



Supported Decision-making in Nova Scotia

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Summary

What is this report about?

Everyone has the right to make their own choices in life. Some adults may need help to do this. This is especially true if they have a disability or condition that makes decision-making harder. Supported decision-making is a way to help adults make their own choices while staying in control of their lives.

This report explains how supported decision-making is used in other parts of Canada and around the world. It will help people in Nova Scotia learn about this idea and think about how it could be used here.

What is supported decision-making?

Supported decision-making is a model for making decisions. It means that an adult makes their own decisions with help from someone they trust. This help can include any of the following.

- Finding and understanding information
- Thinking about different choices
- Sharing the decision with others

What is in this report?

This report includes information about the following topics.

- **Capacity to make decisions:** This part explains what it means to be able to make decisions. It looks at how laws describe that ability.
- **Types of decisions:** This part talks about the kinds of choices people might make using supported decision-making. These include health, money, or daily life decisions.
- **Decision supporters:** This part explains who can help someone make decisions. It describes what their job or role would be.

- **Agreements:** This part talks about how people and their supporters can make an agreement to work together. It describes what might be written in that agreement.
- **Safeguards and oversight:** This part explains how to make sure people are treated fairly and kept safe from harm or abuse.
- **Education and other resources:** This part looks at what training and tools are needed to help supported decision-making work well.

How can you take part?

The Nova Scotia Department of Justice wants to hear what people think about supported decision-making and how it should work in the province. You can share your thoughts by [registering for an engagement session](#) or [sending feedback in writing, audio, or video](#).

Introduction

People make decisions every day. It is an important part of their personal freedoms and human rights. There are many different laws about how adults can make decisions. These laws explain when an adult can make their own decisions. They also explain when other people can make a decision on behalf of an adult. In Nova Scotia, one of these laws is called the *Adult Capacity and Decision-Making Act*, or ACDMA. It was passed in 2017.

The law was reviewed in 2021. This would show how it was working. The review had some recommendations. One of those was to explore supported decision-making. This included seeing if it could be added to the laws of Nova Scotia.

What is Supported Decision-making?

Everyone has to make many decisions in life. They make choices about their health. They decide where they live or what job they do. They decide who they will spend time with or be in a relationship with. Most people need some kind of help to make good decisions. They need clear information. They need time to think about their choice. Sometimes they need a trusted person to talk things through with.

Some adults have disabilities or other conditions that could affect their ability to make decisions. This could be an intellectual or developmental disability. It could be a mental health disability. It could be a brain injury or dementia. It could also be an addictive disorder.

It is important that these adults have the chance to make their own decisions as much as possible. Some adults will need just a bit of help. Some will need more help. Some will need more support than others.

There are laws and policies about support in decision-making. This is true across Canada and around the world. There are 3 main levels of supported decisions. They are described below.

- **Supported decision-making**

The adult makes their own decision with support. The supporter helps the adult through the process of making a decision. The supporter helps to find and understand information. They help to work through what might happen with each choice. The supporter might help share a decision that the adult has made. The supporter does not make the decision.

- **Co-decision-making**

The adult and another person make the decision together. The other person is called a co-decision-maker. They look at the information together. They agree on a choice. A court must approve who can be a co-decision-maker in some places.

- **Substitute decision-making**

Another person makes the decision for the adult. The other person is called a substitute decision-maker. Sometimes they are called a representative. They make decisions for the adult. They must think about what the adult wants or would have wanted. The substitute decision-maker can look at the current or past wishes of the adult. A representative might need to be approved by the court. But if the representative has the power of attorney or if they have the personal care directive then the court does not need to approve them. A power of attorney is a legal document. It lets an adult choose someone to handle their money and property. A personal care directive is a document about an adult's healthcare. It has instructions about their healthcare if they cannot make decisions themselves.

Different places might use different words for these kinds of decision making. This paper will use the words listed above.

Many people know about substitute decision-making. It has been used the most in the past. But supported decision-making is different. It means that the adult is still in charge and makes their own decisions. They just get some help from others to do so. Supported decision-making helps adults get the support they need to make decisions. It helps them to have control over their lives.

Decision-making in Nova Scotia

In Nova Scotia, there are many laws that explain how adults can make decisions or how someone else can make decisions for them. These laws include the following.

- the *Adult Capacity and Decision-Making Act*
- the *Adult Protection Act*
- court rules for choosing a *litigation guardian*
- the *Hospitals Act*
- the *Involuntary Psychiatric Treatment Act*
- the *Personal Directives Act*
- the *Personal Health Information Act*
- the *Powers of Attorney Act*
- and the *Public Trustee Act*

All of these laws use a model called substitute decision-making. This means that another person can be chosen to make decisions for an adult. Right now, Nova Scotia does not have any official laws that allow supported decision-making.

About this Project

Canada has signed the *United Nations Convention on the Rights of Persons with Disabilities (CRPD)*. This is an international agreement about the rights of people with disabilities. It states that they should be able to make their own decisions, get support if they need it, and have the same rights as everyone else. This is especially true when it comes to money and property.

The *Canadian Charter of Rights and Freedoms* also says that all people, including people with disabilities, must be treated equally under the law.

The Nova Scotia Department of Justice wants to look at the province's laws to make sure they respect the rights of adults with disabilities. One way to do this could be by adding supported decision-making. This would help people get the support they need to make their own choices. This work will help to support the [Human Rights Remedy](#). The Remedy is an effort to improve human rights of people with disabilities in Nova Scotia.

A big part of this project is listening to people who are affected by the current decision-making laws. This paper helps explain how supported decision-making works in other places. This will help people share their thoughts and ideas about how it could work in Nova Scotia.

To create this report, we looked at research and examples from other provinces and countries that use supported decision-making. We also spoke with people from those places. The examples we studied include British Columbia, Manitoba, Yukon, New Brunswick, Australia, and Ireland.

What is in this Report

This report explains how other places have made laws and rules about supported decision-making. It looks at the main things that need to be thought about when setting up this model. Each section also has questions that people can discuss and share their ideas about.

Capacity to Make Decisions

The law in Canada says that adults are able to make their own decisions. This is often called ‘capacity.’ There must be strong proof to show why an adult can’t make their own decisions. This is also true in Nova Scotia. Many places have laws about supported decision-making. Those laws look at how a person makes decisions. If a person can make a decision on their own or with some help then they can have an agreement for supported decision-making.

A person’s ability to make decisions can change over time. Some places have laws that talk about this. Here are some examples.

- In British Columbia, a supporter can become a representative. This can happen if there is a change in adult’s ability to make a decision. The representative can then make decisions for the adult.
- In many places, people can plan ahead for a time when they might not be able to make decisions. This can be done in Nova Scotia, other parts of Canada, and other countries like Ireland. They can use other tools like power of attorney or a healthcare directive. These tools will say who can make choices if the adult no longer can.

Supported decision-making is used when a person can still make their own choices but needs some help to do so. A power of attorney is substitute decision-making. It only starts working when a person is no longer able to make their own decisions.

It’s important to have clear rules about how each of these laws work and when they should be used.

Questions to think about:

Who should be able to take part in supported decision-making in Nova Scotia?

What rules or conditions should there be to use supported decision-making?

Types of Decisions

Adults may need help making different kinds of decisions in their lives. These decisions usually fit into these 3 main groups.

- **The first group is personal care.** This includes choices about things like what clothes to wear or buy or what school to go to. It includes choices about where to live and what kind of supports or services to use. It can be about choices for work or fun activities or friendships.
- **The second group is healthcare.** This includes choices about medical or dental care. It can include choices about treatment and other health services.
- **The third group is financial.** This includes choices about money and paying bills. It also includes choices about savings, investments, or property.

Different places may group these kinds of decisions in their own way. There are also differences in what kinds of decisions can be made when using supported decision-making.

In all the laws we looked at, the adult can choose what kinds of decisions they want help with. They can also choose what kinds of decisions they don't want help with. Some places limit the kinds of decisions that can be made this way.

Certain big decisions have special rules. For example, choosing medical assistance in dying (MAiD) has its own laws. There are also laws for getting married. For these, the adult must fully understand what they are agreeing to and give their own consent.

Questions to think about:

What kinds of decisions should people be able to make using supported decision-making?

Are there any kinds of decisions that should not be made this way?

Decision Supporters

A decision supporter is someone who helps an adult make choices. Different places might use different names for this role. But the idea is the same. The supporter helps but does not make the decision for the adult.

Some places have guidelines for the supporter to follow. Decision supporters must always try to do what the adult wants and prefers. This means they should respect the adult's beliefs, values, and usual way of doing things. They must be honest and act in good faith.

An adult can have more than one decision supporter. For example, one person might help with health decisions. Another person might help with money or housing. Sometimes, supporters can work together to help the adult make a decision.

Decision supporters can help in many ways. It depends on the needs of the adult. Decision supporters can do the following actions.

- Find and explain information so the adult can understand it.
- Help the adult think about their choices and what might happen with each one.
- Share the adult's decision with others, like doctors or service providers.
- Take steps to help the adult's decision happen.

To do these things, the supporter might need to see information about the adult. This could include information about health, money, or personal care. In some places, laws allow the supporter to get this information. But only if they have proof that they have permission. For example, in British Columbia supporters have the same access to information as the adult. But they must show the agreement before they can see the information.

A decision supporter should be someone the adult knows and trusts. Usually, the adult can choose anyone to be their supporter. This can only be done as long as that person does not have a conflict of interest. This means they don't have something to gain or lose because of the adult's decisions.

For example, a supporter should not be any of the following.

- the adult's boss or manager
- someone who gets paid to give the adult services
- the Public Trustee (this is a government role)

Decision supporters must also be able to make their own decisions. They must understand the agreement they are signing.

Questions to think about:

Who should be able to act as a decision supporter?

Who should not be allowed to be a decision supporter?

What should a decisions supporter's responsibilities include?

Agreements

An agreement for supported decision-making is a written document. It explains how a person and their supporter will work together to make decisions. It has the following information.

- Information about the adult and the supporter(s)
- what kinds of decisions the supporter can help with
- what information the supporter can look at, like health or money details
- how the supporter will help the adult make choices

Some organizations have a guide to help people fill out these agreements.

Different places have different rules about how these agreements are made. Below are a few examples.

- In British Columbia, an adult can make an agreement with their supporter. They don't need to go to court, hire a lawyer, or see a doctor.
- In New Brunswick, the law says a lawyer must sign the agreement. The lawyer must confirm that the adult understands what they are signing.

If an adult is able to make the agreement then they are also able to change it or cancel it if they want to.

Questions to think about:

How official or flexible should this process be?

Should courts or lawyers have to be involved?

Safeguards and Oversight

Safeguards and oversight are rules and checks. These help keep adults safe when they use supported decision-making. Safeguards are the protections. Oversight means watching and checking to make sure those protections are followed. These help make sure adults are treated fairly. These help make sure the adult is not being abused, pressured, or controlled by others.

Supported decision-making can have some risks. There might be the chance that a supporter will try to influence or pressure the adult into a certain choice. This is why it is important to clearly define the job of the supporter. This will show what decisions they can help with and how. This helps prevent abuse.

Money and property decisions usually have the strongest protections. This is because these can be easier to take advantage of. Here are some examples of safeguards used in other places.

- **Monitor**

Some places let the adult choose one or more people to act as *monitors*. Monitors check to make sure the agreement is being followed. In some places, a monitor must be used if the supporter helps with money decisions.

- **More than one supporter**

An adult can have more than one supporter. The agreement might say that all supporters must work together when helping make a decision. This helps make sure one supporter does not have too much power or influence.

- **Expiry date for agreements**

Agreements can end after a certain amount of time. For example, Yukon uses expiry dates. They go with agreements that are about money decisions. They end after 1 year. They must be renewed for the agreement to continue.

- **Keeping records**

Supporters may have to keep records. In some places, supporters must keep written records of the decisions they help with. This is required in New Brunswick in some cases. For example, if a court chooses a supporter to help with money decisions, the supporter must keep proof. This includes things like receipts or bank statements. These records can be checked by the adult being supported. The records can also be checked by a court.

Complaints can be made in some places. If something goes wrong, a person can make a complaint to a public office that looks into problems. In some parts of Canada, the Public Guardian or Trustee can help with this. In Ireland, there is a special agency called the Decision Support Service has this role. The Service helps manage these kinds of agreements. They can investigate complaints.

If an agreement has a monitor, that person can check in often. They can make sure everything is going well and can report any problems.

Questions to think about:

What should be done to make sure people who use supported decision-making are safe and protected?

What should be done to make sure that their choices and rights are respected?

Education and Other Resources

Resources are needed to make sure supported decision-making works well. This includes education, training, and tools.

Education and Training

Supported decision-making is a newer way to help adults make choices. Because it is newer, it is very important that everyone learns how it works.

Education and training can help in the following ways.

- Adults and their supporters will understand what supported decision-making is. They will learn how it can be used and how to make an agreement.
- Other people and organizations will understand how to work with adults who use supported decision-making. This includes people like doctors, banks, support workers, and lawyers.

For adults and supporters, useful learning tools could include the following.

- Plain language guides with step-by-step instructions on how to make an agreement
- Workshops, videos, and information sessions for people who want to learn more

For other organizations, training should explain the following.

- What information they can share with decision supporters.
- What rules they must follow when sharing that information.

Storing Decision-making Agreements

Another important part is figuring out how and where to keep the agreements.

- In British Columbia, a non-profit group runs an online registry or list. People can store their agreements with the group. Banks, doctors, or other organizations can check this list.

They can confirm that a supported decision-making agreement exists.

- In Ireland, a government agency called the Decision Support Service keeps a registry or list. But they only keep it for co-decision-making and substitute decision-making. They don't keep one for supported decision-making agreements.

Questions to think about:

What should be done to make sure people know about supported decision-making? This includes adults who might use it. Or organizations that support adults who might use it. Or organizations that might provide services to adults who use it like banks, doctors, or lawyers.

What other kind of help is needed to make supported decision-making easier to use?

Conclusion and Providing Feedback

This paper shares information about different parts of supported decision-making. It is meant to help people in Nova Scotia learn about supported decision-making. It is meant to help people think about how it could be used here.

You can share your ideas about how supported decision-making should work in Nova Scotia. You can do this in the following ways.

- [Join an engagement session](#). This could be online or in person.
- [Send in your thoughts by writing, video, or audio](#).

To learn more about how to share your feedback, please visit <https://novascotia.ca/supported-decision-making-engagement/>.