

Laws in Other Provinces, continued

The Representation Agreement Act of British Columbia

- B.C. law allows adults to choose a *representative* to help convey their decisions.
- Representatives offer a supportive relationship built on trust; this trust-based relationship is legally recognized as a factor towards a person's capability by the Act.
- Section 16(2) of the Act says that a representative must consult with the person he/she is representing, and must comply with the person's wishes if it is reasonable to do so.

What Can You do to Promote Supported Decision-Making?

Given that Canada has disagreed with Article 12 of the *CRPD*, it is unlikely that substitute decision-making will be eliminated any time soon. However, as seen in other provinces, there are still opportunities to include supported decision-making within the law. With that in mind, here are some potential things to focus on when writing your local MPP or raising awareness through other avenues:

- Providing rights advice and advocacy supports to persons subjected to substitute decision-making.
 - Basic legal information, advice, and support should be provided
- Educating decision-makers
 - Mandatory training programs would help decision-makers to be sensitive to important concerns and enable more supportive relationships.
- Requiring decision-makers to report
 - Periodic reporting requirements would allow for an impartial review of decisions.

Conclusion

Persons with disabilities have the right to dignity and autonomy, and Canada has recognized this by agreeing with the *CRPD*. While some of the current laws around decision-making promote these rights, many of these rights are automatically stripped due to the law's focus on substitute decision-making. In order for persons with disabilities to be included in society in a dignified way, Canada must shift its focus from substitute decision-making towards supported decision-making.

If you want to set up a formal decision-making arrangement for yourself or a loved one, it is recommended that you seek the advice of a lawyer or a similarly qualified and experienced professional. You may also want to obtain a copy of our guide called *A Guide to Self-Directed Support Organizations* which outlines another way to support a person's decision-making and life direction.



Legal Disclaimer: The information provided is not legal advice and does not create a solicitor-client relationship. Windsor-Essex Family Network provides such information for general information purposes only. While we attempt to convey current and accurate information, we make no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or availability of the information. Any reliance you place on such information is therefore strictly at your own risk. If you would like a list of the sources used in the preparation of this brochure, please contact Windsor-Essex Family Network.

© 2014 Windsor-Essex Family Network, updated 2016

A Guide to Supported Decision-Making: The Basic Legal Concepts



Windsor-Essex Family Network

7025 Enterprise Way, Windsor ON
Phone: 519-974-1008
Email: info@windsor-essexfamnet.ca
Website: <http://windsor-essexfamnet.ca/>

PROUD FUNDED PARTNER OF



pooranlaw
inclusive results

~ Families Helping Families Open Doors ~

Key Laws

The U.N. Convention on the Rights of Persons with Disabilities ('CRPD')

- Says that all persons with disabilities are full citizens who have the right to make free and informed decisions.
- Canada agreed to the terms of the convention in 2010 (well, all the terms except for one...).
- Article 12 of the CRPD states that persons with disabilities should control their own affairs and any measures that take away a person's decision-making abilities must be closely monitored and reviewed.
- This seems to say that substitute decision-making should be seriously restricted, if not eliminated.
- BUT, Canada did not agree with Article 12. When we signed the CRPD our government stated that substitute decision-making would still be allowed in our country and monitoring did not need to be improved.
<http://www.un.org/esa/socdev/enable/rights/convtexte.htm>

Key Terms and Definitions

Autonomy: A person who can freely make decisions has autonomy.

Guardianship: A substitute decision-making model. A guardian makes decisions for an 'incapable' person.

'Incapable': When a person has been deemed by the law to lack the ability to make sound decisions for themselves. This term appears in quotations (' ') in this brochure to recognize that every person has unique abilities and capabilities.

Substitute Decision-Making: When a person makes decisions for another person.

Supported Decision-Making: When a person helps another person to communicate his/her decisions.

Why Supported Decision-Making Makes Sense

Supported decision-making includes persons with disabilities in the decisions that affect them (e.g. important decision about healthcare, property, and legal issues). It recognizes the **autonomy**, identity, and abilities of every person. However, the current laws of Ontario are not in line with supported decision-making.

Substitute Decision-Making

Substitute decision-making strips the rights of persons with disabilities by putting another person in charge of their decisions. The most common example of substitute decision-making in Ontario is **guardianship**, which occurs when the person with a disability is found to be unable to look after their affairs.

Towards Supported Decision-Making: Power of Attorney ('POA')

- A power of attorney is a legal document made by a person who wishes to have someone else act on their behalf (an 'attorney').
- You do not need to be a lawyer to be an 'attorney'.
- Because the person with a disability chooses his/her decision-maker, there is more autonomy involved than in a guardianship situation.
- The person who executes the power of attorney may also revoke it so long as he/she has not been found 'incapable' of doing so.

Two Main Types of POAs

Continuing Power of Attorney for Property

If a person wants someone else to help manage their finances, or if they are worried about becoming unable to manage them, they can choose an 'attorney' to act on their behalf.

Continuing Power of Attorney for Property. . .

The 'attorney' can do almost anything with the person's property that the person could do (e.g. banking, signing cheques, buying or selling real estate, and buying goods). However, the 'attorney' cannot make or change the person's will, or give a new POA on the person's behalf.

The person/grantor may choose to have the 'attorney's' authority begin upon signing and this authority would continue upon incapacity. Alternatively, the grantor may choose to grant this authority upon his/her incapacity only.

Power of Attorney for Personal Care

This is a POA that deals only with personal care decisions. Making a POA for Personal Care gives the affected person a say in his/her healthcare. The 'attorney' must consent to any decisions about the affected person's care. If the person does not want certain medical treatments in the event he/she becomes seriously ill, he/she may state that in the POA, and the 'attorney' must follow the person's wishes by law.

Towards Supported Decision-Making: Laws in Other Provinces

The Saskatchewan Adult Guardianship and Co-decision-making Act

- Saskatchewan law gives the court the option of assigning a *co-decision-maker* for adults with a disability, which allows for a more supportive relationship than guardianship.
- Section 3 of the Act states that the person with a disability has the right to communicate in any way that allows them to be understood, and that they have the right to be informed about and participate in decisions that affect them.