

## Decision Making Capacity Assessment Key Terms and Considerations

**Introduction:** An adult's decision-making ability or capacity is dependent on both the complexity of the decision-making process and their ability to engage in that process. This key terms and considerations document was created for healthcare providers participating in the process of capacity assessment with the goal of sharing common phrases and terms that are regularly used during this process.

In creating this resource there are a few instances where 'process' for decision-making capacity is touched on to capture the term. Please refer to the [Government of Alberta Acts and Regulations](#) directly for further clarification or understanding of the terms or process contained within.

Connect with your site or program's Capacity Assessment Resource or Mentoring team for assistance with process or related questions.

The terminology is primarily taken from the [Government of Alberta legal acts](#) that govern our clinical practice.

Those Acts are:

[Powers of Attorney Act](#) (POA) – allows for adult Albertans to create an Enduring Power of Attorney to name people (attorney) to make decisions in financial matters for them.

[Personal Directives Act](#) (PDA) – allows adult Albertans to create a Personal Directive to name people (agent) to make decisions and describes personal (non-financial) areas in which they want decisions made for them.

[Adult Guardianship and Trusteeship Act](#) (AGTA) – details the legal process for granting powers of surrogate decision making to a designated adult. The continuum of decision-making is designed to allow the adults as much autonomy as possible. Options include supported decision-making, specific decision-making, emergency decision-making, co-decision making, guardianship and trusteeship. Some of these require a court proceeding.

In Alberta, an **adult** is a person 18 years of age or older. It is assumed that all adults have the capacity to make their own decisions until proven otherwise.

### Key Terms:

[Advanced Care Planning](#) (ACP) is the process of thinking, talking about, and documenting your wishes for health care in the event that you become incapable of consenting to or refusing treatment.

**Goals of Care Designation** is a medical order used to describe and communicate the general aim or focus of care including the preferred location of that care. Identifying Goals of Care is not a trigger for a capacity assessment. In the event that an adult who lacks capacity is unable to contribute to a conversation about goals of care, decision-making capacity assessment is not initiated. Please refer to [Advance Care Planning Goals of Care Designation Procedure](#).

**Capacity** under the AGTA and PDA is a person's ability to understand information relevant to making a decision and appreciate what could happen if they choose one option over another, or if they choose to do nothing. It is assumed that all adults have capacity to make their own decisions.

- **Decision-making Capacity** – further describes the term capacity
- **Decision-making Capacity Assessment** - further describes capacity assessment

### **Areas of decision-making authority**

([AGTA](#) Part 1 Section 1(bb) ; [PDA](#) Part 1 Section 1 (l)):

Making decisions regarding the following personal (or financial) matters. This may also be referred to as decision-making domains.

Healthcare	Accommodation	Choice of associates
Social / leisure activities	Education/vocational training	Employment
Legal matters ( <i>non-financial</i> )	Financial	Other ( <i>specify</i> )

Each area of decision-making authority must be assessed separately to determine if an adult is able to continue to make decisions in that area. Loss of capacity to make decisions in one area/domain does not assume loss of capacity in any other.

An Enduring Power of Attorney ([POA Section 5\(1\)](#)) can come into effect one of two ways depending on how it is written

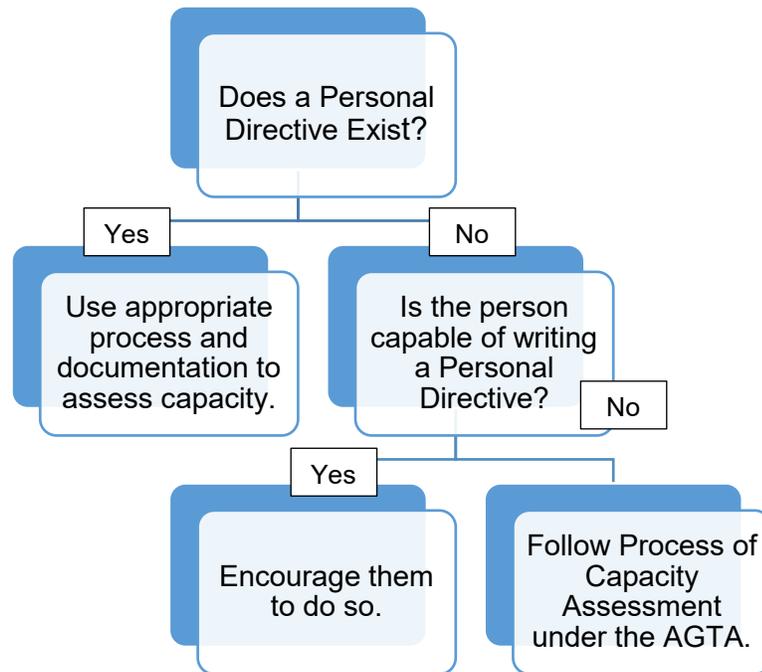
- Immediately upon signing OR
- When the person is deemed to be lacking capacity at some time in the future

This type of Power of Attorney is '**enduring**' as its power continues after the **donor**, the person who wrote the document, loses capacity. Instructions for assessment of the adult's capacity will be written in the document itself and must be reviewed before initiating a capacity assessment.

A [Personal Directive](#) is a written document that appoints a person to make personal, non-financial decisions on another person's behalf, should they one day no longer have capacity to do so. The person who writes a Personal Directive is called the **maker**.

- The **Maker** ([PDA](#) Part 1 Section 1 (h)) can choose one or more persons they trust to make personal decisions for them in the future due to illness or injury. The person(s) chosen is called an **agent**.
- An **Agent** ([PDA](#) Part 1 Section 1 (a)) is a person named in a personal directive to make personal decisions on behalf of the maker of a personal directive.

The process to follow when assessing capacity:



### **Assessment of Capacity under the Personal Directives Act (PDA Part 2 Section 9 (2))**

Two scenarios for initiating a capacity assessment:

1. A maker may name an adult in their personal directive (possibly the agent) to initiate the assessment. They must consult with a physician/psychologist. Both the named person and the physician/psychologist must complete the required documentation (Schedule 2).
2. No one is named in the personal directive to assess the adult's capacity (or the named person is unable or unwilling to complete the assessment) – a physician /psychologist initiates the assessment in consultation with an additional health care provider (physician, NP, RN, RPN, OT, SW). Each service provider must complete the required documentation (Schedule 3).

The [Alberta Government Office of the Public Guardian & Trustee Forms section](#) has the schedules that are required to be completed.

### **Guiding Ethical Principles** as per the **Adult Guardianship and Trustee Act (AGTA Part 1 Section 2)** four guiding principles (embedded in the legislation):

- The adult is presumed to have capacity and is able to make decisions until the contrary is determined. The onus is on the assessor to show that the adult no longer has capacity to make decisions in a specific domain.
- The ability to communicate verbally is not a determination of capacity - the adult is entitled to communicate by any means that enables them to be understood.
- Focus on the autonomy of the adult with a less intrusive and less restrictive approach.
- Decision making that focuses on the best interests of the adult and how the adult would have made the decision if capable.

**Process of Capacity Assessment** is a term used to describe the process in its entirety. A capacity assessment *is a process* where a person's ability to make personal and/or financial

decisions is evaluated by a professional. The emphasis is on the quality of the decision-making process, not the actual course of action in which a person engages. It involves screening, problem-solving, and possibly a capacity assessment (capacity interview). Emphasis is placed on seeking the least intrusive/least restrictive approach to mitigate the risks associated with the reasons for assessment. Removal of decision-making rights is a last resort. View the care map.

**Reasons for Assessment:** A formal capacity assessment may be necessary if the reason for assessment meets the following:

- An event or circumstance which potentially places a person or others at risk.
- Seems to be caused by impaired decision-making which necessitates investigation, problem solving (and possibly action) on the part of a health care professional.

**Initial Assessment:** When the question arises as to an adult's ability to make a decision, reasons for assessment are identified and are explored to determine their validity and attempts are made to solve the problems by less intrusive measures. Any temporary or reversible medical conditions are also addressed during this stage. This part of the assessment process occurs *prior* to conducting a capacity interview and may result in no longer requiring a capacity interview.

**Capacity Assessment** (this term is not specifically defined in the act. There is a process outlined in the AGTA regulations – Part 1 [Section 3](#) and [Section 4](#); PDA regulations [Sections 7-11](#)) is a process where a person's ability to make personal and /or financial decisions is evaluated by a regulated health care professional as outlined in the applicable legislative act. A capacity assessment is completed when there is reason to believe the adult no longer has the ability to make their own decisions and allowing the adult to do so will result in unintended harm to self and /or others. The capacity assessor meets with the adult and completes a capacity interview to determine the degree to which they can make decisions in different areas of life (domains). See 'Areas of Decision-making authority'.

**Capacity Interview** refers to the final piece of the process, sometimes referred to as a Capacity Assessment or Decision-Making Capacity Assessment.

**Designated Capacity Assessor (DCA)** (defined in [Sections 6 & 7](#) of the AGTA regulations) is an Alberta Government Ministry of Justice and Solicitor General designation given upon successful completion of the education course conducted by the Office of the Public Guardian and Trustee. This ministerial designation only permits capacity assessments for decision making options under the AGTA.

The regulation are as follows:

- 7(1) The following persons are designated as capacity assessors:
- a) a person who is registered as a medical practitioner under the Medical Profession Act;
  - b) a psychologist who is a regulated member of the College of Alberta Psychologists under the health Professions Act
- 7(2) The Minister may designate a person as a capacity assessor if the person
- a) is a regulated member of a college of a health profession listed in section 6(c) to (f), specifically Registered Nurses (including Nurse Practitioners), Registered Psychiatric Nurses, Occupational Therapists, Social Workers
  - b) has successfully completed a course for capacity assessors referred to in section 8,

c) and meets any other requirements set by the Minister

**Capacity Assessment Report (CAR)** is a report completed under [Section 102](#) of the Adult Guardian and Trusteeship Act. The Ministerial Regulation prescribes the forms for the capacity assessment reports that per regulation 5 'a capacity assessment report must be in the form prescribed by the Minister and must contain the information required in the form'.

[Form 3](#) Capacity assessments conducted for co-decision-making applications.

[Form 4](#) Capacity assessments conducted for guardianship and trusteeship applications

[Form 10](#) Capacity assessments under section 96 of the AGTA when the assessment done by a health care provider for specific decision-making ([Form 6](#)) **is disputed** (from the guide for capacity assessors)

A **Guardian** ([AGTA](#) Part 1 Section 1 (p), [AGTA](#) Part 2 Section 34) is a person appointed by the court who has legal authority and responsibility to make personal (non-financial) decisions for an adult who lacks capacity to make decisions about personal matters. These are decisions such as where the person will live, with whom to associate, health care, employment and social activities and legal matters (non-financial). If an adult has a personal directive, they do not require a guardian.

A **Trustee** ([AGTA](#) Part 1 Section 1 (rr)) is a person appointed by the court who has legal authority and responsibility to make financial decisions for an adult who is unable to make decisions about income, expenses, debts, real estate, investments, and other assets.

A **Represented Adult** ([AGTA](#) Part 1 1(hh)) is an adult who is the subject of a guardianship or trusteeship order.

**Guardianship:** A court ordered process providing legal decision-making authority to a guardian to make personal decisions in specified areas of decision-making authority (health care or employment for example) for an adult found to no longer be able to make decisions for themselves in that area.

**Trusteeship:** a court ordered process providing legal decision-making authority to a trustee to make decisions about financial matters on the adult's behalf. There is no continuum of capacity for decisions about financial matters.

**Emergency Decision-making** ([AGTA](#) Part 2 Section 101): Provides a physician with legal authority to make a treatment decision when an adult needs emergency health care to

- preserve the adult's life,
- prevent serious mental or physical harm, or
- alleviate severe pain

even if the adult cannot provide consent. Where practical, the physician shall consult with a second physician or registered nurse confirming that health care is necessary, and the adult is not able to provide consent.

**Co-decision making** ([AGTA](#) Part 2 Section 13) is a court ordered process and is an option if an adult's ability to make personal decisions is significantly impaired, but they can make decisions with appropriate guidance and good support. The adult who needs support must agree to the

appointment of a co-decision maker. The adult does not lose authority to make their own decisions instead they share that authority with their co-decision-maker.

**Specific decision-making (SDM)** ([AGTA](#) part 3 Section 87, 89 (1)) is an option where a health care provider (Physician or Nurse Practitioner) can choose one of the adult's nearest relatives to make a one-time, time-sensitive, decision about health care and / or temporary admission to or discharge from a residential care facility in the event that the adult has lost the capacity to make that decision for themselves. The health care professional chooses a relative from the ranked list and completes Form 6.

The AGTA defines **nearest relative** ([AGTA](#) Part 1 Section 1 (x)) by means of a ranked list. Relatives of the whole blood being preferred to relatives of the same description of the half-blood and the elder or eldest of two or more relatives regardless of gender:

- spouse or adult interdependent partner
- adult son or daughter
- father or mother
- adult brother or sister
- grandfather or grandmother
- adult grandson or granddaughter
- adult uncle or aunt
- adult nephew or niece

**Supported decision making** ([AGTA](#) Part 2 Section 4) is an option for an adult who is capable of making their own decisions and may have times that they might want support. This lets the person give their 'supporter' legal authority to –

- Access relevant personal information about themselves (e.g. health care records)
- Think through a decision with you
- Communicate a decision for you

**Acronyms:**

AGTA	Adult Guardianship and Trusteeship Act
CAPW	Capacity Assessment Process Worksheet
CAR	Capacity Assessment Report
DMCA	Decision Making Capacity Assessment
EPOA	Enduring Power of Attorney
GOC/ACP	Goals of Care / Advanced Care Plan
OPGT	Office of the Public Guardian and Trustee
POA	Powers of Attorney Act

**Site / program teams may be called:**

CARP	Capacity Assessment Resource person
DMCT	Decision-Making Capacity Team
M-R Team	Mentor-Resource Team