

Supported Decision-Making & Supporting Entities

Part I: Connecting Supported Decision-Making & Self-Direct Support Organizations (SDSOs)

A number of families in the Windsor-Essex area have received positive responses from the Province of Ontario to their proposals for individualized housing supports. Families will use the funds to purchase homes, to rent apartments or to renovate existing spaces (hereinafter referred to as “Individualized Housing Plans” or “IHPs”). The City of Windsor has also committed funds to assist with the capital costs as well as ongoing operations. The combined initiative will allow individuals to self-direct their own living arrangements thereby promoting the principles of dignity and autonomy entrenched in our legislative frameworks.

With this opportunity comes considerations regarding the administration of supports as well as mechanisms to effectively facilitate the individualized nature of the IHPs. Families are interested in developing a framework that would capture and operationalize the choices of the individual in a transparent, sustainable and unobtrusive manner.

To this end, a means to build on and exercise the concept of “support decision-making” has been recognized by many families and their community partners as a critical success factor with respect to the implementation of the IHPs. While supported decision-making can be exercised in various ways, embedding this concept within a formalized legal framework would allow not only allow for supports in the legal context but with respect to operational and administrative aspects of the housing plans as well.

It is proposed that such legal frameworks take the form of a corporate entity established solely to provide support to the individual. These entities are commonly referred to as “microboards”, “arohas” and “self-directed support corporations or organizations” in various jurisdictions (hereinafter referred to as “SDSOs”). This brief paper will explore the relationship of supported decision-making and SDSOs as a means of effectively supporting the ongoing aspects of IHPs.

1. What is Supported Decision-Making?

As explained by Bach and Kernzer, supported decision-making “enables a person to make his/her own decisions with the help of others”.¹ We all rely on others for support when making decisions within various aspects of everyday life. A key tenet of supported decision-making is that one’s legal capacity is not measured by his/her mental capacity. In other words, “the focus on supported decision-making is not on the presence or lack of particular mental attributes, but on the supports and accommodations that can be

¹ Bach and Kernzer at page 53

provided to assist individuals in exercising control over the decisions that affect them”.² Rather, there “are individuals who have a knowledge of the person born out of a relationship of trust and understanding of their unique ways of communicating, and who, through shared life experience, have come to understand who the person is, what he or she values and wants and what he or she dislikes or rejects”.³ Bach and Kerzner cite at least six different types of supports involved in assisting individuals to exercise their legal capacity:

- Life planning (which included person-directed planning and facilitation);
- Independent advocacy;
- Communicational and Interpretive;
- Representational;
- Relationship-building; and
- Administrative.⁴

While a fulsome discussion of these supports is beyond the scope of this paper, the above illustrates the various elements of assistance provided within the supported decision-making context.

Various forms of supported decision-making have been legally recognized in British Columbia, the Yukon, Alberta, Saskatchewan and Manitoba. British Columbia and the Yukon permit Representation Agreements while Saskatchewan and Manitoba allow for supported decision making agreements or authorizations. The Law Commission of Ontario is currently administering a project called “Legal Capacity, Decision-making and Guardianship” that focuses on identifying law reform recommendations in this area. The hope is that this project will open the door for supported decision making legislation in Ontario.

2. What are SDSOs?

The first “microboards” were created in Manitoba in 1984 by David and Fae Wetherow.⁵ According to Wetherows, regardless of how they are labelled, the qualities that exemplify the purpose of the entities are:

1. An unencumbered focus on the identity, needs and express wishes of the person who is supported;
2. Development and maintenance of an active, diverse and fully engaged citizen-based circle of support;
3. Retaining all possible elements of control, especially including the role of employer-of-record.⁶

² LCO at 222.

³ Bach and Kerzner at 79.

⁴ Bach and Kerzner at 75.

⁵ David Wetherow & Faye Wetherow, "Microboards and Microboard Association Design, Development and Implementation" (revised August 2004), online:

<http://www.communityworks.info/articles/microboard.htm> (last accessed: 28 November, 2014).

⁶ Ibid.

Although there is no formal definition associated with as SDSO, typically they are small not-for-profit corporations comprised of people who work together with an individual to provide various degrees and types of supports. Vela Canada, a British Columbia organization that assists with the development and ongoing support of “microboards”, suggests that such groups help the individual:

- Plan his or her life;
- Brainstorm ideas;
- Advocate for what they need;
- Monitor services and ensure they are safe;
- Connect to his or her wider community; and
- Do fun things together.⁷

Individuals and their families also form SDSOs for the purposes of:

- Administering individualized funding arrangements;
- Employing or contracting with support workers;
- Receiving and managing income and disability supports;
- Supporting trustees of trusts for which the individual is the beneficiary;
- Supporting the plan holder(s) of the RDSP for which the individual is the beneficiary (which may include the individual); and
- Advocating for additional supports and resources.

Members of SDSOs are determined by the founders and are typically comprised of the directors that are responsible for governing the corporation. Often the individual is a member and/or director of the SDSO as well.

In addition to the various roles taken on by SDSOs, families have been increasingly forming these entities as a means to facilitate supported decision-making, especially within the context of IHPs.

Part II: Making the Case for Supporting Families

In order for IHPs to be successful they must be both sustainable and individually driven. Including SDSOs as part of the overall plan would not only provide a mechanism that facilitates succession planning but it would also reduce the individuals’ reliance on larger community service providers. The following are ways in which SDSOs can provide significant benefit to the IHPs of individuals.

1. Decreases the risk of the individual’s legal capacity being compromised

There are many decisions involved within the daily operations of an IHP. These may include signing contracts related purchasing, leasing or maintenance, hiring or contracting with support workers and interacting with third parties such as financial institutions, insurance companies and various government entities. Ontario laws make it very difficult for some individuals to exercise their decision-making rights despite the

⁷ Vela Website

equality protections entrenched in our Constitution⁸ and *Human Rights Code*;⁹ the compliance requirements identified in accessibility specific legislation;¹⁰ and the ratification of the United Nations Convention on the Rights of Persons with Disabilities of which Article 12 states that “persons with disabilities enjoy the legal capacity on an equal basis with others in all aspects of life”.¹¹

Although supported decision-making is not formally recognized in Ontario law, the involvement of a group of individuals who have come together with the primary objective of supporting an individual within the framework of the IHP may alleviate the concerns some third parties may have with respect to contracting or otherwise dealing with the individual themselves. The SDSO would be there to support the individual in the decision-making process.

2. Uses existing legislative structure for governance of not-for-profit corporations

Existing legislative frameworks can be utilized as a basis to govern to SDSOs. Not-for-profit corporations can either be incorporated under Ontario’s *Corporations Act* (soon to be succeeded by the *Ontario Not-for-Profit Corporations Act* or “ONCA”) or federally under the *Canada Not-for-Profit Corporations Act* (the “CNCA”). The statutes provide the structure for which SDSOs can operate and facilitate a means to ensure that the stated goals of the group are carried out by its members and directors. The “objects” of the corporation are clearly identified in its Letters Patent or Articles of Incorporation and the way in which the corporation governs or regulates itself are spelled out in its bylaws. In other words the overarching goal related to the provision of support can be clearly identified and fleshed out in the corporation’s governing documentation.

3. Promotes sustainability & succession planning

The sustainability of IHPs can be easily jeopardized if its operations rely on too few people (i.e. parents). There are numerous roles and responsibilities associated with initiating the plan as well as maintaining its ongoing well-being. Beyond matters related to the home itself (i.e. accounting, taxes, legalities, property maintenance, etc.), hired or contracted support workers are often a key pillar of the overall plan. The SDSO can fulfill the role of the employer or contractee so that employment/contractor relationship is not dependent on only one person.

In order for the IHP to be truly successful, it must live beyond the involvement of an individual’s immediate family members. The corporate legislation governing SDSOs allow for multiple directors. In fact, both the *Corporations Act* and ONCA require that a not-for-profit be governed by at least at least three directors. The directors can include friends, extended family members, interested members of the community and the individual himself or herself. The requirement of multiple directors not only facilitates a continuance of support but also provides an inherent check and balance framework that minimizes the risk of the individual’s interests being compromised.

⁸ See section 15 of the *Canadian Charter of Human Rights & Freedoms*.

⁹ See the *Ontario Human Rights Code*.

¹⁰ See the *Accessibility for Ontarians with Disabilities Act*.

¹¹ U.N. Convention

4. Decreases government oversight, involvement and expenditures

Lastly, including SDSOs as part of the IHP has the potential to significantly reduce government expenditures associated with supporting individuals in their own homes. Resources could be conveyed directly to SDSOs instead of having to fund larger service providers to fulfill the role of a transfer payment agency. The likelihood of the Office of the Public Guardian and Trustee becoming involved with the management of one's life would be reduced given the inherent supported-decision making role provided by SDSOs. Overall, fewer hours would be spent by family members (who often have to take time off of work), service providers and government agents dealing with issues related to supporting individuals in their own homes. SDSOs, comprised of group of involved members, would, along with the individual, be responsible for directing, maintaining and sustaining the IHP.

In conclusions, although small not-for-profit corporations established to support the well-being of individuals have been around for over thirty years, they still provide a novel means of supporting individuals as they embark on a new journey of exercising a self-directed, autonomous and dignified way of living in their own homes.