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In December 2022, after many years of advocacy by Inclusion NB, the *Supported Decision-Making and Representation Act* was passed unanimously in the New Brunswick legislature. On January 1, 2024, the Act was proclaimed into law giving it full effect. This legislation represents a significant shift in how we think about decision making rights, self-determination, and legal mechanisms for assisting people who may require help with making decisions. It is a law that is deeply rooted in a human rights approach to decision-making, reflecting both Canadian laws and the United Nations *Convention on the Rights of Persons with Disabilities*.

This Act ensures that New Brunswickers, including seniors and adults with a disability, can make their own decisions – big and small – about their own lives.

This can happen with assistance or support, if needed, and most importantly, it will result in having those decisions recognized as legally valid decisions of the person.

This approach – true to the principles of inclusion – has been many years in the making. Protecting the autonomy and dignity of everyone to participate in their decision-making is the very cornerstone of an independent and full life.

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 for adults in New Brunswick. It protects the rights and dignity of people who need assistance or 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 assistance or 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. Under a representation order, a substitute decision-maker is appointed.

What is decision-making “capacity” under the Act?

The Act sets out a legal test for capacity to make decisions. To meet this test, a person must understand information that is relevant to a decision and appreciate the reasonably foreseeable consequences of a decision. A person can show that they meet this test with assistance that is available to them. A person may also have the capacity to make decisions even if they need assistance to communicate or if they make decisions that other people consider to be risky or unwise.

What is supported decision-making?

Supported decision-making is a general term that recognizes that some people require help with making some or all of their decisions. As noted above, the Act sets out two ways for people to have a formal and legally recognized support arrangement:

- (a) The person can appoint their own **decision-making assistant**. This can happen if the person is able (with some help if needed) to make decisions about the appointment. This includes decisions about whom to appoint as their assistant, the types of decisions they want the assistant to help with (personal care or financial), and the kinds of things they would like the assistant to do (such as gather information and help them

communicate their decisions). Under this arrangement, a person is still expected to have the “capacity” to make their own decisions (can understand relevant information and appreciate the reasonably foreseeable consequences of a decision)– but with the involvement of their named assistant when needed.

- (b) Another person can apply to a court to become a **decision-making supporter**. This may happen if there is evidence that a person is not able to meet the test for capacity to make decisions even with informal or formal assistance (that is, the appointment of a decision-making assistant). Under this type of arrangement, there must be evidence that the person can make decisions **interdependently** with a suitable decision-making supporter (a person who is in a relationship of trust) through a “**supported decision-making process**”. This means that the person is able to express their wishes and preferences in a way that the supporter is able to understand, interpret, and be guided by.

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 decision-making support order can help to address this.

How does this work?

As noted above, 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 and should be considered as a first option. You will need to a lawyer a to make a

decision-making assistance authorization. A standard form (Form 1) must be used to appoint an assistant.

2. The court can appoint a decision-making supporter.

This is more complex than a decision-making assistance authorization. It involves a court application by the person who would like to be named as a decision-making supporter. It also requires 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](#)

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

The main difference is that supported decision-making allows someone to help you make decisions while an enduring power of attorney allows someone to make decisions on your behalf when you are unable to make decisions for yourself. **An enduring power of attorney is substitute decision-making.**

It is possible to have a decision-making assistance authorization and an enduring power of attorney at the same time because they can be used in different circumstances. An authorization is used by the assistant when the person has the capacity to make decisions (with assistance if needed). An enduring power of attorney is generally used by the attorney when the person no longer has the capacity to make decisions.

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 decision-making support 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 decision-making support 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 decision-making support 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 and an opinion about the person's ability to make decisions either on their own or with the assistance that is available. If the assessor is of the opinion that the person lacks the "capacity" to make some or all of their decisions (even with assistance), then they must provide an opinion on whether the person can make decisions through a supported decision-making process with a suitable supporter. In this part of the assessment, the assessor determines if the person can express "wishes and preferences" and if the proposed supporter can interpret and be guided by these wishes and preferences to make decisions with the person. The assessor's 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 may need to pay the capacity assessor to conduct the capacity assessment. They will determine their fees.

The New Brunswick Legal Aid and Services Commission will financially assist with **court applications** for the appointment of a decision-making supporter or a representative 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 \(ICI\)](#) course: <https://www.ici-nb.ca/sdmra-courses>. **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.**