



# Supported Decision-Making: Connecting Law and Practice

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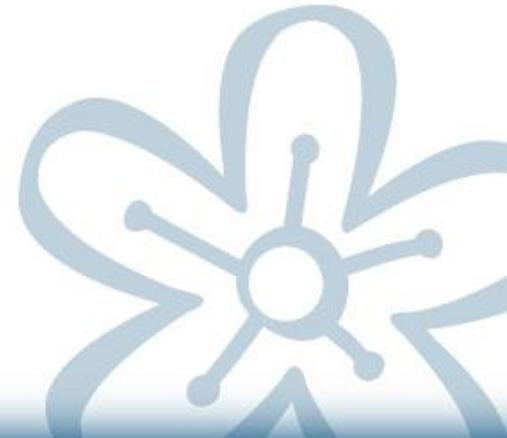
# Canadian Centre for Elder Law

1. Legal research
2. Law reform
3. Legal education
4. Outreach



# Disclaimer

This presentation is not legal advice



## Presentation outline

1. Inclusive Investing Project
2. Legal framework for supported decision-making in BC
3. Group discussion: promising practices for supported decision-making

## Inclusive investing project

We are speaking with:

- Investors from various communities, e.g.
  - people living with dementia,
  - people living with an intellectual disability
- Supportive decision-makers
- Investment industry, regulators, PGT

## Research concepts & themes

- Supported decision-making
- Investment decision-making
- Undue influence
- Financial abuse
- Respect for autonomy
- Accommodation of skills and abilities



## Why this project?

- Decision-making rights are fundamental
- Some individuals are particularly vulnerable to lack of respect for these rights:
  - People who are identified as living with intellectual or developmental disabilities
  - Survivors of traumatic brain injuries
  - People with some forms of mental illness
  - Adults with Alzheimer's or dementia



## What are investment decisions?

- Investment needs range from conservative to complex:
  - One or more Guaranteed Income Certificates (GICs)
  - Registered Disability Savings Plan (RDSP)
  - Larger and more sophisticated portfolios

## Substitute decision-making

- If incapable, dominant approach is substitute decision-making
  - Example: Guardianship
- Communicate directly with financial institution staff
- Duties and powers of the guardian or other substitute decision-maker are generally clear to financial institution staff

## Supported decision-making

- Supported decision-making is less familiar
- Perceived risk to financial institution
- Families may have to choose between not accessing financial institution's services or going to court to get guardianship order
- Yet supported decision-making may be adequate

## Project goals & outcomes

- Understand the legal, regulatory and practical issues
- Identify ideas and opportunities
- Publish report
- Develop educational resources and tools
- Publication of report and tools: 2020

## Who will benefit?

- Adults receiving support and self-advocates
- Supporters and supporting organizations
- Investment Industry Members and Regulators

## What is supported decision making?

Supported decision making is:

- a **voluntary** relationship
- a person or **network** of people **assist** another person with decision-making
- assistance with making communicating and implementing **decisions**

## PRINCIPLES OF SUPPORTED DECISION MAKING

- Adult retains full legal capacity
- Adult makes the decision
- Relationship of trust
- Voluntary
- Supportive group or network
- Supporters assist adult make the decision
- Supporters are usually unpaid and could include friends, family and/or community members

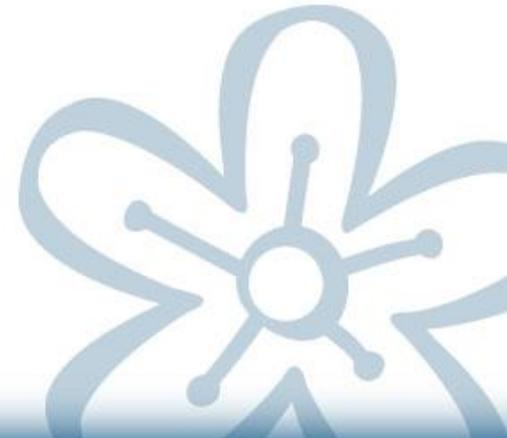
## International context:

# UN Convention of the Rights of Persons with Disabilities

- Adopted by UN in 2006
- Ratified by Canada in 2010
- Promoting, protecting and ensuring full and equal enjoyment of all human rights by people with disabilities
- Article 12: legal capacity
- Canada's Reservation

## Supported decision-making in Canada

- International leader
- British Columbia's *Representation Agreement Act*
- Different models of Sup DM now exist in:
  - British Columbia
  - Yukon
  - Alberta
  - Saskatchewan (possibly)
  - Manitoba (to a very limited degree)



## What does “support” mean?

Help to:

- Understand the issues involved
- Understand the consequences
- Access appropriate assistance / information
- Express their views, and act as interpreter where needed

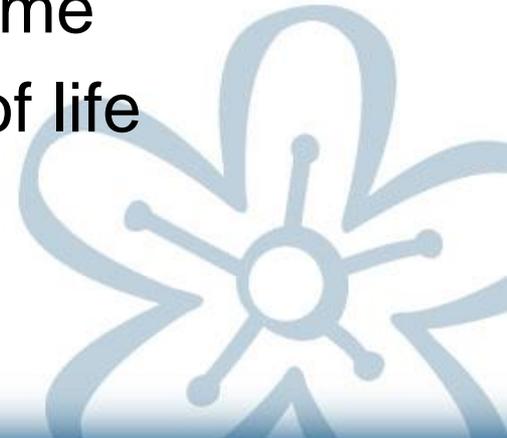
## What does “support” mean?

A supportive decision-maker can help others to:

- Truly hear a person who requires support;
- Appreciate the person’s needs, rights, values, preferences and goals; and
- Respect the person’s autonomy, dignity and wisdom—in other words, help prevent discrimination and bias linked to disability.

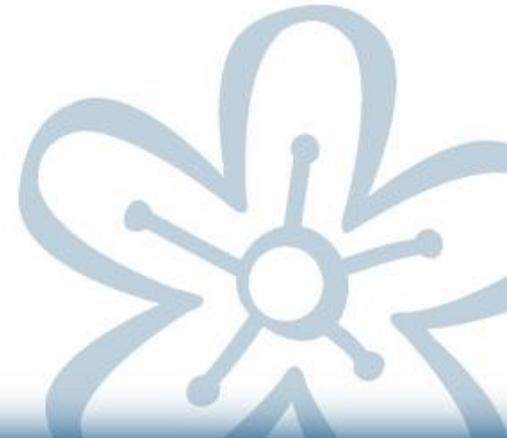
## Why do we have substitute and supported decision making?

- Not everyone has the ability to make their own decisions without support
- Capacity can fluctuate or change over time
- Decision making is a fundamental part of life

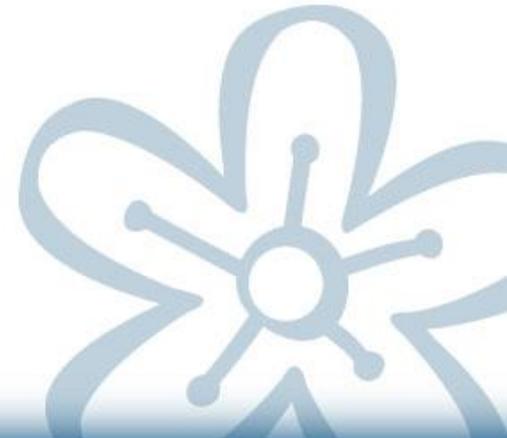


## Why we have substitute and supported decision-making laws?

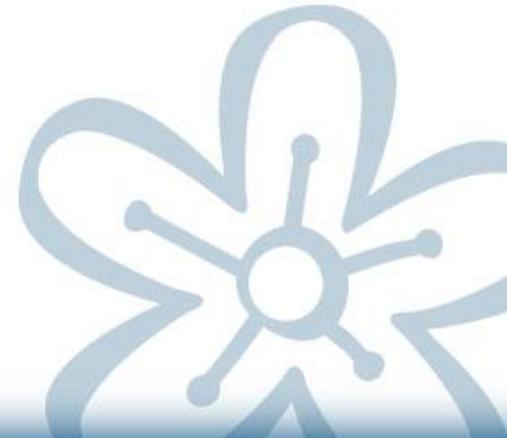
- Vulnerability to abuse
- Significant responsibilities
- Capacity standards



# What does “support” mean to you?

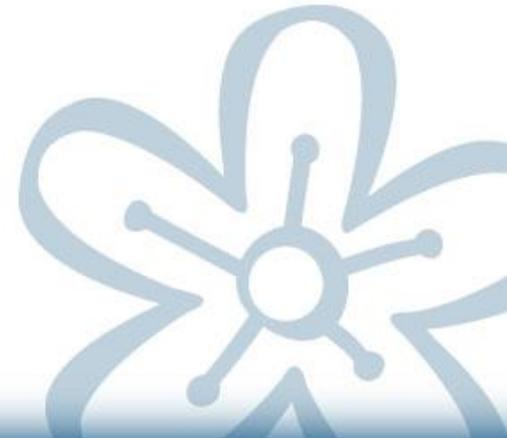


**What does “supported decision making” mean to you?**



## Who supports you to make decisions?

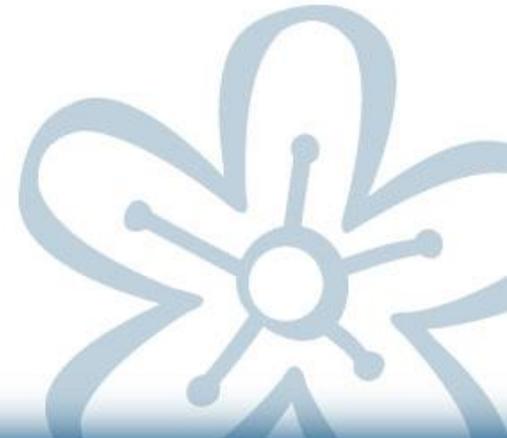
- Family?
- Friends?
- Spouse/Partner?
- Group?



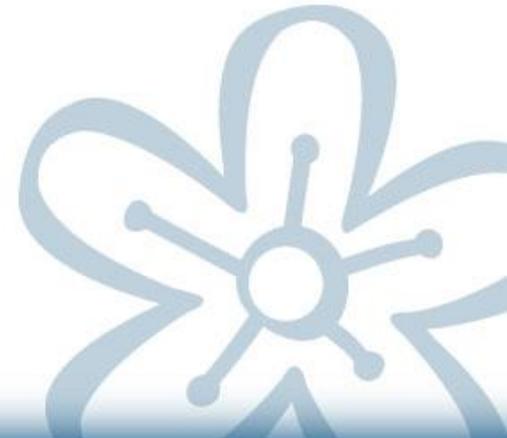
# Working together



# Examples of support



## Examples of support: finances



## Barriers or challenges?



## Tools & resources





# HEALTH CARE DECISION-MAKING: RIGHTS & RESPONSIBILITIES

May 24, 4-5 pm

Krista James, CCEL &

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Trustee



# Canadian Centre for Elder Law

[www.bcli.org/ccel](http://www.bcli.org/ccel)