

# Representation Agreement

## What is a Representation Agreement?

A Representation Agreement is a legal planning document which can be used in British Columbia to provide your named representative the authority to make health care decisions for you if you are unable to do so because of mental or physical disability. Living Will language can also be incorporated into a Representation Agreement which provides the named representative the legal right to refuse specific medical treatment or any treatment at all.

A Representation Agreement gives you the opportunity to appoint a person of your choice to make health care decisions for you on an ongoing basis. You set out in what circumstances consent to treatment is to be given on your behalf by your representative and in what circumstances it is not to be given. As well, you can specify acceptable types of treatment.

## What happens if I do not have a Representation Agreement?

- If you do not have a Representation Agreement and you are incapable of making health care decisions for yourself, the legislative framework allows a health care provider to appoint a person to make those decisions for you on a temporary basis. The person, known as a temporary substitute decision maker, is chosen from a statutory imposed list beginning with a spouse (including a common law spouse), then adult children, then siblings and so on. The disadvantages to this are:
- The scope of authority of the temporary substitute decision maker is very limited especially with respect to refusal of consent to medical treatment;
- You do not choose who will be making the decisions on your behalf. This disadvantage cannot be overemphasized, particularly in the situation of a blended family. Conflict can easily arise where the authority to make health care decisions is granted according to the legislation without any specific direction from the individual;
- The substitute decision maker can only make certain decisions regarding health care and a Committee will be required for personal care once any health crisis is passed; and
- The decisions made by the substitute decision maker may not be the same as the choices you would make if you were able.



## When does a Representation Agreement come into effect?

A Representation Agreement comes into effect once it is signed, unless you provide otherwise in the document. You retain the right to make your own medical decisions unless you are

mentally or physically unable. A Representation Agreement can be drafted to come into effect sometime in the future on the happening of a specific event. The most common example of this is that it can be written so that it only becomes valid if you become mentally incapacitated which would have to be proven, usually by letters from two of your doctors. This is in contrast to a Power of Attorney which includes the property and financial matters of an individual.

### **Who will be your representative?**

The Representation Agreement enables you to choose who will make the decisions regarding your personal care and health matters when you cannot. As well, it provides you with the flexibility to choose more than one person so that two or more people have to act together to make the necessary decisions.

You can also:

- Stipulate whether one representative can break a tie or has a veto.
- Choose one to act on an aspect but someone else to act on a different aspect.
- Choose an alternate representative in the event the person(s) you have chosen are unable or unwilling to act at the time.

Without a Representation Agreement, the decisions are in the hands of a judge and your health care provider.

### **Abuse of the Representative's Authority?**

Another advantage to a Representative Agreement which provides comfort to individuals looking to plan for incapacity, is the flexibility to appoint a monitor who ensures that the representative(s) are complying with their duties. In the event the monitor believes there is an issue with the representative, the monitor can require the representative to produce records and report on specific matters. The decision to appoint a monitor will depend on your individual circumstances.

### **Proper planning is essential**

Representation Agreements provide a great deal of flexibility when it comes to planning for incapacity in the delegation of decision-making authority for personal care and health matters. We strongly recommend that you seek legal advice to ensure that it is the proper tool for you in your particular circumstances.

This information applies as a general rule but may change depending upon the specific circumstances of your own situation. You should consult a lawyer before acting on any of this information.

If you have any questions, please do not hesitate to contact us:

**PUSHOR MITCHELL**  
LLP  
LAWYERS, PATENT & TRADE-MARK AGENTS

301 - 1665 Ellis Street,  
Kelowna, British Columbia  
V1Y 2B3  
Telephone: 762-2108  
E-mail: [lawyers@pushormitchell.com](mailto:lawyers@pushormitchell.com)  
Website: [www.pushormitchell.com](http://www.pushormitchell.com)