

The Right
to **Decide.**

Intellectual Disability and the Right to Decide

Resource #5: Barriers to financial control:
“Banking with a disability”

This document offers insight into the banking-related barriers often experienced by people who have an intellectual disability.



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.



Barriers to financial control: “Banking with a disability”

The Law Commission of Ontario has stated that “issues related to concepts of legal capacity and supported decision-making are among the most controversial in this area of the law, as well as the most difficult. They raise profound conceptual and ethical questions, as well as considerable practical challenges.”¹

The challenges related to legal capacity can be seen in one of our most common and essential activities: depositing and withdrawing money at a bank.

As an example of this, take ‘Geoffrey,’ a 45-year-old man who has an intellectual disability and uses a relatively small number of words, sounds, gestures, and behaviours to communicate.² He has been supported in a group home by a developmental service agency for 10 years.

Before he came to the group home, Geoffrey’s father assisted him to procure a debit card connected to his chequing account, and he understands that the card can be used to pay for things he needs and likes. He has some trouble with coordination, and since the ‘tap’ function was implemented, he enjoys using the card to pay for items at shops in the community.

The agency keeps Geoffrey’s debit card in a locked drawer, and when out in the community staff often help him use the card to pay for things that aren’t covered in his service agreement. He doesn’t have much income, so there are limits to what he can buy. Staff members often remind him that he needs to choose his purchases wisely, and they support him to weigh the risks and benefits of spending.

The agency has a clear policy in place about receiving consent for staff to assist people to make purchases.

When it became necessary to replace Geoffrey’s debit card at the bank, the bank’s staff seemed to be spooked by the fact that Geoffrey didn’t really use words to communicate, and worried that his staff supporter could be engaged in theft. The staff member froze Geoffrey’s account, which set in motion a series of unfortunate events. With a frozen bank account, no funds can be withdrawn, which meant that:

- He couldn’t pay for his cell phone, which he uses to talk to family members on a regular basis (which greatly contributes to helping him stay calm).
- He couldn’t access any income that would come into his bank account (while his social assistance housing portion is paid directly to the service provider, he receives other amounts directly).

Because there is no clear guidance for the stakeholders involved, there are many possible outcomes in a situation like this. Many people with intellectual disabilities do not have legal guardians or other substitute decision-makers. Since informal decision supports are not recognized in law, Geoffrey is at very high risk of losing his rights or getting caught in a bureaucratic tilt-a-whirl:



- The Ontario Public Guardian and Trustee (OPGT) is very likely to be contacted, and may make the decision to become Geoffrey’s statutory guardian – which would give the office the power to completely control his finances, and would take away all of his property rights.
- The OPGT may decline to get involved, which means the stalemate with the bank would continue.
- Agency staff would need to negotiate with the bank, helping them understand the details of how people in Geoffrey’s situation are supported to manage their finances. This could include the involvement of the Ministry of Children, Community and Social Services and the office of the Ombudsman.

Unfortunately, this is not an isolated issue – it is, in fact, a pervasive problem. It is also just one piece of an issue that extends into the legal system, health care, social services, emergency services, housing, and beyond.

It touches on the lives of people with intellectual disabilities, age-related cognitive impairments, and mental illness. Every day, thousands of people are making decisions – and facing serious barriers to those decisions – in a legal grey area because Ontario’s system for recognizing and supporting legal capacity is underdeveloped and underexamined. The result is unnecessary bureaucracy, increased cost burden, and – most worrying – a loss of rights for people.

For more information and resources related to this project, please visit our [Right to Decide resource page](#).



Notes

1. Law Commission of Ontario (2017). Legal capacity, decision-making and guardianship. <http://www.lco-cdo.org/wp-content/uploads/2017/03/CG-Final-Report-EN-online.pdf>
2. 'Geoffrey' is an amalgamation of several people supported by developmental service agencies in Ontario. ^a



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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