

ROLE OF THE MONITOR

The monitor's duties are outlined in Section 20 of the *Representation Agreement Act*. Following is a plain language explanation of the monitor role and duties. This is not legal advice.

Overview of the monitor's role

The monitor's legal duty is to try to make sure the representative is carrying out his or her duties. The monitor is a safeguard.

The monitor does not make decisions but can help speak up for the adult's wishes. The monitor's loyalty is to the adult. ('Adult' refers to the person who the Agreement belongs to.)

Benefits of the monitor role

A monitor can be a valuable role in a Representation Agreement. For example, if a bank staff person or health care provider has a concern, they might phone the Public Guardian & Trustee (government official) directly. The PGT will tell them to speak to the monitor first. This is helpful because it facilitates discussion and problem solving at the local level with those most involved.

The monitor may take on other roles such as helping the adult review the Agreement annually.

The monitor's responsibilities

The monitor must act honestly and in good faith and use the care, attention and skill of a responsible person.

The monitor must keep any personal information about the adult and the adult's affairs confidential except as required to carry out the monitor's duties.

If there is a concern that a representative might not be following his or her duties, according to the law or the terms of the Representation Agreement:

- The monitor will talk to the representative and must let the adult and any other representative(s) or alternate(s) named in the Agreement know about the concern.
- The monitor tries to clear up any problems by getting information and clarification from the representative.
- The monitor tries to work things out with the representative.

If, after checking and discussion, the monitor believes that the representative is not following his or her duties the monitor is legally required to contact the Public Guardian and Trustee's Office (a BC government office) and make an official complaint. The PGT staff must review the complaint in a timely manner.

TIP

To be pro-active, the monitor and representative(s) should arrange to review the finances and other matters on a regular basis. This is good for communication and will prevent misunderstandings. It is a good idea to include the alternate too. The alternate needs to know what is going on in case he or she might have to take over at short notice.

The monitor's rights

The monitor has a right to speak with and visit the adult. No one can prevent the monitor from this contact.

The monitor has a right to request information from the representative if the monitor believes there is a problem. This may be financial records (if finances are part of the Agreement) or records and information about other types of decisions or actions.

The monitor may not be liable (legally responsible) for actions they take or fail to take if they carry out their duties as outlined in the *Representation Agreement Act* and the terms of the Representation Agreement.

The monitor may be reimbursed for reasonable out-of-pocket expenses that are a result of carrying out his or her duties.

The monitor cannot be paid a fee unless the court or the Public Guardian and Trustee (when replacing a monitor) approve it.

The monitor may resign. This must be in writing and copies given to the adult and all representatives and alternates named in the Agreement. Check with Nidus on the legal requirements for how the written notice must be delivered to the necessary people.

When a monitor is required

A monitor is **required** in cases where the authority for routine management of the adult's financial affairs is included in the Representation Agreement with standard powers.

A monitor is NOT required if:

- The representative is the adult's spouse, OR
- Two or more representatives are named in the Agreement and are required to act together (jointly) for finances, OR
- The Agreement does not include financial matters, OR
- The adult consulted a lawyer who signed a Certificate to say the adult is capable.

Even though the monitor requirement is specific to finances, many adults name a monitor in their Agreement even if it is optional. A monitor is particularly helpful when there are many people involved or if there is an existing conflict among family members or with professionals. Some people have named a monitor to provide support to the representative.

If the monitor dies, becomes incapable, resigns or is unsuitable, AND the adult cannot make a new Agreement, the Public Guardian and Trustee (government official) or the court can name a replacement. Most common is for the adult to make a new Agreement.