
Alternatives to Guardianship

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Introduction

Inclusion Saskatchewan (INSK) receives many inquiries about guardianship and while guardianship may be a fit for some, it may not be a fit for others. 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 and options beyond guardianship and 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 them. While this information is intended to provide clarity on various options, it is important to note that the wishes and needs of the individual should always be considered first and foremost.

Power of Attorney, Co-Decision-Making & Guardianship

Power of Attorney

If a person experiencing an intellectual disability would like assistance from someone they trust to help manage their affairs, they may wish to have 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 speak and act on their behalf. An adult can have:

- a personal POA to assist with matters such as the type of support they need in their home;
- a property POA to assist with matters such as their finances and property;
- or both a personal and property POA. *Note: If they would like someone to assist with both, they can choose the same person or, if preferred, two different people can represent them.*

An adult who chooses to have a POA must have the ability to understand the nature and effect of the document which includes:

- understanding information relevant to making decisions about their property and/or their financial and personal affairs; and
- understanding the consequences of making or not making a property, financial, or personal decision.

The adult 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 an adult's behalf, it is extremely important that the person who is acting as POA understands the wishes and needs of the adult. Please note that a POA cannot make health care decisions on an adult's behalf; see *Supporting within the Health Care System* below for more information.

Co-Decision-Making & Guardianship

It is important for parents/caregivers to recognize that, when their child enters adulthood, they are no longer the legal guardian; only the court can appoint a legal guardian for someone who is 16 years of age or older. Both co-decision-making and guardianship entail a legal process 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 the adult with personal matters such as health care, property matters such as finances, or both.

A **Co-decision-maker** is a support person who can assist an adult with making decisions. Decision making is intended to be collaborative but it is important to recognize that the final decision rests with the adult. There are only certain circumstances, mainly pertaining to safety, in which a co-decision-maker would be able to make the final decision. *The Adult Guardianship and Co-decision-making Act* recognizes that everyone should have the right to make their own decisions but that some adults need assistance. A co-decision-maker is court appointed to assist the adult when the court recognizes that the adult has limitations in making decisions. Applying to become a co-decision-maker is a similar process to applying to become a guardian.

Guardianship is the most restrictive measure that can be taken as a guardian has the right to make almost all decisions pertaining to the adult's life (if both personal and property guardianship are obtained). Guardianship is only approved when the court deems that an adult 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

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; these roles include but are not limited to:

- Being presented with every co-decision-making and guardianship application within Saskatchewan. PG&T go over 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: <https://www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/office-of-the-public-guardian-and-trustee>

Supported Decision Making

Supported Decision Making (SDM) is a process of supporting a person's right to make informed choices about their life. SDM includes the person's support network as it recognizes the importance of meaningful relationships. The supporters (those identified by the individual as their support network) work to empower the person to be the leader of their own life while ensuring they feel supported, respected and heard.

SDM requires established relationships between a person and their support network, an understanding of the underlying principles, and a respectful, person centred process for making decisions. SDM should be focused on identifying the wishes and goals of the person. The best course of action should also be determined such as:

- which decisions require support
- the specific roles of each supporter
- how differences of opinion will be handled

SDM is intended to be carried out with the least restrictive measures possible. **The success of SDM is not measured by outcomes, it is measured by how well a person is empowered to have choice in their life.**

The Principles of Supported Decision Making:

- Recognize that everyone has an inner drive to choose how they want to live.
- The person making the decision is at the centre of the decision-making process.
- Every person has the right to self-determination (the right to make decisions). A person's right to make a decision is not limited or removed by disability.
- The right to make decisions includes the right to have the support needed to make decisions. This includes respecting the choices people make and helping them achieve their goals.
- Decision making is a human right that is guaranteed in the Canadian Charter of Rights and Freedoms and in Canadian and provincial/territorial human rights laws.

Relationships are Key

Relationships are the foundation of SDM. Established relationships built on trust are critical in maintaining an individual's right to self-determination. Family members, friends and community supports can all be included, as guided and chosen by the person.

It is essential for supporters to consider a person’s values, culture, experiences, relationships, abilities and areas required for support. Person-Centred Planning is necessary for successful Supported Decision Making. Person-Centred Planning consists of a group of people, chosen by the individual, who meet to discuss the individual’s hopes, dreams and goals. Person-Centred Planning focuses on strengths and is intended to empower individuals to increase control over their own lives and develop the skills needed to achieve their goals. This planning helps inform how the individual prefers to be supported in making decisions which is the basis for SDM.

It is important to note that the SDM process can look different each time. Who the individual would like to be involved (which supporters) and how options are presented can differ depending on relationships and the type of decision being made. The supporters should also work to identify approaches that work best for the individual. Supportive approaches may include: using plain language and open ended questions, streamlining decision making tasks, and active/reflective listening. It is also important to give the individual ample time to process information.

As a supporter, you should:	As a supporter, you should not:
Help the person understand choices and decisions they are making	Make choices or decisions without the person
Remember that the person you are supporting is the expert of their own life	Share your views, opinions and thoughts unless asked to do so
Help the person gather and understand the information they receive	Support dangerous or illegal choices (you must help the person understand alternative options)
Help the person tell their decisions to other people	Tell others about decisions the person makes without their permission

The Supported Decision Making Process

SDM follows a recommended process when helping with any decision that an individual would like support with:

1. Determine what decision needs to be made.

- What does the person want?
- Do they need/want support to make a decision, or can they do so independently?
- What are their strengths? What areas may they need support with?

2. The person can choose which supporters they would like involved (the person may choose different supporters depending on the decision they are making).

- The supporter must work with integrity to support the person with an unbiased approach and awareness of a person's goals and wellbeing.

3. Present the options in a way that works best for the person.

- There may be many ways for the person to achieve what they want.
- This includes considering when the best time is for the person to make a decision, adapting to how the person likes to receive information, and including others who should be enlisted as a support.

4. Gather the person and their supporters to identify any additional information needed to make the decision.

- Be clear about who will be helping with what.
- Make sure all information is shared, that the steps to achieve the desired outcome are discussed and that everyone understands the possible options.
- Consider the advantages and disadvantages of each option, and outline challenges.
- Take as much time as is required (this may mean multiple meetings).
- Consider how the person likes to receive information and go at their pace.

5. A decision is made and the supporters ensure the person fully understands the decision.

- The outcome should be the most appropriate option for the person.

6. Check in with the person.

- How do they feel? What did you learn while supporting them with the process? What did they learn?
- Evaluate the outcome.
- Was it what the person was hoping for? Why or why not?

- If new information comes forward, or the situation changes, continue communicating, as required.

7. What is the next decision the person would like support with?

- Every decision is an opportunity for people to exercise their autonomy.
- Begin the process again, but remember to begin at step one each time, as every decision is different and may require different supporters, sharing updated information, etc.

For more information on Supported Decision Making as well as additional resources, go to:

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

Navigating Systems without Guardianship

Navigating through various systems, such as health care and social assistance programs, can be challenging for parents or caregivers when children are under the age of 18; this can become even more challenging as children transition into adulthood and parents are no longer legally able to make decisions on their child's behalf. Many people believe that obtaining guardianship, or another type of legal decision making document, are the only options to assist an adult in navigating through certain systems but it is important to know that this is not the case. This section is intended to provide ideas about how to assist an adult in navigating through various systems without having a legal decision making document in place.

The Health Care System

Capacity

When a doctor provides care for an individual, they will determine if the individual has the capacity to make their own health care decisions. If an individual is determined as having capacity, they can provide informed consent 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.

Appointing a Proxy and Creating a Health Care Directive

An individual may choose to create a Health Care Directive (sometimes called an Advance Care Plan) which lays out their wishes regarding the medical care they receive if they have to go to the hospital. Anyone over the age of 16 can create a Health Care Directive. A Health Care Directive is intended to take effect when the individual who made it is no longer able to communicate their decisions regarding the proposed medical treatment or care. If an individual is interested in filling out a Health Care Directive, the Supported Decision Making process should be utilized to ensure that the information is presented in a way that the individual understands. This process also ensures that the individual receives support from their chosen supporters and that they are comfortable with their decisions.

An individual 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 individual is not able to communicate themselves. A proxy should be someone who knows the individual very well and who respects their opinions and values; a proxy should also be able to communicate the individual's wishes to the health care team. It should be noted that an individual can create a Health Care Directive without appointing a proxy.

When creating a Health Care Directive or appointing a proxy, it is important to be as clear as possible. Health Regions have advance care planning and proxy designation forms available. If yours is not listed below, you can reach out to your health region to inquire if they have forms available.

- Regina Qu'Appelle Health Region- Appointing a Proxy: http://www.rqhealth.ca/service-lines/master/files/proxy_form.pdf
- Regina Qu'Appelle Health Region- My Advance Care Plan: http://www.rqhealth.ca/service-lines/master/files/my_plan.pdf
- Saskatoon Health Region- Advance Care Directive- Appointment of a Proxy: <https://www.saskatoonhealthregion.ca/patients/Documents/Advanced-Care-Directive-Proxy-SHR.pdf>
- Five Hills Health Region- My Voice- Planning in Advance for Future Healthcare Choices: [HealthCareDirectiveMyVoiceBookletNF220.pdf \(fhhr.ca\)](http://www.fhhr.ca/HealthCareDirectiveMyVoiceBookletNF220.pdf)

Nearest Relatives

If a doctor determines that someone does not have capacity, and there is no legal decision making document in place (such as guardianship or co-decision-maker), they will reach out to that person's nearest relatives. Your nearest relative is your closest living relative or 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 an individual has two or more siblings, the older sibling's health care decision will be preferred.

If the individual does not have any nearest family members who would be able to consent for a decision on behalf of an individual, they can consult with another doctor and, if the second doctor agrees, they can go ahead with the procedure or recommended care.

Banking

Opening a bank account is an important part of entering adulthood and is necessary for certain programs. For example, an individual must have a bank account in their name when applying for the Saskatchewan Assured Income for Disabilities (SAID) program, 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, and so on.

There may be times when an individual needs assistance from someone in their support network to assist them with the banking process. Every bank and credit union function differently so there is no specific process however, these are some ideas that have been helpful for some:

- A support person can assist an adult 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, a support can assist in finding a bank or credit union with low or no transaction fees.
- If the individual is comfortable, a support may attend bank appointments with them in order to help explain and ensure they understand their options and rights.
- If an individual is having challenges managing and budgeting their income, and the individual would like assistance with looking into options with their bank to help them save, a support may wish to assist the individual in looking into options (such as opening a savings account).

If an individual is deemed to not have the capacity to manage their finances, an application to become the adult's trustee may be made. This is a legal document that allows someone to assist the individual with their finances which includes supporting the individual with banking. If an individual 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 the individual. A trust officer is someone who is able to assist the individual with managing their finances to ensure their needs are being met.

The Saskatchewan Assured Income for Disabilities (SAID) Program

Saskatchewan Assured Income for Disabilities (SAID) is a financial support program through the Ministry of Social Services. Individuals experiencing a disability can apply for the program once they turn 18. The SAID program is a great resource however, there may be times when an individual is experiencing challenges and are not quite sure what to do or what their rights are. Assured Income Specialists (the

SAID workers who oversee the files) cannot give out information about an individual's file unless they have the necessary paperwork/consent forms to do so.

If an individual is experiencing some challenges with the SAID Program, they may wish to reach out to their circle of support, which may include family or a community advocate, for assistance. Assured Income Specialists can provide a consent form which can be signed by the individual with the person's name who they are granting consent. The consent form includes identifying the type of information the individual is comfortable with the Assured Income Specialist sharing about their file. The Assured Income Specialist will go over this form with the individual. Consent should only be granted for people who the individual knows and trusts. If the individual wishes to retract the consent at any point, they simply let their Assured Income Specialist know.

If an individual needs further assistance to manage their SAID funding, an application can be put forward to SAID to apply to be a trustee. Chapter 12 in the SAID Policy Manual states:

A trustee may be appointed to handle a beneficiary's funds when the Ministry is satisfied that he or she is incapable of managing the benefit. 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 beneficiary's circumstances, keep records of and account for funds, and submit an accounting documentation upon the request of the Ministry.

Although some individuals 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 individual 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 individual and their supports should help them work towards any goals they may have.

For more information on eligibility and how to apply, go to:

<https://www.saskatchewan.ca/residents/family-and-social-support/people-with-disabilities/income-support-for-people-with-disabilities>

Canada Revenue Agency (CRA)

For some individuals, navigating their taxes and other information for the Canada Revenue Agency can be overwhelming. Many parents or caregivers believe that they can call on a loved one's behalf to assist however, if the individual is over the age of 18, the CRA cannot give out someone else's information. Although this can be frustrating, these measures are in place to ensure everyone's information is protected.

If an individual needs assistance managing their information with the CRA, they can authorize a representative. According to the CRA website:

When you authorize a representative, they have access to your tax information on the accounts you choose. They can then help you manage your tax information with the Canada Revenue Agency (CRA).

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

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

Authorization should only be given to someone who the individual trusts. A representative should take time to explain what they will be assisting with and ensure the individual knows their rights. For example, an individual should be made aware that they can cancel their representative at any time.

A representative's authorization stays in effect until the individual or their representative cancel it, or it reaches a chosen expiry date. For more information on how to apply, go to:

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

Housing

Many parents or caregivers have concerns about where their adult child will live when they move out and what type of care or support they will receive. This transition can be highly stressful for the individual who wants to move and also for their loved ones. It is crucial to create a safe space without judgement for the individual to share their wishes. When an individual can be open and honest with the people most important to them, they can share their goals and visions for their future home. Everyone has the right to live in a home where they feel comfortable and safe, and patience is needed to allow an individual to express what is meaningful to them in a potential home.

Supported Decision Making (SDM) can be an incredibly useful tool for making important decisions such as those related to deciding where a loved one will live and the type of support they will need to be successful. SDM includes various tips and tools for communicating with individuals in the ways that work best for them to ensure that the decisions made with the individual are in alignment with their preferences, hopes, and dreams.

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. The SDM process can be beneficial in preparing an individual to set realistic expectations when making a plan and deciding to move into their new home. INSK has observed that the most successful transitions happen when the individual 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>

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>

Regina Qu'Appelle Health Region- Appointing a Proxy

http://www.rqhealth.ca/service-lines/master/files/proxy_form.pdf

Regina Qu'Appelle Health Region- My Advance Care Plan

http://www.rqhealth.ca/service-lines/master/files/my_plan.pdf

SAID Policy Manual

<https://pubsaskdev.blob.core.windows.net/pubsask-prod/35930/SAID-PolicyManual-November-2019.pdf>

Saskatchewan Health Authority: Health Care Directives

<https://paphr.ca/info-for-patients/patients-and-families/health-care-directives>

Saskatoon Health Region- Advance Care Directive- Appointment of a Proxy

<https://www.saskatoonhealthregion.ca/patients/Documents/Advanced-Care-Directive-Proxy-SHR.pdf>

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>