

The Right  
to **Decide.**

# Intellectual Disability and the Right to Decide

Resource #6: A short primer on the Right  
to Decide in Canada

*This document offers excerpts from legislation and legal frameworks that are meant to guarantee control over choices and decisions among people who have an intellectual disability in Canada.*



## The Right to Decide Project – Overview

‘Legal capacity’ refers to people’s experience of being recognized as persons before the law, exercising rights, accessing the civil and judicial system, entering into contracts, making decisions about their own life and property, and communicating on their own behalf.

In many situations (for example, in the case of guardianship) substitute decision-making removes people’s legal capacity, i.e., the right to direct their own lives, including managing their money, making health-related decisions, and deciding where and with whom they live.

From 2018 to 2023, Community Living Ontario worked with five front line service organizations to understand how people who have an intellectual disability exercise their right to legal capacity – that is, how they make choices and decisions, and the barriers they face in doing so.

Our collaborative work uncovered many enablers of legal capacity, as well as many barriers. This resource is part of a series of documents that address this important issue.

Our local partners in the project were Community Living Dryden & Sioux Lookout, Brockville & District Association for Community Involvement, Durham Family Resources, and Community Living Windsor in partnership with Windsor Essex Brokerage for Personal Supports.

Special thanks to the Institute for Research and Development on Inclusion and Society (IRIS), PooranLaw, and Inclusion Canada.

For more information and resources related to this project, please visit our Right to Decide resource page.



# A short primer on the Right to Decide in Canada

There are well-established legal frameworks and legislation that support self-determination, the right to decide, and the use of supports for decision-making among people with disabilities internationally, nationally, and provincially, though these are often misunderstood or ignored. In this document we will review international and national provisions. For information on the basis for legal capacity in Ontario specifically, please see the longer version of this document.

## International Provisions

### *Convention on the Rights of Persons with Disabilities*

The Convention on the Rights of Persons with Disabilities (CRPD), ratified by Canada in 2010, includes Article 12, “Equal recognition before the law,” which directs nations to:

- Reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
- Take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
- Ensure that all measures that relate to the exercise of legal capacity respect the rights, will and preferences of the person.
- Take measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit.
- Ensure that persons with disabilities are not arbitrarily deprived of their property.

Notably, the Government of Canada has formally stated that “Canada recognizes that

persons with disabilities are presumed to have legal capacity on an equal basis with others in all aspects of their lives.”<sup>1</sup>

The CRPD also includes Article 5, “Equality and non-discrimination,” which directs nations to:

- Recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.
- Prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.
- Take all appropriate steps to ensure that reasonable accommodation is provided, to promote equality and eliminate discrimination.

The first principle of the CRPD is “respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons.” There exists a crucially important link between equality, equal recognition before the law, accommodation, and dignity in Canada that will be touched upon in the next section, and that is explored more fully here.

## National Provisions

### *Accessible Canada Act*

While the *Accessible Canada Act* (passed into law in 2019) only applies to federally-regulated entities, it offers useful language and guidance with respect to disability. The Act's list of principles is informative:

- “All persons must be treated with dignity regardless of their disabilities;
- All persons must have the same opportunity to make for themselves the lives that they are able and wish to have regardless of their disabilities;
- All persons must have barrier-free access to full and equal participation in society, regardless of their disabilities;
- All persons must have meaningful options and be free to make their own choices, with support if they desire, regardless of their disabilities;
- Laws, policies, programs, services and structures must take into account the disabilities of persons, the different ways that persons interact with their environments and the multiple and intersecting forms of marginalization and discrimination faced by persons;
- Persons with disabilities must be involved in the development and design of laws, policies, programs, services and structures; and
- The development and revision of accessibility standards and the making of regulations must be done with the objective of achieving the highest level of accessibility for persons with disabilities.”

### *The Canadian Charter of Rights and Freedoms*

Section 15 (1) of the Charter states that “Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

This section of the Charter is an important basis of the presumption of mental capacity and the right to legal capacity among people who have an intellectual disability.

Additionally, section 7 of the Charter states that “everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.” The Supreme Court of Canada has interpreted this as meaning that “liberty protects the right to make fundamental personal choices free from state interference. Security of the person encompasses a notion of personal autonomy involving control over one’s bodily integrity free from state interference.”<sup>2</sup>





## **Supreme Court of Canada Decisions**

The Supreme Court of Canada has made several important decisions related to the concept of dignity. These decisions, and the central role of dignity in Canadian jurisprudence, have concrete implications for the duty to accommodate people with disabilities, including accommodations related to the exercise of legal capacity.

As one example of this, the Supreme Court has stated that “human dignity means that an individual or group feels self-respect and self-worth,” and that “human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced when laws recognize the full place of all individuals and groups within Canadian society.”<sup>3</sup>

Further, the Supreme Court has noted that the purpose of section 15 of the Charter is to “prevent the violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition at law as human beings or as members of Canadian society, equally capable and equally deserving of concern, respect and consideration.”<sup>4</sup>

In simpler terms, for the Supreme Court the purpose of section 15 is “the protection of human dignity,” and “to prevent the violation of human dignity and freedom” that often follows the imposition of “limitations, disadvantages or burdens through the stereotypical application of presumed group characteristics rather than on the basis of merit, capacity, or circumstance.”<sup>5</sup>

## **In Conclusion...**

People with disabilities consistently face barriers to exercising their right to legal capacity, especially when they are pushed into guardianship. This is happening despite the fact that Canadian provinces and territories are governed by international, national, and provincial-territorial guidance that supports people’s right to control their lives and make their own decisions, even when their mental capacity has been questioned.

For more information, including our recommendations for change, please visit our Right to Decide resource page.

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# Notes

1. United Nations. Convention on the Rights of Persons with Disabilities. Canada – Disability: Reservations and declarations.  
[https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-15&chapter=4&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-15&chapter=4&clang=_en)
2. Carter v Canada (Attorney General), 2015 SCC 5 at para 64  
<https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14637/index.do>.
3. ‘Law v Canada (Minister of Employment and Immigration) [1999] 1 SCR 497.
4. Law v Canada (Minister of Employment and Immigration) [1999] 1 SCR 497.
5. Law v Canada (Minister of Employment and Immigration) [1999] 1 SCR 497.



Community Living Ontario is a non-profit provincial association that has been advocating with people who have an intellectual disability and their families for 70 years. We proudly work alongside more than 115 local agencies and advocate on behalf of more than 100,000 people across Ontario.

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