Consent by substitute decision-makers for incapable children as excerpted from the *Practice Guidelines for Consent and Confidentiality with Children and Youth*

This resource is a quick reference to the substitute decision-maker table in Part 5: Decision-Making Process for Children and Youth Clients, page 18. Registrants are encouraged to read the entirety of the *Practice Guidelines for Consent and Confidentiality with Children and Youth.*

Consent by substitute decision-makers for incapable children

If a child or youth client is incapable to make their own decisions about treatment, services, or information privacy, a substitute decision-maker (SDM) must be identified to make decisions on their behalf.

In most cases, parents will act as SDMs. However, there is a legal list of who makes decisions when children are incapable. The HCCA, CYFSA, and PHIPA use the same ranked list of SDMs

1.	Guardian of the person or guardian of property (depending on the decision) appointed by a court.	These require a legal process or documentation. Registrants may rely in good faith if someone purports to hold one of these legal positions. Registrants may also ask to see a copy of this documentation if there is any concern or dispute about the legitimacy of the person holding the role.
2.	Attorney for personal care or property (depending on the decision) set out in a power of attorney document signed and witnessed. *(note: Children under the age of 16 cannot execute a power of attorney for personal care –so they will not have one. Children under the age of 18 cannot execute a power of attorney for property – so they will not have one).*	
3.	Representative appointed by the Consent and Capacity Board	

4.	Spouse or partner	Automatic family members Registrants may rely in good faith if someone purports to be a family member. Registrants may also ask for evidence of family relationships if there is a dispute about the legitimacy of the person as a family member.
5.	Parent (which refers to someone with custody or decision-making authority for the child or youth and not a parent with a right of "access" only and not a parent if children's aid society or Indigenous child and family well-being agency has authority) or children's aid society/ Indigenous child and family well-being agency or child who is at least 16 years old.	
6.	Parent with only right of access	
7.	Brother or sister	
8.	Any other relative	
9.	Office of the Public Guardian and Trustee	Automatic SDM of last resort

An SDM must be at least 16 years of age, unless they are the parent of an incapable child.

Parents are usually the SDMs if their child is incapable, except:

- If the parents are separated or divorced, there may be a court document that grants one parent decision-making responsibility. Parents may have to produce court documents or separation agreements to prove to a registrant who has decision-making responsibility.
- If the child is in the care and custody of a children's aid society or Indigenous child and family well-being agency.
- If the parents are deceased, the person who has custody of the child becomes the SDM.
- If the parents are not available (for any reason such as they are out of town and cannot be reached, or are in detention or unconscious), the child's sibling can be the SDM (as long as the sibling is over the age of 16 years).
- If there are no available parents and no siblings, then any other relative can be the SDM.
- If there are no other family members, the Office of Public Guardian and Trustee must be contacted and is the SDM of last resort.