

Here are the pertinent sections of the Representation Agreement Act for your review:

### ***Section 16 of the Representation Agreement Act for information***

#### **Duties of Representatives**

- (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.
- (2.1) Subsection (2) does not apply if
  - (a) a representative is acting within authority given to the representative under section 9, and
  - (b) the representation agreement provides that in exercising that authority the representative need only comply with any instructions or wishes the adult expressed while capable.
- (3) If subsection (2) applies but the adult's current wishes cannot be determined or it is not reasonable 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) Subject to subsection (6.1), a representative may not delegate any authority given to the representative in the representation agreement.
- (6.1) A representative may delegate to a qualified investment specialist, including a mutual fund manager, all or part of the representative's authority with respect to investment matters.
- (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 must
  - (a) keep accounts and other records concerning the exercise of the representative's authority under the representation agreement, and
  - (b) Produce the accounts and other records for inspection and copying at the request of any or all of the following:
    - (i) the adult;
    - (ii) the adult's monitor
    - (iii) the Public Guardian and Trustee
- (9) A representative who is required to do anything referred to in section 7(1)(b) or 9(1)(g) must keep the adult's assets separate from the representative's assets.
- (10) Unless the representation agreement provides otherwise, subsection (9) does not apply to assets that
  - (a) are owned by the adult and the representative as joint tenants, or
  - (b) have been substituted for, or derived from, assets that were owned by the adult and the representative as joint tenants.
- (11) not in effect as of Sept. 1, 2001.
- (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.

### **Section 3.1 of the Representation Agreement Act for information**

#### **Care Records of Representatives**

- 1) This section applies to a representative who has authority over an adult's personal care or health care, as applicable.
- 2) Subject to subsection (3), a representative must keep the following records in relation to the period for which the representative is acting:
  - (a) except as set out in the representation agreement, a copy of any record made by the adult of the adult's instructions, wishes, beliefs and values within the meaning of section 16 of the Act;
  - (b) if, since the date the representation agreement was made, the adult's residence changes or there is a material change in the needs of the adult with respect to personal care or health care, information respecting the nature of the change and the decision made by the representative in respect of it;
  - (c) if the representative made on behalf of the adult a decision respecting
    - (i) major health care within the meaning of the *Health Care (Consent) and Care Facility (Admission) Act*, or
    - (ii) the admission of the adult to, or the adult's continued residence in, a care facility within the meaning of the *Health Care (Consent) and Care Facility (Admission) Act*,a description of the decision made and the date on which it was made;
  - (d) if the representative restricts a person from contacting or association with the adult, information respecting the nature of the restriction and the decision made by the representative in respect of it;
  - (e) if the adult was physically restrained, moved or managed, under authority granted under the representation agreement and section 9(1)(b)(viii) of the Act or another enactment, a description of who physically restrained, moved or managed the adult and why.
- 3) If an adult, in a representation agreement made under section 9 of the Act, states that the adult's representative is not required to keep one or more of the records described in subsection (2), subsection (2) does not apply to the extent described in the representation agreement.

#### **NON-STANDARD PROVISIONS**

### **Section 9 of the Representation Agreement Act for information**

- (1) In a representation agreement made under this section, an adult may, subject to subsections (2) and (3), authorize his or her representative to
  - a) Do anything that the representative considers necessary in relation to the personal care or health care of the adult, or
  - b) Do one or more things, including any of the following:
    - i. Decide where the adult is to live and with whom, including whether the adult should live in a care facility;
    - ii. Decide whether the adult should work and, if so, the type of work, the employer, and any related matters;

- iii. Decide whether the adult should participate in any educational, social, vocational or other activity;
  - iv. decide whether the adult should have contact or associate with another person;
  - v. decide whether the adult should apply for any licence, permit, approval or other authorization required by law for the performance of an activity;
  - vi. make day-to-day decisions on behalf of the adult, including decisions about the diet or dress of the adult;
  - vii. give or refuse consent to health care for the adult, including giving or refusing consent, in the circumstances specified in the agreement, to specified kinds of health care, even though the adult refuses to give consent at the time the health care is provided;
  - viii. despite any objection of the adult, physically restrain, move and manage the adult and authorize another person to do these things, if necessary to provide personal care or health care to the adult.
- (2) Unless expressly provided for in a representation agreement made under this section, a representative must not
- a) Give or refuse consent on the adult's behalf to any type of health care prescribed under section 34(2)(f) of the *Health Care (Consent) and Care Facility (Admission) Act*,
  - b) Make arrangements for the temporary care and education of the adult's minor children, or any other persons who are cared for or supported by the adult, or
  - c) Interfere with the adult's religious practices.
- (3) In a representation agreement made under this section, if a representative is provided the power to give or refuse consent to health care for the adult, the representative may give or refuse consent to health care necessary to preserve life.

## **COURTESY OF:**

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