



# Planning for Incapacity

## 5 Tips for Dealing with Substitute Decision Makers

### Tip 1: Have an Incapacity Plan

#### Plan Your Estate and Incapacity Differently



No two plans are alike, but they deal with common topics. Consider:

- Who will be your substitute decision maker (SDM) or makers? You can appoint Powers of Attorney for your medical decisions and your property (wealth) decisions.
- How would you want people to investigate your capacity to determine if a substitute should step in?
- Imagine situations your SDM will have to face. What would you want to tell your SDMs to guide their decisions?

#### Potential consequences of having no plan:

1. No choice
2. No quick decisions can be made – long wait periods for court approvals
3. No predictability at the time of your incapacity



### Tip 2: Make Your Network Aware of Your Plan

**Professionals are often disconnected from the process** – requiring costly and time-consuming resources to:

- **Identify** a document or resolve conflicting documents
- **Validate** if it met the required formalities or not
- Determine if this is a **fraudulent** request being made or not
- **Know when** to use a Substitute Decision Making document (e.g. PoA)



### Tip 3: Witnesses to Your Appointments Matter

#### Witnesses are Critical to Ensure Validity of Plan/Change

Check for:

- Prohibited witnesses (relation to a SDM or Decision Maker)
- Confirm decision-making capacity to sign a Document
  - Legal practitioner
  - Capacity assessor vs. evaluator
  - Adult (i.e. neighbour)
  - Notary



## Tip 4: Establish Incapacity Boundaries

### Proactive Interventions:

- When is the SDM expected to seek **professional help**?
- Who will carry out the assessment?
- What **information can be exchanged** your SDM and your Network while investigating incapacity?
- When do you expect your plan to change from a health or a financial point of view?
- How can the SDMs exchange important information regarding potential incapacity?



## Tip 5: Track Changes & Engage Your Network

Important to track changes over time:

### Changes in Understanding

1. Memory concerns
2. Difficulty learning new concepts
3. Difficulty expressing themselves or speaking

### Changes in Appreciation

1. Missing obvious risks or benefits
2. Difficulty making a choice

### Changes in the types of decisions made

Changes in health (physical or mental); social network; living arrangements or circumstances.



*Your network often has valuable perspective regarding changes in decision-making over time.*

Created in collaboration with  **Capacity Clinic**

**Capacity Clinic** is a group of multidisciplinary experts/practitioners providing assessments and/or resources to help identify incapacity with more confidence. Capacity Clinic has developed screening and assessment modules to help people work through these sensitive conversations. Frequently Capacity Clinic is retained to provide assessments with complex medical, social and/or legal circumstances for the courts, law firms, advisors or families looking to activate/appoint their Substitute Decision Makers.

National Bank Financial - Wealth Management (NBFWM) is a division of National Bank Financial Inc. (NBF), as well as a trademark owned by National Bank of Canada (NBC) that is used under license by NBF. NBF is a member of the Canadian Investment Regulatory Organization (CIRO) and the Canadian Investor Protection Fund (CIPF), and is a wholly-owned subsidiary of NBC, a public company listed on the Toronto Stock Exchange (TSX: NA). The information contained herein has been prepared by Andrew Froese, a Wealth Advisor at NBF. The particulars contained herein were obtained from sources we believe to be reliable but are not guaranteed by us and may be incomplete. The opinions expressed are based upon our analysis and interpretation of these particulars and are not to be construed as a solicitation or offer to buy or sell the securities mentioned herein. The opinions expressed do not necessarily reflect those of NBF.