

Substitute Decision Makers (SDM)

Capacity to make decisions may fluctuate throughout a person's healthcare journey. Deciding on a substitute decision maker early on is very important.

In Ontario, adults are presumed to be capable, depending on the type of decision being made. Capacity should be measured on a case-by-case basis. People with capacity also have the right to make decisions that others do not agree with, even where a decision made by a capable person with a mental health disability is thought by others not to be in his or her best interest.

Capacity assessors may be:

- doctors
- nurses
- nurse practitioners
- psychologists
- social workers
- occupational therapists

All capacity assessors have training and expertise in conducting assessments, but some may have specific skills and experiences working with people who have certain types of disabilities, such as:

- dementia
- mental illness
- brain injuries
- intellectual disabilities

You can contact the Capacity Assessment Office by:

Email: CAO@ontario.ca

Tel: [416-327-6766](tel:416-327-6766) or [Toll-free: 1-800-366-0335](tel:1-800-366-0335)

For more information about person centered decision making please contact Advanced Care Planning Ontario

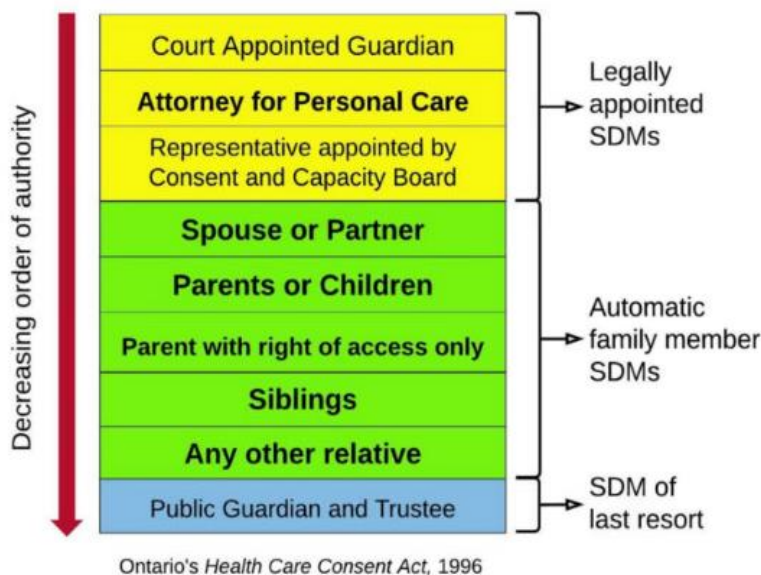
Tel: [1-833-621-0728](tel:1-833-621-0728)

A person who makes decisions for another person that has been found mentally incapable is called a "Substitute Decision Maker." In Ontario, everyone has a Substitute Decision Maker, and the Health Care Consent Act tells healthcare providers who this would be (for most people it is your closest living

relative unless you have a Court Appointed Guardian, or you have appointed an Attorney for Personal Care).

A person's wishes about their future and healthcare may change. It is important to review your wishes regularly and communicate with your substitute decision maker. Especially if your health changes or there is a major change in your life.

Substitute Decision Maker Hierarchy



Court Appointed Guardian (of the person): A guardian of the person, is someone appointed by the court to make personal care decisions on behalf of a mentally incapable adult. This usually happens when the person doesn't have a power of attorney for personal care or if their attorney is not able or willing to fulfill their duties. <https://www.ontario.ca/page/guardianship>

Attorney for Personal Care: A power of attorney is a legal document that gives someone you trust the right to make health care decisions for you should you be mentally incapable. This trusted person does not have to be a lawyer to be your attorney. You can make a power of attorney document yourself for free or have a lawyer do it. Consider consulting a lawyer as they can provide additional things to consider when appointing an Attorney for Personal Care. <https://www.ontario.ca/page/make-power-attorney>

Office of the Public Guardian and Trustee: The Office of the Public Guardian and Trustee acts as Substitute Decision Maker of last resort to make substitute treatment or long-term care admission decisions for incapable individuals. <https://www.ontario.ca/page/office-public-guardian-and-trustee>

If you suspect that a person may be incapable and at risk of harm, abuse or neglect, call the **OPGT's Investigations line at 416-327-6348 or Toll Free 1-844-640-3615.**

Things to Consider when Choosing a Substitute Decision Maker:

- Can I talk with this person(s) about my wishes, values and beliefs?
- Do I trust this person(s) to make decisions that reflect my wishes even if they disagree with them?
- Can they make decisions under stress?
- Are they able to communicate effectively with my health team during stressful situations and ensure my wishes are followed?
- Does this person understand my basic functional quality of life, including my preferences for daily living, comfort, and independence? Can they advocate for my needs and determine if an intervention is appropriate for what I would or would not want?

In making decisions on behalf of an incapable person, a Substitute Decision Maker (SDM) must:

- Follow any applicable wishes expressed by the patient when capable; or
- If no applicable wishes were expressed, make decisions in the patient's best interests.

For more information refer to the <https://www.pcdm.ca/quick-links/resource-guide/substitute-decision-makers-resource-guide>

Key Responsibilities of your Substitute Decision Maker:

- Willing to be your Substitute Decision Maker and make decisions on your behalf if you are not capable of making the decision yourself
- Available when decisions need to be made
- Over 16 years of age
- Capable of providing consent
- Not prohibited by court order or a separation agreement

Remember:

Your Substitute Decision Maker can only make your healthcare decisions when you are **NOT** mentally capable of making healthcare decisions on your own, for example:

- During surgery or if you are unconscious
- Cases of advanced dementia
- During a temporary time of incapacity
- Alcohol or drug intoxication
- Medication side effects
- Infection causing confusion

If you recover, and become mentally capable again, you will make your own healthcare decisions.

What is capacity?

Capacity to consent means that an individual:

- Understands the relevant information (e.g., risks, benefits, and alternatives).
- Appreciates how that information applies to their own situation.
- Can reason about their choices and consider consequences.
- Communicates a clear and voluntary decision.

Consent cannot be “general” but must be specific to a particular treatment. A person's capacity may change day to day and with the nature of the treatment (e.g. whether to take a medication or not, a procedure to prolong life (e.g. feeding tube) a living situation).

The criteria for determining mental incapacity in healthcare decisions are outlined in the Health Care Consent Act. Here are the key points:

1. **Understanding:** The person must be able to understand the information relevant to the decision, including the benefits, risks, and alternatives of the proposed treatment or intervention
2. **Appreciation:** They must appreciate the significance of this information and how it applies to their own situation
3. **Reasoning:** The person should be able to weigh the information, consider the consequences, and reason through the decision-making process
4. **Communication:** They must be able to communicate their decision clearly, whether verbally, in writing, or through other means. These principles are part of the legal framework in Canada to ensure that decisions made on behalf of an incapable person are in their best interests and reflect their previously expressed wishes.