



Report on the
Review of the
**Adult Capacity and
Decision-making Act**

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The ACDMA: Main Points

ACDMA stands for the **Adult Capacity and Decision-making Act**.

The ACDMA is a new law in Nova Scotia. In 2017, it replaced an old law called the Incompetent Persons Act.

How the new law is different

The ACDMA is different from the old law in many ways.

Under the old law, a judge could choose a person to make decisions for an adult who could not make all or some of their own important decisions. This person was called a guardian. The guardian could make all the decisions for the adult, even if the adult could make some decisions on their own.

That does not happen under the new law.

Now a judge can choose a person, called a “representative” (or rep), who only makes the decisions the adult cannot make for themselves.

Checking that the new law is working

In 2021, government wanted to know two things about the new law:

1. They wanted to make sure it is a good law and that it is working well.
2. They wanted to hear what other people thought about something called supported decision-making.

What is supported decision-making?

Supported decision-making is when an adult gets help to make decisions from someone they trust. For example, a person they trust can help them to make decisions about money or health. This person might be an ACDMA rep or someone else.

How government checked that the new law was working

Government created a group to review the new law. The members of this group were from different government departments, such as Community Services, Seniors and Long-term Care, Health and Wellness, and Justice.

The group reviewed the court files at the Supreme Court of Nova Scotia. They also asked lots of people across Nova Scotia about how the new law is working. And they held meetings with people who know a lot about the new law.

The group learned that the new law is working well in some ways. They also learned that it needs to be improved in other ways.

The government's group came up with a list of recommendations for ways to improve the law.

This report shares some details of what the government group learned while reviewing the law and why they are making these recommendations.

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What is the ACDMA

ACDMA stands for the **Adult Capacity and Decision-making Act**. This is a new law in Nova Scotia. It replaced an old law called the Incompetent Persons Act.

The ACDMA allows a judge to choose a person—or sometimes more than one person—to make some decisions for an adult who cannot make their own important decisions. The person the judge chooses to make these decisions is called a representative. We will call them “reps” in this report.

We will also use the word “adult” to mean the person who needs help to make some of their important decisions.

How the ACDMA is different from the old law

Under the old law, a judge could choose a person, called a guardian, to make **all** of the decisions for the adult.

That does not happen under the new law.

- The new law allows the adult to make their own decisions, if they can.
- The adult can have help from a rep to make decisions that are hard for them.
- The rep can only make a decision for the adult if that adult cannot make the decision for themselves.
- When the rep makes a decision for an adult, the rep must involve the adult in the decision-making. The rep must explain all the choices that could be made and what each choice could mean for the adult.
- The rep must do their best to follow the adult’s wishes.

The rep must not take advantage of the adult by making decisions that are only good for the rep. A judge has the power to check on the rep to make sure they are making good decisions for that adult.

Why government made this report

In 2020, government wanted to know two things about the ACDMA:

1. We wanted to make sure it was working well.
2. We wanted to know more about something called supported decision-making.

Supported decision-making

Supported decision-making is when an adult gets help to make decisions from someone they trust. That person does not have to be an ACDMA rep – it could be someone else.

Government made this report by asking people what they thought the ACDMA is doing well, and how it could be better. We also did some research into court files to find out how the ACDMA is being used.

Who government talked to about the ACDMA

Government created a group to review the new law. The members of this group were from different government departments, such as Community Services, Seniors and Long-term Care, Health and Wellness, and Justice.

The group worked with a company called Horizons. Horizons helped the group talk to people about the ACDMA.

Court Files

The government's group looked over court files from the Supreme Court of Nova Scotia. This would tell the group how the ACDMA is being used by people who have to go to court.

Consultations

The group also invited people to talk to them. They wanted people to tell them what they thought of the new law. The people they invited included

- adults who need help to make decisions
- organizations that help these adults
- family members/caregivers of adults who need help
- doctors, psychologists, nurses, social workers, and other health professionals
- lawyers who help people use the ACDMA

The group invited these people to complete a survey either online or by phone, or to be part of a meeting.

The group used what they learned from the court files, the survey, and the meetings to figure out ways to improve the new law.

The group came up with several recommendations for ways to improve the law. These recommendations can be grouped into these categories:

- A. How well the act allows adults to be independent
- B. How well people understand the act, and how to use it
- C. What it's like to go to court
- D. How an adults are assessed for capacity
- E. How supported decision-making works

Category A. How well the law allows adults to be independent

The new law is not “all or nothing”

People like that the new law is not “all or nothing” the way the old Incompetent Persons Act was.

Under the old law, a guardian had the right to make all the decisions for an adult. Under the new law, adults can make some of their own decisions if they can understand the decisions.

Reps can only make decisions about certain things


People also like that a rep can only make decisions for an adult about certain things under the new law. These must be things the adult cannot make a decision about for themselves.

For example, an adult may not be able to make decisions about money, but can make decisions about where they live. If so, the rep can only make decisions about the adult’s money—not about where the adult lives.

People also like that the rep must usually respect the adult’s wishes. Reps cannot make a decision just because it would be in the adult’s best interests. This means the adult has the right to take risks, and to make mistakes.

Update the other laws

There are other laws in the province that let another person make decisions for an adult. These laws include the Adult Protection Act, the Personal Directives Act, the Hospitals Act, the Involuntary Psychiatric Treatment Act, the Powers of Attorney Act, and more.


 **Recommendation:** People told the group they want the other laws to be updated so they are more like the new ACDMA. Government should make sure the laws respect the adult’s right and ability to make their own decisions.

Check in with reps and the adult they are helping

Sometimes, an adult who cannot make decisions for themselves at one time may regain their ability to make decisions later—for example, if an adult was injured or sick, and then got better.

In those cases, the rep is only needed for a short period of time. But under the ACDMA, once a person becomes a rep, they can keep making decisions for the adult. It can be expensive and complicated to go back to court to get that changed.


People told the group there needs to be an easier, less costly way to check on reps and the adults they are helping to make sure the rep is still needed and is making good decisions.

 **Recommendation:** The adult and their rep should be checked in with regularly to make sure the adult still needs help to make decisions, and that the rep is making good decisions.

Review who can allow aversive stimulus treatments

Aversive stimulus treatment is supposed to help an adult give up a bad habit or harmful behaviour by making the habit or behaviour unpleasant. It is used to help people who want to stop doing things like biting their nails or smoking cigarettes. For example: if someone wanted to stop biting their nails, they may have something painted on their nails that makes the nails taste bad.

Under the ACDMA, a rep can agree to a health professional giving the adult this kind of treatment, but only if the court agrees. Many adults with disabilities do not like aversive stimulus treatments. People told the group they do not want the courts to be able to allow it.

 **Recommendation:** Government should review how aversive stimulus treatment gets ordered for an adult.

Category B. How well people understand the act, and know how to use it

Teach people about Nova Scotia's different decision-making laws

The group heard that many people do not know when they should use the ACDMA or when they should use another law, such as the Personal Directives Act.

They said they are also confused because one law may say an adult can make their own decisions, while another says not.

▶ **Recommendation:** Government should provide education, training, and other support services about Nova Scotia's decision-making laws. This training should be available for adults and their families, judges and lawyers, service providers, educators and staff in government, and reps. It should cover what the ACDMA is all about, as well as other laws that provide decision-making for adults.

▶ **Recommendation:** This training should be available across the province. It should also be in many different forms, such as online, and in print, so people can get the type of training that works for them.

Give people a navigator to guide them through the process

People told the group the new law can be complicated to use. There are many forms that have to be filled out. It all takes time.

Many said they needed the help of a lawyer to use the ACDMA, and that costs money.


As a result, some families are not using the ACDMA when they should, and are making up their own solutions. These solutions are not always in the best interests of the adult.

Families told the group they need support from someone who can help them fill out all the forms and paperwork for the ACDMA and other laws. This person would be a “navigator” – someone who knows their way around the law.

▶ **Recommendation:** Adults and their families should be able to contact one person who can help them find their way through the legal system. This “navigator” could also do things like help prepare applications, help adults find their own lawyers, and help families find counsellors.

Educate guardians so they will know what has changed

Some people who had guardianship orders under the old Incompetent Persons Act need to understand the new law. They aren't guardians anymore – they are reps – and they need to know how their responsibilities and powers have changed.

 **Recommendation:** The Public Trustee's Office should contact all adults and guardians who had guardianship orders under the old law. The office needs to educate guardians and the adults about what has changed under the new law.


Category C. What it's like to go to court

Create a new place—that is NOT court—for ACDMA cases

People told the group they do not like that they have to go to court under the ACDMA.


People see court as a place where people usually “fight” each other to find out who is right and who is wrong. Under the ACDMA, families are usually not in a fight with anyone—they are trying to take care of a loved one.

Creating a new place for ACDMA cases that is not a court would be helpful. This new place could be informal when possible. It should have people who know about decision-making challenges. That way, everyone who works there will understand what adults, reps, and their families need.

 **Recommendation:** Government should consider creating a special place that is not a court where ACDMA cases can be decided.


Make sure adults can access their own lawyers

Sometimes, an adult who is being assessed to see if they can make their own decisions needs their own lawyer. It can be difficult for them to know how to get a lawyer. The person doing the assessment is in a good position to tell the adult they have a right to a lawyer, and how to get one.

 **Recommendation:** Government should change Section 9 of the regulations to make it part of the assessor's job to tell the adult they have the right to a lawyer if they want one.

Make sure adults have help in telling their lawyer what to do

Some adults who have difficulty making decisions may not be able to tell a lawyer what to do. In those cases, there should be someone to help the adult tell the lawyer what to do. The person needs to be someone other than the person who wants to be the rep. This kind of helper is called a “litigation guardian.”


 **Recommendation:** There should be someone chosen to tell the adult’s lawyer what to do, when the adult is not able to do so.

Don’t always make people give a bond

Sometimes the judge will make a rep “post a bond” before the rep is allowed to make decisions about an adult’s property or money. The rep or the adult has to pay for the bond – it’s like getting insurance. The court will hold the rep’s bond until the rep finishes the job of making decisions for the adult.

Many people told the group they don’t think the judge should ask for this bond in some cases. They said the rep is often a trusted family member who would not make bad decisions for the adult or take the adult’s property. They also said the bond can cost a lot of money and they can’t afford to pay it.

Other people said that sometimes a bond is a good idea to make sure the adult’s property and money is protected.

 **Recommendation:** The judge should be allowed to say they do not need a bond if they think the adult’s property and money are safe, and that the rep is going to do an honest job of helping the adult.


Be clear about what is needed by the judge

A person who wants to be a rep for an adult must ask a judge to let them be a rep.

The person has to let the adult know they want to be their rep. They also have to let other people know they are going to ask a judge to let them be a rep. These other people could be members of the adult’s family.

The person then has to prove to the judge that they can be trusted to make good decisions for the adult. They need to give the judge information about why they will be a good rep.


Right now, the wording in the law is unclear about when the person has to let people know that they are going to ask a judge to let them be a rep. It is also unclear about how some of the information has to be given to the judge.

 **Recommendation:** The ACDMA should be clearer about when the person has to let the adult and other people know that they are going to ask a judge if they can be the adult's rep. It should also be clearer about how information has to be given to the judge.

Give people sample documents to follow

As mentioned earlier, reps need to file several documents with the court when they apply to make decisions for an adult. Right now, there are no examples of these documents for reps to look at and follow. That means reps sometimes leave out information.


People need a sample document so they know what information must be included.

 **Recommendation:** Government should have a set of sample documents available so reps, lawyers, and others can make sure they are giving all the information needed when they make an application to the court.

Get the Public Trustee involved earlier

The Public Trustee's job is to protect the financial and personal well-being of their clients. Their clients include adults who cannot make decisions for themselves.

The Public Trustee can do things like help manage the adult's money and property, and can give permission for the adult to receive health care or be placed in a home. They can also act as a rep for an adult who cannot make decisions for themselves.

 **Recommendation:** The Public Trustee should automatically receive all applications made under the ACDMA. This way the Public Trustee will see all the documents and evidence and will be able to get involved if they think there is a problem with the person who wants to represent an adult.

Category D. How adults are assessed for capacity


Tell people about the trained capacity assessors

Under the old law (the Incompetent Persons Act), an adult needed to be examined by two doctors to see if they could make their own decisions or not. These assessments are called capacity assessments.

Under the ACDMA, there are workers other than doctors who can do these assessments. Nurses, social workers, and occupational therapists can assess capacity under the ACDMA now if they have been trained to do so. Doctors and psychologists can still do capacity assessments, too.

Also, under the new law, the adult needs to be assessed only once, not twice.

However, people told the group they are still having a hard time finding someone to do the assessments. Many doctors will not do them. And people do not know they can go to a trained assessor.

 **Recommendation:** Government should make the public more aware that they can choose to go to a trained assessor to get a capacity assessment for the adult who needs help.

Update Form 1

When an adult is having their ability to make decisions assessed, the person doing the assessment follows a form to make sure they are asking all the right questions and assessing all the right things.

Under the ACDMA, that form is called “Form 1.”

People told the group they had problems with Form 1. For example, Form 1 asks the person doing the assessment if the adult was given any support during the assessment, but did not list all the ways a person could be supported.

Form 1 also asks the person doing the assessment if the adult was in good condition to be assessed that day, but doesn't give examples of things that could affect the adult's ability—for example, if the adult had taken any medications, or hadn't slept well, or was hungry. Those things could affect the adult's ability to make decisions.

Finally, there are other laws in the province that use something called a Form 1 and that causes confusion. People don't know which Form 1 to use.

- ▶ **Recommendation:** The form used for capacity assessments should be updated to ensure it is clear and easy to use. It should also have a space to show whether the adult had support during the assessment, and if they were in the best condition to be assessed.
- ▶ **Recommendation:** The form needs a unique name so it won't be confused with other things called Form 1.

Offer education and training on how to give capacity assessments

Under the ACDMA, doctors and psychologists do not have to take any special training to be able to assess adults to see if they can make their own decisions.

However, the group heard from many people that the assessments done by some doctors do not go into enough detail.

Deciding whether an adult can make their own decisions is a complex job. An adult's ability can change from day to day, and from morning to afternoon. The person giving the assessment needs to be careful and thoughtful about how they assess capacity so they are being fair to the adult.

The review the group did of court files showed the same thing. Some reports made by doctors appeared to be done in a hurry and did not have enough detail or explanation.

Many doctors and psychologists are doing a good job, but there is room for improvement.


- ▶ **Recommendation:** There should be a guide on how to give capacity assessments, and there should be more training. This training should include an example of a capacity assessment that has been filled out properly.

Make sure adults having capacity assessments are given support

Adults who are being assessed to see if they can make their own decisions are allowed to have support during the assessment.

This support could be a friend, family member, or even a professional who helps them understand what's going on during the test.

Some adults who are clients of other government departments, such as Community Services, automatically get someone to support them through the capacity test. Other adults need to find their own support.


 **Recommendation:** Government should find ways to make sure all adults having a capacity assessment know they can have support, and get the support they need.

Give assessors guidelines so they will know when to give an adult a capacity assessment

Adults should only be assessed to see if they can make decisions in the areas where they actually need to make decisions. The point is to make sure adults are not being given capacity assessments they do not need.

However, the ACDMA does not have clear rules about when an assessment should happen or not.

The Public Trustee's Office has developed a screening tool to help assessors decide when an assessment is necessary. But for the most part, the law leaves it up to the person doing the assessments to decide if it is needed. That means some adults might be assessed when they don't need to be.


 **Recommendation:** The capacity assessment guide should have a section to help assessors know when a test needs to be given.

Give assessors more information and training on how and when to ask for personal information

When an adult's ability to make decisions is being assessed, they may be asked for some personal information. This could be information about their health, their family, and other government agencies they deal with.

The person giving the assessment is not supposed to ask for any personal information that is not directly related to the reason for the assessment. For example, if the adult is being assessed to see if they can make decisions about their health, the assessor should not ask about the adult's money situation.

Some people told the group they did not think the rules are clear enough to protect the adult's information.


 **Recommendation:** The capacity assessment guide should have a section to help assessors know how and when to ask for information. Assessors should also receive more training about this.

Let assessors share their concerns with the Public Trustee's Office

When a person wants to apply to become a rep for an adult, they need to contact an assessor to have the adult's ability to make decisions assessed.

This means the assessor gets the chance to meet the adult, and the person who wants to be a rep. The assessor can see how the rep and the adult get along—how the rep treats the adult, and the adult's family.

Right now, the assessor doesn't really have a way of reporting that information on the capacity assessment form. If the assessor thinks there may be a problem with the rep, they should be able to put that on the form so the judge will know. That way, the judge can stop the application and the rep will not get to make decisions for the adult.


 **Recommendation:** Government should add a section to the assessment form that lets assessors describe how the rep treats the adult. This information should also be shared with the Public Trustee's Office.

Assessors should tell adults they can have a lawyer


Under the current law, an assessor must tell the adult about their rights when they are having a capacity assessment. They must tell the adult why they are being assessed, and what could happen as a result.

But the current law does not directly say that the adult can have a lawyer with them during the assessment.

It can be difficult for adults to know how to get a lawyer. The person doing the assessment is in a good position to tell the adult they have a right to a lawyer, and how to get one, while doing the assessment.

 **Recommendation:** Capacity assessors should have to tell the adult about their right to a lawyer. The regulations should be changed to make it part of the assessor's job to tell the adult they have the right to a lawyer if they want one. The capacity assessment form should also remind assessors to do this.

Talk to the people who will be affected by the law before making any changes

 **Recommendation:** If big changes will be made to the ACDMA or how people get help using the ACDMA, the group thinks more conversations with the public should happen – especially with the adults most affected by this law.

Category E. How supported decision-making works

Supported decision-making is when an adult gets help to make their own decisions from someone they trust. The person who helps them might be an ACDMA rep or someone else.

Right now, the ACDMA tries to make sure adults have lots of support. For example

- reps can only make decisions that the adult cannot make for themselves. It is not “all or nothing” the way the old law was.
- reps must involve the adult in making a decision as much as possible
- the rep must usually respect the adult’s directions and wishes when making decisions

But the ACDMA does not include supported decision-making. The people who came to the consultations about the ACDMA told the group they think there should be a law to allow for supported-decision making.

What decisions do adults want help with?

Adults said they did not want someone to make all their decisions for them. They said that they wanted someone to help them make decisions for themselves.

Adults told the group the most important decisions they needed help to make were about these things:

- Money – how to spend it and save it
- Health – things like having surgery or getting a COVID vaccine
- Food – what foods to buy
- Work – what kind of work they do
- Where to live – at home, alone, with a friend, in a care facility
- Relationships – with friends or romantic partners

When getting help is good, and not good

Adults told the group they like to get help with decisions for many reasons like these:

- you get more information
- things get explained using words you understand
- you get your questions answered
- you can share ideas


Sometimes it is not good to get help because the person who helps might

- give you too many choices and make you stressed
- be bossy, or abusive, or too controlling
- tell you to make a decision you do not want to make

How supported decision-making works in other parts of Canada

Some provinces already have supported decision-making as part of their laws. Here are three ways of doing it:

- Supported decision-making agreements—this is when the adult chooses a person or people to help them make decisions. The supporter is only allowed to help with the decision, they cannot make it.
- Representation agreements—this is when the adult appoints a rep to help make decisions, or to make the decision for the adult.
- Co-decision-making agreements—this is when a judge chooses a person to work with the adult to make decisions together. Both the adult and the co-decision maker must agree on the decision.

 **Recommendation:** Nova Scotia should consider making supported decision-making part of the law.

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