

What is the *Supported Decision-Making and Representation Act*?

The [*Supported Decision-Making and Representation Act*](#) (SDMRA) is a new law that governs decision-making in New Brunswick. It protects the rights and dignity of people who need support to make decisions, such as New Brunswickers with a disability and seniors. The new law says that when a person makes a decision with support, it is **still considered to be their decision**.

This legislation makes it possible for people with more significant developmental and cognitive disabilities, who would otherwise not be seen as being able to make decisions with legal consequences, to make legally valid decisions.

What is different about this Act?

For people who experience challenges making decisions on their own, New Brunswick's *Supported Decision-Making and Representation Act* (SDMRA) provides different options to help. While some people get the support they need from family and friends, others may need to pursue a legal option to ensure their financial and personal care decisions are recognized under the Act.

The SDMRA recognizes different ways a person who is 19 or older can make or guide their own decisions. These are:

- making decisions independently or with informal assistance as may be needed
- through a decision-making assistance authorization
- through a supported decision-making order

There is also a last resort option under the Act – a “representation order” – when the court determines that a person is unable to make or guide their own decisions through any of these options.

What is supported decision-making?

Supported decision-making is a new option under the Act where people are assisted or supported to make their own decisions with help from people they know and trust. Assistants or supporters help the person understand information related to a decision and the potential consequences of the decision. They do not make decisions on behalf of the person they are supporting. In some situations, decisions are made using a shared process where people work together to make decisions based on the wishes and preferences of the person being

supported. A person's wishes and preferences are at the centre of all decisions that concern them.

So, will a person requiring support now have to enter into a formal, legal arrangement with their trusted friend or family member?

Many people may already be making decisions through informal arrangements, and the new Act does not take away or make these arrangements less valid.

When would a legal option be required?

A legal option may be required when a person (or the person who helps them) is having trouble dealing with things like banks or government agencies. In some circumstances, a person may have more difficulty understanding information about decisions and their consequences. A decision-making assistance authorization or a supported decision-making order can help to address this.

How does this work?

For people who require a formal arrangement, the Act provides different options:

1. The appointment of a decision-making assistant through a **decision-making assistance authorization.**

This is someone you choose to help you understand information, explore your options, and/or communicate your decisions. This is the least intrusive decision-making option under the SDMRA. You will need to a lawyer a to make a decision-making assistance authorization.

2. The court can appoint a decision-making supporter through a supported decision-making order.

This is more complex than a decision-making assistance authorization. It involves a **formal capacity assessment** and other legal steps. A **decision-making supporter** works **closely** with a person to help them make decisions through a supported decision-making process. This option is designed for individuals who **face significant challenges in decision-making** and need **ongoing, structured support**.

There is also third option available as a **last resort**. If a court determines that a person is unable to make or guide their own decisions, they are appointed a representative. This person becomes a substitute decision-maker and has the authority to make decisions on behalf of another person, based on the wishes and preferences of that person to the greatest extent possible.

You can learn more here:

Link to [Guide for DMA authorizations](#)

Link to [Introduction to Supported Decision-Making and Decision-Making Supports](#)

Do I need a lawyer?

Yes. You will need a lawyer to pursue any legal option under the SDMRA. This includes a decision-making assistance authorization, a supported decision-making order, and a representation order.

To find a lawyer who has knowledge of and experience with the new Act, you can visit the [Law Society OF NB](#).

The [Public Legal Education & information Service of New Brunswick](#) (PLEIS-NB) also has resources that may be helpful, and they can answer questions about the law in New Brunswick, legal procedures, legal terms, and the court system.

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<https://legalinfonb.ca/our-work/legal-information/>

What other professionals are involved?

For a supported decision-making order or a representation order, the person requiring support will need to have a capacity assessment done by a medical practitioner (doctor), a nurse practitioner, or a psychologist. An application for a supported decision-making order or a representation order will go before a judge.

What is a Capacity Assessment?

Capacity assessments are conducted under the SDMRA when someone is planning to apply to the court for an order appointing them as a decision-making supporter or representative for another person. A capacity assessor's role is to do an assessment and complete a report with information about the person's ability to make decisions with the assistance that is available. The report is made using a form called a capacity assessment report ([Form 3](#)).

What is the cost?

You will need to pay your lawyer for their time, and you will need to pay the capacity assessor to conduct the capacity assessment. They will determine their fees.

New Brunswick Legal Aid Services Commission will assist with **court applications** for the appointment of a decision-making supporter to people who meet the financial requirements.

You can visit [Legal Aid NB](#) for more information or to speak with someone from Legal Aid in your area.

How can I find out more?

Inclusion NB has created resources to provide more information about the SDMRA and the options available to people for making decisions with assistance or support.

Link to [Guide for DMA authorizations](#)

Link to [Introduction to Supported Decision-Making and Decision-Making Supports](#)

Supported Decision-Making & Representation Act: A Course for Families

This course is designed for individuals and families looking to better understand the changes to decision-making legislation in New Brunswick, how these changes impact individuals and their families, and the options available for people who may require support with decision-making.

The course covers 4 key components:

- The key principles of supported decision-making;
- The different ways for a person to make legally valid decisions;
- Supporting individuals and their families through the legal process, including capacity assessments; and
- Building a plan for you and your family.

To access the course, families can visit the [Inclusive Communities Institute](#) (ICI). **This is available to families at no cost. We would like to thank the New Brunswick Department of Education and Early Childhood Development for making this possible.**

Some SDM examples:

To help demonstrate how this decision-making law could work for people with an intellectual or developmental disability, we have created several examples based on real people known to Inclusion NB. The names and details of the people these scenarios are based on have been altered to protect privacy.

Morgan – Independent Decision Making with Accommodations

I am 37-years-old and I like being involved in my community, spending time with friends, cooking, and staying active by working with a personal trainer. I live in my own apartment where I have access to supports as needed. I have been diagnosed with an Autism Spectrum Condition and I am a member of the Deaf community. I communicate using American Sign Language (ASL) and I often require support from an interpreter when communicating with people who do not use sign language.

My disability is visible, meaning that people often believe that I cannot do certain things, but I make most of my daily decisions independently.

Though I am capable of making most decisions on my own, I do struggle with those who find it hard to communicate in the ways that I need. For this reason, it is important that I have access to the appropriate accommodations for me to understand the relevant information to make decisions. For me, this is the opportunity to communicate with people in my first language, ASL, and additional time to understand and process information. As long as I have access to these accommodations, I do not need any formal decision-making arrangements.

Taylor – Decision-Making Assistant

I am 40-years-old. I work part-time and spend my free time with my animals and my family. I live on my own with two dogs and several tanks of exotic fish. I like being independent, and while I have great friends and family who love to help, I prefer to do things myself. I was diagnosed with Fetal Alcohol Spectrum Disorder (FASD), but this does not hold me back from my daily activities. My sister currently acts as my Power of Attorney, but I would like to be as independent as possible. I value my independence greatly, but can find it hard to ask for help. This means that sometimes I wait until problems are too big to handle on my own. I feel as though the Power of Attorney is too restrictive for what I would like and actually need. I want my sister to be my decision-making assistant instead. As a decision-making assistant, she would help me process information about decisions that I need to make and help me communicate my decisions to others when necessary. This better protects my right to make my own decisions.

Sam and Devon – Decision-Making Assistant or Supporter

We are siblings who have a degenerative condition that requires full-time assistance and mobility aids as we both have a significant mobility disability. As people in our early fifties, we have had the same support team for over 30 years. Our team knows and understands us better than anyone else, and they support us to live in our home which we own together. Sam is passionate about fashion and assisting the local animal shelters. She also likes to spend free time baking and socializing with friends. Devon is a hockey fan and a proud supporter of the local teams. He enjoys managing the household expenses and bills and has a keen eye for planning and scheduling.

While our verbal speech is limited, our team knows our facial expressions, vocalizations, and limited hand gestures that others would typically overlook. We both lead very fulfilling and active lives and, when given the opportunity, we will communicate our wishes and preferences for all decisions with support from our team. With assistance from those who know us best, we can make decisions that are legally binding.

We currently have a written agreement with family members which identifies who we want to support us with different decisions about health care, finances, etc. With a decision-making assistant or supporter, we will be enabled and supported to make our own daily and legal decisions.

Note: A lawyer would need to determine that Sam and Devon both have the required capacity to make an appointment of a decision-making assistant, including that they have the capacity to decide who they want as their assistant(s), the areas in which they need help making decisions, and what authority the decision-making assistant would have (for example, obtaining information and communicating their decisions). When assessing Sam and Devon's capacity to make these decisions, the lawyer will take into consideration that an individual can have the capacity to make decisions even if they require assistance to make or to communicate the decisions. If, in the opinion of the lawyer, this capacity is not present, members of Sam and Devon's trusted support team could apply to the court to be appointed as their decision-making supporters. This would involve additional legal and other costs.