

Alternatives to Guardianship



**INCLUSION
SASKATCHEWAN**
supporting people with intellectual disabilities

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Introduction

Inclusion Saskatchewan (INSK) receives many inquiries about guardianship and while guardianship may be a fit at times, there are many alternative ways to support someone. It is still common for family members or supporters to be told that guardianship is the only option to support an adult with an intellectual disability. This document is intended to provide clarity that this is not the case and present options beyond guardianship. It can also be used to provide ideas about how to support someone in the least restrictive ways possible while also maintaining a person's right to self-determination. It provides a brief overview of decision-making options and tools as well as information about how to support people who do not have a legal decision-making document in place, as they navigate through various systems. Every situation is different, therefore, the options presented are suggestions intended to provide ideas and recommendations, not directions to be followed.

INSK believes that everyone has the right to be supported in making decisions for themselves and that decision making methods should be tailored to each person's needs and goals. While this information is intended to provide clarity on various options, it is important to note that the wishes and needs of the person should always be considered first and foremost.

Power of Attorney, Co-Decision-Making & Guardianship

Power of Attorney

If a person with an intellectual disability would like assistance from someone they trust to help manage their affairs, they may wish to appoint a power of attorney (POA). A POA is a legal contract that allows an adult (18 years of age and over) to give someone they trust the authority to make decisions and act on their behalf. The person must be able to understand the nature and effect of the contract which includes understanding the impact of making or not making certain decisions.

A person can have:

- a personal POA to assist with matters such as the type of support they need in their home (does not include healthcare decisions; see "The Health Care System" section for more information);
- a property POA to assist with matters such as their finances and property;
- or both a personal and property POA. The person can choose if they would like the same person to assist with both or, if preferred, two different people can represent them.

The person also has the right to decide if they would no longer like a POA and can follow the appropriate steps to terminate the legal contract. Since a POA has the legal right to make decisions on a person's behalf, it is extremely important that the person who is acting as POA understands the wishes and needs of the person.

Co-Decision-Making and Guardianship

When a person turns 18, a parent or caregiver are no longer the legal guardians; only the court can appoint a legal guardian for an adult. As healthcare decision making rights begin at 16, guardianship and co-decision making applications can be put forward for someone who is 16 and over. Two professionals (with at least one medical professional) must sign off stating they do not believe the person has the ability to make decisions on their own.

Co-decision-making and guardianship are legal processes in which an application is put forward to the Court of Queen's Bench. A co-decision-maker or guardian can be appointed to assist someone with personal matters such as health care, property matters such as finances, or both.

A **co-decision-maker** is someone approved by the court to assist an adult with making decisions. Decision making is intended to be collaborative and supportive, and the final decision rests with the adult. *The Adult Guardianship and Co-decision-making Act* recognizes that everyone should have the right to make their own decisions but that some people need support. A co-decision-maker may be appointed when the court recognizes that someone has limitations in making decisions. Applying to become a co-decision-maker is a similar process to applying to become a legal guardian.

Guardianship is the most restrictive measure that can be taken as a guardian has the right to make decisions FOR a person as outlined in the court order. This means that if a guardian has only been approved for property guardianship, they cannot make personal decisions on someone's behalf and if a guardian has only been approved for personal decisions, they cannot make decisions related to the person's property. Guardianship is only approved when the court deems that someone does not have the capacity to make decisions on their own. Applying to become someone's guardian should be taken very seriously as a guardian can ultimately take away an adult's right to self-determination. Even if a guardianship order is in place, it is important to involve the adult in making decisions that impact their life as much as possible.

Public Guardian & Trustee (PG&T)

The Public Guardian and Trustee (PG&T) is an official administrator for the province of Saskatchewan. They are an administrator of last resort which means that they are appointed when no one else is available or appropriate. They fill a variety of roles to ensure the well-being of Saskatchewan citizens. Some of these roles include:

- Reviewing every co-decision-making and guardianship application that is put forward within Saskatchewan. PG&T review the application to help determine if anything is missing or if certain parameters should be put in place to protect the adult.
- Investigating instances of suspected financial abuse.
- Acting as a trustee or guardian for adults who have received a certificate of incapacity from a medical professional and who do not have any supports in their life who would be appropriate to become their trustee or property guardian.

For more information go to [Office of the Public Guardian and Trustee](#)

Supported Decision Making

Supported Decision Making (SDM) is a method of decision making where a person makes their own decisions, supported by people they trust. It's a process that relies on trust and meaningful, supportive relationships in order to work because the person being supported needs to feel empowered to express their opinions and wishes. For this reason, the people involved in the SDM process are all chosen by the person and often include family, friends, and members of the community.

It is essential to understand that SDM is an entire way of living and a lifelong process. Over time, the decision-making process itself can change, evolve, and look different. It can also involve different people each time, depending on the relationships the person has with their supporters, the decision being made, and how options are presented. It's flexible, team oriented, and focused solely on identifying the wishes and goals of the person.

Most importantly, SDM is a person-centred and person-directed process for making decisions. It's about empowering the person to be the leader of their own life while ensuring they feel supported, respected, and heard. For this reason, SDM is not measured by outcomes, but whether a person feels empowered to have choice in all aspects of their life.

Inclusion Saskatchewan, along with people with lived experience, have developed a variety of Supported Decision Making and Medical Decision Making resources. These resources can be used to help guide decision making and determine a person's goals and preferences. We recommend all supporters review [Supported Decision Making for Supporters](#).

Additional INSK decision making resources here:

[Supported Decision Making](#)

[Medical Decision Making](#)

Navigating Systems without Guardianship

Navigating through various systems, such as health care and social assistance programs, can be challenging and, at times, require advocacy for people with disabilities to have equal access to programs and supports. People with disabilities should always be empowered to be as involved as they would like to be in advocating and making decisions that pertain to their life. There are also times in which a person may want support and it's helpful to know how to assist someone without needing a formal decision making order in place.

The Health Care System

Inclusion Saskatchewan has developed medical decision making resources to help people with disabilities, and their supporters, navigate through the health care system. [My Health Care Wishes](#) and [My Health Care Wishes for Supporters](#) can provide helpful insight and tools about navigating through the health care system as well as determining someone's preferences for the type of care they receive. The below information provides additional insight about how to navigate through the health care system.

Capacity to Consent

When a doctor provides care for someone, they will determine if the person has "capacity" to make their own health care decisions. If the person is determined as having capacity, they are able to provide informed consent for themselves in relation to their health care decisions. *The Health Care Directives and Substitute Health Care Decision Makers Act* defines capacity as:

- The ability to understand information relevant to a health care decision respecting a proposed treatment.
- The ability to appreciate the reasonably foreseeable consequences of making or not making a health care decision respecting a proposed treatment.
- The ability to communicate a health care decision on a proposed treatment.

Even if a person is determined to not have capacity, the decision maker should do their best to include the person and uphold their wishes as much as possible.

Advanced Care Planning and Designating a Proxy

The Saskatchewan Health Authority has Health Care Directive templates (sometimes called an Advance Care Plan) that can be filled out and are intended to help express someone's wishes in the event that they need medical care and are not able to communicate their wishes themselves. Anyone over 16 can create a Health Care Directive but they can be challenged if a physician believes the person did not have capacity at the time they filled it out. If this happens, the decision maker for the person (the nearest relative if there is no formal decision making order in place) can give consent (or not) for the medical care.

A person can also choose to designate someone as their proxy. A proxy is someone appointed to make health care decisions on someone else's behalf in the event that the person is not able to give consent themselves. A proxy should know the person very well and commit to understanding the person's wishes, opinions and values. A proxy should also be able to communicate the person's wishes to the health care team.

A Health Care Directive can be filled out without appointing a proxy and a proxy can be designated without filling out a Health Care Directive.

Nearest Relatives

If a doctor determines that someone does not have capacity, and there is no legal decision making document in place (such as a guardian or co-decision-maker), they will reach out to the person's nearest relatives. The health care team follows a list of who should be contacted first which is as follows:

- A spouse
- An adult child
- A parent
- An adult sibling
- A grandparent
- An adult grandchild
- An adult aunt or uncle
- An adult nephew or niece

If there are two or more relatives that fall under the same category, the older relative is preferred. For example, if someone has two or more siblings, the older sibling is preferred. If the person does not have any nearest family members who would be able to provide consent, a physician will consult with another physician to have them sign off that they agree with the care being provided.

Banking and Money Management

Opening a bank account is an important part of entering adulthood and is necessary for certain programs. For example, a person must have a bank account in their name when applying for Saskatchewan Assured Income for Disabilities (SAID), unless they have an assigned trustee. However, opening and managing a bank account can be overwhelming and confusing at times. Different banks and credit unions have different rules, fees, etc.

Due to banks functioning differently, there is no one size fits all approach but if a person would like assistance with banking, here are some ideas that have been helpful for some:

- A support person can assist the person in determining what they will be needing and using their bank account for. For example, if they plan to complete transactions with their debit card often, it would be beneficial to find a bank or credit union with low or no transaction fees.
- If the person is comfortable, a support may attend bank appointments with them in order to help explain and ensure the person understands their options and rights.
- If the person is having challenges managing and budgeting their income, and they would like assistance with looking into options with their bank to help them save, a support can assist the person in looking into options (such as opening a savings account).

It is not up to a bank teller to determine if a person has the capacity to manage their own finances but there may be times in which a person's capacity is challenged and education and/or advocacy are required. If a physician has deemed that a person does not have the capacity to manage their finances, the person can open a joint bank account with someone they trust. This may also mean that the person may be required to have a trustee. This is a legal document that allows someone to assist the person with their finances. If the person does not have anyone who would be suitable to become their trustee, a request can be put forward to the Public Guardian and Trustee to have a trust officer assigned to help the person. A trust officer is someone who is able to assist the person with managing their finances to ensure their needs are being met.

Even if a person has a trustee, they should still get to make some decisions about how to spend their money and be included as much as possible.

Saskatchewan Assured Income for Disabilities (SAID)

Saskatchewan Assured Income for Disabilities (SAID) is an income support program through the Ministry of Social Services. People with a disability can apply for the program once they turn 18. SAID is a great resource however, there may be times when a person is experiencing challenges and are not sure what to do or what their rights are. SAID Specialists (the SAID workers who oversee the files) cannot give out information about someone's file unless they have consent to do so.

If a person is experiencing challenges with the SAID Program, they may wish to ask someone they trust for assistance. SAID Specialists can provide a consent form to the person so they can grant consent for the Specialist to communicate with the support the person identified. The consent form includes identifying the type of information the person is comfortable with the Specialist sharing about their file. The Specialist should go over this form with the person and consent should only be granted by the person if they know and trust them. If the person wishes to retract the consent at any point, they simply let the Specialist know.

If someone would like further assistance to manage their SAID funding and someone they know and trust is willing to help them, an application can be put forward to SAID to apply to be a trustee. This is not a process that needs to go through the Office of the Public Guardian and Trustee. Chapter 12 in the SAID Policy Manual states:

A trustee may be appointed to handle a client's funds when the ministry is satisfied that he or she is incapable of managing the benefit and that other support is not sufficient. A trustee may also be appointed to assist the client with money management skills.

A trustee is responsible for the administration of SAID benefit solely for the purposes specified in the Trustee's Agreement. All trustees must notify the ministry of any changes in the client's circumstances, keep records of and account for funds, and submit an accounting documentation upon the request of the ministry. A trustee will administer the benefit in the best interests of the client.

Although some people may need assistance to manage their SAID funding, it is important to recognize that this is still their funding and should be treated as such. Even if a trustee or another form of decision-maker is involved, conversations should be had with the person about where their money is going (housing, bills, etc.) and they should be actively involved in making choices. Additionally, time should be taken to identify what is important to the person and their supports should help them work towards any goals they may have.

For more information about SAID and how to apply, see the [Saskatchewan Assured Income for Disability \(SAID\): DISC Guidebook](#)

Canada Revenue Agency (CRA)

For some people, navigating their taxes and other information for the Canada Revenue Agency can be overwhelming. Many parents or caregivers believe that they can call on someone's behalf to assist however, if the person is over the age of 18, the CRA cannot give any information. Although this can be frustrating, these measures are in place to ensure everyone's information is protected. If a person needs assistance managing their information with the CRA, they can authorize a representative.

With authorization, a representative can do one or more of the following:

- access personal tax information
- view personal tax assessment or reassessment
- get information about business tax accounts
- update business number and program account information
- access non-resident tax information
- ask for changes to non-resident tax accounts

Authorization should only be given to someone the person trusts. A representative should take time to explain what they will be assisting with and ensure the person knows their rights. The person should also be made aware that they can cancel their representative at any time.

A representative can be authorized for a period of time or indefinitely until the person chooses to cancel the representative. For more information, go to [Authorizing a Representative](#).

Housing

Many parents or caregivers have concerns about where their child will live when they move out and what type of care or support they will receive. This transition can also be highly stressful for the person who wants to move. Inclusion Saskatchewan, along with people with lived experience, created [My Housing Wishes](#) to help people determine and communicate their wishes for their potential housing options.

Planning to move to a new home can take time as a variety of factors that have an impact on housing options must be considered, such as cost, level of support, suitability, location, and accessibility. *My Housing Wishes* can be a useful tool in preparing someone to set realistic expectations when making a plan for their home. INSK has observed that the most successful transitions happen when the person is actively involved and at the center of the decision-making process every step of the way.

Resources

Applying for Adult Guardianship

<https://www.saskatchewan.ca/residents/justice-crime-and-the-law/power-of-attorney-guardianship-and-trusts/guardianship-and-co-decision-making-for-dependent-adults/apply-for-adult-guardianship>

Government of Canada: Authorize a Representative: Overview

<https://www.canada.ca/en/revenue-agency/services/tax/representative-authorization/overview.html>

Guardianship and Co-Decision Making for Dependent Adults

<https://www.saskatchewan.ca/residents/justice-crime-and-the-law/power-of-attorney-guardianship-and-trusts/guardianship-and-co-decision-making-for-dependent-adults>

Medical Decision Making Resources

<https://www.inclusionsk.com/medical-decision-making>

Office of the Public Guardian and Trustee

<https://www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/office-of-the-public-guardian-and-trustee>

PLEA Power of Attorney Information

http://www.plea.org/legal_resources/?a=347&searchTxt=&cat=28&pcat=

Power of Attorney for Adults

<https://www.saskatchewan.ca/residents/justice-crime-and-the-law/power-of-attorney-guardianship-and-trusts/powers-of-attorney-for-adults>

SAID Policy Manual

<https://publications.saskatchewan.ca/#/products/28896>

Supported Decision Making Resources

<https://www.inclusionsk.com/sdm>

The Health Care Directives and Substitute Decision Makers Act

<https://publications.saskatchewan.ca/api/v1/products/546/formats/732/download>

The Trustee Act, 2009

<https://publications.saskatchewan.ca/api/v1/products/911/formats/1459/download>