

Case study: British Columbia, Canada

## Advancing supported decision-making

In many countries around the world persons with disabilities are deprived of the right to make their own choices. British Columbia has led the way in the recognition of the right to support in personal decision-making.

In the development and implementation of British Columbia's Representation Agreement Act of 1996, disability organisations played a major role. Echoing this history, the law's flexible definition of capability is one of its main strengths, since it recognises trust as one of the defining features of support relationships and shifts the burden of proof for incapability to others. The legislation allows for the creation of personal planning tools known as representation agreements, which enable adults to appoint someone "to help the adult make decisions or to make decisions on behalf of the adult". These planning tools are progressive in that, unlike most personal planning tools, they permit the appointment of an individual(s) to help an adult make decisions. The law allows for support on deciding personal care, health care and, most importantly, on routine financial management.

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[Quote] *The Representation Agreement Act enshrines new ways of understanding capability; it allows most importantly all adults to authorise personal supporters to assist them with decision-making as needed.* Joanne Taylor, Nidus

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### Principles

Respect for personal autonomy

A representation agreement is of extreme importance in preventing persons from being forced into guardianship and in ensuring that individual beliefs, values and wishes are paramount.

Presumption of capability

Until the contrary is demonstrated, every adult is presumed to be capable. The way in which a person communicates is not grounds for deciding that an individual is incapable.

Interrelationship

The law acknowledges that the defining feature of human relationships is one of trust, rather than that of care-giving or dependence.

Legal recognition of support

Representatives providing support with decision-making can be one or more adults to whom legal standing is granted vis-a-vis third parties, such as banks or medical professionals.

#### **Accessibility**

Entering into a representation agreement is not complicated. It is accessible for any person with a disability in that it is simple, inexpensive, flexible and responsive to a variety of needs.

#### **History**

The law-making process of the Representation Agreement Act is unique, since it came out of the community. At hundreds of forums, workshops and roundtables, people spoke about the exercise of human rights, reviewed guardianship laws in British Columbia and produced a position paper "How Can We Help". Based on this paper, a Joint Working Committee of community and government drafted the Representation Agreement Act, together with three other Acts, which all were passed unanimously in 1993. In the same year a Community Coalition for the Implementation of Adult Guardianship Reform was formed. Its purpose was to ensure that representation agreements would work for those most affected and vulnerable to adult guardianship. It produced a Legislative Subcommittee Report which led to a review of the implementation of the Act. After a series of complex negotiations between the community and government, the law was proclaimed in 1999, coming into full effect in February 2000. Some years later, the Act's provisions inspired the drafting process of the UN CRPD Article 12, which calls for legislation that ensures all adults receive support with decision-making without the need to restrict the rights of persons with disabilities. At present the Representation Agreement Act, integrated with provisions from similar legislation of Yukon and Manitoba, is being used to craft new supported decision-making legislation in the Canadian provinces of Newfoundland and Labrador.

#### **Key features**

The Representation Agreement Act was enacted in 1993 and entered finally into force in 2000, despite some initial opposition by the government and the legal community. Provisions of the law include: Every adult is presumed to be capable and may make a representation agreement. Any challenge to capability must consider all of the relevant factors and the law provides examples of various ways of knowing; Representation agreements allow for the appointment of an individual(s) to help an adult make decisions, most importantly about the routine management of her or his financial affairs; Representatives have a duty to act honestly and consult with the adult to determine his or her current wishes; and, Monitors are established as safeguards and the Public Guardian and Trustee has the power to apply to court.

#### **Key figures**

Representation Agreements are praised by the disability community as highly successful in providing legal recognition of supported decision-making. The non-profit organization Nidus provides a centre for excellence in Good Practice with personal planning and supported decision-making and operates a centralised registry with some 5,000 records, of which the majority are representation agreements. Representation agreements are used by persons with disabilities, seniors, but often also by young people. They significantly prevent guardianship and are the reason why the number of private guardianships has remained fairly stable during the last years.

#### **Future development**

It is very encouraging that, from 2011, lawyers, notaries and health authorities will start to promote the Act as well as the registry. However, to register one's representation agreement remains, basically, voluntary and the registry operated by Nidus receives no public funding. In the future, it will be important to support the registry as well as the training of monitors financially.

#### **Further information and reading**

John L. McKnight, "Regenerating Community", Social Policy, Winter, 1987.

Nidus Personal Planning Resource Centre and Registry, "Experiences of adults living with FASD and their personal supporters in making and using Representation Agreements,"  
[http://www.nidus.ca/PDFs/Nidus\\_Research\\_RA\\_FASD\\_Project.pdf](http://www.nidus.ca/PDFs/Nidus_Research_RA_FASD_Project.pdf)

Nidus Personal Planning Resource Centre and Registry "A Study of Personal Planning in BC: Representation Agreements with Standard Powers",  
[http://www.nidus.ca/PDFs/Nidus\\_Research\\_RA7\\_InAction.pdf](http://www.nidus.ca/PDFs/Nidus_Research_RA7_InAction.pdf)

David Schwartz, "Crossing the River: Creating a Conceptual Revolution in Disability and Community", Brookline Books, 1992.

### **Contact details**

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