



Supported Decision-Making: Connecting Law and Practice

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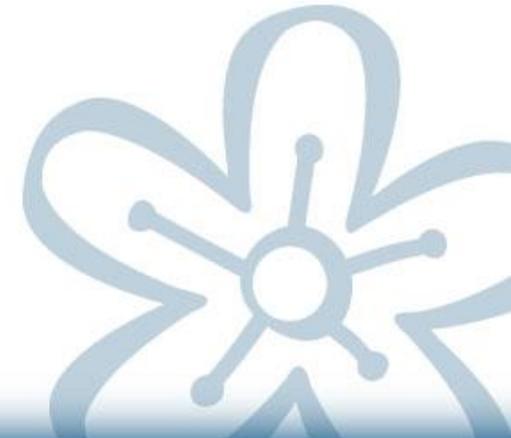
Canadian Centre for Elder Law

1. Legal research
2. Law reform
3. Legal education
4. Outreach



Disclaimer

This presentation is not legal advice



Presentation outline

1. Inclusive Investing Project
2. Legal framework for supported decision-making in BC
3. Group discussion: promising practices for supported decision-making

Inclusive investing project

We are speaking with:

- Investors from various communities, e.g.
 - people living with dementia,
 - people living with an intellectual disability
- Supportive decision-makers
- Investment industry, regulators, PGT

Research concepts & themes

- Supported decision-making
- Investment decision-making
- Undue influence
- Financial abuse
- Respect for autonomy
- Accommodation of skills and abilities



Why this project?

- Decision-making rights are fundamental
- Some individuals are particularly vulnerable to lack of respect for these rights:
 - People who are identified as living with intellectual or developmental disabilities
 - Survivors of traumatic brain injuries
 - People with some forms of mental illness
 - Adults with Alzheimer's or dementia



What are investment decisions?

- Investment needs range from conservative to complex:
 - One or more Guaranteed Income Certificates (GICs)
 - Registered Disability Savings Plan (RDSP)
 - Larger and more sophisticated portfolios

Substitute decision-making

- If incapable, dominant approach is substitute decision-making
 - Example: Guardianship
- Communicate directly with financial institution staff
- Duties and powers of the guardian or other substitute decision-maker are generally clear to financial institution staff

Supported decision-making

- Supported decision-making is less familiar
- Perceived risk to financial institution
- Families may have to choose between not accessing financial institution's services or going to court to get guardianship order
- Yet supported decision-making may be adequate

Project goals & outcomes

- Understand the legal, regulatory and practical issues
- Identify ideas and opportunities
- Publish report
- Develop educational resources and tools
- Publication of report and tools: 2020

Who will benefit?

- Adults receiving support and self-advocates
- Supporters and supporting organizations
- Investment Industry Members and Regulators

What is supported decision making?

Supported decision making is:

- a **voluntary** relationship
- a person or **network** of people **assist** another person with decision-making
- assistance with making communicating and implementing **decisions**

PRINCIPLES OF SUPPORTED DECISION MAKING

- Adult retains full legal capacity
- Adult makes the decision
- Relationship of trust
- Voluntary
- Supportive group or network
- Supporters assist adult make the decision
- Supporters are usually unpaid and could include friends, family and/or community members

International context:

UN Convention of the Rights of Persons with Disabilities

- Adopted by UN in 2006
- Ratified by Canada in 2010
- Promoting, protecting and ensuring full and equal enjoyment of all human rights by people with disabilities
- Article 12: legal capacity
- Canada's Reservation

Supported decision-making in Canada

- International leader
- British Columbia's *Representation Agreement Act*
- Different models of Sup DM now exist in:
 - British Columbia
 - Yukon
 - Alberta
 - Saskatchewan (possibly)
 - Manitoba (to a very limited degree)



What does “support” mean?

Help to:

- Understand the issues involved
- Understand the consequences
- Access appropriate assistance / information
- Express their views, and act as interpreter where needed

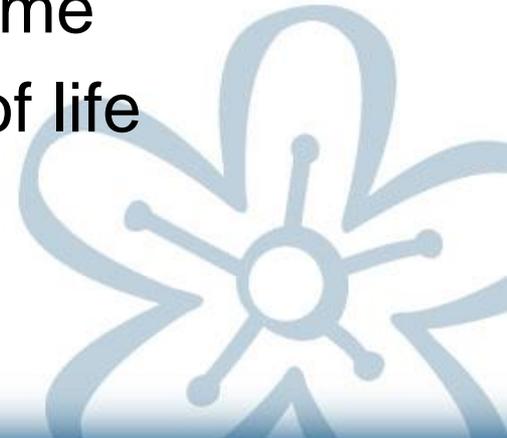
What does “support” mean?

A supportive decision-maker can help others to:

- Truly hear a person who requires support;
- Appreciate the person’s needs, rights, values, preferences and goals; and
- Respect the person’s autonomy, dignity and wisdom—in other words, help prevent discrimination and bias linked to disability.

Why do we have substitute and supported decision making?

- Not everyone has the ability to make their own decisions without support
- Capacity can fluctuate or change over time
- Decision making is a fundamental part of life

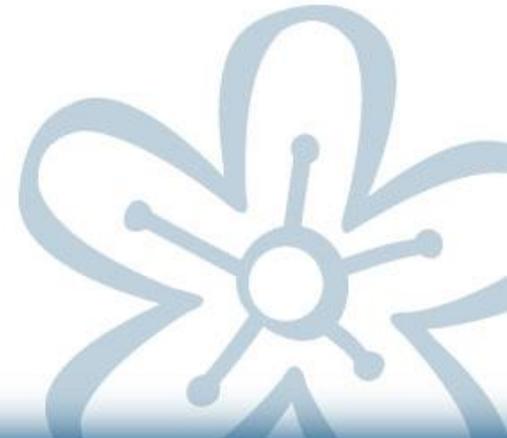


Why we have substitute and supported decision-making laws?

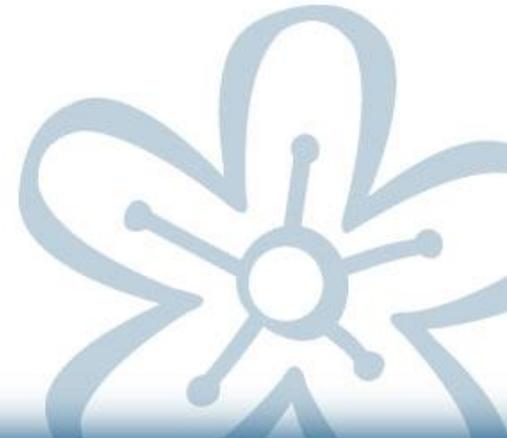
- Vulnerability to abuse
- Significant responsibilities
- Capacity standards



What does “support” mean to you?

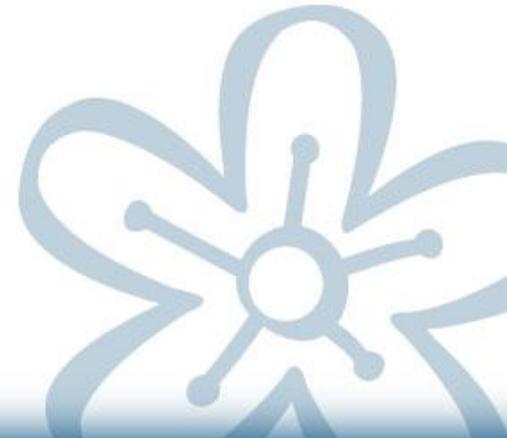


What does “supported decision making” mean to you?

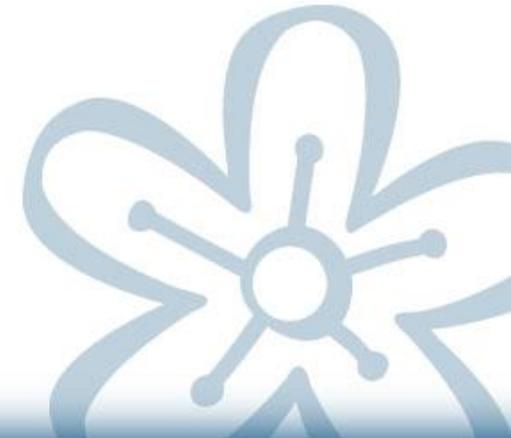


Who supports you to make decisions?

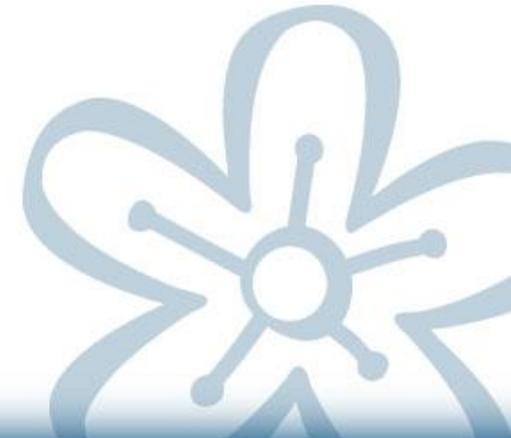
- Family?
- Friends?
- Spouse/Partner?
- Group?



Working together



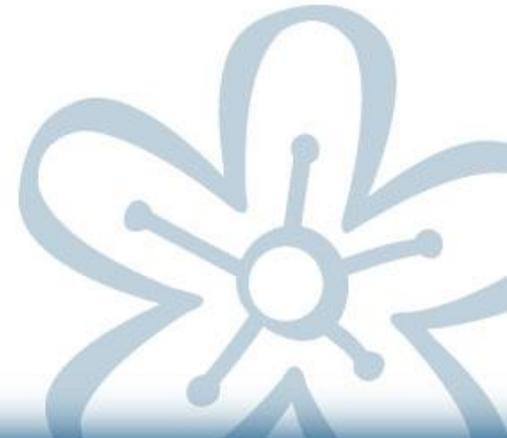
Examples of support



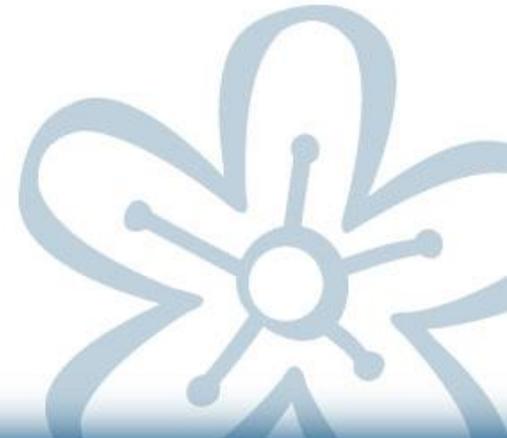
Examples of support: finances



Barriers or challenges?



Tools & resources





HEALTH CARE DECISION-MAKING: RIGHTS & RESPONSIBILITIES

May 24, 4-5 pm

Krista James, CCEL &

Alison Leaney, Office of the Public Guardian and
Trustee



Canadian Centre for Elder Law

www.bcli.org/ccel