

A Fact Sheet on
Substitute Decision Making

What is The Adults Living with an Intellectual Disability Act?

On October 4, 1996, a law came into force in Manitoba, called *The Adults Living with an Intellectual Disability Act*.

The Act was developed to promote and protect the rights of adults living with an intellectual disability who need assistance to meet their basic needs. The legislation recognizes these Manitobans as “adults living with an intellectual disability.”

The Act is based on the belief that adults living with an intellectual disability should have the opportunity to make their own decisions and direct their own lives, with support if necessary.

What is a substitute decision maker?

A substitute decision maker is an individual appointed by the Commissioner for Adults Living with an Intellectual Disability to make decisions for an adult living with an intellectual disability who is unable to make certain decisions for him or her self. A substitute decision maker has the legal authority to make decisions for the adult living with an intellectual disability in those specific areas in which he or she has been given power by the Commissioner.

When is a substitute decision maker appointed?

A substitute decision maker may be appointed to make decisions when an adult living with an intellectual disability has one or more decisions to make and is unable to make them. The appointment is only for the time required for the decision, and only for the decision(s) that the adult living with an intellectual disability is unable to make. The adult living with an intellectual disability retains the right to make all other decisions.

A substitute decision maker may only be appointed for a maximum of five years. If at the end of that time, the adult living with an intellectual disability continues to require to have decisions made and is unable to make them, the appointment may be renewed.

Who is considered to be an adult living with an intellectual disability?

According to *The Adults Living with an Intellectual Disability Act* (the Act) an adult living with an intellectual disability is defined as "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 and/or management of his or her property."

For an individual to be considered mentally disabled, the disability must have occurred prior to the age of 18. The individual must also have significantly impaired intellectual functioning and impaired adaptive behaviour.

Who can be appointed as a substitute decision maker?

Adults who are willing, able and suitable to act as substitute decision makers may be appointed by the Commissioner to make decisions for adults living with an intellectual disability. These may be family members, friends or others willing to act in this capacity. One or more persons may be appointed to act as sole, joint or alternate substitute decision makers. If no one is available, the Public Trustee will be appointed as substitute decision maker.

Service providers may not be appointed as substitute decision makers for the adult living with an intellectual disability to whom they provide service.

All individuals applying to be appointed as substitute decision makers must satisfy a Criminal Record check and Child Abuse Registry check.

Also, those applying for property may be required to provide a bond.

What powers does a substitute decision maker have?

A substitute decision maker is given the power to make only those decisions that an adult living with an intellectual disability requires to be made and is unable to make. The Act divides the powers that may be granted in two major areas: personal care and property.

An individual can apply to be appointed as the substitute decision maker for the management of an adult living with an intellectual disability's personal care, their property, or both.

1) Personal Care

Powers are only granted in those areas where an adult living with an intellectual disability is not able to make a decision that needs to be made. For example, the power to decide where to live would not be granted to the substitute decision maker unless there are plans for the adult living with an intellectual disability to move. Some of the powers that may be granted to the substitute decision maker for personal care are:

- to make decisions regarding the adult living with an intellectual disability's living arrangements;
- to make health care decisions on the adult living with an intellectual disability's behalf;
- to make decisions regarding the adult living with an intellectual disability's working arrangements;
- to make decisions regarding the adult living with an intellectual disability's participation in educational or life skills training;
- to make decisions regarding the adult living with an intellectual disability's participation in social or recreational activities; and
- to make decisions about daily living on behalf of the adult living with an intellectual disability.

2) Property

Powers are only granted in those areas where an adult living with an intellectual disability is not able to make a decision that needs to be made. For example, the power to operate an adult living with an intellectual disability's business would not be granted if he or she has no business. Some of the powers that may be granted to the substitute decision maker for property are:

- to purchase, sell, dispose of or transfer personal belongings on behalf of the adult living with an intellectual disability;
- to receive, deposit and invest money on behalf of the adult living with an intellectual disability;
- to pay bills on the adult living with an intellectual disability's behalf; and
- to apply for any benefits for which the adult living with an intellectual disability may be eligible.

What are the duties of a substitute decision maker?

The duties of a substitute decision maker vary with the powers he or she is granted. For example, a substitute decision maker with responsibility only for specific areas of personal care will confine his or her duties to these areas. Similarly, a substitute decision maker for property will restrict his or her activities to those specific areas for which he or she has been given decision making power. A substitute decision maker with power for personal care and property will have duties in relation to both areas. However, there are differences between the duties for personal care and property. These are:

1) Personal Care

In exercising his or her powers, the substitute decision maker for personal care is required to:

- comply with the terms and conditions of his or her appointment;
- act diligently and in good faith;
- make reasonable efforts to explain his or her powers and duties to the adult living with an intellectual disability;
- seek to foster the adult living with an intellectual disability's independence;
- encourage the adult living with an intellectual disability to participate in the substitute decision maker's decision;
- choose the least restrictive and least intrusive course of action available in a situation; and
- take into consideration the adult living with an intellectual disability's wishes, values, beliefs and best interests.

2) Property

A substitute decision maker for property is expected to perform the duties listed under personal care as well as:

- keep a record of all transactions involving the adult living with an intellectual disability's property;
- make expenditures that are necessary for the adult living with an intellectual disability's support, education and care; and
- provide regular written reports to the Commissioner which detail the substitute decision maker's management of the adult living with an intellectual disability's property.

How is an application made to have a substitute decision maker appointed?

Anyone may obtain and complete an application form asking the Commissioner to appoint a substitute decision maker for an adult living with an intellectual disability. The applicant may ask to be appointed as the substitute decision maker, or may indicate that someone else is willing to be considered for the appointment.

Application forms are available on-line. They can also be picked up or be requested for mail out from regional offices of The Department of Family Services and Consumer Affairs or from the Office of the Commissioner for Adults Living with an Intellectual Disability.

How does the application process work?

- The applicant submits an application for the appointment of a substitute decision maker to the Commissioner's office.
- The Commissioner will provide the person for whom the application is made with a copy of the application.
- Once the Commissioner conducts a preliminary investigation of the application, the Commissioner will decide whether to dismiss the application or refer it to a hearing panel.
- If the application is referred to a hearing panel, the three-member panel will conduct a hearing and make recommendations to the Commissioner. After considering the hearing panel's recommendations, the Commissioner will decide to either dismiss the application or appoint a substitute decision maker.

Must an adult living with an intellectual disability have a substitute decision maker?

No. If an adult living with an intellectual disability is making his or her own decisions, alone or with the assistance of a support network, or if there are no decisions to be made, no substitute decision maker needs to be appointed.

Is it possible to appeal the Commissioner's decision?

Most of the decisions made by the Commissioner can be appealed to the Court of King's Bench. Upon hearing the appeal, the court may decide to set aside, vary or confirm the decision of the Commissioner.

Additional information:

For more information about *The Adults Living with an Intellectual Disability Act* contact your nearest regional office of The Department of Family Services and Consumer Affairs or the Office of the Commissioner for Adults Living with an Intellectual Disability (CALIDO):

Northern

Thompson (204) 677-6570

Flin Flon (204) 687-1700

The Pas (204) 627-8311

Parkland

Dauphin (204) 622-2035

Swan River (204) 734-3491

Eastman

Beausejour (204) 268-6226

Steinbach (204) 346-6390

Interlake (204) 785-5106

Westman (204) 726-6336

Toll Free: 1-800-230-1885

Central

Portage La Prairie (204) 239-3092

Morden (204) 822-2870

Winnipeg (204) 945-1335

Office of the Commissioner for Adults Living with an Intellectual Disability (CALIDO)

315-258 Portage Avenue
Winnipeg, Manitoba R3C 0B6
(204) 945-5039

Toll-free 1-800-757-9857 outside Winnipeg