

Fact Sheet

Supported Decision-Making and Representation Act

Background

The *Supported Decision-Making and Representation Act* (the “Act”), also known as Bill 20 in the New Brunswick Legislature, received Royal Assent on December 16, 2022, and came into force January 1, 2024. The [Act](#) allows adults 19 years of age or older in New Brunswick with an intellectual disability to retain the presumption of capacity and make decisions with the assistance and support they require. This represents a significant shift in adult decision-making laws in New Brunswick and replaces the *Infirm Persons Act*. It ensures adults with a disability can make decisions about their lives, with the support needed to do so, and to have those decisions respected by others and the law (Book, 2023). In accordance with the *Act*, a nurse practitioner (NP) lawfully entitled to practice in the province is identified as an assessor and authorized to complete the capacity assessment and record the results of the assessment conducted for the purposes of a court application under the *Act*.

Purpose

The purpose of the *Act* is to protect and promote the autonomy and dignity of persons who require support in relation to decision-making. This is done in accordance with the principle that persons should receive the support they need to make or participate in decisions about their lives to the greatest extent possible. This legislation permits adults with intellectual disability to make decisions that impact their lives, with assistance¹ or support, without being declared incapable.

The *Act* features a three-level framework of which provides legal recognition and outlines the rights and responsibilities of:

1. Decision-making assistants for assisted persons²;
2. Decision-making supporters for supported persons³; and
3. Representatives for represented⁴.

¹ In the *Act*, “assistance” in relation to decision-making, means any measure that helps a person have the capacity to make a decision, including explanations of relevant information and reasonably foreseeable consequences of the available options.

² An ‘assisted’ person is defined in the *Act* as the person who has made the decision-making assistance authorization.

³ The *Act* defines a supported person as a person who is the subject of an application for a supported decision-making order or in relation to whom a supported decision-making order has been made.

⁴ The *Act* defines a ‘represented’ person as “a person who is subject of an application for a representation order or in relation to whom a representation order has been made.

Capacity

The *Act* not only defines capacity but outlines how assistance and/or support factor into the decision-making process. All persons are presumed to have the capacity to make a decision unless the contrary is demonstrated. Pursuant to the *Act*, the following relate to capacity:

1. A person is considered to have the capacity to make a decision if they are able to: *a)* understand the information that is relevant to the decision; and *b)* appreciate the reasonably foreseeable consequences of the decision.
2. A person has a capacity to make a decision if the person is able to satisfy the above (both *a* and *b*) with the assistance that is available.
3. A person may have the capacity to make a decision even if the person makes or would make a decision that another person would consider risky or unwise; lacked the capacity to make a similar decision in the past; lacks the capacity to make other decisions; or requires assistance to communicate.

Assessment

Capacity assessments are conducted by assessors, including NPs lawfully entitled to practice in New Brunswick. The ability to assess a person for capacity is considered foundational to NP practice and an entry-level competency (ELC) required for NPs to provide safe, competent, ethical, and compassionate care. NP assessors must ensure they have the required knowledge, skill, and competency to complete the capacity assessment as outlined in the *Act*.

As per the principles and assumptions of the [Entry-Level Competencies for Nurse Practitioners](#), the entry-level NP works within their scope of practice and seeks guidance when they encounter situations beyond their individual competence (p. 3). Also, as per Standard 1 of the [Standards of Practice for Nurse Practitioners](#), indicator 1.3 states that the NP attains, maintains, and enhances competence within own NP practice (p. 6). NPs have a legal obligation to provide safe, competent, and ethical care to their clients; If NPs do not feel competent or is unable to complete a capacity assessment, they are responsible to seek additional knowledge and assistance and/or take appropriate steps in arranging for a suitable alternative or replacement of services⁵.

The Decision-Making Assistance Authorization Form, Financial Form, and Capacity Assessment Report are provided as Appendices. These forms, along with provisional information, are found online at the end of the *Act*: [New Brunswick Regulation 2023-66](#).

⁵ [NANB Practice Guideline: Duty to Provide Care](#)



Questions?

Questions regarding the *Act or Regulation 2023-66* should be directed to the [Public Legal Education and Information Service of New Brunswick](#). Questions regarding nursing liability protection should be directed to the [Canadian Nurses Protective Society](#). Questions regarding NP scope and/or standards of practice should be directed to practiceconsultation@nanb.nb.ca.

Resources

The following resources provide general information related to assessing capacity in practice. It is the responsibility of the NP to ensure they remain up to date on current evidence-informed practices.

[Competency and Capacity](#) (Stat Pearls)

[Assessment of Healthcare Decision-Making Capacity](#) (Oxford Journals)

[Evaluating Medical Decision-Making Capacity in Practice](#) (AAFP)

[L'évaluation de l'aptitude et ses défis pour les membres](#) (ACPM – French)

[Évaluation de l'aptitude à donner un consentement éclairé à l'aide médicale à mourir](#) (AMM – French)

References

Book, B. (2023, February). *Introducing New Brunswick's Supported Decision-Making & Representation Act* [Commentary]. <https://welpartners.com/blog/2023/02/introducing-new-brunswicks-supported-decision-making-representation-act/>

Supported Decision-Making and Representation Act, SNB (2022, c. 60). Retrieved from the Government of New Brunswick website: <https://lois.gnb.ca/en/tdm/cs/2022-c.60/>.

Supported Decision-Making and Representation Act, SNB (2023, c. 66). Retrieved from the Government of New Brunswick website: <https://www2.gnb.ca/content/dam/gnb/Departments/agpg/PDF/RegulationsReglements/2023/2023-66.pdf>.