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# **The Vulnerable Persons Living with a Mental Disability Act**

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**A Facilitator's Guide For Viewing  
"The Law for Adults Living with a Mental Disability"  
With Vulnerable Persons**

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## Introduction

### ***The Vulnerable Persons Living with a Mental Disability Act***

On October 4, 1996 a law came into force in Manitoba. It is called *The Vulnerable Persons Living with a Mental Disability Act* (The Act).

This law promotes and protects the rights of “vulnerable persons.” The Act defines vulnerable persons as adults living with a mental disability who need assistance to meet their basic needs with regards to personal care or property management. Mental disability means *significant intellectual impairment plus impaired adaptive behaviour*, both occurring before the age of 18 years.

The Act is based on the belief that vulnerable persons should have the opportunity to make their own decisions and direct their own lives, with support if necessary. Implementation is guided by the following principles.

- Vulnerable persons are presumed able to make their own decisions on matters affecting their lives, unless they demonstrate otherwise.
- Vulnerable persons should be encouraged to make their own decisions, with support if needed.
- Like many people, vulnerable persons sometimes rely on the advice and assistance of support networks, which may include family members, friends, service providers and others they choose. The Act recognizes the important roles support networks play and encourages their assistance with decision making, when necessary.
- Assistance with decision making should respect the privacy and dignity of vulnerable persons.
- Sometimes vulnerable persons are unable to make decisions about some aspects of their lives, even with the help of a support network. In such cases, when a vulnerable person needs decisions to be made and is unable to make them, a substitute decision maker may be appointed as a last resort.

### ***The Law for Adults Living with a Mental Disability – A Video to Help Vulnerable Persons Understand the Act***

To help vulnerable persons understand the Act and how it may be applied, a 12-minute video called *The Law for Adults Living with a Mental Disability* was developed. The video outlines important aspects of the legislation and is designed to encourage viewers to discuss them with a facilitator.

The video is divided into four sections, each addressing key matters that affect the lives of vulnerable persons. Each section is followed by questions, which are intended to promote discussion, understanding and application of the concepts explained in the video.

This guidebook has been prepared to assist facilitators who will be viewing and discussing the video with vulnerable persons. It provides basic information on the Act, as well as responses to the questions raised in the video. It is not expected that facilitators will be “experts” on the legislation. Rather, the facilitators’ expertise lies in knowing the vulnerable person and how to help that person understand the information to the best of their ability.

## Recommendations for Facilitators

The goal of the video is to educate vulnerable persons about the legislation and stimulate discussion about how its provisions may apply to each person. This goal is more likely to be accomplished if the video is shown in the following manner:

- Ideally, it should be shown one-on-one or, if this is not possible, in a small group setting. This approach permits the facilitator to focus on the viewer and provide support, where necessary, to help him or her better understand the information.
- As noted earlier, the video is divided into four sections. Each section is followed by questions, which test the viewers’ understanding of the section they have just seen. This guidebook provides answers to the questions raised in the video. However, depending on the individual’s needs and ability, facilitators may wish to simplify or expand on some of the answers.
- The video may be shown in one session or over a series of sessions, based on individual needs and circumstances. However, maximum results are more likely to be obtained by showing the video section by section. Where possible, it is recommended that the video be screened over two or more sessions.
- Above all. Facilitators need to proceed at a pace that meets each vulnerable person’s ability to fully understand.

## SECTION I

### **The Law for Adults Living with a Mental Disability**

The opening section of the video introduces the law and informs viewers that this legislation applies to adult Manitobans living with a mental disability.

Two important guiding principles of the Act are emphasized in the section. The first is that vulnerable persons are presumed able to make their own decisions on matters affecting their lives, unless they demonstrate otherwise. In other words, vulnerable persons have the right to make their own decisions about their lives, if they are able.

The second principle concerns the involvement of support networks in the lives of vulnerable persons. Support networks are primarily persons in the social circle of vulnerable persons, and may comprise family members, friends, service providers and others with a personal connection. These people play an important role in assisting vulnerable persons to make decisions about their lives, as required. They do this by providing advice, support or assistance to vulnerable persons.

Although the term support network is not used, the video gives examples of support network members (e.g. mother, father, brother, sister, aunt, uncle, cousin, friends and others that one lives or works with) and their role.

## Questions for Discussion

### **Who is this law for?**

This law applies to adults living with a mental disability who need assistance to meet their basic needs with regards to personal care or property management. To be mentally disabled means that the person has significant intellectual impairment plus impaired adaptive behaviour, both having occurred before the age of 18 years.

The act does **not** apply to persons whose mental impairment occurred in adulthood.

### **Who could you ask for help?**

Vulnerable persons are encouraged to ask people they like and trust for help. Typically they will be a part of the vulnerable person's support network, and may include family members, friends, service providers and others with whom they work, live and socialize.

### **What type of things do you choose for yourself?**

The answer to this question will vary among vulnerable persons. Some vulnerable persons may have the capacity to make decisions about their lives without assistance. Others may be less able and may therefore need more support from others in making choices.

However, facilitators should stress that wherever possible, vulnerable persons have the right to make their own decisions, with support if necessary.

### **What type of things do you need help with?**

Individual needs and circumstances will influence the type of things vulnerable persons need help with. Some may need help buying groceries, banking, buying shoes or a coat, or with other kinds of decisions. A support network may provide physical assistance, information about various choices and consequences, and other support or assistance that may benefit the vulnerable person.

## SECTION II

### **Supported Decision Making Individual Planning**

#### **Supported Decision Making**

This section introduces the concept of supported decision making and gives viewers a number of examples of how it works. The Act defines supported decision making as *“a process whereby a vulnerable person is enabled to make and communicate decisions with respect to personal care or property and in which advice, support or assistance is*

*provided to the vulnerable person by members of his or her support network.*” There are two concepts in this definition:

- The vulnerable person is enabled to make and communicate decisions.
- Friends and family can provide advice, support and assistance to the vulnerable person.

The concept of supported decision making recognizes that when decisions need to be made, many of us rely on the advice, assistance and support of people we like and trust. Vulnerable persons are no different. For example, when there is a decision to be made, vulnerable persons may turn to their parents, other family members, friends, service providers or supervisors to help them understand what their choices are. These people can provide information, ideas and advice which enable vulnerable persons to make decisions that are right for them. This is what supported decision making means: vulnerable persons making their own decisions, with support and advice from family and friends, if desired.

## **Individual Planning**

Section II also introduces the concept of “services,” using examples to help illustrate the broad range of services available to Manitobans. The video then examines the process by which vulnerable persons identify the services they need or want. This process results in a written document called a *plan*.

The video describes the planning process in very general terms. It is therefore recommended that facilitators give the following information to vulnerable persons so that they will better understand the process and their role in it.

Manitoba Family Services and Consumer Affairs has a policy on planning that includes several principles that guide all planning activities. The most important of these principles concerns the independence and self-determination of vulnerable persons. This principle says that vulnerable persons are capable of making their own decisions, unless they demonstrate otherwise. This means that, during the planning process:

- the vulnerable person is the focus of planning activities, thereby increasing the person’s level of control;
- the vulnerable person’s wishes are most important;
- the vulnerable person is actively encouraged to make choices and given opportunities to exercise those choices; and
- the vulnerable person has the opportunity to make choices that are real and substantial.

Another principle vulnerable persons should be aware of is that the planning process should consider the whole person. The planning team may, therefore, consider the physical, intellectual, emotional and spiritual needs of the vulnerable person. For

example, the team might look at the vulnerable person's need for friendship, meaningful daytime activities, respect, privacy and dignity.

To make these principles a reality, the department's planning policy encourages the vulnerable person (and the support network, if desired) to make some important decisions about the planning process. The decisions to be made are:

- which individual planning method will be used?
- Who will facilitate or lead the planning process?
- What will be the scope of the plan?
- Whom does the vulnerable person want to invite to participate in the planning process?

Once these decisions are made, the vulnerable person and the others involved in the process work with a community service worker to develop the plan. Manitoba Family Services and Consumer Affairs require that the following components be addressed in planning for support services provided through the department.

- **Knowing the vulnerable person and his/her vision** – The vulnerable person and other planning team members start by gathering a personal history of the vulnerable person. This includes learning who the vulnerable person is and gaining an understanding of the person's current situation. The team discusses the person's dreams, hopes and interests for the present and future. The dream or "visioning piece" is important because it gives the vulnerable person and the team something to aim for – even though the dream may not be immediately attainable.
- **Goal planning** – Goals are important because they force team members to be clear about wants and needs. Once goals are identified, the team can prioritize and begin to act on them. Opportunities, resources and barriers to attaining an improved quality of life should also be considered.
- **Action planning** – At this stage, the team identifies the activities through which goals are to be realized and assigns responsibility to specific persons or agencies, along with time lines for completion.
- **Planning for accountability** – Here, the team determines who is responsible for following up on specific actions decided upon during planning.

During this process, the vulnerable person may wish to visit potential service providers in order to choose the one that is most suitable. If a service provider is able to accommodate the needs of the vulnerable person, the community service worker will assist the vulnerable person and the team in obtaining the desired support services.

Once support services are in place, planning team members and the community service worker will keep in touch with the vulnerable person to monitor his/her situation and ensure that services remain relevant.

At least once a year, the community service worker will contact the vulnerable person to assess the person's level of satisfaction with the planning process and its results. If the vulnerable person wants to engage in further planning, the worker will take steps to start the process again.

## Questions for Discussion

### **Has someone supported you or helped you make a decision?**

The purpose of this question is two-fold. Firstly, it is intended to encourage viewers to think about who has helped them make decisions. Typically, the people that provide this assistance are members of the vulnerable person's support network. Therefore, the likely responses to this question include parents, brothers, sisters, other family members, friends, house/roommates, co-workers and service providers.

This question also seeks to promote understanding of the concept of supported decision making. It is recommended that facilitators review the definition of supported decision making and reinforce the idea that while support network members provide advice, support and assistance, it is the vulnerable person who makes the final decision.

### **Have you ever been sick and not known what to do?**

This question is posed to encourage viewers to apply the concept of supported decision making to a common life experience. Facilitators should emphasize that vulnerable persons should turn to those they like and trust – their support network – when they are uncertain about what to do. The member(s) of the support network can provide information and advice and help the vulnerable person to decide on a course of action that's right for them.

### **Who would you include in your plan?**

The planning policy established by Manitoba Family Services and Consumer Affairs encourages the vulnerable person, with the assistance of their support network if desired, to make several key decisions regarding the planning process. One decision concerns the participants in the planning process.

The involvement of knowledgeable and supportive people whom the vulnerable person likes contributes to developing and implementing an effective plan. But the participation of persons with whom the vulnerable person is uncomfortable can have a negative impact on the process. Therefore, the vulnerable person is given the opportunity to choose who is to be invited to participate in planning activities.

Facilitators may wish to review with vulnerable persons the following list of people who may be candidates for participating in the planning process:



- spouse
- family members
- friends
- advocates
- current service providers
- potential service providers, if known
- professionals with expertise in areas pertinent to the vulnerable person (physician, speech therapist, occupational therapist and others)

## SECTION III

### **Substitute Decision Making**

The third section of the video presents the concept of substitute decision making. This concept recognizes that sometimes vulnerable persons are unable to make decisions about some aspects of their lives, even with the help of a support network. In such cases, when a vulnerable person needs decisions to be made and is unable to make them, a substitute decision maker (SDM) may be appointed as a last resort.

Before a substitute decision maker is appointed, an application must be made to the Vulnerable Persons' Commissioner, an official appointed under the Act to protect the decision-making rights of vulnerable persons and to appoint and monitor SDMs.

Before making the decision to appoint an SDM, the Commissioner establishes a hearing panel to consider the application. Hearing panel members are made up of community representatives such as lawyers, members of another vulnerable person's family (unrelated to the person for whom the application is made) and other community members. The hearing panel consists of three members. They may be from the community where the vulnerable person lives and, wherever possible, will try to hold the hearing there. The vulnerable person, family and friends, other members of the support network, service providers and the community service worker are invited to participate in the hearing to consider the application.

The hearing panel considers whether the person is vulnerable, has a decision to be made and is able to make that decision, with or without the involvement of a support network. Panel members also consider whether the person has family or friends who could help the person make the required decision.

After the hearing, the panel sends written recommendations on the appointment to the Commissioner. The Commissioner then decides whether to appoint a substitute decision maker, who that person should be and what decision-making powers the person should have. If no suitable family member or friend is willing to serve as SDM, the Public Trustee will be appointed.

A substitute decision maker may be appointed for a maximum of five years. If at the end of that time, the vulnerable person still requires decisions to be made and is unable to make them, the appointment may be renewed for the period of time required for those decisions.

Facilitators should emphasize that an appointed SDM makes decisions only in areas where the vulnerable person cannot make them, and only for the period of time required to make the decision(s). These decisions may be for personal care, such as residence, health care, education, employment, recreation and support services. Decisions may also be required for property, such as managing the vulnerable person's money, settling claims, or making decisions regarding land, houses or property. The vulnerable person can still make all other decisions not granted to the SDM to make.

The SDM's decisions must foster and encourage the participation and independence of the vulnerable person and take into consideration the values, beliefs and best interests of the vulnerable person.

## Questions for Discussion

### **Do you understand what a substitute decision maker does?**

There are several key points to which facilitators will want to pay special attention when discussing this section with vulnerable persons. These points were explained in greater detail in the previous section, but are summarized here for convenience.

- A substitute decision maker may be appointed to make decisions when a vulnerable person needs one or more decisions to be made and is unable to make them.
- Before making the decision to appoint a substitute decision maker, the Vulnerable Persons' Commissioner will establish a hearing panel of three community members to review and make recommendations on the appointment. The vulnerable person, any SDM or committee, a close relative, other members of the support network, service providers and the community service worker will be invited to participate in the hearing.
- An appointed SDM makes decisions **only** in areas where the vulnerable person cannot make them, and only for the period of time required to make the decision(s). There are two areas of decision making: personal care and property management.
- The vulnerable person retains the right to make all other decisions not granted to the substitute decision maker to make.

## SECTION IV

### **Protection of Vulnerable Persons from Abuse or Neglect**

The final section of the video deals with the sensitive issue of protecting vulnerable persons from abuse or neglect. This information is placed at the end of the video to allow for maximum recall of this very important subject matter.

*The Vulnerable Person Living with a Mental Disability Act* provides a legislative framework for protecting vulnerable persons from abuse or neglect. Separately and in combination, four main provisions make up this protective framework. These provisions are:

- **Duty to report abuse or neglect** – By law, service providers, substitute decision makers and committees are required to report any knowledge or suspicion of abuse and/or neglect of the vulnerable persons they support to the nearest regional office of Manitoba Family Services and Consumer Affairs. Failure to do so may be punishable upon conviction.
- **Authority to investigate** – Under the Act, Manitoba Family Services and Consumer Affairs must investigate any report of abuse and/or neglect of a vulnerable person.
- **Authority for protective action** – Where Manitoba Family Services and Consumer Affairs is satisfied, upon investigation, that a vulnerable person is in need of protection, designated department staff may take protective action to ensure that the vulnerable person is safe from abuse and/or neglect. Protective action may include one or more of the following:
  - providing support services,
  - requesting an investigation by a law enforcement agency,
  - taking emergency intervention action,
  - applying for the appointment of a substitute decision maker,
  - applying for the suspension, variation or termination of a substitute decision maker.
- **Emergency intervention for up to 120 hours** – In cases where a vulnerable person is believed to be in immediate danger of serious harm or death, Manitoba Family Services and Consumer Affairs can proceed with immediate emergency intervention for up to 120 hours to ensure the safety and well-being of the vulnerable person. Designated staff may enter any place and provide emergency support services or, if necessary, remove the vulnerable person to a place of safety (e.g., hospital, parental home).

The video seeks to communicate two very important messages to vulnerable persons. The first is that a vulnerable person has the right to say “no” under any circumstance where the person believes his or her well-being is compromised or threatened.

The second message is that vulnerable persons need to tell someone if someone else is doing something to them that they don’t like. Vulnerable persons must be made

aware of the fact that this law requires service providers, substitute decision makers and committees to notify Manitoba Family Services and Consumer Affairs if they know or suspect the vulnerable persons they support are being abused or neglected. For example, if a vulnerable person tells a service provider he or she has been abused, that service provider **must** report the disclosure to Manitoba Family Services and Consumer Affairs. Upon receiving this information, the department must investigate the matter and has the power to:

- visit and communicate with the vulnerable person;
- require any person to provide any information or produce any record or item in his or her custody that may be relevant to the investigation; and
- request and review reports and information that may be relevant to the investigation.

Where there is suspicion of abuse or neglect and staff cannot gain access to the vulnerable person, Manitoba Family Services and Consumer Affairs may apply to the court for an “Order of Entry.” This order authorizes designated departmental staff to enter any place in order to communicate with the vulnerable person, using the assistance of a peace officer if necessary.

It is worthwhile for facilitators to note that persons may also report suspicions of abuse and/or neglect to the police. The police will do a preliminary investigation and determine if further investigation under the Criminal Code is warranted.

## Questions for Discussion

Discussions concerning abuse and neglect may become highly personal and emotionally charged. Vulnerable persons may, for example, describe difficult personal experiences, disclose abusive or neglectful situations or ask challenging questions. Due to the sensitive nature of the subject matter, facilitators should have a basic comfort level with the topics that may be raised by vulnerable persons. If the facilitator is not comfortable talking about the range of issues that may arise, it is recommended that another person assume responsibility for leading the discussion on protection. A facilitator who can provide honest, accurate information in a non-judgmental way will have better success in assisting vulnerable persons to develop positive, healthy attitudes about themselves and their situation.

The provisions related to protection are fairly complex. Therefore, this section of the guidebook provides basic information on the legislation, as well as examples of simplified explanations that may be given to vulnerable persons. When explaining this material, facilitators are encouraged to proceed at a pace that is consistent with the vulnerable person’s ability to understand.

**Facilitators may wish to have additional information and support before leading a discussion on protection. Resources and support are available from a regional Family Services and Consumer Affairs office or Community Living – Manitoba.**

**Please see pages 15 and 16 for the regional Family Services and Consumer Affairs office closest to you.**

### **What are the different ways people can hurt you?**

The Act recognizes that vulnerable persons can be hurt through abuse or neglect. The Act defines **abuse** to mean:

“mistreatment, whether physical, sexual, mental, emotional, financial or a combination thereof, that is reasonably likely to cause serious physical or psychological harm to a vulnerable person, or significant loss to his or her property.”

Vulnerable persons may better understand the concept of abuse if it is explained in the following manner:

“Abuse means when someone does something to hurt you. For example, a person can hurt you by:

- not respecting the privacy of your sexual body parts
- hitting you or handling you roughly;
- yelling at you; or
- taking away your personal things, such as money, clothing, etc.”

Facilitators should stress that these are **examples** of abuse and not a complete list of the different ways in which vulnerable persons can be hurt.

Under the Act, **neglect** means:

“An act or omission whether intentional or unintentional, that is reasonably likely to cause death or that causes or is reasonably likely to cause serious physical or psychological harm to a vulnerable person, or significant loss to his or her property”

Neglect may be explained to vulnerable persons in the following way:

“Neglect means when a caregiver (family member or service provider) does not give you the necessities of life. Some examples of necessary things are proper food, clothing, shelter, medical care and protection from physical harm. Neglect may be either intentional or unintentional.”

Regardless of these definitions, facilitators need to emphasize that if something doesn't feel right, vulnerable persons should tell a community service worker, service provider, substitute decision maker, committee or peace officer about it. By law, these people must help the vulnerable person.

## **Can a person hurt you by yelling?**

Yelling is a form of abuse that can cause serious psychological harm to vulnerable persons. This question gives facilitators an opportunity to emphasize the action vulnerable persons should take if someone yells at them. Therefore, facilitators could offer the following response to this question:

“Yes. Yelling is a form of abuse that can make you feel awful and afraid. If someone is constantly yelling at you and makes you feel bad, you need to tell someone. But sometimes that person may not believe what you are telling them. That’s not your fault. If you aren’t believed, it’s important to tell someone else. For example, you could tell a friend, your friend’s mother or father, a counselor, doctor, teacher or social worker.”

## **Are there places you don’t like to be touched?**

There are several potential answers to this question, so facilitators will need to adjust their response to the feedback provided. The responses that follow are general in nature and should be used with discretion and respect for the vulnerable person. Facilitators may wish to add to these responses by providing information about sexual abuse and exploitation, appropriate vs. inappropriate touching, consent, self-protective action and how to identify trustworthy people who can help.

Facilitators may wish to begin this discussion by talking generally about touching and indicating that it is a normal, healthy means of expression. However, certain touches are not appropriate with:

- strangers
- acquaintances
- staff or volunteers
- friends
- family members

Facilitators should emphasize that none of the people on this list should ever touch a vulnerable person in a way that makes them feel awful. This message might be conveyed in the following manner:

“Strangers, acquaintances (i.e., people you don’t know well), staff or volunteers (i.e., helpers), friends or family members should never touch your private body parts in a way that makes you feel awful.”

Some vulnerable persons may have no reaction or express no real concern about being touched. In this case, facilitators will want to address the issues of consent, privacy and the rights of others. These issues may be handled in the following manner:

- “if you have a partner (i.e., boyfriend, girlfriend) and want to touch that person’s private body parts, make sure your partner is consenting. Consent means your partner wants to touch you as much as you want to touch them.”

- “Private touching with a partner should be done in a private place. Being in a private place also means you won’t be infringing on the rights of other people.”

The response of most vulnerable persons to this question will be that there are places where they don’t like to be touched. The facilitator should emphasize that if someone is touching the vulnerable person in these places without consent, the vulnerable person should immediately tell a trusted person. If this person doesn’t believe the vulnerable person, stress that the vulnerable person should keep telling people until they are believed.

Remind viewers that the law requires service providers, substitute decision makers and committees to report any knowledge or suspicion of abuse or neglect of the vulnerable persons they support to Manitoba Family Services and Consumer Affairs. The department will then investigate the report and may take action to protect the vulnerable person from any further abuse or neglect.

### **If someone hurts you, who should you tell?**

Vulnerable persons may choose to tell someone they trust that someone has hurt them. However, this person may not be obliged by law to report the allegation and may not do so. Therefore, facilitators should advise vulnerable persons that, by law, their service providers, substitute decision makers and committees must report any knowledge or suspicion of abuse or neglect to Manitoba Family Services and Consumer Affairs. Encourage them to tell these people. Also, vulnerable persons can tell the police. The police will conduct a preliminary investigation and determine if further investigation under the Criminal Code is warranted.

## **Additional Information**

This guidebook provides basic information on *The Vulnerable Persons Living with a Mental Disability Act*. If you would like more information, please contact your nearest regional office of Manitoba Family Services and Consumer Affairs or the Office of the Vulnerable Persons’ Commissioner:

### **Northern**

|           |                |
|-----------|----------------|
| Thompson  | (204) 677-6570 |
| Flin Flon | (204) 687-1700 |
| The Pas   | (204) 627-8311 |

### **Parkland**

|            |                |
|------------|----------------|
| Dauphin    | (204) 622-2035 |
| Swan River | (204) 734-3491 |

### **Eastman**

|            |                |
|------------|----------------|
| Beausejour | (204) 268-6028 |
| Steinbach  | (204) 346-6390 |

|                  |                |
|------------------|----------------|
| <b>Interlake</b> | (204) 785-5106 |
|------------------|----------------|

|                |                |
|----------------|----------------|
| <b>Westman</b> | (204) 726-6336 |
|----------------|----------------|

Toll Free: 1-800-230-1885

**Central**

Portage La Prairie (204) 239-3092

Morden (204) 822-2870

**Winnipeg** (204) 945-1335

**Office of the Vulnerable Persons' Commissioner**

305-114 Garry Street

Winnipeg, MB R3C 4V7

Telephone: (204) 945-5039

Toll-Free: 1-800-757-9857 outside Winnipeg