



The Equal Right to Decide in Canada: Closing the Gap

In 2019, IRIS completed a study on how people with developmental, cognitive, and psychosocial disabilities lose the right to decide in their lives, and what can be done to address this growing problem.

The issue

- More than 50,000 Canadians are currently under guardianship, a system that takes away their power, choice, and control over their lives.
- 880,000 to 1 million Canadians with disabilities need decision-making assistance from others. They are vulnerable to losing this power, and far too many do. As the population ages, those living with disabilities are the fastest-growing group in Canadian society.
- Untold (and uncounted) numbers of people lose their right to decide when they are involuntarily admitted and treated in mental health facilities, or when adult protection services intervene, physicians determine that they are deemed “incapable” of giving informed consent, or financial assistance workers make access to social assistance dependent on having a substitute decision-maker.
- Disproportionate levels of poverty, being denied a job, lacking needed disability supports, social isolation, institutionalization, and a culture of ableism leave many people with developmental, cognitive, and psychosocial disabilities without real power to direct their own lives.

50,000 Canadians are currently under guardianship—and their numbers are growing.

Why does it matter?

- The right to make our own choices is fundamental in a democratic society that values autonomy and self-determination.
- It is discriminatory to deny people the right to exercise power, choice, and control in their lives because of their disability.
- Doing so diminishes their value and contribution in our society, as one group of citizens comes to be seen as less human and less able to have a self-directed and authentic life.
- Research shows that people under guardianship experience financial and other abuse, social isolation, and loss of self-esteem.

The United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) protects the right of people with disabilities to exercise their legal capacity—that is, the right to direct their personal, health care, and financial decisions—on an equal basis with others.

How does it happen?

- **Laws:** Guardianship and substitute decision making laws in Canada restrict people from exercising their right to make decisions, when they are unable to do so by themselves. Supported decision making recognizes that a person can exercise this right, if they have the support to translate their will and preferences into plans and decisions that give them legal effect.



- Policies: Public policies in health care, social services, employment and other sectors all reinforce the notion that people need to have certain levels of cognitive ability to be recognized as citizens who can make decisions about their own lives.
- Programs: Community programs in health and social services are often empowered by funding from governments and their community boards to make decisions for people they support—including about where they will live, who they will have relationships with, how they will spend their days, and more.
- Daily practice: Often, it is family, friends, community members, health care and social service providers, police, and judges who lack information and awareness about how to support a person to gain and maintain power over their own lives. Sometimes, out of concern for safety and a person's "best interests," they take away choice and control.

What can be done?

Some of IRIS's recommendations for reform include the following:

- Legally recognize "independent" and "interdependent" decision-making capability. Legal definitions of what is required to exercise legal capacity need to change, consistent with the CRPD and the Charter of Rights and Freedoms. It is not having certain cognitive abilities that should give people power over their lives. People with even the most significant intellectual disabilities can direct their lives when they have support from others to turn their intentions—what matters most to them—into legal decisions. The CRPD requires governments to ensure the supports to do so are available.
- Develop a uniform approach for federal and provincial/territorial legal capacity law. This will help address the growing disparity in decision-making rights across provinces and territories.
- Adopt Charter-informed principles to guide the reform.
- Invest in pilot projects for supported decision-making.
- Ensure community capacity to support people to exercise legal capacity. This includes providing training, information, and assistance to the health care, social services, and justice sectors.
- Closely consult with and actively involve people with disabilities, their families, and their representative organizations at all stages of the reform process.
- Reevaluate Canada's reservation on Article 12, in light of the study's findings and Charter rights to liberty, security and equality, without discrimination based on disability.

The *Canadian Charter of Rights and Freedoms* protects the right to liberty (section 7) and equality (section 15) without discrimination. Yet guardianship, mental health, health care consent, contract, social assistance, and other laws in Canada systematically deny these rights to people with intellectual, cognitive, and psychosocial disabilities because of their disability.

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