke a previous POA or EPOA. You need to follow the revocation rules.

Who can be an attorney

You can name anyone you trust to be your attorney. You may choose your spouse, a family member or a close friend. If the person is not an adult, that person cannot act until he or she turns 19. You may also name a trust company or a credit union authorized to provide these services.

It is important to know that you cannot name someone who is paid to provide personal care or health care services to you as your attorney. This includes employees working at a facility where you live that provides these services. There is an exception if the attorney you choose is your spouse, child or parent.

In determining who would be a good attorney for you, consider their ability to be available as well as their knowledge and skills.

Talk to the attorney before proceeding. The attorney you name is not obliged to accept the role. There may be requirements that need to be included in your EPOA. For example, a trust company or credit union will need to ensure the EPOA provides compensation for them.

Duties and responsibilities of an attorney

Being an attorney carries many responsibilities. Not only are there duties to you, but there are expectations and legal requirements. Your attorney is expected to comply with these rules. That means they need to agree to take on the responsibility, and that they have the skills, abilities and time to do what is expected. This becomes especially important if you are no longer capable and cannot oversee what your attorney is doing.

Duties of an attorney include:

- Acting honestly and in good faith
- Exercising the care, skill and diligence of a reasonably prudent person
- Only making decisions the attorney is authorized to make
- Investing assets according to Trustee Act rules
- Keeping your assets separate from the attorney's assets
- Keeping records of your assets and their value, as well as transactions, for accounting purposes

Other rules an attorney needs to know include:

- The attorney cannot make or change your will
- There are restrictions on making or changing beneficiary designations
- Your attorney can hire agents but cannot delegate decision making to others except to qualified investment specialists

If you appoint 2 or more attorneys and one is no longer able to act for any reason, the other attorney can continue to act. This may or may not be what you want. If you want more than one attorney at all times, your EPOA must state this.

Things to discuss with your attorney

Even if you trust someone to comply with the duties and responsibilities, it is always a good idea to discuss your plans with the attorney. If they agree to take on the role, you may want to discuss what is important to you so they know your values and wishes to guide their decision making, especially if they cannot discuss them with you. You may also want to explain the important aspects of your financial affairs and where to locate critical information.

How many attorneys can be appointed

You may appoint more than one attorney. They must act together unless your EPOA says otherwise or if they have different areas of authority. Each situation is different. It is your choice to decide what arrangement is practical to carry out your wishes while minimizing the risks to you.

Naming an alternate attorney

There is always a possibility that your attorney may no longer be able or qualified to act or they may want to resign. If there is someone else you trust to take over, you may want to name this person as an alternate so that your EPOA can continue. Your EPOA must describe the circumstances when your alternate can start to act.

Other considerations for an EPOA

There are some other things to consider when making an EPOA. If any of the below apply to you, you may wish to seek legal advice to ensure your wishes can be carried out.

Gifts, loans and donations by an attorney

Although the attorney's primary responsibility is to you, you may have family or dependents you want to help, gifts you like to make each year, or a favourite charity you want to support for as long as your finances can manage it. The law permits some gifts, loans and donations, but they are subject to strict limits.

If you want your attorney to be able to continue to make gifts and donations, or to make loans to certain family members, you may want to consider whether specific guidelines should be included in your EPOA. Your attorney may also want to have a better understanding of what your wishes are and how to carry out the powers you put in the EPOA.

Paying your attorney

If you want your attorney to be paid, you must state that in your EPOA. However, all attorneys are entitled to be reimbursed, from your assets, for their validated and reasonable expenses.

Ending an EPOA

The EPOA continues until you revoke it or die. Certain events will also cause your EPOA to end. Some of the more common events are:

- Your attorney and any alternates are no longer available or qualified to act
- Your marriage or marriage-like relationship ends and your attorney is your spouse EPAO will end unless you stated in your EPOA it continues

- You put a condition in your EPOA and that condition occurs
- A court order ends it

Your EPOA is suspended, and your attorney cannot act if, the Public Guardian and Trustee (PGT) is appointed committee of estate under the Adult Guardianship Act or the Patients Property Act.

For more information, see the Financial Management and Personal Decision Making Services for Adults page on our website.

General information about representation agreements (RAs)

A representation agreement (RA) is a legal planning document that allows you to give someone you trust the legal authority to help you make decisions or to represent you and make decisions for you if you are incapable of making decisions independently. It can cover your personal and/or health care decisions, as well as management of your routine financial affairs. RAs are created under the Representation Agreement Act.

Important note: A service provider is prohibited by law from requiring you to make an RA as a condition of receiving goods or services.

RAs can be made for different types of decision making and different rules apply to each type. This section outlines the general rules that apply to an RA, how to choose an RA and details about the types of RA:

- Representation agreement for financial affairs (Financial RA7)
- Representation agreement for financial affairs AND personal and health care decisions (Financial and Personal/Health Care RA7)
- Representation agreement for personal and health care decisions (Personal/Health Care RA9)

RAs have been available as a legal planning tool since February 2000. The rules that govern how RAs are made and used were amended on September 1, 2011. The changes do not affect an existing valid RA. The most significant change is that now an RA for financial affairs can only be made for routine management of financial affairs.

If you made an RA, before September 1, 2011, with broad powers to manage your financial and legal affairs under section 9 of the Representation Agreement Act, it is deemed to be an enduring power of attorney (EPOA). As a result, your representative is subject to some of the restrictions placed on attorneys unless your agreement covers those restrictions. This could mean your representative may not be able to carry out all of your wishes as you expected. You may want to review your representation agreement and seek legal advice to determine if you should make a new planning document.

Who can make an RA?

An adult (19 years or older) can make an RA unless they are incapable of making the agreement.

When does an RA start?

An RA can be effective as soon as you and your representative sign it unless you specify when it is to take effect. If you do not indicate when it is to take effect, you may want to discuss when and how your representative should start to assist you.

You can say when the RA will take effect as long as the RA says what the circumstances are and who will confirm that the event occurred. For example, the RA might state that it is effective when your family doctor signs a letter saying you are incapable.

Under the law, you are presumed to be capable. You can continue to make decisions until you are incapable of making those decisions.

Making an RA

An RA must be in writing. There are legal requirements to ensure it is properly signed and witnessed. You are recommended to seek legal advice from your lawyer or notary, or a community legal clinic.

The Ministry of Attorney General has published forms for making representation agreements.

They may or may not cover your circumstances or needs. They alert you to some of the rules that must be followed for an RA to be valid.

Some of the rules to be aware of include:

- You must sign in front of witnesses
- If you cannot sign, you may instruct someone to sign on your behalf
- Two witnesses are required unless the witness is a lawyer or notary in B.C.
- Your representative cannot be a witness and a witness cannot be the representative's spouse, child or parent
- Your representative must sign the agreement before it can be used

Important note: If the RA is a Financial RA7 or Personal/Health Care RA7, there are additional certificates that must also be signed.

Changing or revoking an RA

You can change or revoke your RA if you are capable. It is your responsibility to ensure that the representative and third parties such as your bank are properly notified of the change or revocation.

Who can be a representative?

You can name any adult (someone 19 or older in B.C.) you trust to be your representative. You may choose your spouse, a family member or a close friend. It is important to know that you cannot name someone who is paid to provide personal care or health care services to you. This includes employees working at a facility in which you live and which provides personal and health care services. There is an exception if the representative is your spouse, child or parent.

In determining who would be a good representative for you, consider the person's ability to be available as well as their knowledge and skills.

Important note: Talk to the representative before proceeding. The representative you name is not obliged to accept the role and there may be requirements that need to be included in your RA.

Duties and responsibilities of a representative

It is important that your representative understand their duties and responsibilities before they agree to act as your representative now or in the future. These include:

- Acting honestly and in good faith
- Exercising the care, skill and diligence of a reasonably prudent person
- Only making decisions that the representative is authorized to make
- Consulting with you to determine your current wishes
- Keeping records of the decisions made and related information

Your representative must consult with you to the extent reasonable to determine your wishes and comply with those wishes if reasonable to do so.

Important note: It is important that your wishes are clear or your representative may not be able to follow them. If it is not clear, you representative may have to go to court to get direction.

How many representatives can be appointed

You may appoint more than one representative in an RA. Unless they have different areas of authority, your representatives must act together unless your RA says otherwise. Each situation is different. It's your choice to decide what arrangement is practical to carry out your wishes while minimizing the risks to you.

Important note: If you appoint 2 or more representatives in an RA and one is no longer able to act for any reason, the remaining representative cannot continue to act unless the RA says otherwise. This may or may not be what you want. If you want one representative to be able to continue, your RA must address this.

Naming an alternate representative

There is always a possibility that a representative may no longer be able to act or may want to resign. If there is someone else you trust to take over, you may want to name this person as an alternate to act under your RA. Your RA must describe the circumstances when your alternate can start to act.

Making more than one representation agreement with different representatives

You may want to make more than one RA if you want to keep your instructions and wishes for financial and personal matters separate. Alternatively, you may want to give different people authority to make different decisions. For example, you may want to give authority over your routine financial affairs to someone who is good with financial matters but give someone else authority to make your personal and health care decisions.

Important note: Making a new agreement for the same area of decision making does not automatically revoke a previous agreement. You need to follow the revocation rules.

Appointing a monitor

A monitor is someone who can be appointed in the RA and who has the power to review the representative's activities to see if the representative is complying with their duties. If the monitor has reason to believe that the representative is not complying with the duties and it cannot be resolved, the monitor is expected to inform the PGT.

For a Financial RA7,you must appoint a monitor unless you appoint 2 representatives who must act together or your representative is your spouse, a trust company, credit union or the PGT.

A monitor is not required for a Personal/Health Care RA9.

Ending an RA

The RA will continue until you revoke it or die. Other events that might end it include:

- Your representative and any alternates are no longer available or qualified to act
- Your marriage or marriage-like relationship ends and your representative is your spouse. Your representation agreement will end unless you stated in your agreement that it should continue
- You put a condition in your RA and that condition occurs
- A court order ends it
- Your RA may be suspended and your representative cannot act if:
- A monitor is required and the monitor is no longer able or willing to act. If your RA does not provide for an alternate monitor, the Public Guardian and Trustee (PGT) may be able to appoint one so the representative can continue to act
- The RA deals with managing your routine financial affairs and the PGT is appointed committee of your estate. For more information, see the Financial Management and Personal Decision Making Services for Adults page on our website.

Important note: Making a new RA does not automatically revoke a previous RA. If you intend to revoke an existing RA, you need to follow the revocation rules.

Details about the different types of representation agreements (RAs)

Representation agreement for financial affairs (Financial RA7)

A representation agreement (RA) for routine management of financial affairs is a representation agreement that is limited to a list of permitted activities and subject to any restrictions you might include. The governing legislation is the Representation Agreement Act. Section 7 of the legislation sets out the rules. This is why some people refer to this type of RA as a section 7 RA or RA7. Sometimes it is referred to as an RA with standard powers.

Why make a Financial RA7

If you are having difficulty managing your financial affairs and are not able to make an enduring power of attorney, you may still be able to make a Financial RA7.

If you want someone to help you manage your routine financial affairs and your personal and health care decisions, see **Representation agreement for both financial affairs AND personal and health care decisions (Financial and Personal/ Health Care RA7)** on page 13.

If you want to make more than one agreement, see **Making more than one representation agreement with different representatives** on page 11.

Who can make a Financial RA7?

Any adult 19 years of age or older can make an RA with standard provisions unless they are incapable of making the agreement. The Representation Agreement Act says that in order to decide if someone is incapable of making an RA7, all relevant factors should be considered, including whether:

- You can communicate a desire to have a representative make decisions on your behalf
- You are able to show your choices and preferences and you can express feelings of approval or disapproval of others
- You are aware that making the RA means that the representative may make decisions or choices that affect you
- You have a relationship with the representative that is based in trust

What does a Financial RA7 cover?

Some examples of "routine" financial management include:

- Paying bills
- Receiving and depositing income and pensions
- Purchasing food, accommodation and other services for your personal care
- Making investments according to the Trustee Act
- Opening bank accounts
- Establishing an RRSP and making contributions
- Converting an RRSP to a RRIF or an annuity
- Applying for benefits you are entitled to
- Making payments on loans that you have
- Purchasing insurance for your home or motor vehicle
- Charitable donations (subject to limits)
- Preparing and filing income tax returns
- Obtaining legal services and instructing counsel to start proceedings (except divorce) or to continue, settle or defend legal proceedings

The Representation Agreement Regulation sets out a more detailed list.

What does a Financial RA7 not cover

A representative under a Financial RA7 is not permitted to:

- Use or renew credit cards or a line of credit
- Take out a mortgage on your home
- Purchase or sell real estate for you
- Guarantee a loan
- Lend your personal property or give it away
- Revoke or amend a beneficiary designation
- Act as a director of a company on your behalf

Making a Financial RA7

For information about how to make a Financial RA7, see **General information about representation agreements** on page 9.

Important note: In addition to the general requirements for making an RA, a Financial RA7 requires the representative and witnesses to sign prescribed certificates.

Records to keep include:

- A current list of your assets and liabilities
  - An assets is something that a person owns. It could be real property, jewellery or a stock, including cash
  - A liability is something that a client owes. A debt to be paid like a mortgage or an amount owing on a credit card

- Accounts and other records
- Invoices, bank statements and tax returns required to create
- A full accounting of the receipts and disbursements

Things to discuss with your representative or monitor

If you are naming a representative and a monitor, it is important that they understand and are willing to undertake their roles and responsibilities.

If you are naming 2 representatives who must act together, it is also important that they understand that they must act together and that they agree to do so.

In either case, you may want to discuss your wishes with your representative and monitor so that if they cannot consult with you in the future, they know what you would want.

Other considerations for a Financial RA7

There are some other things to consider when making a Financial RA7:

- **Gifts and donations:** A representative under a Financial RA7 cannot make gifts with your personal property. Donations are permitted to registered charities if all of the following applies:
  - The donation is consistent with your past practices and your financial means
  - The total donated in a year does not exceed 3% of your taxable income
- **Paying a representative or monitor**: Representatives and monitors cannot be paid for acting unless both of the following apply:
  - The Financial RA7 states that they can be paid
  - The court authorizes the payment

However, a representative and monitor in a Financial RA7 can be reimbursed for reasonable expenses.

Representation agreement for personal and health care decisions (Personal/Health Care RA9)

A representation agreement (RA) for personal and health care decisions is a representation agreement that deals with personal and health care decisions when you are not capable of making the decisions by yourself. You can make an RA that covers all personal and health care decisions, including refusing health care that would preserve your life (Personal/Health Care RA9).

The governing legislation is the Representation Agreement Act. Section 9 of the legislation sets out the rules. This is why some people refer to this kind of RA as a section 9 RA or RA9. Sometimes a Personal/Health Care RA9 is referred to as an RA with non-standard powers.

You can also make an RA that is limited (i.e. one that does not include routine financial management) to personal care, as well as major and minor health care decisions (Personal/Health Care RA7). Sometimes a Personal/Health Care RA7 is called an RA with standard powers. Like Financial RA7s, a Personal/Health Care RA7 is an RA that is limited by the legislation.

Who can make a Personal/Health Care RA9?

Any adult 19 years of age or older can make an RA9 unless they are incapable of understanding the nature and consequences of the proposed agreement.

Personal care decisions included under a Personal/Health Care RA9

In a Personal/Health Care RA9, you may give your representative authority over anything the representative considers necessary for your personal care or you can specify what decisions are covered. Some areas of decision making may include:

- Living arrangements (including admission to a care facility)
- Diet and dress

- Participation in educational or vocational activities
- Access to personal information
- Restraint issues

Personal care decisions not included in a Personal/ Health Care RA9

Unless the Personal/Health Care RA9 provides for it, a representative may not:

- Arrange for the temporary care and education of your minor children or someone supported by you
- Interfere with your religious practices

Health care decisions included under a Personal/Health Care RA9

Health care is anything done for therapeutic, preventive, palliative, diagnostic, cosmetic or other purpose related to health. It includes:

- A series or sequence of similar treatments or care administered to you over a period of time for a particular health problem
- A plan for minor health care that can last for up to a year. The plan is developed by health care providers and deals with one or more of the health problems that you may have. It may also deal with one or more of the health problems that you are likely to have in the future based on your current health
- Participation in a medical research program approved by an ethics committee

Health care is also categorized as major or minor.

Major and minor health care decisions

The Health Care (Consent) and Care Facility (Admission) Act defines major and minor health care decisions.

Major health care includes:

- Major surgery and any treatment that involves a general anesthetic
- Major diagnostic or investigative procedures
- Radiation therapy
- Intravenous chemotherapy
- Kidney dialysis
- Electroconvulsive therapy
- Laser surgery

Minor health care includes:

- Routine medical tests
- Routine dental treatment such as cavity fillings and extractions that do not require a general anesthetic, and dental care

Other health care covered under a Personal/Health Care RA9

If you give your representative authority to refuse or consent to health care, with no further instructions, your representative can give or refuse consent to health care necessary to preserve life.

Your representative can decide where you will live and with whom, including admitting you to a care facility if it becomes necessary.

You may also authorize someone to physically restrain or move you, despite your objections, if necessary to provide you with health care.

Health care decisions not included in a Personal/Health Care RA9

Unless you provide for it in your RA9, your representative cannot consent to a number of invasive and controversial treatments and therapies.

Records to keep

Unless the RA says otherwise, the records that must be kept include:

- Copies of any record of your instructions, wishes, beliefs and values
- Records of material changes in residence or personal or health care needs and related decisions
- Descriptions of health care decisions or admission to a care facility and date
- Descriptions of nature and reasons for restricting contact with anyone

- Descriptions about any decision to physically restrain or move you, despite objections, and why

Advance directive (AD) for health care and a Personal/Health Care RA9

If you want to make an advance directive (AD) or you have an AD already and you want your doctor to follow the instructions in the AD without getting consent from your representative, you must say this in your Personal/Health Care RA9.

Things to discuss with your representative

If you are naming a representative and a monitor, it is important that they understand and are willing to undertake their roles and responsibilities.

If you are naming 2 representatives who must act together, it is important that they understand that they must act together and that they agree to do so.

In either case, you may want to discuss your wishes so that if they cannot consult with you, they know what you would want.

Paying a representative or monitor

Representatives and monitors may not be paid for making decisions regarding personal or health care. However, representatives and monitors may be reimbursed for reasonable expenses.

Representation agreement for both financial affairs AND personal and health care decisions (Financial and Personal/Health Care RA7)

If you are not able to make a Personal/Health Care RA9, you may still be able to make a Personal/ Health Care RA7.

Why make a Personal/ Health Care RA7?

If you are having difficulty managing your personal and health care decisions and are not able to make a Personal/Health Care RA9, you may still be able to make a Personal/Health Care RA7.

The Representation Agreement Act says that in order to decide if someone is incapable of making an RA7, all relevant factors should be considered, including whether:

- You can communicate a desire to have a representative make decisions on your behalf
- You are able to show your choices and preferences and you can express feelings of approval or disapproval of others
- You are aware that making the RA means that the representative may make decisions or choices that affect you
- You have a relationship with the representative that is based in trust

Personal care decisions included under a Personal/ Health Care RA7

Personal care as defined in the Representation Agreement Act includes things like:

- Your diet and dress
- Social activities
- Visits with family and friends
- Where you live including a family care home, group home, or mental health boarding home

Health care decisions included under a Personal/Health Care RA7

Health care under a Personal/Health Care RA7 includes major and minor health care decisions.

Personal care and health care decisions not included under a Personal/Health Care RA7

- Authority to consent to facility admission
- Invasive and controversial treatment or therapies
- Refusing treatment that would preserve life

Advance directives

What is an advance directive?

An advance directive (AD) is another tool that you can use to plan for your future. It only addresses health care decisions. An advance directive is a

written instruction that gives or refuses consent to health care treatment at a time when the health care is needed and you are not capable of giving or refusing consent to treatment.

There are a number of rules about how an advance directive is made and used. The information below provides some guidance. You may wish to seek legal advice if you decide to create an AD.

Important note: A service provider may not require you to make an AD as a condition of receiving goods or services.

Why make an advance directive?

The reasons why you might want to make an advance directive include:

- You do not have anyone you want to name as a representative who can make health care decisions for you
- You have strong feelings about certain medical treatments and interventions and want your instructions regarding their use or non-use for your health care to be legally binding
- You have a representative, but you do not want the representative to have to make certain decisions

Who can make an advance directive?

Any adult 19 years or older who is capable of understanding the nature and consequences of the document can make an advance directive. Your AD can be changed or cancelled as long as you are capable.

Making an advance directive

For an advance directive to be legally binding in B.C., it must be made in accordance with the legal requirements. It must be signed and witnessed by 2 people who are over the age of 19. Only one witness is required if it is a lawyer or notary in B.C. Witnesses must not be someone paid to provide you with personal or health care services, or financial services.

Before making an advance directive, you may wish to read more and seek legal advice. The Ministry of Health has prepared materials on advance care planning and how advance directives might fit within your overall planning for future health care decisions.

The Ministry of Health's Advance Care Planning Guide provides a form that may or may not cover your circumstances.

Important note: If the legal requirements are not met, the document will not be legally binding. However, it will be respected as your wishes made while capable, and the person with legal authority to make your health care decisions will follow your instructions.

How the AD is used

At the time when a health care provider needs consent to or refusal to provide treatment to you and you are not capable of providing that consent, they will turn to your representative (Personal/Health Care R9), if you have one, or to your AD. If you have a representative, the representative is expected to follow your wishes as stated in your Personal/Health Care R9 and AD. Your representative is expected to follow the wishes you stated or shared with them when you were capable. If you do not want your Personal/Health Care R9 to make decisions that are covered in your advance directive, you must state this in your representation agreement.

Advance directives cannot cover other decisions such as facility admission decisions. They can only cover health care.

Other documents that state your wishes about personal/health care decisions

You may have written wishes in other documents such as a living will. These documents are not advance directives under B.C. law since they do not meet the requirements for making an advance directive. However, it will be respected as your wishes made while capable and will guide the person who has legal authority to make your health care decisions.

Nomination of a committee

A person may choose to plan for the future by nominating someone to act as their committee in the future, at a time when they become incapable and cannot manage their affairs. If someone is nominated, that person must be appointed as the committee by the court unless there is good and sufficient reason for refusing the appointment. A nomination of committee is another tool you can use to plan for your future. You do not have to make a nomination of committee.

What is a committee?

A private committee is anyone other than the Public Guardian and Trustee (PGT) who manages the affairs for an adult who is not capable to manage on their own. Private committees must be appointed by the court. This is governed under the Patients Property Act. Most often, private committees are family members or friends.

There are 2 kinds of private committee:

1. **Committee of Estate:** A committee of estate is the person appointed to take care of an adult's legal and financial affairs when an adult cannot make decisions on their own. For example, an adult may have dementia or a severe mental health issue that stops them from paying their bills or dealing with legal issues. A committee may manage income and expenses, take care of investments, operate the adult's bank accounts or maintain property

2. **Committee of Person:** A committee of person is the person appointed to make decisions about health care and living arrangements as the adult may not be able to take care of themselves and may be at risk of other people taking advantage of them. A committee of person may make decisions about where the adult should live, health care or who can visit the adult

It is common for someone to serve as both committee of person and committee of estate.

For more information about being a private committee, see the Review and Monitoring of Private Committees page on our website.

Nomination of a committee

If there is a need for you to have a committee, someone may apply to the court to declare that you are incapable and ask to be named as your committee. The applicant is usually someone from your family. They need to demonstrate that they are willing and appropriate for the responsibilities involved. Sometimes a trust company or the PGT may be appointed.

A nomination is a legal document where you can nominate a person or persons to be appointed committee for you, by the court, if required in the future. A nomination is signed and witnessed in the same manner as a will. You must be capable when you nominate a committee(s).

Why nominate a committee

The court must follow the direction in the nomination unless there is a good reason not to do so. Some reasons to nominate a committee include:

- There is a possibility of conflict between family members and there is a need for a committee
- There is a particular family member or friend that you feel would represent you best
- You do not want a power of attorney or representation agreement, and would prefer that, if needed, your substitute be appointed through the court and be required to provide regular accounting to the court or the PGT

Making a nomination

Any adult who is capable may make a nomination. Just like a will or other planning tools, a nomination can be changed or revoked by you while you are capable.

Notification of nominating a committee

A person nominated is not obliged to accept the nomination so you may wish to discuss this matter with the person you wish to nominate in advance.

You may also want to discuss where you will store the nomination and where your other important papers can be found.

You may also notify the PGT that you have made a committee nomination but the PGT does not store original documents.

Other personal planning considerations

Reviewing documents

As with your will, it is important to review your documents when life circumstances change, or the law changes. There are a number of reasons you may need to update your documents. These include:

- The person you have named to make decisions may no longer be available or qualified
- Someone else may be closer to you and be more familiar with your current wishes
- Your relationships may have changed
- Someone else in your life may have more time and/or have more skills to manage financial, personal or health care matters
- Your instructions have changed or are out of date

Making a will

When you are making one or more personal planning documents, you may also want to consider making or updating your will at the same time.

What happens if adults do not plan or their plans fall through

Not everyone plans for the future or the plans that they made fall apart. Adults, who can no longer manage their financial and legal affairs, because they may no longer be capable, may be vulnerable. Dealing with routine banking and legal matters may be difficult or even impossible. They may lose track of their finances, forget to pay bills or be easily persuaded to turn property over to strangers. You can help them get the support they may need.

Summary chart of the options available to support a vulnerable adult

Below are some examples of situations where an adult may require assistance, and which of the options you may consider.

Scenario:	**Options to consider:**
An adult is capable of managing their financial affairs but is worried about the future and wants to arrange for someone else to make decisions.	Enduring Power of Attorney Representation Agreement – Financial RA7
An adult is capable of managing their financial affairs but needs help with things like signing documents, banking, bill payments and tax returns.	Informal options for helping an adult Enduring Power of Attorney Representation Agreement – Financial RA7
An adult is incapable of managing their financial affairs and only needs assistance managing their federal pensions	Federal government pension trustee
An adult is incapable of managing their financial and/or personal affairs, meaning there is a need for someone to have legal authority to manage their affairs for them.	Committee of Estate Committee of Person
An adult is incapable of managing their financial and/or personal affairs, and they or other people are mismanaging their affairs.	Protecting a vulnerable adult from abuse, neglect and self neglect

How you can help a vulnerable adult

Informal options for helping an adult

If an adult is capable of managing their financial affairs but needs help with things like signing documents, banking, bill payments and tax returns, informal options may be all they need. These options are the least intrusive means of helping an adult.

Even if the adult has made an enduring power of attorney or representation agreement for routine management of financial affairs, it may not be necessary or appropriate for the attorney, or representative to act.

A number of services can help an adult manage their financial affairs, while retaining their independence. They include:

- Financial institutions that may be able to help arrange direct deposits and automatic bill payments
- Tax clinics that can help with tax returns and ensure all tax refunds and credits are claimed
- Financial planners, trust companies, accounting firms and law firms that may be able to provide advice and/or assistance
- Community agencies that may be able to identify services to meet the adult's specific needs and circumstances

Federal government pension trustee

If an adult is having difficulty managing their financial affairs, federal income assistance laws allow a person to be appointed as trustee to collect and manage the following types of payments:

- Old Age Security (OAS)
- Guaranteed Income Supplement (GIS)
- Canada Pension Plan (CPP)
- War veteran allowances

This may be an option if the adult has no other income sources and no assets to be managed. While a pension trustee has a limited authority, it is often all that is needed to assist with routine daily financial matters.

Applying to be a federal government pension trustee

If the adult wants you to apply to be the trustee, or if the adult is not capable of making the decision and you are willing to accept the responsibility, you or a trustworthy family member or friend may apply.

Service Canada can help with the process. A signed certificate from one qualified medical doctor is required, verifying that the adult needs help to manage their pension income. Service Canada provides forms for the doctor and trustee to sign.

The doctor may charge a small fee for this service, but a lawyer is not required to complete the application. In addition, the person applying to be pension trustee must sign an agreement that sets out the trustee's role and responsibilities.

The agreement signed by the trustee requires that the trustee administer the pension benefits in the adult's best interests, maintain yearly records and be prepared to provide an accounting report.

Important note: A pension trustee does not have authority to manage other assets or communicate with Canada Revenue Agency about tax returns. A pension trustee cannot be paid for acting as a pension trustee.

Committee of estate and person

A private committee is anyone other than the Public Guardian and Trustee (PGT) who manages the affairs of an adult who is not capable to manage on their own. Private committees are appointed by the court and are governed under the Patients Property Act. Most often, private committees are family members or friends.

Most often private committees are trusted family members or friends who are able and willing to accept the responsibilities. If no one is available or appropriate, a trust company or a credit union that offers trust services may apply. The PGT can also take steps to become committee.

There are 2 kinds of private committee:

1. **Committee of Estate:** A committee of estate is the person appointed to take care of an adult's legal and financial affairs when an adult cannot make decisions on their own. For example, an adult may have dementia or a severe mental health issue that stops them from paying their bills or dealing with legal issues. A committee may manage income and expenses, take care of investments, operate the adult's bank accounts or maintain property

2. **Committee of Person:** A committee of person is the person appointed to make decisions about health care and living arrangements as the adult may not be able to take care of themselves and may be at risk of other people taking advantage of them. A committee of person may make decisions about where the adult should live, health care or who can visit the adult

Committeeship is the most intrusive option for dealing with an adult's financial affairs. Because of this, it is important to confirm that informal options, and other solutions such as a federal pension trusteeship or making a Financial RA7, are not sufficient to address the adult's needs.

A committee has broad powers to make decisions for the adult. In other provinces and territories in Canada, a committee may be known as a guardian.

Your court order

The court order gives you the authority to protect and secure the property of and/or the person for whom you are committee. The order will also state any restrictions on your authority. For example, the court order may say that you cannot sell any of the adult's real property without the permission of the PGT. You must follow the court order.

Your lawyer will give you copies of the court order appointing you as committee. This is your direct authority to act as committee. It remains in effect until:

- Another order says otherwise
- An executor or administrator is appointed after the adult's death
- An executor is a person or organization named in a will to administer and distribute an estate.
- An administrator is a person responsible for administering the estate of someone who died either without a will or where a named executor cannot act or has died. An administrator is the same as an executor, but is appointed by a court.

You may need certified or notarial copies of your order from your lawyer or the registry. Some institutions, for example banks, may require a certified copy.

While you are committee, the adult's circumstances may change. The terms of the court order may no longer allow you to act in the adult's best interest. For example, the adult may need an increased level of care. The cost of this care may be more than the adult's estate can afford without access to restricted assets. You may need legal advice to go back to court to change your court order.

The B.C. branch of the Canadian Bar Association offers Lawyer Referral Service that can help find a lawyer who is experienced in dealing with this type of application.

Duties and responsibilities of a committee of estate

The committee must take full responsibility for the adult's financial and legal affairs. However, the committee is expected to consider and respect the wishes of the adult. This includes fostering the independence of the adult and encouraging the adult's involvement in any decision making that affects the adult.

A committee has wide powers and extensive responsibilities including:

- Identifying and securing the adult's assets and income
- Managing a budget to look after the adult's expenses and liabilities
- Ensuring the adult's legal obligations are met
- Preparing all income tax returns
- Preparing accounts for review by the PGT or court

When applicable, unless limited by the court, responsibilities also include:

- Buying or selling the adult's property when it is in their best interests
- Entering into contracts
- Operating any existing businesses
- Bringing or defending any lawsuits on behalf of the adult

Within one year of being appointed as committee, a detailed accounting of the estate must be submitted to the PGT. Subsequent reporting intervals are then assigned by the PGT and may vary from one to 5 years, depending on factors such as the size and complexity of the estate. For more information, see the Review and Monitoring of Private Committees page on our website.

The PGT as committee of estate

When there is no relative or friend who is willing and appropriate to become committee of the adult's estate, the PGT may take steps to become committee of estate. The PGT can be appointed in one of 2 ways:

- An application may be made to the court for an order that the adult is incapable of managing their financial affairs and appointing the PGT as committee of estate
- A designated person from a regional health authority or the provincial health authority may issue a certificate of incapability stating the adult is incapable of managing their financial affairs
    - Certificate of Incapability (CI) is a legal document issued by a health authority after an adult is assessed to be unable to manage their legal or financial affairs. The CI appoints the PGT as committee of estate and is considered only when less intrusive options have been evaluated or tried.

For more information, see the Financial Management and Personal Decision Making Services for Adults page on our website.

Duties and responsibilities of a committee of person

Fostering independence is an important duty of all committees. As committee of person, it is important that you make an effort to find out the adult's current wishes and beliefs. You must also involve the adult to the greatest extent possible when making decisions about their affairs. The adult has the right to participate in personal decisions, even when you are committee.

A committee of person has the legal authority to make decisions about personal and health care affairs for the adult for whom they are acting as committee.

Some examples of these decisions include:

- Where an adult should live
- Whether the adult should participate in work, educational, or other activities
- Whether an adult should receive a type of health care
- Decisions about an adult's diet or what they wear
- Who can visit with the adult

To learn about the adult's wishes and beliefs, you should first talk to the adult. You may wish to talk with family members, close friends and others who might have valuable information that will help guide your decisions. Talking with the adult and the people connected to the adult will help you make the best decisions possible.

It is recommended that you record reasons for any decisions you make on behalf of the adult at the time of making them.

As committee of person you can make decisions around health care and care facility admission.

Health care and care facility admission decisions as committee of person

While you are committee of person, you have the authority to provide informed consent on behalf of the adult for whom you are committee. You may have to make health care decisions for the adult or decisions around care facility admission.

Health care decisions as committee of person

Health care decisions could be minor, such as keeping the adult up to date with medications and routine visits to the doctor. They can also be major, such as whether to undergo surgery.

These decisions can have serious implications for the adult. The following is a list of considerations to help you make these important decisions:

- Have the doctor explain all treatment options
- Make sure you understand the benefits and risks of each option
- Consider seeking a second opinion
- If possible, speak to the adult about their wishes and consider any known instructions or wishes made by the adult when the adult was capable
- If there are no known prior instructions made when the adult was capable, follow their known values and beliefs and if there are no such values and beliefs, know then the decision is to be made in the adult's best interests
- When it's appropriate, talk with family members and friends. They can help you understand the adult's wishes when they were capable, values and beliefs
- Keep a journal with information, events and dates related to the key decisions you make

Residential and facility admission decisions

As committee of person, you also have the legal authority to decide where the adult for whom you are committee lives. When managing this aspect of the adult's personal life, you can ask yourself the following questions:

- How is the adult currently managing?
- Is the adult's current setting suitable?
- What plans are there for the adult's future?

These decisions can be very hard to make, especially if the adult needs to move from their home. For example, it can be hard to balance the adult's wishes against the acceptable risk and affordability of the option for them to stay at home. There may not be a clear choice. Speaking with the adult's caregivers, such as their physician or social worker, can be very helpful. You must consider:

- The adult's wishes
- The best interests of the adult
- The level of care/support the adult needs
- The level of support that is available
- The level of risk associated with the location
- Consultation with family or friends
- Financial considerations

Challenging incapability assessments and reassessments

Sometimes the adult may wish to challenge an assessment of incapability. Sometimes, an adult may become capable in the future and require a reassessment to confirm their capability. It is important for the adult to know that these options are available. The committee of estate of estate may need to assist the adult to obtain legal assistance to challenge an assessment of incapability or to coordinate a reassessment.

Contact the Public Guardian and Trustee

Assessment and Investigation Services

700–808 West Hastings Street
Vancouver, B.C. V6C 3L3

Local phone	604-660-4507
Toll free phone	1-877-511-4111
Local fax	604-660-9479
Toll free fax	1-855-660-9479
Email	AIS-PDS@trustee.bc.ca
Website	www.trustee.bc.ca

PGT hours of operation
Monday to Friday 8:30am to 4:30pm