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# A Profile of Personal Planning in British Columbia

**P**roclamation of the *Representation Agreement Act (RA Act)* in 2000 introduced a new legal tool for personal planning and brought a fresh focus to the topic.

Unfortunately, the consensus that brought about the legislation was a fragile one.

As well, the community-government partnership that provided the direction did not survive changes in political leadership.

Other priorities and interests emerged to rival the original vision and have negatively affected the context for the practice of personal planning. There has been much confusion and uncertainty. The community, however, has stayed on course and a profile of personal planning is taking shape.

The Representation Agreement Resource Centre (RARC), a nonprofit charitable organization, was founded by key community organizations to be a resource to the public on personal planning and alternatives to guardianship. As the Centre for quality-of-life planning, RARC provides information and assistance to those most affected and enabled by the legislation, especially seniors who want to plan for the future.

It is clear from contacts to RARC that seniors want to engage in personal planning. That is, they want to make their own personal and private arrangements in the event of mental incapacity due to illness, injury, or disability.

This article highlights some of what RARC has learned from the field and suggests how this may influence practice and apply to future trends.

**The information is based on contact with over 600 individuals who made Representation Agreements (RAs) for health and personal care, including powers under section 9 of the Representation Agreement Act (which requires legal consultation). The percentages provided are approximations.**

The following is very general; there is much greater detail and explanation underlying these observations. And there is more research and analysis to be done.

### A General Overview

The following gives a quick impression of who and how people participate in personal planning. There is no attempt at demographic description in terms of ethnicity, sexual orientation, or levels of income.

### The Gender Breakdown?

66% are female  
34% are male

The above result is no surprise, given that women generally live longer.

Senior women of the current generation may view personal planning as compatible with their role to “take care of” and “not be a burden to” others.

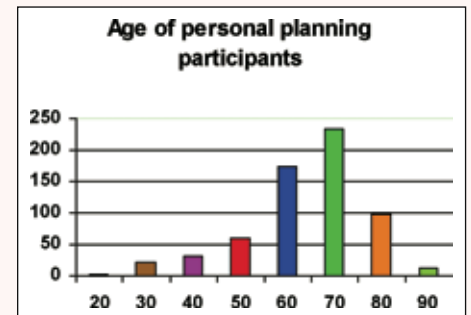
### Couples or Singles?

51% are singles  
49% are couples

As defined in the legislation, couples or spouses include same-sex and common law relationships. Such couples tend to use the term *partner* or *common law* in the RA, rather than *spouse*.

### What age are the personal planning participants?

Age of participation ranged from 21 years to 94 years.



The chart clearly shows that personal planning is a seniors issue, with the highest participation from those in their 60s, 70s, and 80s. These combined numbers equal 80 percent.

### Do those named in personal planning documents live near the adult?

Yes. In only about 4 percent of cases, none of the people named live in the same area as the senior. The Lower Mainland was treated as one area.

## Specifics on Financial and Legal Planning

### How many have previous Enduring Powers of Attorney (EPA)?

20% report having an enduring Power of Attorney in place.

6% revoked their previous EPA and made a new document.

### What documents do people use for financial/legal planning?

82% made an EPA.

8% used the Representation Agreement. (Authority for routine management of financial affairs is under section 7 of the *Representation Agreement Act*.)

Those who use the RA to cover financial and legal affairs are typically older seniors with few assets who no longer own real estate property or never did.

### How many attorneys are appointed?

51% appointed 2 people.

25% appointed 1 person.

24% appointed 3 or more people.

### Who is being appointed in an EPA?

Family members are by far the majority appointed. By frequency these are children, spouse, siblings, in-laws, nieces and nephews, and other relatives.

In 8 percent of cases, only friends were appointed.

Only 1 or 2 mentioned appointing a financial institution in a previously made EPA.

## Specifics on Health and Personal Care Planning

### How many revoke previous documents?

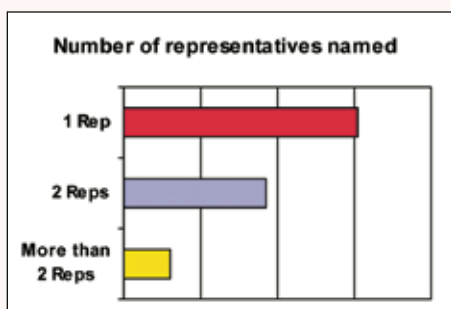
Barely 1 percent revoked previous RAs or expressions of wishes outlined in a Living Will or Advance Health Care Directive.

### How many representatives are named?

61% named 1 representative.

37% named 2 representatives.

12% named more than 2.



### How many alternate representatives are named?

36% did not name an alternate representative.

Of those who did not name an alternate, 7% named only 1 representative.

Of those who did name an alternate,

61% named 1 alternate.

29% named 2 alternates and, of these,

- 63% said the alternates may act independently when replacing the representative, and
- 37% wanted the alternates to act in order (Alternate #1, Alternate #2).

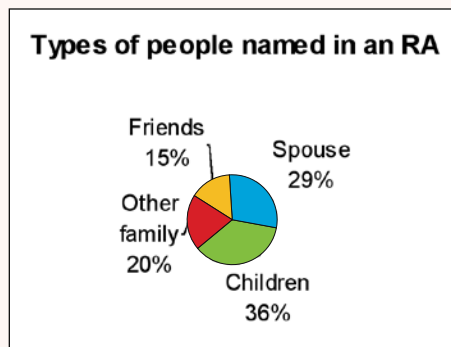
### How many name a monitor?

6% named a monitor.

A monitor is optional for the RAs discussed here. Seniors who name a monitor state this is not because of a lack of trust but to support the representative in carrying out the senior's wishes, values, and beliefs. The monitor is most often a friend or "other family member" (see next heading).

### Who is being named in RAs?

The chart shows the types of people named as representative.



While the categories are not exclusive—someone may name a spouse and more than one adult

child—the breakdown shows that spouse and children are the most frequent choices. "Other family" includes, in order of frequency, siblings, in-laws, nieces and nephews, grandchildren, and cousins.

As with the EPA, only friends are named 8 percent of the time in the RA. This category may grow in the future, given changes to the traditional family structure.

In a few cases, spouses do not name each other as representative or attorney, and instead name an adult child. The seniors who do this are generally older and already dealing with personal health problems.

In some instances, spouses name each other as representative and each names a different person as the alternate. It is important to put one's mind to the possibility that the alternates may need to work together if both spouses are incapable—for example, one may suffer a stroke; the other may have dementia.

### Why make a Representation Agreement?

Callers to RARC often report they are told they do not need to make an RA if they have a spouse and children. Like a Will, an RA is voluntary; although it would be rare to be told that it is not necessary to make a Will because the default scheme says your spouse and children will get your estate anyway!

Clearly, many seniors are naming a spouse and adult children in an RA even though they are listed in the default scheme for health care decision-making (see box).

There are a number of reasons seniors choose to make an RA.

- To be certain about who will be making decisions on their behalf
- To be secure in knowing everything is covered (no gaps in authority). A representative has more authority than a TSDM.
- To provide flexibility and customization. An RA can involve more than one person in decision-

making. Only one TSDM is selected at a time.

- To have assurance of continuity of care. A family doctor is unlikely to be involved when a senior needs hospital, facility, or hospice care. The constant is the representative.
- To affirm trust in the representative; to confirm the representative's acceptance of his or her role
- To be proactive and provide opportunity for discussion and clarification of wishes and values, well in advance

### Default Scheme for Substitute Health Care Decision-Making

If a health care provider determines that an adult is incapable of giving or refusing consent, and there is no representative chosen by the adult, the health care provider turns to the default scheme described in the *Health Care Consent and Care Facility Admission Act*.

The Act provides a ranked list of family members from which the health care provider selects a Temporary Substitute Decision-Maker (TSDM).

- Spouse is first on the list; adult child is second; other family members follow in specific order. The provider decides if the person qualifies to be a TSDM. There is no appeal regarding who is selected as TSDM.

### Specific Wishes

About 15 percent referred to a pre-existing Living Will or Advance Health Care Directive in the RA.

Making reference to these documents, rather than including the wording in the RA, enables the documents to be amended or changed without the expense and paperwork of the RA's current execution requirements. Being separate does not diminish the effect of the wishes and instructions (see next heading).

- 12% included a specific instruction or statement in the RA.

Of this number, 50 percent said they do not want a family member involved in matters affecting their care.

Of the remaining 50 percent, the most common wish was refusal of blood transfusions and blood products in all circumstances, due to religious beliefs.

### Pre-Expressed Wishes

RAs give legal effect to pre-expressed wishes. The *Representation Agreement Act* rivals any jurisdiction in this regard. The Act says the representative must comply with wishes the adult expressed when capable. This covers wishes the adult expressed verbally or in written form in the RA or in a separate document such as a living Will or Advance Health Care Directive.

**An RA can involve more than one person in decision-making.**

### Authority of Representative

Seniors want representatives to have all possible authority when making decisions on their behalf. It is possible to count on one hand the number of seniors who put some limitation on the powers under section 9.

### Duty of Representative

Seniors value the duty set out in the *Representation Agreement Act* that, if feasible, the representative must first consult with them for their current wishes. Of the over 600 individuals who made RAs for health and personal care, only 3 seniors chose to give their representative the authority to "bypass" the process of checking for the seniors' current wishes first.

### Conclusion

The above profile is of course incomplete. Many seniors make RAs with standard powers under section 7 of the *Representation Agreement Act*, to cover health and personal care matters in the event of future mental incapability. Such RAs cover end-of-life comfort care, including consent for pain medication.

These seniors are satisfied that a consensus will be possible between the medical team and family members if life-sustaining treatments are offered at end-of-life that the senior would not want. Giving the representative final and absolute authority to refuse life support is under section 9 and requires legal consultation.

There is much yet to study and explore with Representation Agreements. They are an example to other jurisdictions in their ability to address specific life situations such as living with mental illness or dementia.

One of the greatest barriers in the promotion of Representation Agreements is lack of education. Many doctors still ask about a Power of Attorney, even though this document does not give the person appointed the authority to make health or personal care decisions. Hospitals still list "next-of-kin" on their admitting forms.

The practice of personal planning is evolving. Representation Agreements are designed to adapt to a variety of life situations, particularly those required of an aging population.

This article is excerpted from a more detailed analysis, available from RARC.

RARC would like to acknowledge the Notary Foundation for its supporting funds during the law reform of adult guardianship legislation and its past support of RARC and public education on Representation Agreements. ▲

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