

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 for the Practice of Primary Health Care Nurse Practitioners](#), indicator 1.3 states that the NP attains, maintains, and enhances competence within own area of 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/tm/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/ag-pg/PDF/RegulationsReglements/2023/2023-66.pdf>.

Form 1: Decision-Making Assistance Authorization

(Supported Decision-Making and Representation Act, S.N.B. 2022, c.60, s.6)

A. Assisted person

Name: _____ Date of birth: _____

Address: _____

B. Appointment of decision-making assistant

Under section 6 of the *Supported Decision-Making and Representation Act*, I appoint the following person(s) as my decision-making assistant(s):

Name: _____ Relationship to assisted person: _____

Address: _____

Name: _____ Relationship to assisted person: _____

Address: _____

Name: _____ Relationship to assisted person: _____

Address: _____

C. Powers of decision-making assistant

If the assisted person is appointing two or more decision-making assistants, complete the following in relation to the first decision-making assistant named in section B.

My decision-making assistant may exercise the following powers in relation to the matters referred to below (*check and initial one or both*):

_____ to obtain from any person any information that is relevant to a decision I am going to make or to assist me in obtaining that information

_____ to communicate a decision I have made to other persons or to assist me in communicating a decision

My decision-making assistant may exercise these powers in relation to the following matters (*check and initial as applicable*):

_____ all of my personal care matters

_____ the following personal care matters:

_____ health care

_____ education

_____ diet

_____ employment

_____ clothing

_____ recreation

_____ accommodation

_____ social activities

_____ support services

_____ other: _____

_____ all of my financial matters

_____ the following financial matters:

The powers of my decision-making assistant are subject to the following conditions and restrictions (optional):

If the assisted person is appointing two or more decision-making assistants, check and initial one of the following:

_____ The additional decision-making assistant(s) may exercise the same powers as the first decision-making assistant named in section B and may exercise these powers in relation to the same matters, and (if applicable) these powers are subject to the same conditions and restrictions.

_____ The powers of the additional decision-making assistant(s) differ from those of the first decision-making assistant named in section B as follows:

D. Expiry of authorization

This authorization expires on the following date (optional): _____

E. Revocation

Check and initial if applicable.

_____ All previous decision-making assistance authorizations made by me under the *Supported Decision-Making and Representation Act* are revoked.

F. Signature

Signature of assisted person: _____ Date: _____

Complete if applicable. Note that a person appointed as a decision-making assistant in section B is not eligible to sign the authorization on behalf of the assisted person.

I am signing and dating this authorization on behalf of, at the direction of and in the presence of the assisted person.

Name: _____ Signature: _____

Date: _____ Address: _____

Check if applicable.

The requirement that a person who signs and dates a decision-making assistance authorization on behalf of an assisted person must do so in the presence of the assisted person was satisfied using an electronic means of communication in accordance with section 3 of the *General Regulation – Supported Decision-Making and Representation Act*.

G. Lawyer’s statement

Note that provisions of the Supported Decision-Making and Representation Act relating to capacity and assistance are set out at the end of this form.

I declare that I am a practising member of the Law Society of New Brunswick, that I have reviewed the provisions of this authorization with the assisted person, that I am of the opinion that the assisted person has the capacity to make this authorization, and that I was present when this authorization was signed and dated by the assisted person or a person on behalf of the assisted person.

Name: _____ Signature: _____

Date: _____ Address: _____

Check if applicable.

- The requirement that a decision-making assistance authorization must be signed and dated by the assisted person or a person on behalf of the assisted person in the presence of a lawyer was satisfied using an electronic means of communication in accordance with section 3 of the *General Regulation – Supported Decision-Making and Representation Act*.

H. Consent of decision-making assistant

I consent to my appointment as a decision-making assistant.

Name: _____ Signature: _____

Date: _____ Address: _____

Name: _____ Signature: _____

Date: _____ Address: _____

Name: _____ Signature: _____

Date: _____ Address: _____

Form 2: Financial Summary

(Supported Decision-Making and Representation Act, S.N.B. 2022, c.60, ss.19(2)(d), 36(2)(d))

Application information

Court of King’s Bench of New Brunswick, Family Division

Judicial district: _____

Court file no.: _____

Name of applicant: _____

Name of supported/represented person: _____

A. Property

Bank accounts

Provide information about the supported/represented person’s bank accounts (e.g., savings account, chequing account).

Name of institution and type of account	Name of co-holder of account (if applicable)	Estimated value

Investment accounts

Provide information about the supported/represented person’s investment accounts (e.g., registered retirement savings plan, registered retirement income fund, tax-free savings account, registered disability savings plan, brokerage account, guaranteed investment certificates, term deposits, savings bonds, mutual funds).

Name of institution and type of account	Name of co-holder of account (if applicable)	Name of beneficiary (if applicable)	Estimated value

Other financial assets

Provide information about the supported/represented person's other financial assets (e.g., cash, account at residential facility, shares in private companies or partnerships, security certificates, shareholder loans, private loans, interest in a trust or estate).

Description	Estimated value

Real property

Provide information about the supported/represented person's real property.

Location of property	Co-owner (if applicable)	Estimated value

Personal property

Provide information about the supported/represented person's personal property (e.g., vehicles, boats, valuables, equipment, tools, business assets).

Description	Co-owner (if applicable)	Estimated value

B. Debts

Provide information about the supported/represented person's debts (e.g., mortgage loans, car loans, lines of credit, personal loans, credit card balances, judgments, taxes).

Description	Name of creditor	Estimated amount

C. Income

Provide information about the supported/represented person’s income (e.g., pension, annuities, investment income, Old Age Security, Canada Pension Plan, income support, disability benefits, employment income).

Source of income	Frequency of payments	Estimated amount

Estimated total monthly income: \$ _____

D. Expenses

Provide information about the supported/represented person’s monthly expenses (e.g., mortgage, utilities, property maintenance, property tax, rent, nursing home fees, income tax, insurance, food, medical expenses, transportation, recreation).

Description	Estimated amount

Estimated total monthly expenses: \$ _____

E. Anticipated changes

Provide information about any anticipated changes to the information provided in sections A to D, including any increase or decrease of income or expenses and any changes to the person’s property or debts.

Signature of applicant: _____ Date: _____

Form 3: Capacity Assessment Report*(Supported Decision-Making and Representation Act, S.N.B. 2022, c.60, s.53(3))*

This is a form that an assessor is required to use to record the results of a capacity assessment conducted for the purposes of a court application under the Supported Decision-Making and Representation Act. Relevant provisions of the Act are set out at the end of the form.

A. Assessor

Name of assessor: _____

Address: _____

I am a medical practitioner nurse practitioner psychologist I am lawfully entitled to practise in New Brunswick.

Year I began practising: _____

B. Person being assessed

Name of person being assessed: _____ Date of birth: _____

Address: _____

If you have met the person being assessed before, provide information about how long you have known them and how often you have seen them.

C. Request for assessment

Name of person who requested assessment: _____

Relationship of person who requested assessment to person being assessed: _____

Type of court order sought:

 appointment of decision-making supporter(s) appointment of representative(s) other: _____

Name(s) of proposed appointee(s): _____

Matters in relation to which the proposed appointee(s) will exercise powers if the court makes the order sought:

 personal care matters financial matters personal care matters and financial matters

D. Temporary conditions

- I am satisfied that the person being assessed does not have a temporary condition that may affect their capacity.

If you made this determination on the basis of information obtained from another person, provide details.

E. Circumstances of assessment

Date of assessment: _____ Location of assessment: _____

- I took reasonable steps to ensure that the assessment was conducted at a time and in circumstances in which the person being assessed was likely to be able to demonstrate their capacity.

Comments: _____

The person being assessed refused did not refuse to undergo or continue with the assessment.

If the person refused to undergo or continue with the assessment, provide details.

The person being assessed was able was not able to participate in the assessment.

If the person was not able to participate in the assessment, provide details.

If a person other than the person being assessed was present during the assessment, provide their name and their relationship to the person being assessed.

F. Information provided to person

Before starting the assessment, I advised the person being assessed of the following:

- the reason for the assessment
- the nature of the assessment
- that the person is entitled to
 - refuse to undergo the assessment or refuse to continue with the assessment
 - have a person of their choosing accompany them
 - have a device or an interpreter or other person to assist them to communicate
 - ask me questions or raise concerns with me about the assessment or the results of the assessment
 - receive a copy of the capacity assessment report on request

Comments: _____

H. Opinion – Personal care matters

For the purposes of this section and section I, the person being assessed has the capacity to make a decision if they have the capacity to do so without assistance or with the assistance that is available to them.

In my opinion, the person being assessed

- (a) has the capacity to make all of the decisions that are likely to arise in relation to *all* of their personal care matters.
- (b) has the capacity to make all of the decisions that are likely to arise in relation to their personal care matters *except for the following*:
 - health care education
 - diet employment
 - clothing recreation
 - accommodation social activities
 - support services other: _____
- (c) *does not* have the capacity to make all of the decisions that are likely to arise in relation to *any* of their personal care matters.

If you checked (b) or (c), check one of the following:

In my opinion, the decisions that the person being assessed does not have the capacity to make

- could be made could not be made through a supported decision-making process with a suitable decision-making supporter.

Reasons for opinion:

I. Opinion – Financial matters

In my opinion, the person being assessed

- (a) has the capacity to make all of the decisions that are likely to arise in relation to *all* of their financial matters.
- (b) has the capacity to make all of the decisions that are likely to arise in relation to their financial matters *except for the following*:

- (c) *does not* have the capacity to make all of the decisions that are likely to arise in relation to *any* of their financial matters.

If you checked (b) or (c), check one of the following:

In my opinion, the decisions that the person being assessed does not have the capacity to make

- could be made could not be made through a supported decision-making process with a suitable decision-making supporter.

Reasons for opinion:

J. Views on proposed appointee(s)

Provide any information you have about the views of the person being assessed with respect to the proposed appointee(s). Indicate whether this information was provided to you by the person being assessed or by another person.

K. Additional comments

Provide additional comments regarding the person being assessed, if you wish.

Signature of assessor: _____ Date: _____