EXECUTIVE SUMMARY

Upon the request of the Attorney General of Manitoba, the Manitoba Law Reform Commission ("the Commission") reviewed the state of the law regarding assisted decision-making to consider whether there is a need for legislative reform.[1]

On March 27, 2025, the Commission released a consultation paper titled Assisted Decision-Making Agreements. The consultation paper examined the current state of the law on assisted decision-making in Manitoba and other jurisdictions and invited readers to comment on the issues for discussion. Upon review of the law and consideration of the feedback and commentary received, the Commission does not, at this time, recommend significant legislative reform to formalize assisted decision-making agreements. However, there may be some benefit in developing a non-legislative template or guidance document, grounded in the existing recognition of assisted decision-making in section 6 of *ALIDA*, that could be used consistently across a range of circumstances.

A. Fundamental Principles

The ability to make independent decisions is widely recognized as a fundamental right. While people with disabilities are presumed to have capacity to make decisions, The United Nations Convention on the Rights of Persons with Disabilities (CRPD) contemplates assisted decision-making arrangements as having a place in decision-making for individuals with some limitations.

Assisted decision-making (ADM) is a model in which adults retain legal authority over their decisions while receiving assistance from trusted supporters. Support may involve gathering information, interpreting and evaluating options, and communicating decisions. Unlike substitute decision-making, decision-making authority remains with the adult.

While assisted decisions in Manitoba, being informal, can occasionally be "messy" (as described by one commenter), it is essential to recognize that the presumption of capacity includes the ability to make decisions. With that fundamental principle at the forefront, it must follow that individual

[1] Letter from the Minister of Justice and Attorney General of Manitoba to the Manitoba Law Reform Commission (April 5, 2024).

independence and autonomy be paramount, ahead of convenience or even the perfection of the outcomes of decisions.

B. Existing Legislation Meets Most Needs

The Commission did not identify substantial gaps in the law. To the extent that individuals and families encounter practical challenges in implementing decision-making, the Commission views those issues as attributable more to the practical execution and implementation of existing legal tools than to shortcomings in existing law and legislation.

For individuals who have adequate capacity to make decisions regarding their financial and property matters and wish to appoint someone to effectively act as their agent while they continue to have capacity and even after they lose capacity, an enduring power of attorney made in accordance with *The Powers of Attorney Act*, with its formal execution requirements and accompanying safeguards, should remain the standard for financial and property matters. In an age where fraud and identity theft run rampant, enabling easy access to an individual's banking information, for example, carries undue risk of abuse for vulnerable individuals. For matters related to medical care, *The Health Care Directives Act* already allows individuals to set out their wishes in a health care directive and to appoint a proxy with the right to be provided with all the information necessary to make informed health care decisions on their behalf. The health care directives can be executed with minimal formality.

The law in Manitoba, as it currently stands, does not prohibit or prevent assisted decision-making arrangements. *The Adults Living with an Intellectual Disability Act* (*ALIDA*) provides a process for appointing substitute decision-makers. Amendments to the Act in 2023 also recognized that assisted decision-making "*should be respected and recognized as an important means of enhancing the adult's self-determination, independence and dignity*" (s. 6(2)) and that substitute decision-making should be invoked only as a last resort, when an adult living with an intellectual disability needs decisions to be made and is unable to make these decisions by themselves or with the involvement of members of their support network.

C. Potential Practical Improvement

To the extent that some practical assisted decision-making areas pose challenges, there may be merit in creating a template that provides a useful framework and point of reference. Developing

a recognizable template would add a level of consistency and formality to what are currently informal arrangements, making it more likely that institutions (other than financial institutions) and organizations will understand and accept the document when presented. Any such template should make clear that it is not intended to replace an enduring power of attorney for financial or property matters, nor to authorize an assistant to conduct banking transactions, manage property, sign financial documents, or otherwise act on behalf of the adult. Where financial or property authority is required, the Commission's view is that the enduring power of attorney remains the appropriate instrument because of its formal execution requirements and safeguards.

Additionally, by incorporating a variable scope with a list of possible areas of assistance that can be included or excluded at the time the agreement is made, a person who requires support with some decisions but not others can indicate this clearly. Ideally, the agreement would remain flexible, taking into account the assisted person's needs. However, an expiry date should be set to ensure the agreement is reviewed regularly and continues to meet the needs of the assisted person, or to reflect changes in circumstances, such as loss of capacity.

D. Legislation in Other Provinces

Several provinces across Canada, including British Columbia, Quebec, New Brunswick and Yukon, have passed legislation to formalize the use of assisted decision-making agreements. The Commission consulted and invited feedback from jurisdictions across the country and received limited responses. Ultimately, the Commission compared the varied existing legislation and considered which, if any, provisions found elsewhere could be adopted by Manitoba to improve the legal decision-making process for Manitobans.

E. Conclusion

The Commission does not view existing legislation as substantially deficient. There may be some benefit in developing a non-legislative framework, template, or guidance document for assisted decision-making agreements, consistent with the recognition already provided for in section 6 of *ALIDA*. Such a tool would be intended as a practical supplement to the existing law, not as a new statutory regime or as a recommendation for legislative amendment.