

**REPRESENTATION AGREEMENT ACT****CHAPTER 67***Assented to July 29, 1993***Contents****PART 1****INTRODUCTORY PROVISIONS****Section**

1. Definitions
2. Purpose of this Act
3. Presumption of capability

**PART 2****PARTIES, TERMS, FORMALITIES AND REGISTRATION**

4. Who can make an agreement
5. Representatives
6. Alternate representatives
7. Standard provisions
8. Test of incapability for standard provisions
9. Other provisions
10. Test of incapability for other provisions
11. Mental health decisions
12. Monitors
13. Form, signing and witnessing of agreements
14. Agreements not effective unless registered - exception
15. When agreements become effective

**PART 3****DUTIES, POWERS AND LIABILITY OF  
REPRESENTATIVES AND MONITORS**

16. Duties of representatives
17. Power to retain services
18. Rights of representatives to information
19. Agreements made by representatives
20. Duties and powers of monitors
21. Removal or replacement of monitors
22. Duty to keep information confidential
23. Liability of representatives
24. If authority is exercised when agreement is not effective or valid
25. Liability of monitors
26. Payment and expenses

**PART 4****CHANGING, REVOKING OR ENDING AGREEMENTS**

27. Changing or revoking agreements
28. Automatic cancellation of financial, business or asset provisions
29. When agreements come to an end

**PART 5****OBJECTIONS, INVESTIGATIONS AND ASSISTANCE**

30. Objecting to agreements, changes or revocations
31. Investigations by the Public Trustee
32. Court orders
33. Costs of applications to court
34. Advice and assistance for representatives

**PART 6****GENERAL PROVISIONS**

35. Legal proceedings
36. Agreement does not deprive adult of power to act
37. Supreme Court jurisdiction
38. Protection of the registry staff
39. Effect of this Act on enduring power of attorney
40. Existing health care authorizations
41. Agreements made elsewhere
42. Regulations
43. Offence
- 44 - 64. Consequential Amendments
65. Commencement

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

**PART 1****INTRODUCTORY PROVISIONS****Definitions****1. In this Act**

"adult" means anyone who has reached 19 years of age;

"care facility" has the same meaning as in the *Health Care (Consent) and Care Facility (Admission) Act*;

"credit union" means a credit union authorized under the *Financial Institutions Act* to do trust business;

"court" means the Supreme Court of British Columbia;

"health care" has the same meaning as in the *Health Care (Consent) and Care Facility (Admission) Act*;

"near relative" means a spouse, adult child, parent, adult brother or sister or other adult relation by birth or adoption;

"registrar" means the person who is designated as the registrar of the representation agreement registry established under section 42 (b);

"representation agreement" means an agreement made under this Act;

"spouse" means a person who

(a) is married to another person and is not living separate and apart, within the meaning of the *Divorce Act*, (Canada), from the other person, or

(b) is living with another person in a marriage-like relationship

and, for the purposes of this Act, the marriage or marriage-like relationship may be between members of the same sex;

"trust company" means a trust company, or extra provincial trust corporation, authorized under the *Financial Institutions Act* to do trust business.

### **Purpose of this Act**

#### **2. The purpose of this Act is to provide a mechanism**

(a) to allow adults to arrange in advance how, when and by whom, decisions about their health care, personal care or financial affairs or about other matters will be made if they become incapable of making decisions independently, and

(b) to avoid the need for the court to appoint someone to help adults make decisions, or someone to make decisions for adults, when they are incapable of making decisions independently.

### **Presumption of capability**

#### **3. (1) Every adult is presumed to be capable of**

(a) making, changing or revoking a representation agreement, and

(b) making decisions about personal care, health care and legal matters and about the adult's financial affairs, business and assets,

until the contrary is demonstrated.

(2) An adult's way of communicating with others is not grounds for deciding that he or she is incapable of understanding anything referred to in subsection (1).

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## PART 2

### PARTIES, TERMS, FORMALITIES AND REGISTRATION

#### Who can make an agreement

4. An adult may make a representation agreement unless he or she is incapable of doing so.

#### Representatives

5. (1) An adult who makes a representation agreement may name as his or her representative one or more of the following:
  - (a) another adult;
  - (b) the Public Trustee;
  - (c) a credit union or trust company as long as the credit union's or trust company's authority under the representation agreement is confined to the adult's financial affairs, business or assets and to related legal matters.
- (2) An adult who names more than one representative in a representation agreement must in the agreement
  - (a) assign a specific area of authority to each representative,
  - (b) name the one who is to be the principal representative and the spokesperson for the other representatives, and
  - (c) specify a method for resolving any disputes among the representatives.
- (3) A representation agreement naming more than one representative is invalid unless it contains the information described in subsection (2).
- (4) A representation agreement is invalid unless each representative completes a certificate in the prescribed form.

#### Alternate representatives

6. (1) An adult who makes a representation agreement may name as an alternate representative any person who qualifies under section 5 (1).
- (2) Section 5 (2) to (4) applies to an alternate representative.
- (3) If an alternate representative is named, the following must be specified in the agreement:

- (a) the circumstances in which the alternate representative is authorized to act in place of the representative, including, for example, if the representative is unwilling to act, dies or is for any other reason unable to act;
  - (b) any conditions subject to which the alternate representative is authorized to act in place of the representative, including, for example, conditions about the appointment of a monitor.
- (4) When acting in place of a representative, the alternate representative is the representative for the purposes of this Act and any other Act.
  - (5) An alternate representative must notify the registrar as soon as the alternate representative begins to act in place of a representative.

### Standard provisions

- 7. (1) In a representation agreement an adult may authorize his or her representative to help the adult make decisions, or to make decisions on behalf of the adult, about any or all of the following:
  - (a) the adult's personal care, including, for example, where and with whom the adult is to reside;
  - (b) routine management of the adult's financial affairs, including, for example,
    - (i) payment of bills,
    - (ii) receipt and deposit of pension and other income,
    - (iii) purchases of food, accommodation and other services necessary for personal care, and
    - (iv) the making, in the manner provided in the *Trustee Act*, of any investments that a trustee is authorized to make under that Act;
  - (c) major health care and minor health care, as defined in the *Health Care (Consent) and Care Facility (Admission) Act*, but not including the kinds of health care prescribed under section 34 (f) of that Act;
  - (d) obtaining legal services for the adult and instructing counsel to commence proceedings, except divorce proceedings, or to continue, compromise, defend or settle any legal proceedings on the adult's behalf.
- (2) An adult may authorize a representative under subsection (1) (a) to accept a facility care proposal under the *Health Care (Consent) and Care Facility (Admission) Act* for the adult's admission to a care facility, but only if the facility is
  - (a) a family care home,

- (b) a group home for the mentally handicapped, or
  - (c) a mental health housing home.
- (3) The Lieutenant Governor in Council may prescribe a form of representation agreement containing the provisions authorized by this section, but the use of the form is optional.

#### **Test of incapability for standard provisions**

8. (1) An adult may make a representation agreement consisting of one or more of the standard provisions authorized by section 7 even though the adult is incapable of
- (a) making a contract, or
  - (b) managing his or her health care, personal care, legal matters, financial affairs, business or assets.
- (2) In deciding whether an adult is incapable of making a representation agreement consisting of one or more of the standard provisions authorized by section 7, or of changing or revoking any of those provisions, all relevant factors must be considered, for example:
- (a) whether the adult communicates a desire to have a representative make, help make, or stop making decisions;
  - (b) whether the adult demonstrates choices and preferences and can express feelings of approval or disapproval of others;
  - (c) whether the adult is aware that making the representation agreement or changing or revoking any of the provisions means that the representative may make, or stop making, decisions or choices that affect the adult;
  - (d) whether the adult has a relationship with the representative that is characterized by trust.

#### **Other provisions**

9. (1) In a representation agreement, an adult may also authorize his or her representative to do any or all of the following:
- (a) physically restrain, move or manage the adult, or have the adult physically restrained, moved or managed, when necessary and despite the objections of the adult;
  - (b) give consent, in the circumstances specified in the agreement, to specified kinds of health care, even though the adult is refusing to give consent at the time the health care is provided;

- (c) refuse consent to specified kinds of health care, including life-supporting care or treatment;
  - (d) give consent to specified kinds of health care, including one or more of the kinds of health care prescribed under section 34 (f) of the *Health Care (Consent) and Care Facility (Admission) Act*;
  - (e) accept a facility care proposal under the *Health Care (Consent) and Care Facility (Admission) Act* for the adult's admission to any kind of care facility;
  - (f) make arrangements for the temporary care, education and financial support of
    - (i) the adult's minor children, and
    - (ii) any other persons who are cared for or supported by the adult;
  - (g) conduct the adult's business or dispose of or manage the adult's assets that are not managed under section 7 (1) (b);
  - (h) invest the adult's assets, in the manner specified in the agreement, in investments that a trustee is not authorized to make under the *Trustee Act*;
  - (i) undertake any other specified task, or make any other specified decision, that is not prohibited by law.
- (2) A provision in a representation agreement that authorizes a representative to do anything described in subsection (1) is invalid unless
- (a) the adult authorizing the representative consults with one of the following about the provision:
    - (i) a member of the Law Society of British Columbia;
    - (ii) anyone who belongs to a prescribed class of persons, and
  - (b) the person who is consulted completes a certificate in the prescribed form.

### **Test of incapability for other provisions**

- 10.** An adult may authorize a representative to do any or all of the things referred to in section 9 unless the adult is incapable of understanding the nature of the authority and the effect of giving it to the representative.

### **Mental health decisions**

- 11.** Despite sections 7 (1) (c) and 9 (1) (c), an adult may not authorize a representative to refuse consent

- (a) to the adult's admission to a Provincial mental health facility or psychiatric unit under section 20, 23, 24, 25 or 25.1 of the *Mental Health Act*,
- (b) to professional services, care or treatment if the adult is detained under section 20, 23, 24 or 25.1 of the *Mental Health Act*, or
- (c) to professional services, care or treatment under the *Mental Health Act* if the adult is on extended leave from a Provincial mental health facility or psychiatric unit under sections 31 and 33 of that Act.

### Monitors

12. (1) An adult who wants to have a representative must either
- (a) name in the representation agreement someone to act as monitor, or
  - (b) state in writing or dictate at the time of signing the agreement that a monitor is not required.
- (2) An adult may name as monitor another adult who is willing and able to perform the duties and exercise the powers of a monitor.
- (3) A person named in the representation agreement as monitor must complete a certificate in the prescribed form.
- (4) If an adult does not comply with subsection (1), the Public Trustee may appoint as monitor a near relative or friend of the adult who qualifies under subsection (2).

### Form, signing and witnessing of agreements

13. (1) A representation agreement must be in writing.
- (2) A representation agreement must be executed in the presence of 2 witnesses by
- (a) the adult who wants to be represented, and
  - (b) each representative and each alternate representative named in the agreement.
- (3) All of the persons referred to in subsection (2) must be present together when a representation agreement is executed, but, if it is impracticable for an alternate representative to be present,
- (a) the others may execute the agreement in the absence of the alternate representative, and
  - (b) the alternate representative may execute the agreement in the presence of 2 witnesses.

- (4) A representation agreement may be signed on behalf of the adult who wants to be represented if
  - (a) the adult is physically incapable of signing the agreement,
  - (b) the adult is present and directs that the agreement be signed,
  - (c) the person signing the agreement is an adult who is not named as a representative or alternate representative in the agreement and is not a witness to the agreement, and
  - (d) the person signing the agreement and the witnesses complete a certificate in the prescribed form.
- (5) None of the following may witness the signing of a representation agreement:
  - (a) anyone named in the agreement as a representative or alternate representative;
  - (b) a spouse, child or parent of anyone named in the agreement as a representative or alternate representative;
  - (c) an employee or agent of a person named in the agreement as a representative or alternate representative;
  - (d) anyone under 19 years of age;
  - (e) anyone who does not understand the type of communication used by the adult who wants to be represented.
- (6) A witness must complete a certificate in the prescribed form.

**Agreements not effective  
unless registered - exception**

- 14.** (1) Subject to subsection (3), a representation agreement has no effect unless it is registered by the registrar in accordance with the regulations.
- (2) The registrar may refuse to register a representation agreement until he or she is satisfied that it has been properly completed and executed.
- (3) Before a representation agreement is registered, a representative may exercise the authority given by the adult in the agreement if
- (a) the prompt exercise of the authority is necessary to protect the adult's interests,
  - (b) the agreement has been executed,
  - (c) the agreement has been or is about to be sent to the registrar for registration,
  - (d) the representative notifies the registrar that the representative proposes to exercise or has exercised the authority, and

- (e) the representative acts within the authority and in accordance with the instructions set out in the agreement.

#### **When agreements become effective**

- 15.** (1) A representation agreement becomes effective on the date it is registered unless the agreement provides that it, or a provision of it, becomes effective later
- (a) when the representative receives an assessment report under section 5 of the *Adult Guardianship Act* indicating that the adult is incapable of making the kinds of decisions the representative is authorized to make under the representation agreement, or
  - (b) when an event occurs.
- (2) If the representation agreement provides that it, or a provision of it, is to become effective when an event occurs, the agreement must specify how the event is to be confirmed and by whom.
- (3) A person named as a representative in a representation agreement that becomes effective as described in subsection (1) (a) or (b) must
- (a) notify the registrar as soon as the agreement or a provision of it becomes effective, and
  - (b) allow the registrar to examine a copy of the assessment report under the *Adult Guardianship Act* or a copy of the confirmation of the event.

### **PART 3**

#### **DUTIES, POWERS AND LIABILITY OF REPRESENTATIVES AND MONITORS**

##### **Duties of representatives**

- 16.** (1) A representative must
- (a) act honestly and in good faith,
  - (b) exercise the care, diligence and skill of a reasonably prudent person, and
  - (c) act within the authority given in the representation agreement.
- (2) When helping the adult to make decisions or when making decisions on behalf of the adult, a representative must
- (a) consult, to the greatest extent possible, with the adult to determine his or her current wishes, and

- (b) comply with those wishes if it is practicable to do so.
- (3) If the adult's current wishes cannot be determined or it is not practicable to comply with them, the representative must comply with any instructions or wishes the adult expressed while he or she was capable.
- (4) If the adult's instructions or expressed wishes are not known, the representative must act
  - (a) on the basis of the adult's known beliefs and values, or
  - (b) in the adult's best interests, if his or her beliefs and values are not known.
- (5) On application by a representative, the court may exempt the representative from the duty under subsection (3) to comply with any instructions or wishes the adult expressed while he or she was capable.
- (6) A representative may not delegate any authority given in the representation agreement.
- (7) Section 19 (3) of the *Health Care (Consent) and Care Facility (Admission) Act* applies when a representative makes health care decisions on behalf of an adult.
- (8) A representative who is authorized under section 7 (1) (b) or 9 (1) (g) or (h) to make decisions about an adult's financial affairs, business or assets must
  - (a) keep accounting records, and
  - (b) keep the adult's assets separate from the representative's assets.
- (9) A representative who is required under subsection (8) (a) to keep accounting records must produce the records for inspection and copying at the request of
  - (a) the adult,
  - (b) the adult's monitor, or
  - (c) the Public Trustee.
- (10) Subsection (8) (b) does not apply to assets that were jointly owned by the adult and the representative before the representation agreement became effective, but in that case the representative holds the adult's interest in the assets in trust for the adult.
- (11) If a conflict of interest or a potential conflict of interest arises between an adult and the adult's representative, the representative must
  - (a) promptly notify the adult and the Public Trustee, and

- (b) consider any advice, or follow any instructions, the Public Trustee gives about the conflict.
- (12) A person who, on the death of an adult, will be or might be a beneficiary of the adult's estate does not, for that reason, have a conflict of interest with the adult.

#### **Power to retain services**

- 17.** An adult's representative may retain the services of a qualified person to assist the representative in doing anything the adult has authorized the representative to do.

#### **Rights of representatives to information**

- 18.** (1) A representative of an adult has a right to all the information necessary to help the adult make, or to make on behalf of the adult, informed decisions under the representation agreement.
- (2) Anyone who has custody or control of the information referred to in subsection (1) must disclose that information to the representative.
- (3) This section is subject to any restriction in the representation agreement, but the section overrides
- (a) any claim of confidentiality or privilege, except a claim based on solicitor-client privilege, and
  - (b) any restriction in an enactment or the common law about the disclosure or confidentiality of information.

#### **Agreements made by representatives**

- 19.** An agreement made by a representative on behalf of an adult is binding on the adult, even after the representative no longer has authority under the representation agreement.

#### **Duties and powers of monitors**

- 20.** (1) A monitor for an adult who has a representative must try to make sure that the representative complies with section 16 (duties of representatives).
- (2) At any reasonable time, the monitor may visit and speak with the adult.
- (3) Anyone having custody or control of the adult must not hinder the monitor from visiting or speaking with the adult.

- (4) If the monitor has reason to believe that the representative is not complying with section 16, the monitor
  - (a) may require the representative to produce accounting records or to report to the monitor on the matters the monitor specifies, and
  - (b) must notify each person who signed the agreement of the representative's failure to comply with section 16.
- (5) After notifying the persons, the monitor must
  - (a) follow any directions given by the adult, if, in the monitor's opinion, the adult is capable of giving directions, or
  - (b) direct the representative to comply with section 16, if, in the monitor's opinion, the adult is not capable of giving directions.
- (6) If the representative does not comply with the monitor's direction, the monitor must promptly inform the Public Trustee.

#### **Removal or replacement of monitors**

- 21.** (1) On application by a representative or any other interested person, the court may remove or replace a monitor if
  - (a) the monitor is no longer acting as monitor or is otherwise unsuitable, and
  - (b) the adult who named the monitor is incapable of changing the representation agreement.
- (2) If an application is made to remove or replace a monitor or if a monitor dies, becomes incapable or is for any other reason unable to act, the Public Trustee may act as monitor until the court
  - (a) determines that a monitor is not required, or
  - (b) appoints another monitor.

#### **Duty to keep information confidential**

- 22.** A representative or a monitor must not disclose information provided under this Act or obtained in the exercise of authority under a representation agreement, except to the extent necessary for the purposes of
  - (a) performing the duties or exercising the authority of a representative or a monitor,
  - (b) an investigation under section 30 (3) (a) or 31, or
  - (c) an application to the court.

**Liability of representatives**

- 23.** (1) A representative who complies with section 16 is not liable for injury to or death of the adult or for loss or damage to the adult's financial affairs, business or assets.
- (2) A representative who tries to the best of his or her ability to comply with the duties in section 16 (2) to (4) is not liable for injury to or death of the adult, or for loss or damage to the adult's financial affairs, business or assets, resulting from a breach of any of those duties if the representative acts in what the representative believes to be the adult's best interests.

**If authority is exercised when agreement is not effective or valid**

- 24.** (1) If a representative who acts within the authority given in a representation agreement does not know, and could not reasonably have known, that the agreement, or a provision of it, is not in effect or is invalid, the representative
- (a) is deemed to have had authority to act, and
  - (b) is not liable for acting without authority.
- (2) If a representation agreement or a provision of it is not in effect or is invalid, any exercise of the authority given to a representative by the agreement is valid and binding in favour of a person who did not know and had no reason to believe that the agreement or provision was not in effect or was invalid.

**Liability of monitors**

- 25.** A monitor is not liable for any act or failure to act of a representative if the monitor
- (a) acts honestly and in good faith, and
  - (b) exercises the care, diligence and skill of a reasonably prudent person.

**Payment and expenses**

- 26.** (1) No person is entitled to be remunerated for acting as a representative unless the agreement expressly provides for the remuneration.
- (2) A person is entitled to be reimbursed from an adult's assets for reasonable expenses properly incurred in performing the duties or exercising the powers of the adult's representative or monitor.

## PART 4

### CHANGING, REVOKING OR ENDING AGREEMENTS

#### Changing or revoking agreements

- 27.** (1) An adult who has a representative may change or revoke the representation agreement at any time if
- (a) the adult is capable of changing or revoking the agreement,
  - (b) in the case of a change to a provision authorized under section 9 (1), the adult consults with a person mentioned in section 9 (2) about the change and the person consulted completes a certificate in the prescribed form,
  - (c) any criteria for change or revocation that are set out in the agreement are met, and
  - (d) written notice of the change or revocation is given to
    - (i) each representative,
    - (ii) each alternate representative,
    - (iii) the monitor, and
    - (iv) the registrar, if the agreement has been registered.
- (2) A representation agreement may be changed under subsection (1)
- (a) by adding, removing or replacing a representative,
  - (b) by removing or replacing a monitor,
  - (c) by deleting any provision of the agreement, or
  - (d) in any other way that is consistent with this Act.
- (3) A change to a provision of a registered representation agreement becomes effective as follows:
- (a) if the provision is in effect when the registrar is given written notice of the change,
    - (i) 72 hours after written notice of the change has been given to all of the persons mentioned in subsection (1) (d), or
    - (ii) at a later time determined under the agreement;
  - (b) if the provision is not in effect when the registrar is given written notice of the change,
    - (i) on the date the agreement or provision comes into effect, or
    - (ii) on a later date determined under the agreement.

- (4) The revocation of a registered representation agreement becomes effective
  - (a) 72 hours after written notice of the revocation has been given to all of the persons mentioned under subsection (1) (d), or
  - (b) at a later time determined under the agreement.

#### **Automatic cancellation of financial, business or asset provisions**

- 28.** (1) A provision of a representation agreement by which an adult authorizes a representative to do anything referred to in section 7 (1) (b) or 9 (1) (g) or (h) is cancelled
- (a) on the bankruptcy of the adult or the representative or on the appointment of a receiver for the adult,
  - (b) on the conviction of the representative for an offence involving dishonesty, or
  - (c) if the representative is a credit union or trust company, on the dissolution or winding up of the credit union or trust company or on it ceasing to carry on business.
- (2) When a provision of a representation agreement is cancelled under this section, the following must notify the registrar:
- (a) the monitor;
  - (b) if there is no monitor, anyone, other than the court or the registrar of companies, who knows of the representation agreement and the event that causes the cancellation of the provision.

#### **When agreements come to an end**

- 29.** (1) A representation agreement ends as follows:
- (a) on the death of the adult who made the agreement;
  - (b) on the court appointing a decision maker or a guardian, under the *Adult Guardianship Act*, for the adult who made the agreement;
  - (c) on the court cancelling the agreement under section 32 (1);
  - (d) if an adult and the adult's representative are spouses, on their divorce or on the termination of their marriage-like relationship;
  - (e) on the representative becoming incapable;
  - (f) on the resignation or death of the representative;
  - (g) on the effective date of the revocation of the agreement under section 27.

- (2) Subsection (1) (d) to (f) does not apply if
  - (a) more than one representative is named in the representation agreement and the remaining representative or representatives agree to continue to act, or
  - (b) an alternate representative is named in the agreement and is willing and able to act as representative.
- (3) When a representation agreement ends under subsection (1), the following must notify the registrar:
  - (a) the monitor;
  - (b) if there is no monitor, anyone, other than the court, who knows of the agreement and the event that brings the agreement to an end.

## PART 5

### OBJECTIONS, INVESTIGATIONS AND ASSISTANCE

#### Objecting to agreements, changes or revocations

- 30.** (1) Any person may make an objection to the Public Trustee if there is a reason to believe that
- (a) an adult is, or was at the time, incapable of making, changing or revoking a representation agreement,
  - (b) fraud, undue pressure or some other form of abuse or neglect is being or was used to induce an adult to make, change or revoke a representation agreement,
  - (c) the making, use or revocation of a representation agreement or a change to a representation agreement is clearly inconsistent with the current wishes, values, beliefs or best interests of the adult who made, revoked or changed the agreement,
  - (d) there is an error in a representation agreement or an error was made in executing, witnessing or registering the agreement,
  - (e) anything improper has occurred in the making, use or revocation of a representation agreement,
  - (f) a representative is purporting to act under the authority of a representation agreement when the agreement is not in effect and section 14 (3) does not apply or when the relevant provision of the agreement is cancelled under section 28,
  - (g) a representative is not qualified under section 5 (1) or (2),

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- (h) a representative is
    - (i) abusing or neglecting the adult for whom the representative is acting,
    - (ii) failing to follow the instructions in the representation agreement or otherwise failing to make decisions in accordance with the wishes of that adult,
    - (iii) incapable of acting as representative, or
    - (iv) otherwise failing to comply with the representation agreement or the duties of a representative,
  - (i) a representative has given or proposes to give consent to health care that is not authorized by the representation agreement or that is inappropriate for the adult, or
  - (j) any criteria specified in the representation agreement as grounds for objection have been met.
- (2) An objection is made by
- (a) giving written notice of the objection in the prescribed form to the Public Trustee, and
  - (b) serving a copy of the notice on
    - (i) the adult who has or wants to have a representative, and
    - (ii) each person who is a representative, alternate representative or monitor under the representation agreement or the proposed agreement.
- (3) On receiving notice of an objection, the Public Trustee must promptly review the objection and may do one or more of the following:
- (a) conduct an investigation to determine the validity of the objection and then advise the objector of the outcome;
  - (b) provide or recommend mediation services or other services to assist in
    - (i) resolving any dispute that appears to have caused the objection, or
    - (ii) finding out the wishes of the adult who has or wants to have a representation agreement;
  - (c) obtain advice or assistance from any person, board or other body;
  - (d) apply to the court for an order under the *Adult Guardianship Act* appointing a decision maker or guardian;

- (e) apply to the court for an order confirming a change to, or the revocation of, a representation agreement, or for an order cancelling all or part of a representation agreement;
- (f) recommend that someone else apply to the court for an order referred to in paragraph (d) or (e);
- (g) make a report under section 46 of the *Adult Guardianship Act*.

### Investigations by the Public Trustee

- 31.** (1) The Public Trustee may conduct an investigation without receiving a notice of objection under section 30 if he or she is of the opinion that there are grounds for objection under section 30 (1).
- (2) Section 10 (2) and (3) of the *Public Trustee Act* applies to an investigation under subsection (1), except that the references to "trustee" are to be read as references to "representative".
- (3) After conducting the investigation, the Public Trustee may do anything referred to in section 30 (3) (b) to (g).

### Court orders

- 32.** (1) On application under section 30 (3) (e) or (f), the court may make an order confirming a change to, or the revocation of, a representation agreement or an order cancelling all or part of a representation agreement.
- (2) When making an order under subsection (1), the court must consider, in the same order of priority as under section 16 (2) to (4), the wishes, instructions, values and beliefs of the adult who made the representation agreement.
- (3) The court may not make an order that overrides the adult's wishes, instructions, values or beliefs unless
- (a) the adult is incapable,
  - (b) the order is in the adult's best interests, and
  - (c) the court gives reasons for making the order.

### Costs of applications to court

- 33.** The costs of an application to court under this Act are in the discretion of the court and the court may order that all or part of those costs be paid from the assets of the adult who has or wants to have a representative

**Advice and assistance for representatives**

- 34.** (1) A representative who is uncertain about the nature and scope of the representative's authority or who needs advice about anything else relating to the role of representative, may ask the Public Trustee for guidance.
- (2) On application by a representative, the court may give directions or give an opinion about the interpretation of a provision of a representation agreement

**PART 6****GENERAL PROVISIONS****Legal proceedings**

- 35.** (1) A representative who is authorized under this Act to instruct a lawyer to commence, continue, defend or settle a proceeding on behalf of an adult while the adult is incapable is the adult's litigation guardian for the purposes of that proceeding, unless the court orders otherwise.
- (2) If a person commences or continues a proceeding against the adult, the person must service notice of the proceeding on the litigation guardian and on the Public Trustee.
- (3) If the litigation guardian commences or continues a proceeding on behalf of the adult, or intends to settle or compromise a claim brought by, on behalf of or against the adult, the litigation guardian must service notice of the proceeding, settlement or compromise on the Public Trustee.
- (4) No settlement or compromise of a claim referred to in subsection (3) is binding without the written approval of the Public Trustee.
- (5) The Public Trustee is entitled
- (a) to be heard if the litigation guardian applies to the court for approval of a settlement or compromise of a claim referred to in subsection (3), and
  - (b) to any costs the court orders.

**Agreement does not deprive  
adult of power to act**

- 36.** An adult who is capable may do anything that he or she has authorized a representative to do.

### Supreme Court jurisdiction

#### 37. Nothing in this Act

- (a) limits the inherent jurisdiction of the Supreme Court to act in a *parens patriae* capacity, or
- (b) deprives a person of the right to ask the court to exercise that jurisdiction.

### Protection of the registry staff

#### 38. (1) No action or proceeding for damages may be brought against the registrar or a person acting on behalf of or under the direction of the registrar for anything done or omitted to be done in good faith by the registrar or that person

- (a) in the performance or intended performance of a duty or function under this Act or the regulations, or
- (b) in the exercise or intended exercise of a power under this Act or the regulations.

- (2) Subsection (1) does not absolve the Public Trustee from vicarious liability for an act or omission of anyone referred to in subsection (1) for which the Public Trustee would be liable if this section were not in force.

### Effect of this Act on enduring power of attorney

#### 39. (1) The donor under a power of attorney referred to in section 7 (1) of the *Power of Attorney Act* that was made in British Columbia may submit, before or after that section is repealed by section 61 of this Act, the power of attorney to the registrar for registration in accordance with the regulations made under this Act.

- (2) A donor who submits a power of attorney under subsection (1) must complete a certificate in the prescribed form naming a monitor or stating that a monitor is not required and must submit the certificate to the registrar.
- (3) The attorney under a power of attorney referred to in section 7 (1) of the *Power of Attorney Act* that was made in British Columbia may submit, before or after that section is repealed by section 61 of this Act, the power of attorney to the registrar for registration in accordance with the regulations made under this Act if the authority given by the power of attorney has been exercised.

- (4) At the request of an attorney who submits a power of attorney under subsection (3), the Public Trustee may appoint as monitor a near relative or friend of the donor.
- (5) A power of attorney that is submitted for registration under this section is deemed, on registration, to be a representation agreement for the purposes of this Act.

#### Existing health care authorizations

- 40.**
- (1) A person may submit to the registrar, for registration in accordance with the regulations, a written authorization that was signed in British Columbia before this section comes into force and that authorizes another person to give or refuse consent to health care for the first person.
  - (2) A person who submits a written authorization under subsection (1) must complete a certificate in the prescribed form naming a monitor or stating that a monitor is not required and must submit the certificate to the registrar.
  - (3) A person who is authorized by a written authorization referred to in subsection (1) to give or refuse consent to health care and who has exercised the authority may submit the authorization to the registrar for registration in accordance with the regulations.
  - (4) A written authorization that is submitted for registration under this section is deemed, on registration, to be a representation agreement for the purposes of this Act.

#### Agreements made elsewhere

- 41.**
- (1) A person may submit to the registrar for registration in accordance with the regulations an agreement, directive or power of attorney that
    - (a) the person made outside British Columbia before or after this section comes into force,
    - (b) provides for one or more other persons to make, or help make, decisions about the first person's personal care, health care or financial or legal affairs, and
    - (c) meets the standards in section 13 for executing a representation agreement.
  - (2) A person who submits a document for registration under subsection (1) must
    - (a) complete a certificate in the prescribed form naming a monitor or stating that a monitor is not required and submit the certificate to the registrar, and

- (b) if the document contains authority to do anything referred to in section 9 (1), submit a certificate, in the prescribed form, of a person referred to in section 9 (2) (a).
- (3) A person who is authorized by an agreement, directive or power of attorney referred to in subsection (1) to make or help make a decision and who has exercised the authority may submit the agreement, directive or power of attorney to the registrar for registration in accordance with the regulations.
- (4) A document that is submitted for registration under this section is deemed, on registration, to be a representation agreement for the purposes of this Act.

### Regulations

- 42.** The Lieutenant Governor in Council may make regulations, including regulations
- (a) prescribing classes of persons for the purposes of section 9 (2) (a) (ii),
  - (b) providing for the establishment and operation, within the office of the Public Trustee, of a representation agreement registry and for the designation of the registrar,
  - (c) respecting the powers and duties of the registrar,
  - (d) prescribing the procedure for registering a representation agreement, power of attorney or other document and for notifying the registrar when a document registered under this Act is changed or revoked or when a provision is cancelled,
  - (e) requiring representatives to submit to the registrar documents to establish or confirm the dates on which representation agreements, or provisions of representation agreements, come into effect,
  - (f) providing for appeals from decisions of the registrar,
  - (g) authorizing persons to search information recorded by the registrar about a representation agreement, power of attorney or other document, and
  - (h) prescribing registration or search fees.

### Offence

- 43.** Section 5 of the *Offence Act* does not apply to this Act or the regulations.

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### Consequential Amendments

#### *Assessment Act*

44. *Section 1 of the Assessment Act, R.S.B.C. 1979, c. 21, is amended in the definition of "trustee" by adding "representative under the Representation Agreement Act," after "personal representative,".*

#### *Community Care Facility Act*

45. *Section 12 (2) of the Community Care Facility Act, R.S.B.C. 1979, c. 57, is amended by striking out "or" at the end of paragraph (g), by adding "or" at the end of paragraph (h) and by adding the following paragraph:*

- (i) *act as representative under an agreement made under the Representation Agreement Act by a resident or former resident of a community care facility operated by the licensee or in which the employee is employed, unless the licensee or employee is a child, parent or spouse of the resident or former resident.*

#### *Company Act*

46. *Section 60 of the Company Act, R.S.B.C. 1979, c. 59, is amended*

*(a) by adding the following subsection:*

- (1.1) *Subsection (1) applies to a representative who is authorized under the Representation Agreement Act to exercise the rights and privileges or perform the obligations of a member., and*

*(b) in subsection (2) by striking out "Subsection (1) does" and substituting "Subsections (1) and (1.1) do".*

47. *Section 61 is amended by adding "or representative authorized under the Representation Agreement Act" after "personal representative".*

48. *Section 63 is amended*

*(a) in paragraph (a) by adding ", representative authorized under the Representation Agreement Act" after "personal representative", and*

*(b) in paragraph (e) by adding "or authority" after "appointment" wherever it appears.*

49. *Section 64 is amended by adding ", representative authorized under the Representation Agreement Act" after "personal representative".*

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*Company Clauses Act*

**50.** *Section 114 of the Company Clauses Act, R.S.B.C. 1979, c. 60, is amended by renumbering the section as section 114 (1), by repealing the second sentence and by adding the following subsections:*

(2) A shareholder who is incapable of voting may vote by the shareholder's representative under the *Representation Agreement Act* if the shareholder has authorized the representative to vote.

(3) A vote under this section may be given either in person or by proxy.

*Credit Union Incorporation Act*

**51.** *Section 1 of the Credit Union Incorporation Act, S.B.C. 1989, c. 23, is amended in the definition of "trust business" by striking out "or" at the end of paragraph (b), by adding "or" at the end of paragraph (c) and by adding the following paragraph:*

(d) representative under the *Representation Agreement Act*.

*Estate Administration Act*

**52.** *Section 135 (5) of the Estate Administration Act, R.S.B.C. 1979, c. 114, is amended*

(a) *by adding "representative" after "or has a", and*

(b) *in paragraph (a) by adding "representative" after "his" and after "unless the".*

*Financial Institutions Act*

**53.** *Section 1 of the Financial Institutions Act, S.B.C. 1989, c. 47, is amended in the definition of "trust business" by striking out "or" at the end of paragraph (b), by adding "or" at the end of paragraph (c) and by adding the following paragraph:*

(d) representative under the *Representation Agreement Act*.

**54.** *Section 73 (1) and (4) is amended by adding "representative under the Representation Agreement Act," after "assignee,".*

*Home Owner Grant Act*

**55.** *Section 6 of the Home Owner Grant Act, S.B.C. 1980, c. 18, is amended by adding the following subsection:*

(2.1) Where an applicant is unable to apply, the application may be made by the applicant's representative under the *Representation Agreement Act*, if the representative is authorized to make decisions about the applicant's financial affairs or assets.

*Insurance (Motor Vehicle) Act*

- 56.** *Section 31 of the Insurance (Motor Vehicle) Act, R.S.B.C. 1979, c. 204, is amended by adding the following subsection:*

(1.1) Subsection (1) applies also in respect of an adult who is incapable of making decisions about his or her financial affairs, business or assets and has no representative authorized under the *Representation Agreement Act* to make those decisions.

*Land Title Act*

- 57.** *Section 45 (1) (a) (ii) of the Land Title Act, R.S.B.C. 1979, c. 219, is repealed and the following substituted:*

(ii) where the transferor is an individual, he had, at the time the instrument was executed, no knowledge of the death or bankruptcy of the transferor, or of the revocation of the power by the transferor and no knowledge of the mental incapability of the transferor, and .

- 58.** *Section 46 (1) (a) (iv) is repealed and the following substituted:*

(iv) where the transferor is an individual, he had, at the time the instrument was executed, no knowledge of the death or bankruptcy of the transferor, or of the revocation of the power by the transferor and no knowledge of the mental incapability of the transferor, and .

- 59.** *Section 261 is amended by adding the following subsection:*

(2.1) A representative acting under an agreement made by an adult under the *Representation Agreement Act* may lodge a caveat with the registrar if the representative certifies

- (a) that the representative has been authorized under that Act to make decisions about the adult's financial affairs, business or assets, and
- (b) that the adult's land is or may be endangered.

*Mental Health Act*

- 60.** *Section 1 of the Mental Health Act, R.S.B.C. 1979, c. 256, is amended in the definition of "near relative" by adding "and a representative under an agreement made under the Representation Agreement Act" after "legal guardian of a minor".*

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*Power of Attorney Act*

**61.** *Section 7 of the Power of Attorney Act, R.S.B.C. 1979, c. 334 is repealed.*

**62.** *The following section is added:*

***Representation Agreement Act***

**7.1** Nothing in this Act affects the *Representation Agreement Act* or an agreement made under that Act.

**63.** *The Schedule, in Forms 1 and 2, is amended by striking out everything after "I can lawfully do by an attorney." and before "This power of attorney is subject".*

***Amendment to this Act Consequential  
to the Public Guardian and Trustee Act***

**64.** *Section 31 (2) is repealed and the following substituted:*

(2) In conducting an investigation under subsection (1), the Public Guardian and Trustee may exercise the powers given in section 17 of the *Public Guardian and Trustee Act*.

**Commencement**

**65.** This Act comes into force by regulation of the Lieutenant Governor in Council.