Decision-Making Assistance Authorizations under the Supported Decision-Making and Representation Act

Inclusive Communities Institute

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Welcome!

This guide provides information about a legal form called a **decision-making assistance authorization (DMA)**.

Topics included in this guide:

- Supported Decision-Making and Representation Act (SDMRA)
- Capacity
- Decision-Making Assistants
- Appointing a Decision-Making Assistant
- Starting and Ending a Decision-Making Assistance Authorization
- Decision-Making Assistants and Enduring Powers of Attorney

This guide has important information about DMAs. It also has some information about the new law that allows people to make DMAs, but it doesn't explain all of the new law.

If you have questions about DMAs or other parts of the new law, you can talk to a lawyer.

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Supported Decision-Making and Representation Act (SDMRA)

A new law on decision-making in New Brunswick

The law that deals with decision-making authorizations (DMA) in New Brunswick is called the *Supported Decision-Making and Representation Act (SDMRA)*. It came into effect on January 1, 2024. This law created the option of making a DMA to appoint a decision-making assistant. Before that, people could not appoint a decision-making assistant.

The purpose of the new law is to protect the rights and dignity of people who need support to make decisions. The law helps to make sure that people receive the support they need to make decisions about their lives as much as possible. The new law says that when a person makes a decision with support, the decision is still considered to be their decision. This means that these decisions are legally valid.

What does 'legally valid' mean?

"Legally valid" means an agreement or document that is officially recognized by law and that is enforceable.

Example

If you decide to sign a lease for an apartment with the help of your decision-making assistant, the lease is a valid legal document.

Under the new law, there are **three options** for people who are 19 and older who have difficulty making decisions on their own. These options are:

1. A person can appoint a **decision-making assistant** by making a DMA. The assistant helps the person to make decisions.
2. The court can appoint a **decision-making supporter** for a person. The person and the decision-making supporter make decisions together through a cooperative process called the "supported decision-making process".
3. The court can appoint a **representative** for a person. The representative makes decisions on behalf of the person (after discussing the decision with the person whenever that's possible).

TIP

A lawyer can help to figure out the best option for you. The third option – the court appointing a representative – would affect your rights more than the other options because it allows someone to make decisions for you. A DMA allows you to choose the person who will help you with your decisions.

What is "supported decision-making"?

In supported decision-making, people are supported to make decisions through the help of someone they know and trust. Sometimes, people choose someone to provide support. Other times, a court appoints someone. Supported decision-making includes decisions made by a person with help from a decision-making assistant and also decisions made by a person and their decision-making supporter through the supported decision-making process.

Decision-making assistants and decision-making supporters help people get and understand information about decisions. They also help people understand and think about different options and what might happen if a certain decision is made. They help people to make decisions and communicate decisions.

They do not make decisions for people.

Not everyone who needs help making decisions will need to use one of these options.

Often, you can just get the help you need from people you know. This might look like:

- Someone making sure you have extra time to make decisions.
- Someone helping you read or understand information about decisions.
- Someone communicating with other people when you make decisions.

EXAMPLE

If a person (or the person who helps them) is having difficulties dealing with things like banks or government, a supported decision-making option can be helpful.

This guide will focus on the first option – appointing a decision-making assistant by making a DMA.

Capacity

Decision-making capacity in the new law is about a person's ability to make decisions about their life.

Under the new law, capacity to make a decision involves:

- Understanding information about the decision
- Understanding what might happen if you make a certain decision (the "consequences") and considering which option is right for you

For example, let's say someone is deciding whether to keep living with their family or to rent their own apartment. The person has the capacity to make that decision if:

- They understand information about the decision (for example, how much the rent will be);
- They understand what might happen if they decide to rent the apartment (for example, they will have to leave the apartment if they can't pay the rent); and
- They can consider whether renting or staying with their family is the right option for them.

What does decision-making "capacity" mean in the new law?

Decision-making capacity in the new law is about a person's ability to make decisions about their life. A person can have the capacity to make a decision even if they need some help to understand the decision. The new law says this help can be anything that will allow the person to have the capacity to make the decision.

The new law also says that a person can have the capacity to make a decision even if they need help to communicate. This is very important for people who do not always use spoken words.

For example:

- People may need help explaining their decision.
- People may need help saying that they understand information about a decision.

The new law also says that a person can have the capacity to make a decision even if:

- They make a decision that another person thinks is risky.
- They didn't have the capacity to make a similar decision in the past.
- They don't have the capacity to make some other decisions.

Some types of help that people may use with communication for Decision-making are:

- **Communication devices and assistive technology (text to speech, Eyegaze systems, communication boards, etc.).**
- **Interpreter services if they use sign language (ASL or LSQ) to communicate.**
- **Someone who can understand and explain the meaning of a person's sounds, gestures, or facial expressions.**

Decision-Making Assistants

A decision-making assistant is a person who you appoint to help you make decisions.

You can have more than one assistant and you can have assistants for different types of decisions.
For example:

- You can have one assistant to help you with personal care decisions (such as health care) and another assistant to help you with financial decisions.
- You can have two assistants who can each help you with any kind of decision.
- Your assistants can work together to help you or they can help you separately.

An assistant can help you to make decisions by:

- Getting information about decisions on your behalf or helping you get information
- Discussing options and consequences of decisions with you
- Communicating your decisions to other people or helping you communicate your decisions to other people

A decision-making assistant does not make decisions on your behalf. Any decisions made with help from a decision-making assistant are your decisions.

What kinds of decisions can a decision-making assistant help me with?

You will need to decide what kinds of decisions your decision-making assistant can help you with. In the DMA, you can say that your assistant can help with decisions about your personal care matters or your financial matters or both. If you like, you can say that they can help only with decisions about certain parts of your personal care matters or financial matters.

Personal Care Decisions

- Medications or other health care.
- Your personal supports or services that you use.
- Things that you want to do such as work, go to college, and take part in recreational and social activities.
- Where you live and who you live with.

Financial Decisions

- Money and bank accounts
- Income tax and dealing with the Canada Revenue Agency
- Registered Disability Savings Plans (RDSPs)
- Signing a lease on an apartment

Think about the types of decisions that you would want a decision-making assistant to help you with.

Use the space below to write down your ideas.

What can a decision-making assistant do to help me make decisions?

You will need to decide what your decision-making assistant can do to help you with decision-making.

In your DMA, you can say that they are allowed to do one or both of these things:

- Get information about a decision you are going to make or help you get the information
- Communicate a decision you have made to other people or help you communicate the decision

Your assistant can also help you in decision-making (but they cannot make a decision for you). For example, they can explain things to help you understand information or the consequences of decisions.

What are the things that a decision-making assistant must do?

A decision-making assistant is required to be honest with you and other people and be careful when they are helping you. They must not act for their own benefit or for the benefit of any person other than you.

Think about what kind of help that you would want from a decision-making assistant to help you make decisions.

Use the space below to write down your ideas.

What happens if my decision-making assistant disagrees with a decision I make?

Your decision-making assistant can decide not to communicate a decision you make if they believe that the decision would cause you serious harm. If the decision is not likely to cause you serious harm, the assistant should help you communicate the decision.

Appointing a Decision-Making Assistant

You can appoint a decision-making assistant if you are 19 years old or older and you have the capacity to make the decision-making assistance authorization (DMA).

This means that you need to be able to make all of the decisions involved in making the DMA, including decisions about:

- Who you want to appoint as an assistant
- The types of decisions you want your assistant to help with
- The types of things an assistant can do to help you

You can have someone explain information about assistants and the consequences of appointing one. You can show that you have the capacity to make these decisions even if you need help to communicate.

You will need a lawyer to make a decision-making assistance authorization (DMA).

How do I appoint a decision-making assistant?

To appoint someone as your decision-making assistant, you will need to make a decision-making assistance authorization (DMA), which is a legal form. You will need help from a lawyer to make a DMA.

The DMA includes information such as:

- The name and address of each person you are naming as an assistant and what their relationship is to you (for example, family or friend)
- The types of decisions that your assistant will be able to help you with (personal care decisions or financial decisions or both)
- The things your assistant will be able to do to help you with making decisions (such as get information for you or help you communicate with other people about your decisions)

The DMA also includes a statement from the lawyer that says they discussed the DMA with you and they believe that you have the capacity to make the DMA. Remember, you can have someone help you to show the lawyer that you have the capacity to make the DMA.

The DMA must be signed by you (or by someone on your behalf, if you cannot sign it) and by the lawyer. It must also be signed the assistant (or assistants) you are appointing to show that they agree to be your assistant.

Who can I appoint as a decision-making assistant?

You can appoint a person who is 19 years old or older as a decision-making assistant. However, you cannot appoint a person who is your **paid** support worker or health care worker, **unless they are related to you** (your spouse, common law partner, or other relative).

For example, if your parent or sibling is your support worker, they can also become your assistant.

Before choosing a person to become your assistant, it is important to think about these things:

- How well do you know them?
- How well do they know you?
- How are they involved in your life?
- Do you trust them to be a good assistant to help you make decisions?
- Are they familiar with things like how you communicate and what types of help you need to understand information, communicate, and make decisions?

Name one or two people who you think will make a good decision-making assistant:

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What should a lawyer do to help me make a decision-making assistance authorization?

Here are some things that a lawyer should do to help you make a DMA:

- Explain what a decision-making assistant can do to help you and give you time to ask questions.
- Make sure to give you information in a way that you understand.
- Give you enough time to think about your answers to questions.
- Allow you to have someone with you to help you understand things about making a DMA (but they may also want to speak with you by yourself).
- Allow you to have someone with you to help you communicate if you need help with this.

How much will I have to pay a lawyer to help me make a decision-making assistance authorization?

How much you pay your lawyer to help you make a DMA will depend on your lawyer. It is a good idea to ask about the cost before the lawyer helps you.

What can I do if a lawyer tells me that I cannot make a decision-making assistance authorization?

If this is the case, the next option under the new law is having a **decision-making supporter** appointed by a court. A decision-making supporter makes decisions with you through a cooperative process called the **supported decision-making process**. A decision-making supporter plays a bigger role than an assistant does in helping to decide which option is best.

A person who you know and trust can apply to a court to become your decision-making supporter. They do this by sending a form with other documents to a court, usually with the help of a lawyer.

If this is something that you are interested in, a lawyer can talk to you about who can be your decision-making supporter and give you information about how someone can apply.

Starting and Ending a Decision-Making Assistance Authorization

When does my decision-making assistant start helping me and when do they stop?

Your decision-making assistant can start helping you as soon as the DMA has been completed and signed. They stop helping you when you tell them that they are not your assistant anymore, when they tell you that they are not your assistant anymore, or when your DMA comes to an end.

If you want to, you can include a date in the DMA saying when it will come to an end.

If you don't include an end date, your DMA will last until:

- You revoke (cancel) the DMA by telling all of your assistants that the DMA is revoked or that their appointments are revoked.
- All of your assistants have resigned (quit).
- A court terminates (cancels) the DMA
- A court appoints someone to be your decision-making supporter or representative
- You die

What do I do if I don't want someone to be my decision-making assistant anymore?

If you don't want someone to be your decision-making assistant anymore, you can revoke (cancel) their appointment by giving them "notice" that you are ending it. In other words, you tell them that they are not your assistant anymore. It is a good idea to do this in writing (for example, in a letter or email) if possible. You may also want to tell other people that the person isn't your assistant anymore. For example, if the person was helping you with health care decisions you should tell your doctor (in writing, if possible).

If you have more than one assistant and you revoke the appointment of one of them, the other assistant (or assistants) continues as your assistant. If you revoke all of the appointments, the DMA comes to an end.

What if my decision-making assistant doesn't want to help me anymore?

If your decision-making assistant doesn't want to help you anymore, they can resign (quit). They do this by giving you "notice in writing" that they are resigning. In other words, they give you a written statement (such as a letter or email) saying that they are no longer going to be your assistant. They must also give notice in writing to the other assistants that you appointed in your DMA (if there are any). If you have more than one assistant and one of them resigns, the other assistant (or assistants) continues as your assistant. If they all resign, the DMA comes to an end.

Decision-Making Assistants and Enduring Powers of Attorney

What is the difference between a decision-making assistance authorization and an enduring power of attorney?

The main difference between a DMA and an **enduring power of attorney (EPA)** is that a DMA allows someone to help you make decisions while an EPA allows someone to make decisions on your behalf when you are not able to make decisions for yourself. In other words, a DMA allows for **supported decision-making** while an EPA allows for **substitute decision-making.**

An EPA is similar to a DMA in some ways. It is a legal document, and you can't make one unless you have the capacity to do so. This means you must be able to make decisions about things like who to appoint and what kinds of decisions they will make on your behalf.

For most EPAs, you need help from a lawyer to make the document. This is because an EPA that allows someone to make decisions about your financial matters must include a statement from a lawyer saying that they discussed the EPA with you and that you have the capacity to make the EPA. Even if you want to make an EPA that's only for personal care decisions, it is a good idea to talk to a lawyer first.

Can I have a decision-making assistance authorization and an enduring power of attorney?

Yes, you can have both a DMA and an EPA. This is because they are used for different reasons:

- A DMA is used when you are able to make decisions but may need some help.
- An EPA is used to plan for a time when you are no longer able to make your own decisions. It can also be used to allow someone to manage your finances for you even though you can still make decisions about your finances.

If you want to have both a DMA and an EPA at the same time, talk to a lawyer about how to do this. You may want to make sure that an EPA isn't used to make decisions on your behalf when you are able to make decisions (on your own or with the help of an assistant).

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If you need more information about DMAs or the other two options under the new Act for people who have difficulty making decisions on their own, you can talk to a lawyer.