

Guide to Completing the Substitute Decision Maker Application

When an individual reaches the age of majority (18 years of age) s/he is presumed in law to be capable of making her/his own decisions. Every effort should be made to see that this presumption is maintained by assisting the individual in the decision-making process in whatever ways s/he requires.

However, there may be a decision(s) that the individual is unable to make even with assistance. As a last resort, a substitute decision maker can be appointed.

Under *The Adults Living with an Intellectual Disability Act*, certain requirements must be met in order for a substitute decision maker to be appointed for an individual.

These requirements are addressed by the questions asked in the *Application for the Appointment of a Substitute Decision Maker* and answering all questions in as much detail as possible is important.

The Commissioner for Adults Living with an Intellectual Disability makes the decision about all applications requesting the appointment of a substitute decision maker. All of the information provided in the application will help the commissioner decide whether or not to appoint a substitute decision maker.

Please note that examples given throughout this document are not intended to limit answers, but rather to assist the applicant to provide the necessary information, which describes an individual's particular circumstances.

Ce document existe également en français. Composez le 945-5039 ou le 1 800 757-9857 (sans frais).

PART 1 INFORMATION ABOUT THE PERSON FOR WHOM A SUBSTITUTE DECISION MAKER IS REQUESTED- CALLED "THE INDIVIDUAL" IN THIS GUIDE

1.1 ABOUT THE INDIVIDUAL

This section asks for information about the individual for whom you believe a substitute decision maker is required.

Print the individual's full name, address, mailing address (if different), birth date and gender.

State the type of living situation the individual lives in. Examples are listed on the form. In situations where an organization or agency is involved in providing supports to the individual, please indicate the person responsible for running the organization as the main contact person (ex: executive director/senior manager).

List ways in which the individual is involved in the community. This can include day, school, training programs, or work, if the individual is employed.

1.2 IS THE INDIVIDUAL AN ADULT LIVING WITH AN INTELLECTUAL DISABILITY?

A) AN ADULT LIVING WITH AN INTELLECTUAL DISABILITY

Before a substitute decision maker can be appointed, certain requirements must be met. One of the requirements is that the individual for whom the application is being made is an adult living with an intellectual disability.

Under *The Adults Living with an Intellectual Disability Act* (the Act), an **adult living with an intellectual disability** is "an adult living with an intellectual disability who is in need of assistance to meet his or her basic needs with regard to personal care or management of his or her property".

Intellectual disability is defined as significantly impaired intellectual functioning existing concurrently with impaired adaptive behaviour and manifested prior to the age of 18 years. It does not include an intellectual disability caused exclusively by a mental disorder as defined in section 1 of *The Mental Health Act*.

Therefore, under the Act, for an individual to be considered mentally disabled, all of the following must be true:

The individual must have significantly impaired intellectual functioning. Generally this is determined by a formal diagnosis or the conclusion of significant cognitive impairment" given by a qualified professional (see 1.3 for examples).

The individual must have impaired adaptive behaviour. This means, compared to a person of the same age and background, they have significant limits in the ability to independently carry out some or all of the activities of daily living (ex: personal hygiene, domestic tasks, functional academic skills, money management, etc.).

The disability must have occurred before the individual was 18 years old.

The impairment in intellectual and adaptive functioning cannot be due only to a mental health problem, disorder or illness (ex: psychotic disorder, mood disorder). If the impairment is due exclusively to a mental disorder as defined in section 1 of *The Mental Health Act*, *The Mental Health Act* governs.

To answer Question 1.2 a), use the explanations above and explain why you believe the individual is.

- i) a person with significant intellectual impairment
- ii) (examples of a response could be "*psychological assessment dated May 10, 2005 indicates a significant intellectual impairment*" or "*never attended school - totally dependent on parents for care and all decision-making*" a person with impaired adaptive behaviour (examples of a response could be "see attached assessment which states Anne is independent in some personal care skills but still! needs help, support or supervision with many daily activities as well as direct and consistent supervision for much of each day in home, school, work and community settings" or "As indicated in his Individual Care Plan, Jack has impaired communication and social skills and needs a lot of support with his daily living activities").
- iii) a person with a disability before the age of 18 (examples of a response could be "*diagnosed with Edwards Syndrome at birth*" or "*head injury in a car accident at age 12*")

B) ASSISTANCE MEETING BASIC NEEDS

To answer question 1.2 b) in the application, describe the kind of help the individual needs to meet his or her basic needs for:

personal care, for example help with medical issues, participation in social or recreational activities, personal hygiene, doing domestic tasks, etc.

property, for example help with money management, or estate matters, etc.

1.3 SUPPORTING DOCUMENTS

All available supporting documents that specify the individual's intellectual disability and capacity to make decisions must be submitted with this application. Examples of supporting documents include:

- evaluation report(s) from professionals such as psychologists, psychiatrists, school clinicians (speech pathologist, occupational therapist), etc.
- medical records with diagnosis of a specific developmental disorder, significant cognitive impairment, intellectual disability or a diagnosis according to the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) "Mental Retardation - mild, moderate, severe or profound" Note: Terminology has evolved over the years. The more commonly used term today is significant intellectual impairment or significant cognitive impairment.
- supported living level of care form supported living personal financial plan individual plan or individual education plan
- behaviour management plan and or other related information existing social history reports
- other

1.4 INDIVIDUAL'S SOCIAL WORKER/CASE CO-ORDINATOR (IF KNOWN)

This can include a community service worker, a children's special services worker, a child and family services worker, a school worker or a social worker from a hospital, personal care home or a developmental centre.

1.5 INDIVIDUAL'S NEAREST RELATIVE

Under the Act, the person's nearest relative must receive notice of the application and the decision of the Commissioner for Adults Living with an Intellectual Disability.

Nearest relatives in order of priority:

- a) spouse
- b) son or daughter
- c) father or mother
- d) brother or sister
- e) grandfather or grandmother
- f) grandson or granddaughter
- g) uncle or aunt
- h) nephew or niece

The Act states that the nearest relative must be an adult who lives in Canada. Preference is given to relatives related by blood, then to those related by half blood and the oldest of two or more relatives as prioritized above.

PART 2 INFORMATION ABOUT THE APPLICANT

As the applicant, your name, mailing address, telephone number, and your relationship to the individual are required here.

PART 3 REASON(S) FOR THE APPLICATION

Give a brief explanation of the current circumstances or situation, and indicate what has happened at this time that gives you reason to believe the Individual needs a substitute decision maker. Examples may include a medical professional needing legal consent to perform surgery; the basic needs of an individual living independently are not being met (ex: no food in the fridge, unpaid utility bills, no money, etc.).

PART 4 INFORMATION ABOUT THE INDIVIDUAL'S SUPPORT NETWORK

4.1 PEOPLE WHO PROVIDE ADVICE, SUPPORT AND GUIDANCE TO THE INDIVIDUAL

List family members and others chosen by the individual, who provide advice, support and guidance. They are considered the individual's support network. The involvement of the support network is called "supported decision making" and in many instances, their involvement enables the Individual to make and communicate decisions about his/her personal care or property.

Note how each provides support. Examples could be:

"Schedules and accompanies (the individual) to medical appointments."

"Takes (the individual) out for coffee once a month."

"(The individual) contacts Rob (support worker) when s/he encounters problems."

"Phones on birthdays and holidays."

4.2 SERVICE OR CARE PROVIDERS

If not listed under 4.1, list paid service or care providers who work closely with the individual and have a good understanding of the individual's needs.

PART 5 INFORMATION ABOUT THE PROPOSED SUBSTITUTE DECISION MAKER(S) (SDM)

5.1 SOLE SUBSTITUTE DECISION MAKER(S) (SDM)

5.2 JOINT SUBSTITUTE DECISION MAKER(S) (SDM)

5.3 ALTERNATE SUBSTITUTE DECISION MAKER(S) (ASDM)

List the people proposed as either sole, joint or alternate substitute decision makers. Note their relationship to the individual, and whether the appointment is to act on behalf of the individual for decisions related to personal care and/or property.

The three main **eligibility** requirements for appointment as a substitute decision maker are that the person must be:

- an **adult**
- **capable, suitable** and **able** to act in this capacity
- **willing** to act as the substitute decision maker. (see Schedule 8- Consent Form for consideration of Appointment as Substitute Decision Maker)

The proposed substitute decision maker may be a relative, friend, advocate, or already be an existing substitute decision maker for the person in one area - either personal care or property.

5.1 SOLE SUBSTITUTE DECISION MAKER

The application can propose someone to be appointed to act as the substitute decision maker for the individual in the area of personal care and/or in the area of property. This means that there may be one person proposed to be a substitute decision maker in both areas of personal care and property, or there may be one person as substitute decision maker for personal care and a different person as substitute decision maker for property. If applying to act in the area of property, the proposed sole substitute decision maker must reside in Manitoba.

5.2 JOINT SUBSTITUTE DECISION MAKER

The application can propose two or more people to be appointed to act as joint substitute decision makers in one or both-areas of personal care and property. A joint appointment requires the parties to **act together** in their roles as substitute decision makers. One cannot make decisions in the absence of the other. If applying to act in the area of property, one of the proposed joint substitute decision makers must reside in Manitoba,

5.3 ALTERNATE SUBSTITUTE DECISION MAKER

The application can propose the appointment of an alternate substitute decision maker to act on the death of or in the temporary absence of the sole or joint substitute decision makers.

All proposed substitute decision makers must consent to the appointment by completing Schedule B -Consent Form for Consideration of Appointment as Substitute Decision Maker.

NOTES:

Ineligible people

Some people are not eligible for appointment as substitute decision makers. They include people who do not meet the above eligibility requirements or who are paid service providers for the individual.

Public Trustee appointment

If a substitute decision maker is required for an individual, there is no one who meets the above eligibility requirements, and the criteria for a substitute decision maker appointment have been met, The Public Trustee will be appointed.

ADDITIONAL INFORMATION:

SCHEDULE A – REAL AND PERSONAL PROPERTY FORM AND BOND/SECURITY REQUIREMENT

A Schedule A form must be completed when a substitute decision maker is requested for property. The form asks for current information to the extent known, on the individual's real and personal property, debts, income and expenses. Completion of this form helps determine the powers that will be needed to manage the assets and property of the individual.

Requirements of the substitute decision maker for property

People who apply for appointment and consent to be substitute decision makers for property have a number of very important duties and responsibilities. Some of the specific duties include filing an opening inventory, annual accounting, and in some cases, meeting bond and surety requirements as required by the commissioner.

a) Opening Inventory- Real and Personal Property Inventory on Appointment:

Where granted the power to do so by the commissioner, a substitute decision maker for property has six months to take control of the individual's property. Within that six month period (or sooner if requested by the commissioner) the substitute decision maker must file a complete inventory and account of the individual's property, debts and liabilities.

b) Accounting:

- The substitute decision maker is required to file, on an annual basis, a sworn affidavit and accounting of the individual's property. The accounting will need to include the particulars of the property including:
 - the opening inventory, which sets out the assets and their value
 - a statement of money received including when it was received, the amount, the source and the reason
 - a statement of money spent including the amount, when it was spent, who received it and why
 - a statement of assets sold, realized or acquired, the amount, date of sale or acquisition, and amount of any gain or loss
 - a reconciliation and closing inventory for all assets; their value on the opening and closing dates; the costs of all assets; and a record of all gains, losses, sales acquisitions and disbursements

c) Bonds and Sureties:

A substitute decision maker for property may have to post a bond with or without surety equal to the amount of the sworn value of the property being managed by the substitute decision maker.

The purpose of the bond is to provide assurance to the commissioner that the substitute decision maker will properly administer the person's financial affairs. A surety is a company or person who guarantees payment of the amount in the bond by pledging his or her own property.

If the adult living with an intellectual disability's financial affairs are mismanaged, the Commissioner for Adults Living with an Intellectual Disability may look to the substitute decision maker, the sureties and/or the surety company to compensate the adult living with an intellectual disability.

Where a bond is required, the substitute decision maker's authority does not begin until the Commissioner for Adults Living with an Intellectual Disability approves the bond.

Note: More detailed information can be found in the *Guidelines, Policies and Procedures on Bonds and Sureties for Substitute Decision Makers for Property*.

**SCHEDULE B - CONSENT FORM FOR CONSIDERATION OF APPOINTMENT AS
SUBSTITUTE DECISION MAKER**

All proposed substitute decision makers (sole, joint and alternates) must complete Schedule B-Consent Form for Consideration of Appointment as Substitute Decision Maker. Proposed substitute decision makers can only be considered for the appointment if they have consented to do so.

SCHEDULE C- CRIMINAL RECORD AND CHILD ABUSE REGISTRY CHECKS

The role of a substitute decision maker is considered one of trust and security. For the protection of the individual, it is the responsibility of each proposed substitute decision maker to obtain a Criminal Record Check (including the Vulnerable Sector Search) and a Child Abuse Registry Check and to submit the results of both checks to the Commissioner for Adults Living with an Intellectual Disability.

There is a fee to obtain these checks. See Schedule C for details on how to apply for these checks. The checks are not required if the SDM is going to be The Public Trustee or a trust company.

PART 6 DECISION(S) TO BE MADE

6.1 DECISION(S) TO BE MADE

Another important criterion is that a substitute decision maker only be appointed if there is a **decision(s) needing to be made** by the individual, and the individual is **incapable** of making the decision(s).

Incapacity means that the individual is:

- a) **not able to understand information** that is relevant to making a decision about personal care or the management of his or her property,
- b) **not able to appreciate the reasonably foreseeable consequences** of a decision or lack of a decision,
- c) not capable of making a decision, even with the involvement of a support network.

"Decision(s) to be made" means those that **need to be made now or in the reasonably foreseeable future.**

The power(s) to make a decision(s) are granted to the substitute decision maker based on the decision (s) or issue(s) that face the individual now or in the reasonably foreseeable future. A description of the specific decision(s) needs to be listed on the application under Section 6.1. Please note if an unexpected Issue(s) or decision(s) arises in the future, a request may be made to vary the powers at that time.

Following are specific examples of how an applicant may respond, based on an individual's particular situation.

EXAMPLES

Personal care:

- Joe {the individual} is currently living at home but a residential placement is being explored with an anticipated move date in four to six months.
- Support staff is currently working with Anne {the individual} to secure a part time job at the ABC Cafe.
- David {the individual} was in a motor vehicle accident on July 20, 2007 and will need assistance with his personal injury claim with Autopac.

Property:

- Anne (the individual) requires ongoing help to buy personal effects including clothing, furniture, etc.
- EIA, GST etc. cheques need to be deposited into Frank's (the individual) bank account monthly.
- Plans need to be negotiated to address the outstanding cell phone bill by Tracey (the individual).

POWERS:

The powers that may be granted to a substitute decision maker are in two areas.

Personal care: This includes decisions about residence, health care, education, employment, training, life skills, recreation, legal proceedings not related to property, etc.

The specific powers as stated in the act are listed below. Following each power is a simple explanation or illustration of how the power is more commonly used. It is important to note that these explanations and/or the illustrations do not necessarily reflect the full extent of the power.

- a) *To decide where, with whom and under what conditions the adult living with an intellectual disability is to live*
Where the individual will live
- b) *To give, refuse or withdraw consent to health care on the adult living with an intellectual disability's behalf*
Health care or medical decisions (but excludes consent for the use of physical/chemical restraints- if restraints are needed, the applicant must make a specific request for the authority to consent and attach a current behaviour management plan, and/or other related information that instructs the use of restraints)
- c) *To decide whether the adult living with an intellectual disability should work, and if so, the nature or type of work, for whom the adult living with an intellectual disability is to work and other related matters*
Where the individual will work (paid competitive employment)
- d) *To decide whether the adult living with an intellectual disability should participate in any educational, vocational, training or life skills programs, and if so, the nature and extent of the participation and other related matters*
Participation in educational, training, lifeskills or vocational programs including those where one receives incentive pay
- e) *To decide whether the adult living with an intellectual disability should participate in any social or recreational activities, and if so, the nature and extent of the participation and other related matters*
Participation in social or recreational activities including those needing a signed consent to participate
- f) *To commence, continue, settle or defend a claim or proceeding that relates to the adult living with an intellectual disability other than a claim or proceeding that relates to property*
Initiating or defending any non-property claim or proceeding (ex: initiating a personal injury claim)
- g) *To make decisions about daily living on behalf of the adult living with an intellectual disability, including decisions regarding support services under Part 2 of the Act*
Activities of daily living (ex: self-care, safety in the community, domestic tasks, and transportation arrangements)
- h) *Any other power specified by the commissioner that is reasonably necessary for the vulnerable person's personal care*
Any other power necessary for personal care as specified by the commissioner to address a specific situation (ex: restricting access of certain individuals to the adult living with an intellectual disability, consent to a plan that allows for the use of physical/chemical restraints)
Note: If there is consent to a plan that allows for the use of restraints, the behaviour management plan and/or related information that instructs the use of a restraint (s) is to be provided.
- i) *Any other power that may be specified in the regulation.*

Property: This includes decisions about the management of money, investments, debts, loans, gifts, land or personal property, legal proceedings for property, etc.

The specific powers as stated in the Act are listed below. Following each power is a simple explanation or illustration of how the power is more commonly used. It is important to note that these explanations and/or the illustrations do not necessarily reflect the full extent of the power.

- a) *To purchase, sell, dispose of, encumber or transfer personal property*
Buying or selling personal property (ex: buying clothes, selling personal belongings)
- b) *To purchase, sell, dispose of, mortgage, encumber or transfer real property")*
Buying or selling real property (ex: a house, a farm)
- c) *To transfer property held in trust by the adult living with an intellectual disability, either solely or jointly with another, to the person beneficially entitled to it*

Transferring money held in trust by the adult living with an intellectual disability to
the person entitled to it

- d) *To exchange or partition property or give or receive money for equality of exchange or partition*
Property situations where ownership is shared with another person (ex. selling a house he/she co-owns with a relative)
- e) *To grant or accept leases of real or personal property, or give a consent to a transfer or assignment of a lease, to surrender a lease, with or without accepting a new lease, or accept a surrender of a lease*
Signing or granting a lease on property (ex: renting an apartment, leasing land/home/vehicle)
- f) *To receive, deposit and invest money*
Receiving, depositing and investing money (ex: setting up a bank account, depositing cheques, buying a RRSP)
- g) *To draw, accept or endorse bills of exchange and promissory notes, endorse bonds, debentures, coupons and other negotiable instruments and securities, and assign choses in action*
To issue cheques in order to meet the individual's expenses (ex: for rent, utility bills, individual spending money)
- h) *To give or receive a notice on behalf of an adult living with an intellectual disability that relates to his or her property*
Receiving a notice about property (ex: a notice of property assessment, tax arrears, a lien)
- i) *To carry on the adult living with an intellectual disability's trade or business*
Managing the adult living with an intellectual disability's trade or business
- j) *To exercise a power or give a consent required for the exercise of a power vested in the adult living with an intellectual disability*
To exercise a power or give consent on behalf of the individual, where, for example, s/he is a trustee with certain powers
- k) *To exercise a right or obligation to elect, belonging to or imposed on the adult living with an intellectual disability*
Exercising a right or obligation to choose (ex: choices under the *Income Tax Act* such as taking a capital gains deduction on eligible property)
- l) *To execute any documents on behalf of the adult living with an intellectual disability that are necessary to comply with The Homesteads Act*
Documentation related to the interests in a marital home or homestead
- m) *To commence, continue, settle or defend any claim or proceeding respecting the property of the adult living with an intellectual disability* Initiating or defending any claim or proceeding about property (ex: an entitlement in a will/estate, property insurance claim)
- n) *To compromise or settle a debt owing by or to the adult living with an intellectual disability*
To arrange to clear off a debt (ex: reaching an agreement with a phone company to settle a debt owed by the adult living with an intellectual disability by paying only a percentage)
- o) *Making expenditures from the adult living with an intellectual disability's property for gifts, donations or loans*
Spending the individual's money for gifts, donations or loans
- p) *Any other power specified by the commissioner that is reasonable or necessary to manage the property*
(Ex: completion of income tax forms, applying for GST rebates or Old Age Security, making an inquiry into the adult living with an intellectual disability's interest in his/her mother's estate, or an inquiry

concerning a discretionary trust administered by a third party, or any other related benefits or interests that the adult living with an intellectual disability may be entitled to)

q) Any other power that may be specified in the regulations

PART 7 OTHER INFORMATION REQUIRED

7.1 Considering the decision(s) to be made (outlined in Part 6) what should be the length of time of the substitute decision maker appointment?

The Act states that a substitute decision maker shall be appointed for as long as appropriate given the decision(s) required to be made. No appointment shall be for longer than five years. Where necessary, an appointment may be renewed more than once if, at expiry, a review confirms that the need for the appointment continues.

7.2 Is there currently a substitute decision maker appointed for the Individual?

There may be situations where a substitute decision maker is currently appointed for the individual on an emergency basis, or for managing property but not for personal care or vice versa. Or, a substitute decision maker may have been appointed in the past but the appointment has since expired or been terminated. If any of these situations apply, please indicate this.

7.3 Does the individual have a committee appointed by the Court of King's Bench or an Order of Committeeship under *The Mental Health Act*?

There may be situations where a committee has been appointed for the individual under *The Mental Health Act* to manage his/her affairs. Indicate if this is so.

7.4 Describe any physical or communication arrangements needed for the individual, the proposed substitute decision maker(s) or other parties, should they need to participate at a hearing panel.

If there are any special arrangements needed for any party to participate at the hearing, specify what and for whom the accommodation is required. Examples could be:

- The individual communicates with gestures- Jane Doe, the ABC Care Provider, will need to attend to interpret.
- The individual needs an American Sign Language {ASL} interpreter.
- The individual's family is Portuguese and speaks very little English. Arrangements will be made by the family to bring an independent interpreter to the hearing.
- A wheelchair accessible location is necessary.

7.5 Do you have further information or comments that would be helpful to the commissioner in this application for appointment of a substitute decision maker?

This section is to allow the applicant an opportunity to give any additional information or comments that could not be included in other areas of the application.

SIGNATURE OF APPLICANT

The applicant identified in Part 2 of this application must sign and date the application,

It is also important that all supporting documents, Schedule A if a substitute decision maker is being requested for property, Schedule Band Criminal Record and Child Abuse Registry Checks are submitted with the application. Incomplete application packages will take longer to process.

**Office of the Commissioner for Adults Living
with an Intellectual Disability**

Please submit application packages to:

Office of the Commissioner for Adults
Living with an Intellectual Disability
315-258 Portage Avenue Winnipeg, MB
R3C 0B6
Fax: 204-948-3713
Phone: 204-945-5039
Toll free: 1-800-757-9857
Email: calido@gov.mb.ca
Website: <http://www.gov.mb.ca/fs/calido>