

Living Well, Planning Well

An Advance Care Planning Resource
for Accessing Your Rights

Fall 2021



It's about wishes.

It's about conversations.

It's how we care for each other.

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SECTION 1:

About this resource

Why is this resource important?

A year after her husband died of heart failure, Ji-woo moved from South Korea to Canada. She wanted to be closer to her daughter Seo-yun and her family. Ji-woo sees how hard Seo-yun and her partner are working. They are managing a business together and caring for their three children. She worries about being a burden on them as she gets older. In the future, her daughter may need to manage her affairs, including her health care. She wants to help her daughter by preparing for this. Her English is strong, but she does not know what is required and she is not sure how or where to find the right information.

When Jeremy finds out his uncle Bart has late-stage throat cancer, he moves in with his uncle to help take care of him. Bart is a quiet man who lives alone, but before he gets too sick he tells Jeremy his wishes for his final days. Bart's home care nurse tells Jeremy that Bart's condition is worsening. She says soon he will not be able to make all his own decisions. Someone else will need to make decisions about his care. This person is Bart's Substitute Decision Maker. Bart has not chosen a Substitute Decision Maker but is clear that he wants Jeremy to take on this role. Neither of them knows what they need to do, and Bart's time is short.

There are times when you may not be able to communicate the kinds of care you want or do not want. There may also be times when you feel that your or a loved one's expressed wishes are not being recognized or followed. There are laws in place in Canada to protect your rights to choose the kinds of care you receive now and in the future.

This resource intends to help you understand your rights and the legal requirements for planning for your future care. The information within this resource is intended as a guideline only and is not legal advice.

Section 2 explains:

- how you can plan for your future health and personal care.
- what the laws in Canada allow for planning and making decisions about your care.

Section 3 outlines the legal requirements within each of the provinces and territories in Canada.¹

You may find this resource helpful if you:

- would like to express your future care wishes to those around you.
- are thinking about choosing someone to make future care decisions on your behalf.
- want to know about your rights to plan and to take part in decisions about your care.
- have recently moved to Canada or to a new province or territory.
- are a loved one or care giver who is interested in learning more.

¹ Nunavut is not included in this list as it does not currently have any legislation for Advance Care Planning and Substitute Decision Making for health and personal care.

How was this resource created?

The Canadian Hospice Palliative Care Association and the BC Centre for Palliative Care developed this resource. An advisory committee of legal and health professionals, patients, and caregivers supported its development. Funding for this resource was provided by the Canadian Bar Association's Law for the Future Fund grant program.

Who created this resource and how do I contact them?

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SECTION 2:

Overview of Advance Care Planning

What is Advance Care Planning?

Advance Care Planning is a process that allows you to plan for your future health and personal care. You should involve the important people in your life in your Advance Care Planning.

Advance Care Planning includes:

- understanding and sharing your values, beliefs, and wishes about your future care.
- choosing who you would like to make decisions about your care if you cannot (your Substitute Decision Makers).

You or your Substitute Decision Makers can use this information during conversations with health care providers to plan an approach to care that reflects your wishes.

Why is Advance Care Planning important?

Advance Care Planning can help:

- clarify your values, beliefs, and wishes and share them with the important people in your life.
- improve your connections and conversations with the important people in your life.
- prepare the people who may need to make decisions about your care later on.
- reduce the chance of the important people in your life disagreeing about your wishes.

Advance Care Planning is one of many kinds of life planning activities you may do in your life. To plan for your future the best you can, you may prepare your will and estate, buy insurance, save money for retirement, and so on. Advance Care Planning is also about preparing for your future.

The Life Planning Model helps to show how Advance Care Planning fits within different planning activities. This model is a general and flexible guide to life planning. Depending on your situation and where you live in Canada, these activities may overlap in different ways. For example:

- your Substitute Decision Makers' decisions about your care may be limited by your financial resources and insurance coverage.
- in some provinces and territories, your Substitute Decision Maker for health care may also be able to make some decisions about:
 - » your legal and financial affairs.
 - » your diet, exercise, and recreational activities.
 - » where you live while you receive care.

88%

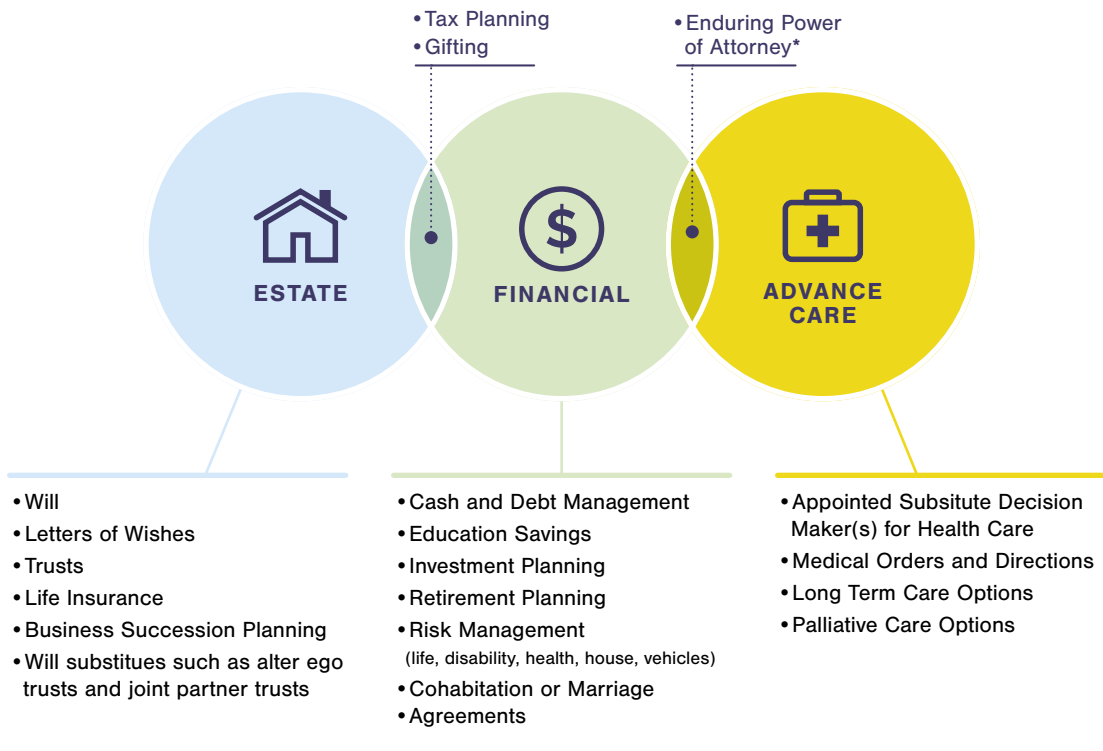
of Canadians think it is important to talk with loved ones about Advance Care Planning, but only

36%

have done so.

CHPCA National Poll, 2019

The Life Planning Model



* The name of the document may vary by province; consult a legal professional for more information.

What are my rights to plan for my future care?

Every province and territory in Canada (except for Nunavut) has laws to help protect your right to plan for your future care by doing Advance Care Planning. These laws vary from place to place, but in general they all outline:

- When and how you can plan for your future care.
- When and how you can choose Substitute Decision Makers.
- What is legally allowed when you plan for your future care.
- How it will be determined you can no longer speak for yourself.
- How your Advance Care Planning will be used when you cannot speak for yourself.

There are also other important laws that may apply to your present and future care. For example:

- The Canadian Constitution recognizes a range of social, cultural, and political rights for First Nations, Inuit, and Métis peoples, which also apply to their health and well-being.
- The Canadian Charter of Rights and Freedoms states that people have the freedom to follow their conscience, religion, thoughts and beliefs, including in situations of health and personal care.
- The Canadian Human Rights Act protects people from being discriminated against, for instance, in the care they receive or do not receive, because of their age, ethnicity, race, religion, ability, marital or family status, sexuality, and/or gender.

Advance Care Planning in 5 steps



Health care preferences and decisions are often informed by a person's social, cultural, and/or religious orientations. You are entitled to **due process**, which means that *all of your rights* defined within Canadian law must be respected.

You do not need a lawyer or notary to plan for your future care. However, they might help you clarify and communicate your values, beliefs, and preferences. They may also help you find the right information and validate legal documents (if needed).

To make it easier for people to access your wishes, you might want to:

- write them down;
- keep copies near you (e.g., in your wallet, on your fridge, or in your car); and
- share them with the people who may be involved in your future care.

In **Section 3** of this resource, you can find a basic introduction to the legal processes and documents required for Advance Care Planning within your province or territory.

How often should I review my Advance Care Planning?

Our circumstances, our goals, and the people around us may change over time. The values, beliefs, and wishes you have shared in the past may no longer reflect your current values, beliefs, and wishes. You should revisit and review them at regular intervals. It is especially important when there is a significant change in your life.

Continue to talk with your Substitute Decision Makers, loved ones, and health care providers about what is more and less important to you. Remind them of your values, beliefs and wishes often, and update them of any changes.

Advance Care Planning is important for accessing your rights. But it does not guarantee you will receive the care you want. Some wishes may not be possible to follow. Some values may need to be traded off to meet the demands of your situation. For example, changes in your health may mean a treatment you wanted before may no longer help you, or may even harm you.

Whatever limits there may be on following your expressed wishes, your rights should never be dismissed or ignored. Decisions about your care must respect the laws that protect your rights and freedoms.

When will my health care providers use my Advance Care Planning?

It is important to share your wishes with your health care providers while you are well. This helps them understand what is important to you. However, they will only use your Advance Care Planning if you lack the **capacity** to provide **informed consent** and decisions need to be made about your care.

Health care providers must receive **informed consent** from you before they can perform health care treatments or tests.

Informed consent means you understand:

- the proposed treatment or test;
- the risks and benefits involved; and
- other treatment options and their risks and benefits.

Health care providers are responsible for providing you with this information. You have the right to consent or refuse consent to health care treatments.

If you have the **capacity** to be involved in decisions about your care, health care providers must ask you for informed consent.

Capacity means you can understand:

- the information that is relevant to a decision about your health care; and
- the likely consequences of the decision.

Your capacity may depend on the decision. You might be able to understand simple health care options and their consequences, but not be able to understand more complex ones.

Your capacity may also change over time. You may lose capacity to make decisions for a short time or a long time. You may regain capacity if you recover from an illness or injury.

If you have reached the age of majority in your province or territory you are entitled to the **presumption of capacity**. This means you are considered to have capacity unless there are reasons to believe otherwise. *Your health care providers should always assume you have capacity.*

If your health care providers believe you may have lost capacity, they must do an assessment. If they determine you do not have capacity, they will refer to your Substitute Decision Makers and your prior expressed wishes *if they have access to them.*

If you regain capacity your health care providers should ask you for your consent for any ongoing or new health care treatment or tests.

Some examples of times you may not have capacity to provide informed consent:

- A severe head injury (e.g., car crash, sports injury, workplace accident)
- Medical treatments involving a coma or general anaesthetic (for example, mechanical ventilation, some surgeries)
- Massive heart attack with a loss of consciousness
- A stroke where thinking, speech or ability to write are affected
- Brain diseases that affect thinking and communication (for example, Dementia, Huntington's, brain tumour)
- Loss of enough blood to make you pass out or affect your brain function (for example, severe internal bleeding, trauma)

Choosing the right person as a Substitute Decision Maker is important. Consider these questions while you decide:

- Will this person serve your best interests when you are not able to speak for yourself?
- Does this person meet the legal requirements? (depends on the province or territory)
- Do you trust this person with your life, comfort and well-being?
- Are you comfortable talking to this person about sensitive and difficult issues?
- Will this person understand your wishes and be willing to speak on your behalf?
- Can this person come to a decision that reflects your wishes and discussions, even with differing opinions from family members and health care providers?

When will my health care providers ask my Substitute Decision Makers for consent?

If you lose the capacity to provide informed consent, your health care providers will contact your Substitute Decision Makers to give informed consent and make decisions about your care.

Your expressed values, wishes and beliefs will help your Substitute Decision Makers and health care providers make decisions about your care that take into account what is most important to you.

Your Substitute Decision Makers may also consult other people in your life to learn about what is important to you and what care you would want.

If your wishes are not known to your Substitute Decision Makers, they must make decisions in your **best interests**. This means they may consider:

- your quality of life.
- how likely your well-being will be improved by the treatment.
- whether the benefit of the treatment is greater than the risk of harm.
- whether less intrusive care would be just as helpful to you.

Your chosen Substitute Decision Makers will not be involved in your care if your health care providers do not know how to contact them or are unable to contact them.

Your Substitute Decision Makers' role may be revoked if they:

- decline to be involved.
- lose their capacity to make health care decisions.
- act against your expressed wishes and/or your best interests.
- were your spouse when you chose them, but you are now separated or divorced.

If you have not chosen a Substitute Decision Maker, their role has been revoked, or they cannot be contacted, your health care providers will need to seek another person to speak on your behalf. Every province and territory has a default list that tells your health care provider who to ask. Who is on the list and the order of the list depends on where you live. See **Section 3** for the list for your province or territory.

What barriers might I encounter to accessing my rights?

There are many ways to express your wishes, seek guidance, and make decisions about your health care. Unfortunately, the law does not always recognize all of these possibilities.

While the law provides you with rights for planning and making decisions about your care, it can also limit how you can do Advance Care Planning, who can be involved, and how it can impact decisions about your care.

Some examples of legal requirements that can be barriers:

WHAT IS THE REQUIREMENT?	WHAT MIGHT BE A REASON FOR IT?	HOW MIGHT THIS BE A BARRIER?
People's expressed wishes may not be respected if they do not follow standard ways of providing health care.	Wishes that do not follow health care standards could possibly harm the person.	Health care standards may not recognize or support people's different needs, values, or goals.
Witnesses or a notary must sign some Advance Care Planning documents.	Having witnesses sign the document can help confirm the document is valid.	Some people don't have someone who could be a witness or cannot afford to pay someone.
People who are below majority age cannot take part in Advance Care Planning and health care decision-making.	Only older adolescents and adults may understand their situation and the consequences of their decisions.	Some younger children and adolescents may be able to show capacity but could be prevented from doing so.
People who lack capacity cannot take part in their own Advance Care Planning and health care decision-making.	A person's capacity can be determined. If you do not have capacity, it may be warranted to lose this right.	Some people who can make decisions or take part in decisions may encounter communication barriers (e.g., language fluency, speech or hearing loss) that are wrongly interpreted as loss of capacity.
If you have not chosen a Substitute Decision Maker and lose capacity, someone will be chosen from a list provided by law. The list usually includes your nearest relatives first.	Your closest relatives may be best suited to know your values, wishes, and beliefs and to make decisions on your behalf.	<p>In some social and cultural contexts, this list will not identify an appropriate person. For example, some people:</p> <ul style="list-style-type: none"> • are not close with their relatives. • have no contactable or living relatives. • have a family of choice that is not reflected in the list. • have a preferred way to choose who will speak on their behalf. <p>Most provinces and territories need them to have been in recent contact with you, and not be in conflict with you. But your health care providers may not know this when choosing a person from the list.</p>

WHAT IS THE REQUIREMENT?	WHAT MIGHT BE A REASON FOR IT?	HOW MIGHT THIS BE A BARRIER?
A person must be your Substitute Decision Maker to be involved in decisions about your care.	Making decisions for another person is an important role that should be limited to only certain people indicated in writing.	In some social and cultural contexts, people may prefer to involve a wider circle of others in decision-making, including family members, community leaders, and/or spiritual or faith advisors.

In the examples above, some legal requirements may restrict certain rights and may not fully reflect the principles of freedom, fairness, and equity in Canadian law. Remember that you are entitled to due process if you feel that any of your rights are not being respected.

General Resources

Speak Up – Advance Care Planning Resource Library:
www.advancereplanning.ca/resource-library/

- Includes information for different provinces and territories
- Includes educational videos, conversation starters, workbooks, decision aids, and more

Speak Up - Online National Interactive Workbook www.myspeakupplan.ca

- An easy way of documenting your wishes
- Can be saved as a digital file that can be shared and printed

SECTION 3:

Regional Summaries

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Alberta

Personal Directives Act, 2000 Adult

Adult Guardianship and Trustee Act, 2008



What legal documents can I use for Advance Care Planning and what can I include in them?

You can use a **Personal Directive** to:

- Provide information and instructions about any personal matters of a non-financial nature.
- Appoint one or more Agents to make decisions about your care, and other personal (non-financial) matters.



What if I have completed a Personal Directive outside of Alberta before moving here?

Your Personal Directive is valid if it meets the requirements described below for a Personal Directive in Alberta.



When can I prepare a Personal Directive?

- If you are 18 years of age or older.
- If you have the capacity to make decisions.



How do I prepare a Personal Directive?

- You must write, date, and sign it.
- With your permission, another person may sign on your behalf. They cannot be your Agents or their spouses.
- Your signature needs one witness. The witness cannot be your spouse, your Agents, or your Agents' spouses.



When will my Personal Directive be used?

It will take effect when you are assessed as having lost the capacity to make personal decisions in areas identified in your personal directive.



How are decisions made about my personal matters if I am assessed as having lost capacity?

If your Personal Directive names an Agent, your health care providers must follow clear, relevant instructions of the Agent.

If your Personal Directive does not name an Agent, or the Agent is unable or unwilling to act, or can not be located, your health care providers must follow any clear instructions in the Personal Directive that are relevant to the decision to be made.

If you do not have a Personal Directive relevant to a decision or a guardian with the authority to make a decision, a health care provider can choose someone (called a “Specific Decision Maker”) to make a decision for you in limited circumstances namely, the decision relates to your health care, or your temporary admission to or discharge from a residential facility.

A Specific Decision Maker usually makes a one-time decision on a specific health care, admission or discharge proposed by the health care provider. There are some types of health care decisions that a Specific Decision Maker cannot make, including decisions where the provision of or withdrawal or withholding of the health care would be likely to result in the imminent death of the adult.



Who can I choose as my Agent?

Your Agent must:

- be 18 years of age or older
- have capacity to make decisions about your care.

Alberta



What decisions can my Agent make?

Your Agent can make any decision about your personal care but cannot make financial decisions. Financial matters are governed by the Powers of Attorney Act.

If you have more than one Agent:

- You can appoint different Agents for different types of decisions.
- You can include instructions for resolving disagreements.
- A decision of the majority of Agents may stand as the decision.
- The first person named may communicate decisions, unless the Agents agree otherwise.
- Their decisions must be guided by:
 - » the instructions in your Personal Directive
 - » any other known wishes, belief, and values if not specified in your Directive
 - » your best interests if your wishes are not known



What decisions can my Agent not make?

- Anything prohibited by law
- Medical assistance in dying
- Delegate their role to another person
- Treatments that are not medically necessary, including research, sterilization, or organ/tissue donation (unless stated otherwise in your Directive)

Where do I go for more information about Advance Care Planning?

Advance Care Planning and Goals of Care Designation – Alberta Health Services:
www.conversationsmatter.ca

Personal Directives – Government of Alberta:
www.alberta.ca/personal-directive.aspx

Office of the Public Guardian and Trustee:
www.alberta.ca/office-public-guardian-trustee.aspx

Centre for Public Legal Education Alberta:
www.cplea.ca/wp-content/uploads/MakingAPersonalDirective.pdf
www.cplea.ca/wp-content/uploads/AdultGuardianshipAndTrusteeAct.pdf



Who might be my Specific Decision Maker?

Health Care Providers may use a default list of nearest relatives (blood relatives and eldest preferred) to identify someone to make decisions about your care if you do not have a Personal Directive relevant to a decision or a guardian with the authority to make a decision. The first person who qualifies on the list may be chosen:

- | | |
|---|--------------------|
| 1. Spouse or adult interdependent partner | 5. Grandparent |
| 2. Son or daughter | 6. Grandchild |
| 3. Parent | 7. Uncle or aunt |
| 4. Brother or sister | 8. Nephew or niece |
| | 9. Public Guardian |

To qualify they must:

- be 18 years of age or older.
- be available, willing and able.
- have been in contact with you in the previous 12 months.
- have knowledge of your wishes, beliefs and values.
- not have a dispute with you that could impact their duties.



What other documents related to Advance Care Planning are in use in Alberta?

- Goals of Care Designation – is a medical order, completed by a member of your health care team, that is used to describe and communicate the general aim or focus of care including the preferred location of that care.
- Tracking record – is used to document the content of Advance Care Planning and Goals of Care Designation conversations and/or decisions by members of your healthcare team.
- You can use a **Supported Decision Making Authorization** to name a supporter (or supporters) to assist you with your own decision making, communicate on your behalf or have access to your personal information.
- You can make a court application to appoint a **Co-Decision Maker** to make decisions together with you.
- Guardianship order – is a court order appointing someone (called “a guardian”) to make personal decisions for an adult who lacks capacity to make them.
- Enduring Power of Attorney – is an important legal document you can use to appoint someone to make financial and legal decisions on your behalf.

British Columbia

Representation Agreement Act, 1996

Health Care (Consent) and
Care Facility (Admission) Act, 1996



What legal documents can I use for Advance Care Planning and what can I include in them?

- You can use an **Advance Directive** to:
 - » provide instructions to give or refuse consent to health care treatments directly to your health care provider.
- You can use a **Representation Agreement (Section 9)** to:
 - » appoint one or more Representatives to make decisions about your health and personal care if you cannot.
- You can use a **Representation Agreement (Section 7)** to:
 - » appoint one of more Representatives to make decisions about your health and personal care if you cannot.
 - » the scope of health and personal care decisions that can be made is more limited than in a Section 9 Representation Agreement,
 - » these are most commonly used where you are already experiencing a level of incapability and cannot prepare a Section 9 Agreement, which requires a higher level of understanding.



What if I have completed documents outside of British Columbia before moving here?

The laws do not state if or when documents from outside British Columbia will be recognized as an Advance Directive.

Your document from outside British Columbia is valid as a Representation Agreement if:

- You made it while you lived in the United States of America, the United Kingdom, Australia, New Zealand, or any other province in Canada except Yukon.
- It meets the legal requirements of the location where you made it, certified by a lawyer from that location confirming it is valid.



When can I prepare an Advance Directive or Representation Agreement (Section 9)?

- If you are 19 years of age or older.
- If you have the capacity to make decisions.

If you do not have capacity to make decisions, you may still be able to make another kind of Representation Agreement, called a Section 7.



How do I prepare an Advance Directive or Representation Agreement (Section 9)?

- You must write, date, and sign it.
- With your permission, another person may sign on your behalf. They cannot be your witnesses, health or financial service providers who receive pay, or under the age of majority.
- Your signature needs two witnesses, or one witness if they are a lawyer or notary.



When will my Advance Directive or Representation Agreement be used?

It will take effect if you lose the capacity to make decisions about your care.



Who might make decisions about my care if I cannot?

If you have made an Advance Directive, your health care providers may follow this Directive if it is relevant and specific to the care you are receiving.

If you have named one or more Representatives in a Representation Agreement, they may make decisions about your care.

If you have both an Advance Directive and a Representation Agreement, unless you say otherwise in your Representation Agreement, your Representatives may still be asked about any instructions you have put in your Advance Directive.

If you have not named a Representative or made an Advance Directive, someone may be chosen as your **Temporary Substitute Decision Maker** to make decisions about your care.



Who can I choose as my Representative?

Your Representative must be:

- 19 years or older.
- able and willing to make decision about your care.

Your Representative cannot be a person who is paid to provide personal care or health services for you (there are some limited exceptions for family members).

British Columbia

**What decisions can my Representative make?**

Your Representatives can make decisions relating to your personal care or health care. Their decisions must be guided by:

- the instructions in your Directive.
- any other known wishes, belief, and values if not specified in your Advance Directive.
- your best interests if your wishes are not known.

If you choose more than one Representative:

- You can assign each one the same or different areas of health care and personal care for which they have authority.
- If they have the same area of authority, they must agree on a decision unless the Representation Agreement states otherwise.

**What decisions can my Representative not make?**

- Anything prohibited by law
- Medical assistance in dying
- Delegate their role to another person
- Treatments that are not medically necessary, including research, sterilization, or organ/tissue donation (unless stated otherwise in your Agreement)

Where do I go for more information about Advance Care Planning?

BC Centre for Palliative Care –
Advance Care Planning Resources:
www.bc-cpc.ca/cpc/acp-resources/

Fraser Health – Advance Care Planning:
www.fraserhealth.ca/acp or call Toll free: 1-877-825-5034

Government of British Columbia – Advance Care Planning:
www2.gov.bc.ca/gov/content/family-social-supports/seniors/health-safety/advance-care-planning

NIDUS Personal Planning Resource Centre and Registry –
Representation Agreements: www.nidus.ca/?page_id=46

People's Law School - Planning for Your Future:
www.peopleslawschool.ca/everyday-legal-problems/planning-your-future/start-your-planning-here

Public Guardian and Trustee of British Columbia:
www.trustee.bc.ca/services/services-to-adults/Pages/personal-planning.aspx

Speak Up - Interactive Advance Care Planning BC Workbook:
www.speak-upinbc.ca/

**Who might be my Temporary Substitute Decision Maker?**

Your Temporary Substitute Decision Maker (TSDM) is identified by your health care provider from a default list of close relatives. The first person who qualifies on the list may be chosen:

1. Spouse (including common law and same gender. No restriction on length of time together)
2. Child
3. Parent
4. Brother or sister
5. Grandparent
6. Grandchild
7. Anyone else related by birth or adoption
8. Close friend
9. A person immediately related by marriage
10. Another person appointed by Public Guardian and Trustee

To qualify they must:

- be 19 years of age or older.
- be willing, capable, and available to make decisions.
- have no dispute with you.
- have been in contact with you in the past year.

**What decisions can my Temporary Substitute Decision Maker make?**

Your Temporary Substitute Decision maker can make decisions relating to your health care.

Their decisions must be guided by:

- any information they can get from you at the time.
- any wishes or instructions you expressed while capable.
- your known beliefs and values if your wishes or instructions are not known.
- your best interests if your beliefs and values are not known.

Your Temporary Substitute Decision Maker can only refuse health care necessary to preserve life if:

- there is agreement among your health care providers that the decision is medically appropriate, and
- your Temporary Substitute Decision Maker has made the decision according to the requirements above.

Manitoba

Health Care Directives Act, 1992



What legal documents can I use for Advance Care Planning and what can I include in them?

You can use a **Health Care Directive** to:

- Express your health care decisions and give guidance about your wishes.
- Appoint one or more **Proxies** to make decisions about your care if you cannot.



What if I have completed documents outside of Manitoba before moving here?

Your document is valid if it meets the requirements described below for a Health Care Directive in Manitoba.



When can I prepare a Health Care Directive?

- If you are 16 years of age or older.
- If you have the capacity to make decisions.



How do I prepare a Health Care Directive?

- You must write, date, and sign it.
- With your permission, another person may sign it on your behalf. This person cannot be your Proxy or their spouse. They must sign it in front of you and a witness.



When will my Health Care Directive be used?

It will take effect if you lose the capacity to make decisions about your care.



Who might make decisions about my care if I cannot?

If you have named one or more Proxies in your Health Care Directive, they may make decisions about your care.

If you have not named a Proxy or completed a Health Care Directive, someone may be chosen from a default list of nearest relatives to make decisions about your care.



Who can I choose as my Proxy?

Your Proxy must:

- be at least 18 years old.
- be available, willing, mentally competent and capable of making health care decisions.

Manitoba

**What decisions can my Proxy make?**

Your proxies can consent and withdraw consent to any health care decision.

Their decisions must be guided by:

- the health care decisions expressed in your Directive
- more recently known wishes, belief, and values, even if they are different from those expressed in your Directive
- your best interests if your wishes are not known

If you have more than one Proxy, you can choose whether they make decisions:

- successively – they may be chosen in the order you have named them. This is the default if you do not choose; or
- jointly – over half of them must agree on a decision. If they are unable to agree, the person named first may make the decision.

**Who is on the default list of nearest relatives?**

Health Care Providers may use a default list of nearest relatives (blood relatives and eldest preferred) to identify someone to make decisions about your care if you have not named a Proxy. The first person who qualifies on the list may be chosen:

1. Spouse or common-law partner
2. Son or daughter
3. Parent
4. Brother or sister
5. Grandparent
6. Grandchild
7. Uncle or aunt
8. Nephew or niece
9. The Public Guardian and Trustee

To qualify they must at a minimum meet the same criteria above for choosing a Proxy. The laws do not state any difference in authority for health care decisions between a Proxy and someone chosen from the default list.

**What decisions can my Proxy not make?**

- Anything prohibited by law
- Medical assistance in dying
- Delegate their role to another person
- Medical treatments for primary purposes of research, the removal of tissues for transplant, education or research or sterilization that is not medically necessary (unless stated otherwise in your Health Care Directive)

Where do I go for more information about Advance Care Planning?

Manitoba Health, Health Care Directives (Living Will) information: www.gov.mb.ca/health/livingwill.html

Cancer Care Manitoba: www.cancercare.mb.ca/Treatments/advance-care-planning

Winnipeg Regional Health Care - Advance Care Planning: www.wrha.mb.ca/acp

Office of the Public Guardian and Trustee: www.gov.mb.ca/publictrustee/



New Brunswick

Infirm Persons Act, 1973

Mental Health Act, 1973

Advance Health Care Directives Act, 2016



What documents can I use for Advance Care Planning and what can I include in them?

You can use an **Enduring Power of Attorney for Personal Care** to:

- Name one or more Attorneys (and alternate Attorneys) who may make decisions about your personal care, in the event you cannot make those decisions on your own;
- Express your instructions regarding decisions relating to your personal care (including but not limited to health care decisions)
- Share general statements about your beliefs, values and wishes; and/or
- State who should be notified when your Attorney begins to act on your behalf.

You can also use a **Health Care Directive** to:

- Give instructions to health care providers, with respect to health care decisions to be made in the event of incapacity



What if I have completed documents outside of New Brunswick before moving to New Brunswick?

A document made outside of New Brunswick is deemed to be a valid **Enduring Power of Attorney for Personal Care**, if it meets all three of the following criteria:

- The document gives another person(s) the authority to act in relation to personal care;
- The person(s) to whom the authority is given may exercise the authority when you (i.e. the Grantor) lacks capacity; and
- The document is valid according to the law(s) in the place where it was made.



When can I prepare an Enduring Power of Attorney for Personal Care?

You can make an Enduring Power of Attorney for Personal Care as long as:

- You are 19 years of age or older; and
- You have legal capacity to make an Enduring Power of Attorney for Personal Care (i.e. it is not determined that you lack capacity).



How do I prepare an Enduring Power of Attorney for Personal Care and/or a Health Care Directive?

An **Enduring Power of Attorney for Personal Care** is valid if it meets all of the following criteria:

- It must be in writing;
- It must be signed and dated by you (i.e. the Grantor) or, *if you are physically unable to sign*, it may be signed and dated on your behalf, by another person who is acting at your direction and in your presence; and
- It must be signed and dated by (or on behalf of) you in the presence of:
 - » A lawyer who is a practising member of the Law Society of New Brunswick (and be accompanied by the lawyer's declaration); or
 - » Two (2) witnesses, both of whom are 19 years of age or older and are not the spouse, common-law partner or child of the Attorney (and be signed by both witnesses)

A **Health Care Directive** must be in writing but is not required to be in any particular form.

New Brunswick



When will my Enduring Power of Attorney for Personal Care be used?

An Enduring Power of Attorney for Personal Care will only take effect if/when you lose the capacity to make decisions about your own personal care, and will only be in effect for as long as you continue to lack capacity.



What does it mean to have capacity to make decisions about my personal care?

You have capacity to make a decisions about your personal care if:

- You understand the information that is relevant to the decisions that has to be made; and
- You appreciate the reasonably foreseeable consequences of the decision

A person is presumed to have capacity unless it is determined otherwise.



How are decisions made about my personal matters if I do not have capacity to make my own decisions?

If you have named an Attorney in an **Enduring Power of Attorney for Personal Care**, the named Attorney(s) may make decisions about your personal care.

If you have made a **Health Care Directive**, your health care providers may follow the Health Care Directive if it is relevant and specific to the health care you are receiving.

If you have **both** an Enduring Power of Attorney for Personal Care and a Health Care Directive and there is an inconsistency between the provisions of the two documents, the most recent document will apply.

If you have not named an Attorney in Enduring Power of Attorney for Personal Care, someone may be chosen from the **default list of nearest relatives**, for the purposes of substitute consent to medical treatment that is not routine clinical medical treatment or other psychiatric treatment.



Who can I choose as my Attorney?

You should choose an Attorney who is:

- 19 years of age or older; and
- Available, willing and capable of making decisions about your personal care.

The following persons *cannot* act as your Attorney:

- A person who has been convicted of an offence involving dishonesty, *unless* the Enduring Power of Attorney for Personal Care states that you are aware of the conviction; or
- A person who provides health care services or support services to you (i.e. the grantor) for compensation, unless the person is a spouse, common-law partner or relative.

If you name an Attorney that is not 19 years of age or older, they can only act when they become an adult (i.e. 19 years old).



What decisions can my Attorney make?

Your Attorney has authority with respect to all matters relating to your Personal Care, unless otherwise specified in you Enduring Power of Attorney:

- Personal care means any matters relating to your well-being, including your *health care*, diet, clothing, accommodations, support services, education, employment, recreational and social activities.
- Health care decisions include consent, refusal, or withdrawal of consent to any therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose (including course of treatment).

When making a decision on your behalf, your Attorney(s) must consult with you (if it is reasonable to do so), and:

- Make the decision in accordance with any relevant instructions given by you (the Grantor) when you had capacity (including instructions left in your Enduring Power of Attorney for Personal Care).
- In the absence of any instructions, your Attorney must make the decision in accordance with your current wishes (if they are reasonable).
- If they are unable to determine what decision you would make, your Attorney must make the decision that they believe is in your best interest.

New Brunswick



What is my Attorney *not* able to do?

Your Attorney cannot:

- Do anything that is prohibited by law or omit to do anything required by law; or
- Make a decision with regards to medical assistance in dying.

Unless specified in the Enduring Power of Attorney, your Attorney cannot:

- Delegate their authority to another person; or
- Be compensated for acting as Attorney (but is entitled to be reimbursed for reasonable expenses incurred).



Who is on the default list of nearest relatives?

If you have not named an Attorney in an Enduring Power of Attorney for Personal Care, or if your Attorney is unable or unwilling to act/continue to act, health care providers may refer to the following list, in order to identify someone to provide substitute consent for non-routine treatment. The list is in order of priority, such that the first category that applies is considered the “nearest relative”:

1. Spouse
2. Child(ren)
3. Parent(s) or lawful authority standing in the place of a parent
4. Sibling(s)
5. Any other next of kin

To qualify, the nearest relative must be 16 years of age or older, be mentally competent to give or refuse consent and be available/ willing to make the decision.

Where do I go for more information about Advance Care Planning?

Public Legal Education and Information Service of New Brunswick:

Powers of Attorney: www.legal-info-legale.nb.ca/en/powers_of_attorney


New Brunswick Legal Aid Services Commission:

Public Trustee Services: www.legalaid-aidejuridique-nb.ca/public-trustee-services/getting-help/




Newfoundland and Labrador

Advance Health Care Directives Act, 1995


 **What legal documents can I use for Advance Care Planning and what can I include in them?**

You can use a **Advance Health Care Directive** to:


- Share general principles and values about how you would like to be cared for.
- Give instructions for your future health care treatment.
- Give instructions for what to do with your body after you have died.
- Appoint one or more Substitute Decision Makers to make decisions about your care if you cannot.

 **What if I have completed documents outside of Newfoundland/Labrador before moving here?**


The laws do not state if or when documents from outside the Newfoundland/Labrador will be recognized.

 **When can I prepare an Advance Health Care Directive?**


- If you are 16 years of age or older
- If you have the capacity to make health care decisions

 **How do I prepare an Advance Health Care Directive?**

- You must write, date, and sign it.
- With your permission, another person may sign it on your behalf. This person cannot be your Substitute Decision Makers or their spouses.
- Your signature needs two witnesses. The witnesses cannot be your Substitute Decision Makers or their spouses.

 **When will my Advance Health Care Directive be used?**


It will take effect if you lose the capacity to make decisions about your care.

 **Who will make decisions about my care if I cannot?**

If you have made an Advance Health Care Directive, your health care providers may follow this Directive if it is relevant and specific to the care you are receiving. It may be used as consent for care while you lack capacity.

If you have named a Substitute Decision Maker in your Advance Health Care Directive, they may make decisions about your care.

If you have not named a Substitute Decision Maker or completed an Advance Health Care Directive, someone may be chosen from the **default list of nearest relatives** to make decisions about your care.

 **Who can I choose as my Substitute Decision Maker?**

Your Substitute Decision Maker must:

- be at least 19 years old.
- be available, willing and capable of making health care decisions.
- have been in contact with you in the last year (although this can be waived by a court application).

Newfoundland and Labrador



What decisions can my Substitute Decision Maker make?

Your Substitute Decision Maker can consent, withdraw consent or refuse consent for any health care decision. Their decisions must be guided by:

- the instructions in your Advance Health Care Directive.
- your values and wishes
- your best interests if your values and wishes are not known.

If you have more than one Substitute Decision Maker, you can choose whether they make decisions:

- successively – they may be chosen in the order you have named them. This is the default if you do not choose; or
- jointly – over half of them must agree on a decision. When there are two, they must both agree.



What decisions can my Substitute Decision Maker not make?

- Anything prohibited by law
- Medical assistance in dying
- Delegate their role to another person
- Treatments that are not medically necessary, including research, sterilization, or organ/tissue donation (unless stated otherwise in your Directive)



Who is on the default list of nearest relatives?

Health Care Providers use the default list of nearest relatives to identify someone to make decisions about your care if you have not named a Substitute Decision Maker. The first person who qualifies on the list may be chosen:

1. Spouse
2. Children
3. Parents
4. Siblings
5. Grandparents
6. Grandchildren
7. Uncles or aunts
8. Nephews or nieces
9. Another relative
10. The person's health care provider

Your Specific Decision Maker cannot make decisions if you have made a Personal Directive about that decision.

Where do I go for more information about Advance Care Planning?

Government of Newfoundland and Labrador – How to Make an Advance Health Care Directive:
www.cssd.gov.nl.ca/publications/pdf/seniors/ahcd_booklet.pdf

Eastern Health – Advance Care Planning Policy:
www.easternhealth.ca/OurServices.aspx?d=2&id=2255&p=202

Public Legal Information Association of Newfoundland and Labrador: www.publiclegalinfo.com

Coalition of Persons with Disabilities – Advance Health Care Directives and Substitute Decision Makers Booklet:
seniorsnl.ca/publication/advance-health-care-directives-substitute-decision-makers-booklet-cod-nl/

Office of the Public Trustee: www.justice.gov.nl.ca/just/departement/branches/division/trustee.html



Northwest Territories

Personal Directives Act, 2006



What legal documents can I use for Advance Care Planning and what can I include in them?

You can use a **Personal Directive** to:

- Share information on your values, beliefs and wishes.
- Provide instructions for giving or refusing consent to specific kinds of health care.
- Specify where you would like to live and / or who you would like to live with.
- Appoint one or more Agents to make decisions about your care if you cannot.



What if I have completed documents outside of Northwest Territories before moving here?

Your document is valid if it meets the requirements of either:

- A Personal Directive in Northwest Territories;
- The province or territory where you made it, certified as valid by a lawyer who practices in that location.



When can I prepare a Personal Directive?

- If you are 19 years of age or older.
- If you understand the nature and effect of a Personal Directive.



How do I prepare a Personal Directive?

- You must date and sign it.
- With your permission, another person may sign it on your behalf. This person cannot be your Agents or their spouses. They must sign it in front of you and a witness.
- Your Agents must date and sign it.
- Your Directive needs one witness, who must sign the Directive as well. The witness cannot be your spouse, the person who signed on your behalf, or one of your Agents or their spouses.



When will my Personal Directive be used?

It will take effect if you lose the capacity to make decisions about a matter specified in your Directive.



Who will make decisions about my care if I cannot?

If you have made a Personal Directive, your health care providers may follow the instructions in the Directive, including consent (or refusal of consent) to certain services. It may be used as consent for care while you lack capacity.

If you have named an Agent in your Personal Directive, they may make decisions about your care where you have not specified your wishes.

If you have not named an Agent or completed a Personal Directive, someone may be chosen from the **default list of nearest relatives** to make decisions about your care.

Northwest Territories



Who can I choose as an Agent?

Your agent must be:

- at least 19 years old.
- available, willing and capable of making health care decisions.



What decisions can my Agent make?

Your Agent can make decisions respecting your health care and other personal matters. This includes providing or refusing consent for health or personal services. Their decisions must follow:

- the instructions in your Directive
- any other known wishes, belief, and values if not specified in your Directive
- your best interests if your wishes are not known

If you have more than one Agent, they may act:

- successively – they may be chosen in the order you have named them. This is the default if you do not choose; or
- jointly – over half of them must agree on a decision. When there are two, they must both agree. You can choose whether they make decisions

If they are to act jointly:

- A decision of the majority of Agents may stand as the decision, and if this is unsuccessful the first Agent named in the Directive may make the decision.
- You may state another way to resolve disagreements in your Directive.



What decisions is my Agent not able to make?

- Anything prohibited by law
- Medical assistance in dying
- Delegate their role to another person (unless stated otherwise in your Directive)
- Treatments that are not medically necessary, including research, psychosurgery, sterilization, or removal of tissues for transplantation, medical education, etc. (unless stated otherwise in your personal Directive)



Who is on the default list of nearest relatives?

Health Care Providers use the default list of nearest relatives to identify someone to make decisions about your care if you have not named an Agent, or to inform them of certain matters related to your care. The first person who qualifies on the list may be chosen. If there are two or more relatives of the same category, the eldest will be chosen:

1. Spouse
2. Children
3. Parents
4. Siblings
5. Grandparents
6. Grandchildren
7. Uncles or aunts
8. Nephews or nieces

To qualify they must meet the criteria above for choosing an Agent.

Where do I go for more information about Advance Care Planning?

Northwest Territories Health and Social Services – Personal Directives:

www.hss.gov.nt.ca/en/services/personal-directives

Alzheimer's Society Alberta and Northwest Territories – Planning for the Future:

alzheimer.ca/en/ab/Living-with-dementia/Planning-for-the-future

Office of the Public Guardian: www.hss.gov.nt.ca/en/services/office-public-guardian



Nova Scotia

Medical Consent Act, 1989
Personal Directives Act, 2008



What legal documents can I use for Advance Care Planning and what can I include in them?

You can use a **Personal Directive** to:

- Provide instructions or wishes about personal care, but not financial matters.
- Appoint one or more **Delegates** to make decisions about your care if you cannot.



What if I have completed documents outside of Nova Scotia before moving here?

Your document is valid if it meets the requirements of either:

- A Personal Directive in Nova Scotia;
- The location where you made it.



When can I prepare a Personal Directive?

- If you are 19 years of age or older.
- If you have the capacity to make decisions.



How do I prepare a Personal Directive?

- You must write, date and sign it.
- With your permission, another person may sign it on your behalf. This person cannot be your Delegates or their spouses. They must sign it in front of you and a witness.
- Your signature needs one witness. The witness cannot be one of your Delegates or their spouses.

If you cannot sign it, you can direct someone else to sign it on your behalf. This person, or their spouse, cannot be the witness.



When will my Personal Directive be used?

It will take effect if you lose the capacity to make decisions about your care.



Who will make decisions about my care if I cannot?

If you have made a Personal Directive, your health care providers may follow this Directive if it is relevant and specific to the care you are receiving.

If you have named a Delegate in your Personal Directive, they may make decisions about your care.

If you have not named a Delegate or completed a Personal Directive, someone may be chosen as your **Statutory Decision Maker** to make decisions about your care.



Who can I choose as my Delegate?

Your Delegates must:

- Be at least 19 years of age (unless they are your spouse)
- Be capable, willing, and available to speak on your behalf
- Not be providing personal care services for compensation unless they are your spouse or relative, or are authorized to provide these services in your Directive.

Nova Scotia



What decisions can my Delegate make?

Your Delegates can make decisions about your personal care that are not financial matters (for example, health care, housing, recreation, support services).

Their decisions must be guided by:

- the instructions in your Personal Directive
- your values and wishes
- your best interests if your values and wishes are not known.

If you have more than one Delegate, they must be assigned to different decisions.



What decisions can my Delegate not make?

- Anything prohibited by law
- Medical assistance in dying
- Delegate their role to another person
- Treatments that are not medically necessary, including research, sterilization, or organ/tissue donation (unless stated otherwise in your Directive)



Who might be my Statutory Decision Maker?

Your Statutory Decision Maker is identified by your health care provider from your hierarchy of nearest adult relatives. The first person who qualifies on the list may be chosen:

1. Spouse (married, domestic partner, or common law partner for at least 1 year)
2. Child
3. Parent
4. Person who stands in the place of a parent
5. Sibling
6. Grandparent
7. Grandchild
8. Uncle or aunt
9. Nephew or niece
10. Other relative
11. Public Trustee's office

To qualify they must:

- Meet the criteria above for choosing a Delegate.
- Have been in contact with you in the previous 12 months.
- Know of no one higher on the hierarchy who is able and willing to take on this role.

Your Statutory Decision Maker can make decisions about your health care, placement in a continuing care home, and receiving home care.

Where do I go for more information about Advance Care Planning?

Government of Nova Scotia – Personal Directives in Nova Scotia: novascotia.ca/just/pda/

Nova Scotia Hospice Palliative Care Association – Advance Care Planning: nshpca.ca/resources/

Nova Scotia Public Trustee: novascotia.ca/just/pto/

Legal Information Society of Nova Scotia (LISNS) <https://www.legalinfo.org/>



Ontario

Substitute Decisions Act, 1992
 Health Care Consent Act, 1996
 Long Term Care Homes Act, 2007



What legal documents can I use for Advance Care Planning and what can I include in them?

You can use a **Power of Attorney for Personal Care** to:

- appoint one or more Attorneys to make decisions about your care if you cannot.

If you live in a long-term care home, you can create a **Plan of Care** to:

- document your planned care, goals of care, and instructions to staff while you live in the care home. This plan can include any aspect of care: medical care, support services, nutrition, recreation, social engagement, and/or religious or spiritual practice.



What if I have completed documents outside of Ontario before moving here?

Your document is valid if it meets the requirements of either:

- A Power of Attorney for Personal Care in Ontario;
- The location where you made it.
- A lawyer can help determine whether documents completed outside of Ontario will be valid in Ontario.



When can I prepare a Power of Attorney for Personal Care?

- If you are 16 years of age or older.
- If you understand whether the proposed attorney has a genuine concern for your welfare
- If you understand that the proposed attorney may need to make decisions for you.



How do I prepare a Power of Attorney for Personal Care?

- You must write, sign and date it.
- The law does not state if another person can sign it on your behalf.
- Your signature needs two witnesses. The witnesses must be 18 years of age or older and cannot be:
 - » your spouse or partner,
 - » your attorney or their spouse or partner
 - » your child or a person who you treat as your child
 - » a person whose property is under Guardianship or who has a Guardian of the person
- A lawyer can assist in preparing a Power of Attorney for Personal Care.
- The two witnesses may be physically present with you, or may witness your signature by means of audio-visual communication technology (in this case, one of the witnesses must be a lawyer or a paralegal licensed by the Law Society of Ontario). There are specific rules for witnessing that must be followed precisely to ensure your Power of Attorney for Personal Care is valid.



When will my Power of Attorney for Personal Care be used?

- It will take effect when you lose the capacity to make decisions about your care.
- Capacity to make decisions about personal care is determined based on the criteria in the Substitute Decisions Act.



Who will make decisions about my care if I cannot?

If you have named an Attorney in your Power of Attorney for Personal Care, they may make decisions about your care.

If you have not named an Attorney, someone may be chosen as your **Substitute Decision Maker** to make decisions about your care.

Ontario



Who can I choose as my Attorney?

Your Attorney for Personal care must be:

- at least 16 years old
- available, willing and capable of making health care decisions.

They cannot be someone who provides health care, residential, social, training or support services to you for compensation, unless they are your spouse, partner or relative.



What decisions can my Attorney make?

Your Attorney can make decisions relating to your health care, nutrition, hygiene, living arrangements, shelter, safety, and any litigation or settle claim other than relating to your property of Guardianship. They can access personal information such as health records.

Their decisions must be guided by:

- your values and wishes
- your best interests if your values and wishes are not known.

If there is more than one Attorney, they may act jointly unless you state otherwise in the Power of Attorney for Personal Care.



What decisions is my Attorney not able to make?

- Anything prohibited by law
- Medical assistance in dying
- Delegate their role to another person



Who might be my Substitute Decision Maker?

Your Substitute Decision Maker is identified by your health care provider from a default list of close relatives. The first person who qualifies on the list may be chosen:

1. Court – appointed Guardian of the Person
2. Attorney for Personal Care
3. A representative appointed by the Ontario Consent and Capacity Board
4. Spouse or Partner
5. A child or parent, or a children's aid society or other person who can lawfully give or refuse consent in the place of the parent
6. Parent with right of access only
7. Siblings
8. Any other relatives
9. The Office of the Public Guardian and Trustee.

Unlike an Attorney, your Substitute Decision Maker can only make decisions about your health care treatments, which can include admitting you to a facility in order to receive the treatments.

Where do I go for more information about Advance Care Planning?

Ontario Consent and Capacity Board: www.ccboard.on.ca/scripts/english/index.asp

Office of the Public Guardian and Trustee: www.attorneygeneral.jus.gov.on.ca/english/family/pgt/

Speak Up Ontario: www.speakupontario.ca/

Speak Up Ontario – Interactive Advance Care Planning Workbook: www.makingmywishesknown.ca/

Speak Up Ontario – The Substitute Decision Maker Hierarchy:

www.speakupontario.ca/resource/the-substitute-decision-maker-hierarchy/



Prince Edward Island

Consent to Treatment and Health Care Directives Act, 1988



What legal documents can I use for Advance Care Planning and what can I include in them?

You can use a **Health Care Directive** to:

- Provide health care directions and wishes about treatments, procedures, or medications in specific situations set out in the Directive.
- Appoint one or more **Proxies** to make decisions about your care if you cannot.
- Specify an event or condition upon which the Directive becomes effective.



What if I have completed documents outside of Prince Edward Island before moving here?

Your document is valid if it meets the requirements of either:

- A Health Care Directive in Prince Edward Island;
- The location where you made them.



When can I prepare a Health Care Directive?

- If you are 16 years of age or older.
- If you have capacity to make health care decisions,



How do I prepare a Health Care Directive?

- You must write, date, and sign it.
- With your permission, another person may sign it on your behalf. They must sign it in front of you and a witness. Your Proxies and their spouses are not permitted to sign on your behalf or sign as a witness.



When will my Health Care Directive be used?

It will take effect when you lose the capacity to make decisions about your care.



Who will make decisions about my care if I cannot?

If you have made a Health Care Directive, your health care providers may follow this Directive if it is relevant and specific to the care you are receiving. It may be used as consent for care while you lack capacity.

If you have named a Proxy in your Health Care Directive, they may make decisions about your care.

If you have not named a Proxy or completed a Health Care Directive, someone may be chosen from a **default list of nearest relatives and friends** to make decisions about your care.

Prince Edward Island



Who can I choose as a Proxy?

Your Proxy must:

- be at least 16 years old,
- be available, willing, and capable of making health care decisions on your behalf, and
- have knowledge of your situation and have been in recent contact with you.



What decisions can my Proxy make?

Your Proxies can consent and withdraw consent for any health care decision. Their decisions must be guided by:

- any instructions in your Health Care Directive that clearly relate to the decision or situation
- more recently stated wishes that relate to the decision or situation, even if they are different than those expressed in your Health Care Directive
- your values and wishes
- your best interests if your values and wishes are not known.

If you have more than one Proxy, you can choose whether they make decisions:

- successively – they may be chosen in the order you have named them. This is the default if you do not choose; or
- jointly – over half of them must agree on a decision.

If they are to act jointly:

- A decision of the majority of Proxies may stand as the decision, and if this is unsuccessful the first Proxy named in the Directive may make the decision.
- You may state another way to resolve disagreements.



What decisions can my Proxy not make?

- Anything prohibited by law,
- Medical assistance in dying,
- Delegation of their role to another person
- Treatments that are not medically necessary including research, sterilization, abortion, or electric shock therapy.



Who is on the default list of nearest relatives and friends?

Health Care Providers use the default list of nearest relatives to identify someone to make decisions about your care if you have not named a Proxy. The first person who qualifies on the list may be chosen:

1. Guardian, if given the authority to consent to or refuse treatment
2. Spouse
3. Son or daughter, or parent
4. Brother or sister
5. Trusted friend who knows your wishes
6. Any other relative
7. The Public Guardian

Except for the Public Guardian, to qualify they must meet the same criteria for choosing a Proxy.

Where do I go for more information about Advance Care Planning?

Health PEI – Advance Care Planning:

www.princeedwardisland.ca/en/information/health-pe/advance-care-planning

Health PEI - Advance Care Planning PEI Workbook: www.advancereplanningpei.ca

Community Legal Information Association of PEI – Health and the Law: www.cliapei.ca/content/page/publications_health/

Office of the Public Trustee:

www.princeedwardisland.ca/en/information/justice-and-public-safety/public-trustee-public-and-official-guardian



Quebec

Civil Code of Québec, 1991
Act Respecting End-of-Life Care, 2015



What legal documents can I use for Advance Care Planning and what can I include in them?

You can use an **Advance Medical Directive** to:

- accept or refuse the following treatments:
 - » CPR to restart your heart and breathing
 - » A ventilator to assist in breathing
 - » Dialysis to keep your kidneys working
 - » Artificial feeding and hydration (e.g., by a tube)
 - » Forced feeding and hydration.

Advance Medical Directives can only be used in one of these situations:

- You are suffering from a serious and incurable illness and are at the end of life;
- You are in a coma or permanently unconscious and there is no chance of regaining consciousness;
- You are suffering from dementia that severely affects your capacity to make health care decisions and there is no chance of recovery

You can use a **Protection Mandate** to:

- appoint one or more **Mandataries** to make decisions about your physical and moral well-being if you cannot.



What if I have completed documents outside of Quebec before moving here?

The laws do not state if or when documents from outside Quebec will be recognized.



When can I prepare an Advance Medical Directive or Protection Mandate?

You can prepare an Advance Medical Directive or a Protection of the Person Mandate if:

- you are 18 years of age or older.
- you have capacity to make health care decisions.



How do I prepare an Advance Medical Directive or Protection Mandate?

An Advance Medical Directive must be given:

- in the presence of two witnesses on the form issued by the Quebec Health Insurance Board (RAMQ) or;
- by **notarial act *en minute*** (that is, an act that a notary must keep in their records and use to issue copies)

A Protection Mandate is made:

- by notarial act *en minute* or;
- in the presence of two witnesses who will not benefit from the mandate and who can confirm that you are of sound mind.

Both documents must be signed by you or another person on your behalf who is of majority age and capable of making decisions.



When will my Advance Medical Directive be used?

It will take effect when you lose the capacity to make decisions about your care in the situations described above.

Quebec

**Who will make decisions about my care if I cannot?**

If you have made an Advance Medical Directive, your health care providers must follow this Directive if it is relevant and specific to the care you are receiving. It may be used as consent for care while you lack capacity.

If you have named a Mandatary in a Protection Mandate, they may make decisions about your care after they have followed these steps for the Mandate to come into effect:

- Get a copy of the Mandate and confirm that it is the most recent one you created
- Get a medical and psychosocial assessment of your capacity by a physician and a social worker
- Make a request to the court to have the Mandate take effect—a process called homologation.

If you have both an Advance Medical Directive and a Protection Mandate, your Advance Medical Directive may have priority.

If you have not named a Mandatary or completed an Advance Medical Directive, someone may be chosen from a default list of persons identified in the Civil Code of Québec to make decisions about your care.

**Who can I choose as a Mandatary?**

Your Mandatary must be:

- 18 years or older.
- available, willing and capable of making health care decisions.

**What decisions can my Mandatary make?**

In the absence of an Advance Medical Directive, your Mandatary can consent or withdraw consent for any health care decision and can make decisions about your moral and physical well-being. These decisions could include where you live, what you eat and drink, what activities you engage in, and what legal procedures you participate in.

Their decisions must be guided by:

- the instructions that clearly relate to the situation
- your values and wishes
- your best interests if your values and wishes are not known.

If you have chosen more than one Mandatary, you can assign them different powers and obligations.

**What decisions can my Mandatary not make?**

- Anything prohibited by law
- Medical assistance in dying
- Delegate their role to another person
- Research that is not beneficial to your well-being

**Who is on the default list of decision makers?**

Health Care Providers use the default list to identify someone to make decisions about your care. The first person who qualifies on the list may be chosen:

1. Mandatary, tutor, or public curator
2. Married, civil union or de facto spouse;
3. A close relative
4. A person who shows a special interest in you

Where do I go for more information about Advance Care Planning?

Government du Québec – Directives médicales anticipées / Advance Medical Directives:

www.quebec.ca/sante/systeme-et-services-de-sante/soins-de-fin-de-vie/directives-medicales-anticipees/

Educaloi

Protection Mandate: www.educaloi.qc.ca/en/capsules/protection-mandates-naming-someone-act-you

Advance Medical Directives: www.educaloi.qc.ca/en/capsules/advance-medical-directives

Curateur public Québec: www.curateur.gouv.qc.ca/cura/en/curateur/index.html



Saskatchewan

Health Care Directives and
Substitute Health Care Decisions Makers Act, 1997



What legal documents can I use for Advance Care Planning and what can I include in them?

You can use a **Health Care Directive** to:

- Give guidance about your wishes, and directions for health care in specific situations.
- Appoint a Proxy to make decisions about your care if you cannot.



What if I have completed documents outside of Saskatchewan before moving here?

Your document is valid if it complies with the requirements described below for a Health Care Directive in Saskatchewan.



When can I prepare a Health Care Directive?

- If you are 16 years of age or older
- If you have the capacity to make health care decisions



How do I prepare a Health Care Directive?

- You must write, date, and sign it.
- With your permission, another person may sign it on your behalf. They must sign it in front of you and a witness. Your Proxies and their spouses are not permitted to sign on your behalf or sign as a witness.



When will my Health Care Directive be used?

It will take effect when you lose the capacity to make decisions about your care.



Who will make decisions about my care if I cannot?

If you have made a Health Care Directive, your health care providers may follow this Directive if it is relevant and specific to the care you are receiving. It may be used as consent for care while you lack capacity.

If you have named a Proxy in your Health Care Directive, they may make decisions about your care.

If you have not named a Proxy or completed a Health Care Directive, someone may be chosen from the **default list of nearest relatives** to make decisions about your care.



Who can I choose as my Proxy?

Your proxy must:

- be at least 18 years old.
- be available, willing and capable of making health care decisions.

Saskatchewan



What decisions can my Proxy make?

Your Proxies can consent, withdraw consent or refuse consent to any health care decision. Their decisions must be guided by:

- instructions that clearly relate to the situation
- your values and wishes
- your best interests if your values and wishes are not known.

If you have more than one Proxy, you can choose whether they make decisions:

- successively – they may be chosen in the order you have named them. This is default if you do not choose; or
- jointly – over half of them must agree on a decision. If they are unable to agree, the person named first may make the decision.

If they are to act jointly:

- A decision of the majority of Proxies may stand as the decision, and if this is unsuccessful the first Proxy named in the Directive may make the decision.
- You may state another way to resolve disagreements.



What decisions can my Proxy not make?

- Anything prohibited by law,
- Medical assistance in dying,
- Delegation of their role to another person
- Treatments that are not medically necessary including research, sterilization, abortion, or electric shock therapy.



Who is on the default list of nearest relatives?

Health Care Providers use the default list of nearest relatives (eldest preferred) to identify someone to make decisions about your care if you have not named a Proxy. The first person who qualifies on the list may be chosen:

1. Spouse, cohabitant, or partner in a relationship of some permanence
2. Son or daughter
3. Parent or legal custodian
4. Brother or sister
5. Grandparent
6. Grandchild
7. Uncle or aunt
8. Nephew or niece
9. Agreement of two health care providers

To qualify they must meet the criteria above for choosing a Proxy.

Where do I go for more information about Advance Care Planning?

Government of Saskatchewan – Planning Ahead:

www.advancecareplanning.ca/wp-content/uploads/2015/09/2012_02_29_Planning-Ahead-Final1.pdf

Saskatchewan Health Authority – Advance Care Planning:

www.rqhealth.ca/department/advance-care-planning/advance-care-planning

Public Legal Information of Saskatchewan: www.plea.org/

Office of the Public Guardian and Trustee: www.saskatchewan.ca/government/government-structure/boards-commissions-and-agencies/office-of-the-public-guardian-and-trustee



Yukon

Care Consent Act, 2003



What legal documents can I use for Advance Care Planning and what can I include in them?

You can use a **Directive** to:

- Appoint one or more **Proxies** to make decisions about your health care, location of care, and personal assistance.
- Give guidance to your Proxies for making decisions.



What if I have completed documents outside of Yukon before moving here?

Your document is valid if it meets the requirements described below for a Directive in Yukon.



When can I prepare a Directive?

- If you are 16 years of age or older.
- If you have the capacity to make decisions.



How do I prepare a Directive?

Your wishes may be expressed in writing, orally or in any other manner.

To appoint a Proxy:

- You must write, date and sign it. With your permission, another person may sign on your behalf.
- Your Proxies must sign it.
- Your signature needs two witnesses. The witnesses must be 19 years or older.
- Your Proxies and their spouses are not permitted to sign on your behalf or sign as a witness.



When will my Directive be used?

It will take effect when you lose the capacity to make decisions about your health care.



Who will make decisions about my health care if I cannot?

If you have named a Proxy in your Directive, they may make decisions about your health care.

If you have not named a Proxy or completed a Directive, someone will be chosen as your **Substitute Decision Maker** to make decisions about your health care.



Who can I choose as my Proxy?

Your Proxy must:

- be 19 years or older (unless they are your spouse).
- be capable, willing and available to speak on your behalf.
- have been in contact with you in the previous 12 months.
- not be in conflict with you.

Yukon



What decisions can my Proxy make?

Your Proxy can make decisions about your health care, location of care, and personal assistance.

Their decision must be guided by:

- your wishes, beliefs and values
- your best interests if your wishes, beliefs and values are not known.

If you have named more than one Proxy, any one of them can make decisions for you unless your Directive says otherwise.



What decisions can my Proxy not make?

- Anything prohibited by law,
- Medical assistance in dying,
- Delegation of their role to another person,
- Sterilization with no therapeutic benefit,
- Financial decisions.



Who might be my Substitute Decision Maker?

Your Substitute Decision Maker is identified by your health care provider from a default list of close relatives. The first person who qualifies on the list will be chosen:

1. Spouse (married, cohabited for at least one year unless either under 19)
2. Child
3. Parent
4. Grandparent
5. Brother or sister
6. Any other relative
7. A close friend (must give care provider a signed statement)
8. Person's health care provider (and 2 other health care providers for major health care)

To qualify they must meet the same criteria for choosing a Proxy.

Where do I go for more information about Advance Care Planning?

Government of Yukon – Adult Protection and Decision-Making: hss.gov.yk.ca/adultdecisionmaking.php

Yukon Capability and Consent Board: www.yukoncapabilityandconsentboard.ca/

Office of the Public Guardian and Trustee: www.publicguardianandtrustee.gov.yk.ca/



Advance Care Planning
Planification préalable des soins



CANADA



Canadian Hospice Palliative Care Association
Association canadienne de soins palliatifs

Annex D, Saint-Vincent Hospital
60 Cambridge Street North
Ottawa, ON K1R 7A5

Tel: 613-241-3663
Toll Free: 1-800-668-2785
Fax: 613-241-3986
Email: info@advancecareplanning