

Mental Capacity

Mental capacity is:

- *the ability to understand information that relates to making a decision, and*
- *the ability to appreciate the reasonably foreseeable consequences of making or not making the decision.*

While an adult has capacity, they can make all personal decisions and financial decisions for themselves. They can also appoint others to make decisions for them, for when they lose capacity.

If you lose capacity, no one has a legal right to make financial or personal decisions for you unless:

- you have a valid legal document appointing an alternative decision-maker, or
- someone has a court order allowing them to make decisions for you.

The Spectrum

Legally, mental capacity is black or white – either you are capable or you are not. You must have mental capacity to sign legal documents, such as an Enduring Power of Attorney, a Personal Directive or a Will.

In day-to-day life, capacity is measured on a spectrum. This means there is a range of different options, from having full capacity to having some capacity to having no capacity. A person can have capacity to make some decisions but not to make other decisions. It depends on the type of decision. For example, the capacity needed to decide where to invest money is different from the capacity needed to decide on taking a crafting class.



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A person's capacity can change suddenly or over time. It can happen suddenly if you are in an accident that leaves you in a coma. In this state, you cannot make financial or health care decisions for yourself. Losing capacity can also happen slowly over time, for example, if you are living with dementia.

Capacity may also change throughout the day or day by day. On some days, a person may need a bit of help but may still be able to make most decisions. Other days, they may not be able to make any decisions.

A person's capacity can change due to many things, such as:

- a medical condition
- stress and anxiety from difficult situations, such as the death of a family member
- the effects of medication or forgetting to take medication
- changing blood sugar or blood pressure levels
- alcohol or drug use mixed with illness or medication

Assessing Capacity

Lawyers

If you are signing legal documents, the lawyer assesses whether you have mental capacity to sign the documents. They might ask you questions to make sure you understand what you are signing. They can only decide on your capacity at that very moment. Lawyers cannot sign documents saying you have, or have lost, capacity.

Doctors

Doctors can give an opinion on your mental capacity. For example, a doctor can sign a Declaration of Incapacity form to activate your Personal Directive. A doctor can also sign a document saying a person is incapable to activate an Enduring Power of Attorney, if the document requires a doctor's opinion.

Capacity Assessors

Capacity assessors are professionals certified by the Alberta government to conduct capacity assessments. These professionals include:

- medical doctors
- psychologists
- registered nurses
- registered psychiatric nurses and mental deficiency nurses
- occupational therapists
- social workers

Capacity assessments are assessments that determine an adult's cognitive and functional capacity. The *Adult Guardianship and Trusteeship Act* sets out the law on capacity assessments and capacity assessors.

You can find more information on mental capacity and planning for the future at www.cplea.ca/planning-for-the-future

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Other publications related to this topic that may interest you include:

- Making a Will
- Making a Personal Directive
- General Powers of Attorney
- Adult Guardianship and Trusteeship Act
- Making an Enduring Power of Attorney
- Planning for Incapacity
- Medical Assistance in Dying

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