



CROSS-PROVINCIAL CAPACITY LEGISLATION CHART

PROVINCE	LEGISLATION	TYPE OF DECISIONAL CAPACITY	Definition of "capacity/capable"?
ALBERTA	<i>Personal Directives Act</i> , RSA 2000, c P-6	Decisions dealing with "personal matters" matter of a non-financial nature that relates to an individual's person and without limitation includes: health care; accommodation; with whom the person may live and associate; participation in social, educational and employment activities; legal matter; any other matter prescribed by the regulations;	Defines "capacity" as: "the ability to understand the information that is relevant to the making of a personal decision and the ability to appreciate the reasonably foreseeable consequences of the decision."
		Capacity to Grant Personal Directive: S. 3(1) Any person who is at least 18 years of age and understands the nature and effect of a personal directive may make a personal directive.	

PROVINCE	LEGISLATION	TYPE OF DECISIONAL CAPACITY	Definition of “capacity/capable”?
		(2) A person who is at least 18 years of age is presumed to understand the nature and effect of a personal directive.	
	<i>Powers of Attorney Act, RSA 2000, c P-20, s.2(1)-(4),</i>	Decisions to grant or revoke enduring power of attorney.	No definition of “capacity”
		Capacity to Grant an Enduring Power of Attorney: s. 3 An enduring power of attorney is void if, at the date of its execution, the donor is mentally incapable of understanding the nature and effect of the enduring power of attorney. ¹	
	<i>Public Trustee Act, SA 2004, c P-44.1, s. 24(2)</i>	The Public Trustee may act: “as personal representative of a deceased person; as trustee of any	No definition of “capacity”

¹ See also, *Midtdal v Pohl*, 2014 ABQB 646 at para 90, *Re K; Re F*, [1988] 1 ALL ER 538 (Ch D) at 361(d), *Perie v Perie*, 2017 ABQB 104 at para 29.

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		trust or to hold or administer property in any other fiduciary capacity (including on behalf of incapacitated persons); to protect the property or estate of minors and unborn persons, and; in any capacity in which the Public Trustee is authorized to act (i) by an order of the Court, or (ii) under this or any other Act.”	
	<i>Adult Guardianship and Trusteeship Act</i> , SA 2008, c. A-4.2, s. 46(2) & (5)	<p>Decisions with respect to personal or financial matters.</p> <p>Governs supported decision-making, co-decision making, guardianships and trusteeships.</p> <p>Designated “capacity assessors” under the regulations.</p>	“capacity” means, in respect of the making of a decision about a matter, the ability to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of (i) a decision, and (ii) a failure to make a decision.

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	<i>Mental Health Act</i> , RSA 2000, c M-13	Governs admission and detention in a facility.	No definition of “capacity”. “mental disorder” means a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs (i) judgment, (ii) behaviour, (iii) capacity to recognize reality, or (iv) ability to meet the ordinary demands of life.
	<i>Limitations Act</i> , RSA 2000 c L-12	Governs the limitation periods to commence a lawsuit and when that period will be “tolled” or suspended when a person is “under a disability”.	1(h) A “person under disability” means (i) a represented adult as defined in the <i>Adult Guardianship and Trusteeship Act</i> or a person in respect of whom a certificate of incapacity is in effect under the <i>Public Trustee Act</i> , or (ii) an adult who is unable to make reasonable judgments

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			in respect of matters relating to a claim. No definition of “capacity” or “incapable”.
BRITISH COLUMBIA	<i>Power of Attorney Act</i> , RSBC 1996, c 370	Decisions to grant or revoke enduring Power of Attorney for financial decisions.	No specific definition of “capacity”.
		Capacity to Grant/Revoke an Enduring Power of Attorney: 12 1) An adult may make an enduring power of attorney unless the adult is incapable of understanding the nature and consequences of the proposed enduring power of attorney. (2) An adult is incapable of understanding the nature and consequences of the proposed enduring power of attorney if the adult cannot understand all of the following: (a) the property the adult has and its approximate value;	

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		<p>(b)the obligations the adult owes to his or her dependants;</p> <p>(c)that the adult's attorney will be able to do on the adult's behalf anything in respect of the adult's financial affairs that the adult could do if capable, except make a will, subject to the conditions and restrictions set out in the enduring power of attorney;</p> <p>(d)that, unless the attorney manages the adult's business and property prudently, their value may decline;</p> <p>(e)that the attorney might misuse the attorney's authority;</p> <p>(f)that the adult may, if capable, revoke the enduring power of attorney;</p> <p>(g)any other prescribed matter.</p>	
	<i>Patients Property Act,</i>	Appointment of a “committee” if an individual is “mentally incapable” and no personal directives in place.	<p>No definition for “capacity”.</p> <p>Section 2(1) states:</p>

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	RSBC 1996, c 349		<p>“The Attorney General, a near relative of a person or other person may apply to the court for an order declaring that a person is, because of (a) mental infirmity arising from disease, age or otherwise, or</p> <p>(b) disorder or disability of mind arising from the use of drugs, incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs.”</p>
	<i>Adult Guardianship Act</i> , RSBC 1996, c 6	Governs statutory property guardians and the process by which health authorities issue certificates of incapability as a last	<p>No definition for “capacity”.</p> <p>S 3(1): “Until the contrary is demonstrated, every adult is</p>

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		<p>resort, resulting in the Public Guardian and Trustee becoming an adult’s committee of estate for financial and legal matters. Also outlines BC’s response to adult abuse, neglect and self neglect by designated agencies.</p> <p>Governs assessment by a “qualified health care provider” according to prescribed procedures.</p>	presumed to be capable of making decisions about the adult's personal care, health care and financial affairs.”
	<i>Mental Health Act, RSBC 1996, c 288</i>	Governs admission of individuals to mental health care facilities.	No definition of “capacity”.
	<i>Health Care (Consent) and Care Facility (Admission) Act, RSBC 1996, c 181</i>	Governs health care decisions and sets out the capacity criteria required to make an advance directive.	No definition of “capacity”. S. 3(1) outlines a presumption of capability with respect to health care decisions.

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	<i>Public Guardian and Trustee Act</i> , RSBC 1996, c 383	Governs the powers and duties of the Public Guardian and Trustee (including the ability to investigate allegations of possible financial mismanagement including by those acting as an adult’s substitute decision maker (trustee, representative, attorney, committee).	No definition of “capacity”.
	<i>Representation Agreement Act</i> , RSBC 1996, c 405	Governs the making of representation agreements by adults that identify one or more representatives to make or assist with personal and health care and/or financial and legal decisions.	No definition of “capacity”. S. 3(1) outlines a presumption of capability. S 8(1) An adult may make a representation agreement consisting of one or more of the standard provisions authorized even though the adult is incapable of (a)making a contract, (b)managing his or her health care, personal care or legal matters, or

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			(c)the routine management of his or her financial affairs.
	<i>Limitation Act, SBS 2012, c 13</i>	Governs the limitation periods to commence a claim and when those limitation periods will be “tolled” or suspended when a person is “under a disability”.	<p>“person under a disability” means an adult person who is incapable of or substantially impeded in managing his or her affairs.</p> <p>No definition of “incapable”.</p>
MANITOBA	<i>The Powers of Attorney Act, CCSM c P97</i>	Governs enduring and springing power of attorneys.	<p>No definition of “capacity”. “mental incompetence” means the inability of a person to manage his or her affairs by reason of mental infirmity arising from age or a disease, addiction or other cause.</p>
		<p>Capacity to Grant/Revoke Power of Attorney:</p> <p>10(3) An enduring power of attorney is void if at the time of its execution the donor is mentally incapable of understanding the nature and effect of the document.²</p>	

² See also *Dubois et al v Wilcosh et al*, 2007 MBQB 20 and *Young v Paille et al*, 2012 MBQB 3 at paras 30-32.

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	<i>Mental Health Act</i> , CCSM c M110	<p>Governs the admission and treatment requirements for patients in psychiatric facilities.</p> <p>The Act also applies to individuals on leave from a facility as well as individuals under Orders of Committeeship living in the community.</p>	<p>No definition of “capacity”</p> <p>“incapable person” means a person for whom a committee has been appointed.</p> <p>S 3: “a person is incapable of personal care if he or she is repeatedly or continuously unable, because of mental incapacity,</p> <p>(a) to care for himself or herself; and</p> <p>(b) to make reasonable decisions about matters relating to his or her person or appreciate the reasonably foreseeable consequences of a decision or lack of decision.</p>
	<i>Health Care Directives Act</i> , CCSM c H27	Governs the making of health care directives regarding health care and treatment decisions.	“capacity”: “For the purpose of this Act, a person has capacity to make health care decisions if he or she is

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			able to understand the information that is relevant to making a decision and able to appreciate the reasonably foreseeable consequences of a decision or lack of decision."
	<i>Vulnerable Persons Living with a Mental Disability Act, CCSM c V90</i>	This Act promotes and protects the rights of adults living with a mental disability who need assistance to meet their basic needs. Deals with support and substitute decision making.	"capable" means mentally capable and "capacity" has a corresponding meaning. s.2: "If the capacity of a vulnerable person or, a person for whom an application for the appointment of a substitute decision maker is made, is in issue under this Act, the person shall be deemed to have capacity to retain and instruct counsel"

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	<i>The Limitation of Actions Act</i> , CCSM c L150	Governs the limitation period within which to commence a claim and the “tolling” of the limitation period while the person is under a “disability”.	s.7(1) A person is under a “disability. . . while he is in fact incapable of the management of his affairs because of disease or impairment of his physical or mental condition”. No definition of “incapable”.
NEW BRUNSWICK	<i>Property Act</i> , RSNB 1973, c P-19	Granting and revoking power of attorney for property.	No definition for “capacity”.
	<i>Enduring Powers of Attorney Act</i> , SNB 2019 c 30	Granting and revoking enduring powers of attorney.	Capacity: 2(1) A person has capacity with respect to a matter or an act if the person is able to

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		Capacity to Grant/Revoke an Enduring Power of Attorney 4(1) An enduring power of attorney is valid if (a) the grantor had capacity to make it (see definition of capacity) 5(1) & (2) A grantor may alter or revoke an enduring power of attorney, if the grantor has the capacity to do so (see definition of capacity)	(a) Understand the information that is relevant to decisions with respect to the matter or act, and (b) Appreciate the reasonably foreseeable consequences of decisions with respect to the matter or act 2(2) A person is presumed to have capacity unless it is determined otherwise.
	<i>Infirm Persons Act</i> , RSNB 1973, c I-8	Governs granting and revoking power of attorney for personal care and committeeships.	No definition for “capacity” “mentally incompetent person” means a person (a) in whom there is such a condition of arrested or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, or

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			(b) who is suffering from such a disorder of the mind that he requires care, supervision and control for his protection or welfare or for the protection of others or for the protection of his property.
	<i>Mental Health Act</i> , RSNB 1973, c M-10	Governs custody and admission to psychiatric facility.	No definition for “capacity” “serious mental illness” means a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs a person’s behaviour, judgment, capacity to recognize reality or ability to meet the ordinary demands of life, but does not include an intellectual disability.”

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	<i>Limitation of Actions Act</i> , SNB 2009, c L-8.5	Governs the limitation periods to commence a claim and when those periods will be “tolled” or suspended when a person is “incapable”.	s. 18(1) The limitation period is suspended when the “claimant is incapable of bringing a claim because of his or her physical, mental or psychological condition” No definition of “incapable”.
NEWFOUNDLAND & LABRADOR	<i>Advance Health Care Directives Act</i> , SNL 1995, c A-4.1	Decisions regarding health care and making an advance directive.	“mental competency”: A maker shall be considered competent to make an advance health care directive where he or she is able to understand the information that is relevant to making a health care decision and able to appreciate the reasonably foreseeable consequences of that decision.
		Making an Advance Health Care Directive 3. (1) A person who is competent may make an advance health care directive setting out the person's instructions regarding his or her health care treatment or setting out general principles regarding the type of health care the person wants. ³	

³ See also, *Eastern Regional Integrated Health Authority v BAH et al (Publication Ban)*, 2007 NLTD 30 at para 21.

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	<i>Enduring Powers of Attorney Act</i> , RSNL 1990, C E-11	<p>Granting and revoking enduring powers of attorney.</p> <p>Capacity to Grant/Revoke Enduring Power of Attorney:</p> <p>11(1) A donor may revoke or terminate an enduring power of attorney at any time while the donor has legal capacity.</p> <p>(2) A donor may change the attorney named in the enduring power of attorney while the donor has legal capacity.</p>	"legal incapacity" means mental disability of a nature (i) such that were a person to engage in an action he or she would be unable to understand its nature and effect, and (ii) that would, but for this Act, invalidate or terminate a power of attorney, RDSP or another legal agreement.
	<i>Mental Health Care and Treatment Act</i> , SNL 2006, c M-9.1	Governs admission, custody, detention, assessment in a mental health care facility.	"mental disorder" means a disorder of thought, mood, perception, orientation or memory that impairs (i) judgment or behaviour, (ii)

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			the capacity to recognize reality, or (iii) the ability to meet the ordinary demands of life, and in respect of which psychiatric treatment is advisable
	<i>Adult Protection Act</i> , SNL 2011, c A-4.01	The act protects adults who are at risk of abuse and neglect, and who do not understand or appreciate that risk. The Act and its policies presume that every adult has the capacity to make decisions unless proven otherwise, and if the adult does not harm him/herself or others, than he/she may choose to live as he/she wishes, even if some may consider it unwise or not socially acceptable.	s. 6(2) An adult shall be considered to lack the capacity to make a decision where that adult (a) is unable to understand information relevant to the decision where that decision concerns his or her health care, physical, emotional, psychological, financial, legal, residential or social needs; or (b) is unable to appreciate the reasonably foreseeable consequences of a decision or the lack of a decision.

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	<i>Limitations Act</i> , SNL 1995 c L-16.1	Governs the limitation periods to commence a claim and “tolling” or postponement of the limitation period where person under a “disability”.	S. 15(5)(b)(c) A person is under a disability when they are “incapable of the management of his or her affairs because of disease or impairment of his or her physical or mental condition; or for the purpose of an action for misconduct of a sexual nature . . . incapable of commencing that action by reason of his or her mental or physical condition resulting from that sexual misconduct” No definition of “incapable”
NORTHWEST TERRITORIES	<i>Powers of Attorney Act</i> , SNWT 2001, c 15 s 7	Decision to grant or revoke enduring or springing power of attorney for property.	"mental incapacity":

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		<p>Capacity to Grant or Revoke a Power of Attorney</p> <p>13 (3) A springing or enduring power of attorney may not be validly given by a donor if, at the time the power of attorney is executed, the donor is mentally incapable of understanding the nature and effect of the document in general or any of the following related matters in particular:</p> <ul style="list-style-type: none"> a) The nature of the donor’s property that will be subject to the power of attorney and its approximate value b) The donor’s obligation to his or her dependants c) That the attorney will, under the power of attorney and subject to its provisions, be able to do on the donor’s behalf anything in respect of the donor’s property that the 	<p>means the inability of a person, by himself or herself or with assistance, to</p> <p>(a) understand information that is relevant to making a decision concerning his or her financial affairs, or</p> <p>(b) appreciate the reasonably foreseeable consequences of a decision concerning his or her financial affairs or the lack of such a decision</p>

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		<p>donor could do if mentally capable, except make a will</p> <p>d) That the attorney must account for his or her dealings with the donor's property</p> <p>e) That the power of attorney may be subsequently revoked by the donor, if he or she is mentally capable of doing so</p> <p>f) That the donor's property that will be subject to the power of attorney may decline in value unless the property is prudently manage by the attorney</p> <p>g) That the attorney may possibly misuse the authority given to him or her under the power of attorney.</p> <p>16(2) A donor may revoke a springing or enduring power of attorney. . .at any time that the donor is not mentally incapacitated.</p>	

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	<i>Personal Directives Act</i> , SNWT 2005, c 16	Decision to grant revoke personal directives re personal care decisions including giving, refusal or withdrawal of consent for health care and other personal matters.	"capacity" means the ability to (a) understand the information that is relevant to the making of a personal decision, and (b) appreciate the reasonably foreseeable consequences of that personal decision;
	<i>Guardianship and Trusteeship Act</i> , SNWT 1994, c 29	Governs the appointment and duties of guardians and trustees.	No definition of capacity.
	<i>Mental Health Act</i> , RSNWT 1988, c M-10	Governs admission, custody, detention, assessment in a mental health care facility.	"mental disorder" means a substantial disorder of thought, mood, perception,

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			orientation or memory that grossly impairs judgement, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life.
	<i>Limitation of Actions Act</i> , RSNWT 1988 c L18	Governs the limitation periods for commencing a claim and the “tolling” or suspending of those periods where person is incapable of commencing a claim.	s. 2.1(3) The limitation period does not run so long as the “aggrieved person is incapable of commencing the action because of his or her physical, mental or psychological condition”. No definition of “incapable”
NOVA SCOTIA	<i>Adult Capacity and Decision-Making Act</i> , SNS 2017 c 4	Governs appointment of representatives (formerly guardians); capacity assessments;	“capacity” means the ability, with or without support, to (i) understand information relevant to making a decision, (ii) appreciate the reasonably foreseeable consequences of making or

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			not making a decision including, for greater certainty, the reasonably foreseeable consequences of the decision to be made
	<i>Powers of Attorney Act</i> , RSNS 1989 c 352	<p>Decisions to grant / revoke powers of attorney for property.</p> <p>Capacity to Grant/Revoke Power of Attorney</p> <p>Not cited in legislation, but defined at common law:</p> <ol style="list-style-type: none"> 1. An appreciation that the document authorizes the donee to exercise all powers in the lifetime of the donor that the donor can himself exercise with respect to the matters set forth in the terms of the document, unless and until the document is revoked or otherwise terminated. 2. An appreciation that the all-embracing terms of the 	No definition of capacity.

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		<p>document give to the donee power to deal with everything that the donor owns and with respect to the total financial affairs of the donor.</p> <p>3. An appreciation by the donor of the nature and extent of his property and financial affairs, as they exist at the time of the execution of the documents, or which the attorney will be entitled to assume control.⁴</p>	
	<i>Personal Directives Act</i> , SNS 2008 c 8	<p>Decision to grant / revoke personal care directives for personal care decisions.</p> <p>Capacity to Grant/ Revoke Personal Directive</p> <p>3(1) A person with capacity may make a personal directive</p>	"capacity" means the ability to understand information that is relevant to the making of a personal-care decision and the ability to appreciate the reasonably foreseeable consequences of a decision or lack of a decision

⁴ See *Vernon v Sutcliffe*, 2014 NSSC 376 at para 91 and *Isnor Estate (Re)*, 2001 CanLII 25721 (NS SC), [2001] NSJ No 659 (SC).

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		12(1) A personal directive has no effect....(c) when the personal directive is revoked by a maker who has capacity and makes the revocation in writing, executed in the same way as a personal directive	
	<i>Involuntary Psychiatric Treatment Act</i> , SNS 205, c 42	Admission and detention in a psychiatric facility.	“mental disorder” means a substantial disorder of behaviour, thought, mood, perception, orientation or memory that severely impairs judgement, behaviour, capacity to recognize reality or the ability to meet the ordinary demands of life, in respect of which psychiatric treatment is advisable
	<i>Limitation of Actions Act</i> , SNS 2014 c 35	Governs the limitation periods for commencing a lawsuit and when they will be tolled or suspended due to incapacity.	S 19(1) The limitation periods will “not run while a claimant is incapable of bringing a claim because of

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			<p>the claimant’s physical, mental or psychological condition.”</p> <p>No definition of “incapable”</p>
NUNAVUT	<i>Powers of Attorney Act, S. Nu 2005 c 9 s3(1)</i>	Decision to grant or revoke springing or enduring powers of attorney for property	<p>“mental incapacity”, unless otherwise specified in a power of attorney, means the inability of a person, due to infirmity or impaired judgment, whether arising from disease, disability, age, addiction or other cause</p> <p>(a) to understand information that is relevant to making a decision concerning his or her property or financial interests, or</p> <p>(b) to appreciate the reasonably foreseeable consequences of a decision concerning his or her property or financial</p>
		<p>Capacity to Grant/Revoke Power of Attorney</p> <p>10(3) A springing or enduring power of attorney may not be validly given by a donor if, at the time the power of attorney is executed, the donor is mentally incapable of understanding the nature and effect of the document in general or any of the following related matters in particular:</p> <p>a) The nature of the donor’s property that will be subject to the</p>	

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		<p>power of attorney and its approximate value</p> <p>b) The donor’s obligation to his or her dependants</p> <p>c) That the attorney will, under and subject to the power of attorney, be able to do on the donor’s behalf anything in respect of the donor’s property that the donor could do, except make or amend a will</p> <p>d) That the attorney must account for his or her dealings with the donor’s property</p> <p>e) That the power of attorney may be subsequently revoked by the donor, if he or she has capacity required in this subsection</p> <p>f) That the property that will be subject to the power of attorney may decline in value unless the property is prudently managed by the attorney</p> <p>g) The possibility that the attorney may misuse the authority</p>	<p>interests or the lack of such a decision;</p>

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		given to him or her under the power of attorney.	
	<i>Guardianship and Trusteeship Act</i> , SNWT (Nu) 1994, c 29	Governs the appointment and duties of guardians and trustees.	“capable”: A person is "capable" if the person has (a) the ability, by himself or herself or with assistance, to understand information that is relevant to making a decision concerning his or her own health care, nutrition, shelter, clothing, hygiene or safety; and (b) the ability, by himself or herself or with assistance, to appreciate the reasonably foreseeable consequences of a decision referred to in paragraph (a) or lack of such a decision.

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	<i>Mental Health Act</i> , RSNWT (Nu) 1988, c M-10	Governs the admission, detention, custody and assessment in psychiatric facilities.	“mentally competent” means having the ability to understand the subject-matter in respect of which consent is requested and the ability to appreciate the consequences of giving or withholding consent
	<i>Limitation of Actions Act</i> , RSNWT (Nu) 1988, c L-8	Governs limitation periods to commence a claim and when those limitations periods will be “tolled” or extended for individuals who are “incapable”.	S 2.1(3) the limitation period does not commence so long as the individual is “incapable of commencing the action because of his or her physical, mental or psychological condition”. No definition of “incapable”
ONTARIO	<i>Substitute Decisions Act</i> , 1992, SO 1992 c 30	Decisions to grant or evoke power of attorneys for property or personal care; management of property and personal care decisions; appointment of guardians.	“capable” means mentally capable, and “capacity” has a corresponding meaning

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		<p>Grant/Revoke Continuing Power of Attorney</p> <p>8(1) person is capable of giving a continuing power of attorney if he or she,</p> <p>(a) knows what kind of property he or she has and its approximate value;</p> <p>(b) is aware of obligations owed to his or her dependants;</p> <p>(c) knows that the attorney will be able to do on the person’s behalf anything in respect of property that the person could do if capable, except make a will, subject to the conditions and restrictions set out in the power of attorney;</p> <p>(d) knows that the attorney must account for his or her dealings with the person’s property;</p>	

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		<p>(e) knows that he or she may, if capable, revoke the continuing power of attorney;</p> <p>(f) appreciates that unless the attorney manages the property prudently its value may decline; and</p> <p>(g) appreciates the possibility that the attorney could misuse the authority given to him or her.⁵</p>	
		<p>Capacity to Grant/Revoke Power of Attorney for Personal Care</p> <p>47 (1) A person is capable of giving a power of attorney for personal care if the person,</p> <p>(a) has the ability to understand whether the proposed attorney has a genuine concern for the person’s welfare; and</p>	

⁵ See *Abrams v Abrams*, 2009 CanLII 12798 (ON SCDC), *Nguyen-Crawford v Nguyen* 2010 ONSC 6836 at paras 75-78.

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		(b) appreciates that the person may need to have the proposed attorney make decisions for the person. ⁶	
	<i>Mental Health Act</i> , RSO 1990, c M 7	Governs criteria for voluntary, informal and involuntary admissions to specially designated psychiatric facilities.	s. 1 “Mental disorder” “any disease of the mind”
	<i>Health Care Consent Act</i> , 1996, SO 1996, c 2 Sch A	<p>Consent regarding health care decisions and admission to long-term care facility.</p> <p>Capacity Treatment/Admission 4(1) A person is capable with respect to a treatment, admission to a care facility or a personal assistance service if the person is able to understand the information that is relevant to making a decision about the treatment, admission or personal assistance service, as the case may be, and able to appreciate the reasonably</p>	“capable” means mentally capable, and “capacity” has a corresponding meaning

⁶ See *JB v DeSouza*, 2018 ONSC 4061, *Nguyen-Crawford v Nguyen* 2010 ONSC 6836.

PROVINCE	LEGISLATION	TYPE OF DECISIONAL CAPACITY	Definition of “capacity/capable”?
		foreseeable consequences of a decision or lack of decision.	
	<i>Limitations Act, 2002 SO 2002, c 24 Sch B</i>	Governs limitation periods for the commencement of a lawsuit.	Section 7 governs a “tolling” of the limitation period to commence a lawsuit when a person with a claim is “incapable of commencing a proceeding in respect of the claim because of his or her physical, mental or psychological condition” and does not have a litigation guardian. No definition of “incapable”.
PRINCE EDWARD ISLAND	<i>Powers of Attorney Act, RSPEI 1988, c P-16</i>	Decision to grant or revoke a power of attorney for property.	“legal incapacity” means mental infirmity of such a nature as would, but for this Act, invalidate or terminate a power of attorney and “legal capacity” has a corresponding meaning.
		Capacity to Revoke Power of Attorney	

PROVINCE	LEGISLATION	TYPE OF DECISIONAL CAPACITY	Definition of “capacity/capable”?
		7. A power of attorney . . . be revoked by the donor at any time while he has legal capacity ⁷	
	<i>Mental Health Act</i> RSPEI 1988, c M-6.1	Governs criteria for admission, detention, custody in psychiatric facility.	“capable” or “incapable” means mentally capable or incapable of making a decision to give or refuse consent to treatment.
	<i>Consent to Treatment and Health Care Directives Act</i> , RSPEI 1988, c C-17.2	Governs consent to health care treatment and making of health care directives. Capacity for Treatment 7: . . . a patient is capable with respect to treatment if the patient is, in the health practitioner’s opinion, able (a) to understand the information that is relevant to making a decision concerning the treatment; (b) to understand that the information applies to his or her	“capable” means mentally capable, in accordance with section 7, of making a decision, and “capacity” is used as the corresponding noun indicating the state of being capable.

⁷ See *Coughlan (Re)*, 2003 PESCTD 64.

PROVINCE	LEGISLATION	TYPE OF DECISIONAL CAPACITY	Definition of “capacity/capable”?
		particular situation; (c) to understand that the patient has the right to make a decision; and (d) to appreciate the reasonably foreseeable consequences of a decision or lack of a decision.	
	<i>Statute of Limitations</i> , RSPEI 1988, c S-7	Governs the limitation periods to commence a lawsuit and the “tolling” or suspension of the limitation period if a person is under a “disability”.	s.1 “disability” means disability arising from minority or disability unsoundness of mind. No definition of “capacity” or “incapable”.
QUEBEC	Civil Code of Quebec, CCQ-1991, art. 2166-2174	Governs the appointment of a protection mandate which can apply to both property and protection of the person. The mandate must be homologated by the court, which must then have evidence that the mandator has become incapable.	No definition of “capacity” 2166: The performance of the mandate is conditional upon the occurrence of the incapacity. . .

PROVINCE	LEGISLATION	TYPE OF DECISIONAL CAPACITY	Definition of “capacity/capable”?
	<i>An Act respecting health services and social services,</i> CQLR, c S-4.2	Governs consent in health care context as well as accessibility to health and social services.	No definition of “capacity”
	<i>An Act respecting the protection of persons whose mental state presents a danger to themselves or to others,</i> CQLR, c P-38.001	Governs the admission, retention, custody, assessment in a psychiatric facility.	No definition of “capacity”
SASKATCHEWAN	<i>Powers of Attorney Act,</i> 2002, SS 2002, c P-20.3	Decisions to grant or revoke enduring power or attorneys for property and personal affairs.	“capacity” means, . . . , the ability: (a) to understand information relevant to making decisions with respect to property and

PROVINCE	LEGISLATION	TYPE OF DECISIONAL CAPACITY	Definition of “capacity/capable”?
		Capacity to Grant / Revoke Enduring Power of Attorney 4. Any adult who has the capacity to understand the nature and effect of an enduring power of attorney may grant an enduring power of attorney. ⁸	financial affairs or personal affairs, as the case may be; and (b) to appreciate the reasonably foreseeable consequences of making or not making a decision referred to in clause (a)
	<i>Adult Guardianship and Co-Decision-Making Act, SS 2000, c A-5.3</i>	Governs the appointment of guardians and co-decision makers with respect to property and personal care decisions.	“capacity” means the ability: (i) to understand information relevant to making a decision; and (ii) to appreciate the reasonably foreseeable consequences of making or not making a decision.
	<i>The Health Care Directives and Substitute Health Care Decision</i>	Governs the making of health care directives and hierarchy of substitute decision makers if no directive in place.	“capacity” means the ability: (a) to understand information relevant to a health care decision respecting a proposed

⁸ See *Hrycya v Hood*, 2018 SKQB 63, aff’d 2019 SKCA 30, *Buckley v Buckley* 2015 SKQB 338.

PROVINCE	LEGISLATION	TYPE OF DECISIONAL CAPACITY	Definition of “capacity/capable”?
	<i>Makers Act</i> , SS 2015 c H-0.002		treatment; (b) to appreciate the reasonably foreseeable consequences of making or not making a health care decision respecting a proposed treatment; and (c) to communicate a health care decision with respect to a proposed treatment.
	<i>Mental Health Services Act</i> , SS 1984-85-86, c M-13.	Governs the admission, custody, detention, assessment, in psychiatric facilities.	“capacity” means capacity as defined in <i>The Health Care Directives and Substitute Health Care Decision Makers Act</i>
	<i>The Limitations Act</i> , SS 2004 c L-16.1	Governs the limitation periods to commence a claim and suspends the limitation period for persons with a “mental disability”.	S 8(1) provides that the limitation period is suspended for a “person who, by reason of mental disability, is not competent to manage his or her affairs or estate and is not represented by a personal guardian or property

PROVINCE	LEGISLATION	TYPE OF DECISIONAL CAPACITY	Definition of “capacity/capable”?
			<p>guardian pursuant . . . or a decision-maker pursuant to who: (i) is aware of the claim; and (ii) has the legal capacity to commence the proceeding on behalf of that person or the person’s estate.”</p> <p>“Mental disability” means: (i) an intellectual disability or impairment; or (ii) a mental disorder</p> <p>No definition of “capacity” or “incapable”.</p>
YUKON	<i>Enduring Power of Attorney Act</i> , RSY 2002, c 73	Decision on granting and revoking power of attorneys for property.	No definition of “capacity”.
		<p>Capacity to Grant an Enduring Power of Attorney</p> <p>4.An enduring power of attorney is void if, at the date of its execution,</p>	

PROVINCE	LEGISLATION	TYPE OF DECISIONAL CAPACITY	Definition of “capacity/capable”?
		<p>the donor is mentally incapable of understanding the nature and effect of the enduring power of attorney.</p> <p>14(1)...an enduring power of attorney terminates....(a)if it is revoked in writing by the donor at a time when the donor is mentally capable of understanding the nature and effect of the revocation.</p>	
	<i>Care Consent Act</i> , SY 2003, c 21	Governs consent and substitute consent to health care and admission to care facilities, and advance directives.	<p>6 (2) When deciding whether a person is incapable of giving or refusing consent to care, a care provider must base the decision on whether or not the person demonstrates that they understand (a) the information provided under paragraph 5(e). . . .</p> <p>5(e) (e) the person is given the information a reasonable person would require to understand the proposed</p>

PROVINCE	LEGISLATION	TYPE OF DECISIONAL CAPACITY	Definition of “capacity/capable”?
			care and to make a decision, including information about (i) the reason or reasons why the care is proposed, (ii) the nature of the proposed care, (iii) the risks and benefits of receiving and not receiving the proposed care that a reasonable person would expect to be told about, and (iv) alternative courses of care.
	<i>Mental Health Act</i> , RSY 2002, c 150	Governs the admission, detention, custody, assessment in psychiatric facilities.	No definition of “capacity” “mental disorder” means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behaviour, capacity to recognize reality, or ability to meet the ordinary demands of life;

PROVINCE	LEGISLATION	TYPE OF DECISIONAL CAPACITY	Definition of “capacity/capable”?
	<i>Adult Protection and Decision-Making Act</i> , RSY 2002, c 150	Governs court appointed guardianships, representation agreements and supported-decision making agreements.	No definition of “capacity” s.82: Subsections 6(2) to (4) of the <i>Care Consent Act</i> apply with the necessary changes to determining the incapability of an adult (a) to give or refuse consent under paragraph 78(1)(c); or (b) to make a decision under subsection 81(1)
	<i>Limitation of Actions Act</i> , RSY 2002, c 139	Governs limitation periods to commence a claim and when those limitations periods will be “tolled” or extended for individuals under “disability”.	Disability “means disability arising from infancy or a mental disorder” No definition of “mental disorder”

This chart is intended for the purposes of providing information and guidance only, and is not intended to be relied upon as the giving of legal advice and does not purport to be exhaustive.

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