

a statutory framework for the right to legal capacity and supported decision making

For Application in Provincial/Territorial Jurisdictions in Canada

PREPARED BY:

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and Supported Decision Making

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Canadian Association
for Community Living

Association canadienne pour
l'intégration communautaire

Diversity includes. On se ressemble.

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Introduction

The right to equal recognition before the law, and its attendant right to legal capacity without discrimination on the basis of disability, is recognized in Article 12 of the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD), ratified by Canada in 2010. The inclusion of Article 12 in the CRPD is a major achievement. It makes clear that people with disabilities have the right to control decisions about their lives with whatever kinds of support they require to do so, and that States Parties are obliged to establish the arrangements to make this possible. This includes enabling a person with significantly challenging disabilities to exercise control over decisions through the assistance of support persons who, in their relationship of personal knowledge and trust with the person, commit to interpreting and acting on that person's preferences and will as the basis of decision making with others.

For governments to fulfil these obligations requires what many have referred to as a 'paradigm shift' in the usual approaches to protecting and promoting the right to legal capacity. Adults can no longer be required to demonstrate that they can meet certain tests of mental capacity in order to have their rights to legal capacity equally respected and protected. In recognizing this right and the supports needed to exercise it, the CRPD is consistent with the equality rights protections of the Canadian *Charter of Rights and Freedoms*.

Recognizing this obligation of governments under international law, the Canadian Association for Community Living (CACL) has taken another step with this report in our twenty year effort to secure recognition for people with intellectual and other disabilities of the right to supports in exercising legal capacity; or, what we referred to in our 1991 Task Force Report on 'Alternatives to Guardianship' as 'supported decision making.'

For people with intellectual, cognitive or psychosocial disabilities in particular, Article 12 is essential to self-determination and equality, fundamental calls of the disability rights movement. The legacy of centuries of confinement and exclusion based on the idea of 'mental incapacity,' is that people with intellectual, cognitive or psychosocial disabilities are often considered to have a lesser moral and legal status than other human beings. The result has been laws, policies and practices in every sector of society that deny equality on the basis of disability – whether this be through guardianship, denial of the right to vote (still the case in some countries), the right to make one's own health care decisions, the right to make decisions about where one will live, and with whom, and how one's money and other property will be managed.

In acknowledging that people can exercise their legal capacity in different ways, and with a range of supports, Article 12 provides new ground on which people with disabilities can retain and rebuild their self-determination. We understand Article 12 as a kind of ‘ramp’ of accessibility for adults who have long been denied the right to equal recognition before the law and to the process of controlling decisions that affect their lives.

While many strategies are needed to fully implement Article 12, there is no doubt that substantial law reform is required. Moreover, no single piece of legislation currently exists in Canada or elsewhere that pulls together all the pieces needed to ensure a right to legal capacity. These include the supports to exercise this right, as Article 12 requires, and the roles and duties of government, other parties in the decision-making process, support networks, and community agencies.

This report presents a statutory framework for guiding implementation of Article 12. CACL recognizes that provincial/territorial jurisdictions have the constitutional authority to legislate with respect to civil and property rights, under which legal capacity has been regulated in the Canadian context. Recognizing that the process of law reform is jurisdiction-specific, and is best designed and managed in a productive dialogue between civil society, governments and legislators, CACL has undertaken the development of this report to contribute to and assist in the necessary law reform processes to give Article 12 full effect. On its behalf, the CACL Working Group on Legal Capacity and Supported Decision Making and its advisors undertook three steps in preparing the framework presented in this report:

- Identified ‘starting points’ – key assumptions and challenges that need to be addressed in law reform;
- Identified ‘essential elements’ of a statutory framework to promote and protect the right to legal capacity and access to needed supports for this purpose;
- Prepared a ‘sample statutory text’ as an example of how these elements could be drafted into a statute.

In presenting and circulating this report, CACL does not propose the sample text as exact statutory language, and recognizes that the concepts related to legal capacity and supports for decision making evolve over time. However, we also recognize that outlining the specifics of how the right to exercise legal capacity and the obligation of governments to ensure access to supports to do so could be implemented is a necessary step in the reform process. The sample text presented in this report was developed in the spirit of assisting governments, civil

society and legislators to engage in the law reform process to ensure compliance of the framework of civil and property rights with the UN CRPD.

Section I of this report identifies the starting points and key challenges to be addressed in legislative reform for promoting and protecting the right to legal capacity and ensuring access to needed supports to maximize control over the decisions affecting an adult's life. Section II outlines essential elements of a statutory framework to fulfil this purpose. In Section III, a sample statutory text is presented as a resource for those engaged in law reform.

I. Starting Points for a Statutory Framework to Promote and Protect the Right to Legal Capacity

In designing this statutory framework, the Working Group and Advisory Group have been guided by the CRPD to inform our starting points and assumptions:

- People exercise their legal capacity in different ways, and may need a variety of supports to do so, as recognized in Article 12. These supports can take different forms including communication aids and devices, or personal supports like a supporter or support network to assist in making decisions.
- Most people use informal support in making personal decisions. We draw on the support of family and friends in managing decision making with financial institutions or doctors, for example. While we all make decisions as adults interdependently, we have a right to make decisions and enter agreements by ourselves, as long as we appreciate and understand the nature and consequences of the decision.
- However, some people are not recognized as fully capable to make decisions by third parties with whom they are seeking to establish formal contracts or agreements, precisely because they need others to assist them. In order to prevent substitute decision making from being imposed, their supporters need some recognition as duly appointed to participate in the decision-making process – not as substitute decision makers, but as supporters. Legislation is needed that guides how such appointments are to be made, and how the role of supporters is to be safeguarded and regulated.
- For some people who cannot communicate in ways that most others understand, decision-making supporters may be required to interpret personal preferences as the basis for direction in decision making. Their preferences and will, as understood by those closest to them, is the basis on which they will exercise their full legal capacity.
- Some people will not be able to make decisions all by themselves, but Article 12 makes clear that their full legal capacity cannot be denied on this basis. One challenge is to figure out how to protect against some people being required to use decision-making supports and assistance, just because others – like a doctor, or financial institution want to protect their contractual liability.

- Creating inclusive and accommodating decision-making processes has largely not been recognized as a public policy issue. Individuals, supporters, health care, social service and financial institutions, and governments themselves will need assistance in figuring out how to enable people in different situations to be supported and accommodated in making decisions.
- Many people will make planning arrangements, through an advance directive or Power of Attorney, which gives authority to another person to make decisions for them, if they become unable to for whatever reason. Such arrangements respect a person's self-determination, because they are deciding what should happen in their future. However, safeguards are needed to ensure that those appointed do not abuse or exploit the person, and that appropriate responses are made when this happens.
- There is likely a small group of people with significantly challenging disabilities, who may remain confined to institutional settings, who do not have family or friends, who are not able to communicate in ways that any other person understands, and who do not have any prior planning arrangements about what decisions they would like made. This could be because of the nature of their lifelong disability, and the exclusion they have experienced, or because of injury or illness which leaves it difficult or impossible for others to communicate with the person. Some way of stepping in to make needed decisions is required in these situations. This type of decision making should be distinguished from 'supported' decision making. While the decisions should be made for the sole benefit of the person, the adult is being represented by another person who is effectively making decisions – what we call in the statutory framework presented below 'representative' decision making. At the same time, investments should be made to ensure that the person is supported to develop relationships with others whom they trust, so that they can be supported to make their own decisions in the future.
- Government has an essential role to play in protecting adults who are abused, victimized or exploited by those around them. However, adult protection systems need to be designed in ways that assure protection and intervention when needed, but do not over-ride the rights of adults to make their own, sometimes risky decisions. At the same time, inputs are needed to assist adults in situations of neglect and abuse to regain their self-determination through supportive relationships with others or any other means as soon as possible.
- Given the range of supported decision-making arrangements that people will have in place, especially with the aging of the population, governments

must create new authorities to help people develop and manage these arrangements. In addition, authority is needed to adjudicate among parties where there are disputes about decision making processes.

- As well, governments must play a role in funding community agencies to assist people in creating decision-making arrangements that enable them to act on their right to legal capacity. Moreover, governments have a role to provide specific decision-making supports when there is a demonstrated need, and to promote broader public awareness about the right to legal capacity.

II. Essential Elements of a Statutory Framework for Promoting and Protecting the Right to Legal Capacity

Based on these starting points, we have identified what we consider to be essential elements in a statutory framework. In outlining these elements, we recognize that the supportive relationships which make self-determination possible for any of us cannot be legislated. That said, we also recognize that Article 12 obliges governments to ensure that people have access to a range of supports needed to make decisions, and that sometimes supports can include assistance in developing relationships of trust and understanding with others who can assist an adult in exercising control over decisions affecting his or her life.

The essential elements we identify in this section are those ‘building blocks’ for promoting and protecting the right to legal capacity that governments are responsible for putting into place. The building blocks must be designed in ways that shape how others play their roles as well. Legal capacity is lived in everyday life, in the many transactions and agreements we all make. The right to ‘Living independently and being included in the community’ recognized in Article 19 of the CRPD, for example, relies on people being able to enter these agreements – whether to rent an apartment, open a bank account, get married, or direct their health care and disability supports. Many of the other rights recognized in the CRPD also rely for their full realization on people with disabilities being able, and supported as necessary, to make decisions in their lives. This means that doctors, bankers, service agencies, support networks, family and community members all have responsibilities to promote and enable decision-making processes that are inclusive, supportive and accommodating of people with disabilities.

The challenge for law reform is to craft legislation that: makes clear the duties and responsibilities of all these actors; recognizes the systematic powerlessness and exclusion of many people in decision-making about their lives; and creates the right balance of rights, responsibilities and liabilities to enable people to lead and live good lives in the community, and to pursue their own life paths.

PREAMBLE

Given that a statutory framework must institute a paradigm shift in *appreciating and understanding* the law of legal capacity, a ‘preamble’ is needed to provide the necessary background and rationale for legislation. It should reference the

long-standing exclusion of people with disabilities from enjoying and exercising the right to legal capacity, how guardianship has undermined that right, the presumption that adults can exercise this right legally independently, the different ways in which people communicate and express their decisions, will or preferences, and the continuum of supports that adults may require to exercise their legal capacity.

INTERPRETATION

A statutory framework should lay out broad guidelines for interpretation, as well as key definitions, the purpose and principles which affirm the right to legal capacity and supports in decision making.

Reference to both human rights legislation which affirms the right to equality without discrimination and the UN *Convention on the Rights of Persons with Disabilities* (CRPD) should be identified as primary guidance for interpreting the statute.

DEFINITIONS

A statutory framework should define concepts and terms in ways that are compliant and consistent with the CRPD. As well, concepts related to decision-making supports, the different ways in which people communicate and make decisions, and the duty to accommodate in decision making should be defined in legislation.

PURPOSE AND PRINCIPLES

The right to equal recognition before the law, to the exercise and enjoyment of legal capacity and to supports for this purpose requires a clear statement of purpose outlining government obligations. Clear principles are needed to guide the many actors – adults, supporters, third parties to decision-making processes, government and community agencies – in ensuring that decision-making processes are fully inclusive, accommodating and supportive of all adults. Such principles should recognize that people may exercise their legal capacity in different ways, and ensure that people with disabilities are in no way restricted as a result of the types of supports they may require. At the same time, principles should make clear that supports cannot be imposed on people against their wishes, and that people should be presumed to be able to make their decisions legally independently – that is that they are able to understand and appreciate the nature and consequences of a decision on their own, with support and accommodations as needed.

ACCESS TO SUPPORT TO EXERCISE LEGAL CAPACITY

Article 12 makes clear that governments have an obligation to provide access to supports people may require to exercise their legal capacity. Legislation should take its guidance from Article 12.3 in particular in this regard, and provide for community-based delivery of supports which should include:

- Individual planning, service coordination and referral;
- Independent advocacy;
- Communication and interpretive assistance;
- Facilitating a supported decision making arrangement;
- Peer support
- Relationship-building assistance;
- Administrative assistance;
- Any other support or accommodation considered necessary to assist the adult in exercising control over his or her decisions, or to provide the adult with the conditions needed to develop or regain decision-making capabilities and to exercise his or her right to legal capacity;

The primary support some adults may require in decision making is another person who can provide individual planning support, brokerage or advocacy as requested by the adult, and the legislation should provide for a supports based on the Swedish system of a ‘personal ombuds’. The personal ombuds is directly accountable to and directed by the adult, but provides advice and assistance to him or her as needed. This approach to support has largely been developed by people with psychosocial disabilities and their organizations, and in the Canadian context also draws upon the long-standing tradition of ‘citizen advocacy’.

DUTY TO ACCOMMODATE IN DECISION-MAKING PROCESSES

The duty to accommodate adults in decision-making processes should be clearly defined and required under legislation. This would ensure that financial institutions, health care providers and other third parties to any decision meet their legal obligations to provide accommodations consistent with human rights laws, the *Charter of Rights and Freedoms* and the CRPD.

ESTABLISHING SUPPORTED DECISION MAKING ARRANGEMENTS

Legislation should provide at least two ways for adults to establish formalized supported decision-making arrangements, which involve an adult having access to other people to assist in decision making and be recognized in their role by third parties:

- An adult should be able to appoint a decision-making supporter or supporters and make an agreement with them to assist in decision-making for certain decisions or types of decisions.
- In situations where adults may not be able to clearly designate supporters to assist, their family or friends should be able to apply to become decision-making supporters where there is a demonstrated trusting relationship with the adult. The role of decision-making supporters in this case is to be guided by their best understanding of the adult's will or preferences over time, and to apply this understanding to executing particular decisions. In this way, the adult maintains control over decisions affecting his or her life. In such situations, individuals should be able to make application to a designated authority to be appointed for this purpose.

ESTABLISHING REPRESENTATIVE DECISION-MAKING ARRANGEMENTS

'Representative decision-making arrangements' should also be provided for which would involve appointment of a representative to make decisions on behalf of a person. Two main options should be provided:

- Where an adult appoints others through a prior Planning Document like an advance directive, Power of Attorney or Ulysses Agreement;
- Where a designated authority makes an appointment for a time-limited and very specific purpose, in those relatively few situations where there is no prior planning document and it is not possible to establish a supported decision-making arrangement. This would only be because an adult is not able to communicate in ways that any other person understands and the adult has no trusting relationships with others who can apply to be appointed as decision-making supporters.

MONITORS

Given that some people are at higher risk of neglect and abuse by others because of the nature of their disability, isolation, or other factors, some provision should be in place to enable 'monitors' of supported decision-making and representative decision-making arrangements to be appointed. An appointment should be made only on request by an adult or supporter or representative or where there are reasonable grounds to indicate that this safeguard is required to ensure the decision-making process with and around the adult maintains integrity in accordance with the purpose and principles of the legislation. A monitor would be independent and act to ensure supporters and representatives are fulfilling their statutory obligations.

DUTIES, POWERS AND LIABILITY OF DECISION-MAKING SUPPORTERS, REPRESENTATIVES, PERSONAL OMBUDS AND MONITORS

A statutory framework should clearly define the duties and responsibilities of decision-making supporter, representatives, personal ombuds and monitors, and the limits of their authority, including to:

- Act diligently, honestly and in good faith;
- Act for the sole benefit of the adult;
- Be guided by the values, beliefs, wishes, and cultural, spiritual and religious norms and traditions that an adult holds;
- Commit, to the greatest extent possible, to creating and maintaining a trusting relationship with the adult, and to establishing relationships with others who are involved with the adult with the purpose of enhancing the representative's personal knowledge and understanding of the adult;
- Commit to liaising with community resources to assist the adult in establishing a wider network of trusting and committed personal relationships;
- Involve supportive family members and friends, as indicated by the adult's will or preferences; and
- Act in accordance with all applicable legislation.

The legislation should protect decision-making supporters, representatives, personal ombuds and monitors from any financial or other liability provided they fulfil their duties in good faith.

PROCEDURES AND RULES GOVERNING THE CONTENT AND USE OF DECISION-MAKING ARRANGEMENTS

Matters to be included in supported and representative decision-making agreements should be set out in a statutory framework, along with the rules for making wills, the status of adults who are in a state of unconsciousness, and protection of third parties who enter contracts or agreements through supported decision-making processes.

RENEWING, CHANGING, REVOKING OR ENDING SUPPORTED OR REPRESENTATIVE DECISION-MAKING ARRANGEMENTS

A statutory framework should lay out the conditions and procedures under which decision-making arrangements could be renewed, modified or terminated, and by which decision-making supporters, representatives, personal ombuds or monitors may resign from their role in these arrangements.

A FIXED POINT OF RESPONSIBILITY WITHIN GOVERNMENT TO PROTECT AND PROMOTE THE RIGHT TO LEGAL CAPACITY

It is clear that enabling the paradigm shift that Article 12 obliges, requires that governments play a proactive role in promoting and protecting the right to legal capacity. Legislation must, therefore, define a fixed point of responsibility within government responsible for assisting people to develop decision-making arrangements and for authorizing appointments of decision-making supporters or representatives in those relatively few situations where the latter may be required. Such an office might merge its functions with, or be complementary to, an existing office. In any event, it would be mandated to promote and protect the right to legal capacity and to assist individuals as well as third parties to decisions – like financial institutions, health care providers, etc. – to meet their obligations to support and accommodate adults in decision-making processes. As well, an office of this nature could respond to questions or concerns about decision-making arrangements that are established under the legislation, and where abuse or neglect was suspected could work with the Adult Protection authority to investigate and address the concerns. Given its purpose to ensure the exercise of a fundamental human right, its authority should ensure independence of government, reporting to the legislature.

DISPUTES RESOLUTION TRIBUNAL

Protecting and promoting the right to legal capacity will undoubtedly give rise to a number of disputes – for example, about whether a person is getting the supports or accommodations they require, or if there is difference of opinion about whether a person can fully understand and appreciate the consequences of a decision on their own, or if decision-making supporters disagree about what a person's will or preferences are, or how they apply in the making of a particular decision. The expertise in questions of legal capacity which are germane to a growing group of adults, third parties, financial institutions, health care providers, and the legal profession justifies a dedicated board or tribunal which is of competent, independent and impartial authority. If a government has already established a board or tribunal with a similar mandate, these functions could be added to it.

RESPONDING TO ABUSE AND NEGLECT

The fixed point of responsibility within government to promote and protect the right to legal capacity must be distinct from and independent of the provincial/territorial adult protection authority, but act in concert with it as required. All abuse and neglect complaints received from any source must continue to be referred to the adult protection authority. However, the statutory

framework should provide that the adult protection authority has the obligation to involve the fixed point of responsibility in managing the investigation and outcome where matters of legal capacity and decision-making arrangements are a key factor. The role of the fixed point of responsibility should be to ensure the adult's right to legal capacity is enhanced to the greatest extent possible by assisting the adult protection authority to develop needed support relationships and arrange for support to exercise legal capacity as needed. The fixed point of responsibility should balance the government's duty to intervene and protect, with the obligation to enhance the supports required to assist a person in regaining their self-determination through appropriate supported or representative decision-making arrangements.

DESIGNATED COMMUNITY AGENCIES

In many communities, a number of generic or specialized community-based agencies already exist to provide disability-related supports. Some of these could be mandated under the statutory framework to assist people in creating the personal networks and providing other kinds of decision-making supports that people may need to exercise their legal capacity. New agencies, dedicated solely to this purpose, might also be required, depending on the community. As well, such agencies could assist in public promotion about the right to legal capacity, and could be resource centres to assist community members, financial institutions, and others develop their capacity to accommodate and support people in exercising their legal capacity.

III. A Sample Statutory Text

The following sample text puts into draft statutory language the essential elements of a statutory framework for promoting and protecting the right to legal capacity and decision-making supports presented in the preceding section. This is not exact language, and other statutory and regulatory provisions would be needed for full implementation. We present this sample text as a guide and a resource to assist civil society, governments and legislators in their own process of law reform in their respective jurisdictions. For the purposes of this sample text, we have named the fixed point of responsibility in government as the ‘Legal Capacity and Support Office’ and the disputes resolution tribunal as the ‘Legal Capacity Tribunal.’

Legal Capacity and Supported Decision Making Act

PREAMBLE

WHEREAS the rights to life, liberty and security are recognized as fundamental rights which can be fully realized only in the context of social and economic inclusion where all persons are recognized and equally valued as participating members of society; and where all adults are enabled to enjoy and exercise their right to legal capacity to make their own decisions with supports;

AND WHEREAS Canada has signed and ratified the United Nations *Convention on the Rights of Persons with Disabilities*, of which Article 12 recognizes that “States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law”; and requires that “States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life” and that “States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity”;

AND WHEREAS the fulfillment of these obligations may be seriously threatened by a person’s lack of access to supports and services to exercise these rights, and by failure of parties to accommodate adults with disabilities in decision-making processes;

AND RECOGNIZING that many persons are restricted in exercising or denied their right to legal capacity on the basis of their disability, perceived incapacity, historic disadvantage and negative stereotypes;

AND WHEREAS, despite prevailing assumptions of the beneficence of guardianship, the detrimental consequences of the added label of “incapable” on persons whose disability is of cognitive origin serve only to further diminish and even destroy the image and status of such persons as citizens of equal value in Canada’s diverse and inclusive society, and do so from the early age of majority;

AND RECOGNIZING that some adults only exercise their legal capacity in decision-making processes by virtue of the involvement of decision-making supporters who have reasonably interpreted the adult’s will and preferences on the basis of the adult’s form of communication;

AND RECOGNIZING that some adults, as a result of their particular intellectual, psychological, or sensory characteristics are able to communicate their will and preferences in ways that one or more other persons are able to reasonably interpret and apply in a specific decision-making situation, based on their personal knowledge of the adult;

AND WHEREAS it is recognized that where an adult requires a supporter(s) or representative(s) to assist him or her in decision making, including by reasonably interpreting and applying the adult’s will and preferences in a specific decision-making situation in order for the adult to exercise his or her legal capacity; the supporter(s) or representative(s) should be expected and encouraged to enhance the adult’s self-determination;

AND WHEREAS it is recognized that any support that is provided to an adult to exercise his or her legal capacity should be provided in a manner which respects the privacy and dignity of the adult and should be the least restrictive and least intrusive form of assistance that is appropriate in the circumstances;

AND WHEREAS the Lieutenant Governor in Council, in taking measures to promote and protect these rights, is subject to the *Canadian Charter of Rights and Freedoms*, the [Provincial/Territorial] *Human Rights Act*, and must have regard to the *International Covenant on Civil and Political Rights* and to the *United Nations Convention on the Rights of Persons with Disabilities* particularly with respect to those fundamental rights that are not to be limited or abridged;

NOW THEREFORE, Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

PART 1 – INTERPRETATION AND APPLICATION

Short Title

- 1.** This Act may be cited as the Legal Capacity and Supported Decision Making Act.

Interpretation

- 2.** In interpreting and applying the legislation, regard shall be had to the principles expressed in the United Nations Convention on the Rights of Persons with Disabilities, and all other international human rights instruments to which Canada is signatory. The legislation is to be construed and applied in a manner that ensures that decisions or actions taken pursuant to the Act are consistent with the *Canadian Charter of Rights and Freedoms*, including its principles of equality and freedom from discrimination, and its right to life, liberty and security of the person;

Definitions

- 3.** In this Act,

“accommodation” in a decision-making process means the provision of necessary and appropriate supports, support to exercise legal capacity, modifications and adjustments to ensure to persons with disabilities or communication difficulties enjoy and exercise their legal capacity on an equal basis with others, and applies to all parties in the decision-making process to the full extent as parties are legally obligated pursuant to the letter and spirit of human rights laws, the *Canadian Charter of Rights and Freedoms*, and the United Nations *Convention On The Rights Of Persons With Disabilities*;

“adult” means a person of the age of majority in whose name a decision is made, and for the purposes of this statute ‘adult’ may include minors, who in the context, are authorized by law as capable of making certain decisions pursuant to s. 4;

“best interpretation” means the interpretation an adult’s will and preferences that seems most reasonably justified in the circumstances, and for which decision-making supporters can provide a reasonable account of how this interpretation was arrived at;

"capacity" means:

- (1) that the understanding of the information relevant to the decision to be made and the appreciation of the reasonably foreseeable

- consequences of such decision or lack of such decision, may rest either,
- (a) within the adult herself or himself, and with decision-making supports and accommodations as needed; or alternatively,
 - (b) within the understanding, appreciation and fiduciary duty of the person(s) duly appointed to support the adult in exercising his or her legal capacity; and
- (2) Where capacity falls within the purview of paragraph (1)(b) there shall be a requirement that the decision be,
- (a) made solely to and for the benefit of the adult; and
 - (b) guided by a support person(s)' best understanding and appreciation of the adult's preferences or will and how these are to be applied to a specific decision(s) where,
 - i. “best understanding and appreciation” means interpreting the adult’s behaviour and/or communication in a present or previous situations as the expression of the adult’s will or preferences and being able to provide a reasonable account of how this interpretation was arrived at;
 - ii. “applied to the specific decision(s)” means applying this interpretation to a specific decision-making situation as the basis for making a decision that will be understood by all parties as the decision of the adult;
 - iii. an adult’s “preference” means an adult’s greater liking for one alternative or another over others which can be, or has been, demonstrated by words or behaviour or both; and
 - iv. an adult’s “will” means a general desire of the adult for a state of his or her affairs or being, which can be demonstrated by words or behaviour or both.

“Commissioner” means the person appointed as Commissioner of the Legal Capacity and Support Office;

“decisions” include, but are not limited to, personal care, health care, and property decisions;

“decision-making facilitator” means an adult who is able to act legally independently, whose role is created by a facilitated decision-making agreement pursuant to sections 15 and 16 and meets the conditions and duties of a decision-making facilitator pursuant to section 21;

“decision-making representative” means an adult who is able to act legally independently, represents the adult in decision making pursuant to sections 14 and meets the conditions and duties of a decision-making representative pursuant to section 20;

“decision-making supporter” means an adult who is able to act legally independently, whose role is created by a supported decision-making agreement pursuant to sections 11 or 12 and meets the conditions and duties of a decision-making supporter pursuant to section 17;

“designated agency” or “designated agencies” means an public or non-profit agency or agencies established, mandated, contracted and/or approved by the Minister to deliver services pursuant to section 8;

“facilitated decision-making arrangement” means an arrangement made pursuant to sections 15 and 16 of this Act;

“legal capacity” means the power and status to fully enjoy ordinary legal rights, and the right to act upon all such rights which includes engaging in a particular undertaking or transaction, to maintain a particular status or relationship with another individual and more in general to create, modify or extinguish legal relationships.

“legally independently” refers to an adult who exercises his or her legal capacity to make decisions without any legally recognized decision-making supporters or representatives, on the basis that he or she understands the information relevant to the decision to be made and the appreciation of the reasonably foreseeable consequences of such decision or lack of such decision, and who may do so with decision-making supports and accommodations as needed;

“Minister” means the Minister of _____ ;

“Office” means the Legal Capacity and Support Office;

“peer support” as defined by the regulations;

“personal ombud” means a person engaged by a designated agency to provide any form of support to exercise legal capacity;

“preference(s)” means an adult’s greater liking for one alternative or another over others which can be, or has been, demonstrated by words or behaviour or both;

“qualified person” as prescribed in the regulations;

“representative decision making arrangement” means an arrangement made pursuant to section 14 of this Act;

“signed” means

- (1) the usual signature of the adult, which may include any mark typically made by that person, or
- (2) a signature stamp, or
- (3) a signature on behalf of the adult if:
 - (a) the adult is physically incapable of signing,
 - (b) the adult is present, and
 - (c) the document to be signed on his or her behalf by another adult is witnessed by an adult (the witness) who makes a statement, which may be in a prescribed form, affirming his or her belief that that the signature is representative of the will and preferences of the adult in this circumstance;
- (4) a signature in any other form, electronic or otherwise, that may be necessary in exercising the duty to accommodate the adult;

“sole benefit of the adult” means the following factors are the basis upon which a decision is facilitated for an adult where a decision-making facilitator does not have sufficient information to arrive at a best interpretation of an adult’s will and preferences in the circumstances:

- (a) Whether making or not making the decision is likely to,
 - i. improve the adult’s condition or well-being,
 - ii. prevent the adult’s condition or well-being from deteriorating, or
 - iii. reduce the extent to which, or the rate at which, the adult’s condition or well-being is likely to deteriorate.
- (b) Whether the benefit the adult is expected to obtain from the proposed decision outweighs the risk of harm to him or her.
- (c) Whether another decision that would result in less restrictive or less intrusive measures for the adult would be as beneficial as the proposed decision.

“support to exercise legal capacity” means supports provided by designated agencies, decision-making supporters, decision-making representatives, a personal ombud or other people or entities and includes:

- (a) individual planning, service coordination and referral;
- (b) independent advocacy;
- (c) communication and interpretive assistance;
- (d) facilitating a supported decision making arrangement;
- (e) peer support;

- (f) relationship-building assistance;
- (g) administrative assistance;
- (h) any other support or accommodation considered necessary to assist the adult in exercising control over his or her decisions, or to provide the adult with the conditions needed to develop or regain decision-making capabilities and to exercise his or her right to legal capacity;
- (i) any other good or service as may be prescribed by the regulations.

“supported decision-making arrangement” means an agreement or other arrangement made pursuant to sections 12 or 13 of this Act;

“third party” means any person involved in a decision-making process, other than the adult, decision-making supporter, or decision-making representative;

“Tribunal” means the Legal Capacity Tribunal;

“will”, when used to refer to an adult’s will means a general desire of the adult for a state of his or her affairs or being, which can be demonstrated by words or behaviour or both, and expressed contemporaneously or through time;

Application

4. This Act applies to:
- (1) All persons of the age of majority, hereafter identified as ‘adults’, without discrimination, and with respect to all areas of personal decision making; and
 - (2) Minors who are authorized by law as capable of making certain decisions.

Purpose

5. The purpose of this Act is to ensure that the Government of [Province/Territory] and entities it regulates with respect to the exercise of legal capacity, fully comply with the obligations and spirit of the United Nations *Convention on the Rights of Persons with Disabilities* by ensuring that:
- (a) adults have access to supports and accommodations they require to exercise their right to legal capacity, and in ways that maximize their self-determination and autonomy;
 - (b) adults who communicate their will and preferences in ways that only one or a small number of persons who have personal

- knowledge of the adult are able to reasonably interpret and apply in a particular decision-making situation, are not denied their right to legal capacity;
- (c) third parties fulfil their duties to accommodate the needs of an adult in decision-making processes;
 - (d) third parties in a decision-making process can rely on decisions that are made through a supported decision making process;
 - (e) disputes related to provision of supports and accommodations to exercise legal capacity are resolved through fair and just processes;
 - (f) adults and their family members can make effective plans for their future;
 - (g) an adult's decisions are safeguarded in accordance with international human rights law and such safeguards ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body and are proportional to the degree to which such measures affect the person's rights and interests;
 - (h) steps are taken to enhance public awareness and understanding of the right to legal capacity without discrimination on the basis of disability and of the legal duties relating to supports and accommodations.

Principles

6. The guiding principles of this *Act* are:

- (a) Adults have a right to direct decisions affecting their lives;
- (b) Adults naturally make or direct their decisions interdependently, meaning they draw on information, support and assistance from others;
- (c) Adults, with or without support, are presumed to be able to make decisions about their lives legally independently;
- (d) Adults are entitled to communicate by any means that enables them to be understood, and an adult's way of communicating with others is not grounds for deciding that he or she is incapable of understanding or appreciating anything related to making decisions;

- (e) An adult may exercise his or her legal capacity with supports for this purpose, or through legal representatives chosen by the adult to make some or all decisions on his or her behalf;
- (f) Adults may exercise their legal capacity legally independently with supports and accommodations as they choose;
- (g) An adult's use of supports to exercise legal capacity cannot be used as a reason to require an adult to have a decision-making supporter or representative appointed;
- (h) An adult with a disability enjoys a right to accommodation in decision-making processes, and other parties to the decision-making process are legally obligated to accommodate the adult to the full extent pursuant to the letter and spirit of human rights laws, the *Canadian Charter of Rights and Freedoms*, and the United Nations *Convention On The Rights Of Persons With Disabilities*;
- (i) All parties to decision making processes have the obligation to ensure the most autonomy-enhancing decision-making arrangement and supports are in place;
- (j) Adults who exercise legal capacity are responsible for their decisions, and liability for the outcome of their decisions does not extend to their personal ombud, or decision-making supporters, representatives or facilitators provided that the latter have met their legislated duties.

PART 2 – ACCESS TO SUPPORT TO EXERCISE LEGAL CAPACITY INCLUDING A PERSONAL OMBUD

- 7.** The Minister shall take appropriate measures to provide supports to:
 - (1) adults who may require such support in exercising their legal capacity;
 - (2) decision-making supporters, representatives, facilitators and personal ombuds who may require such support to assist adults in exercising their legal capacity.
- 8.** In meeting the obligations pursuant to section 7, the Minister shall make provision for delivery of community-based services to ensure that:
 - (1) adults can access:
 - (a) as they may require, support to exercise legal capacity;
 - (b) the assistance of a personal ombud;
 - (c) assistance in developing supported decision-making or representative decision-making arrangements;
 - (2) decision-making supporters, representatives, facilitators and personal ombuds receive support they may require in supporting adults in exercising their legal capacity.
- 9.** In order to make provision for services pursuant to section 8, the Minister shall within one year of the coming into force of this Act, develop a plan, policy framework, arrangements and funding mechanisms for the establishment of designated agencies to deliver to adults supports to exercise legal capacity.
- 10.** The plan and policy framework made pursuant to section 9 shall be developed through active participation and engagement of people with disabilities and their representative organizations and community service providers, and shall:
 - (1) Define eligibility criteria for services pursuant to section 8;
 - (2) Provide for the Minister to:
 - (a) accept applications for funding and/or delivery of supports to exercise legal capacity on behalf of eligible adults, from:
 - i. the adult, a decision-making supporter, representative or facilitator acting on his or her behalf;
 - ii. a designated community agency;
 - iii. a court-appointed substitute decision maker of an adult;
 - iv. the Office; or
 - v. the Adult Protection Authority;
 - (b) within a period prescribed in the regulations, to authorize the provision of supports to exercise legal capacity through a designated agency, or by other means, unless:

- i. the Minister is of the opinion that the adult can independently make decisions without such supports, or does not otherwise require them, or that some alternative type of support would be sufficient;
 - ii. the Minister has clear and convincing evidence that the adult's legal capacity would not be enhanced by the provision of such supports.
 - (c) ensure he or she is advised of any unmet need for services pursuant to section 8;
 - (d) take any action necessary to ensure that services are being delivered pursuant to this Act and prescribed regulations;
 - (e) develop capacity of agencies and any other person to deliver to adults supports to exercise legal capacity;
- (3) Provide for designated agencies to:
 - (a) deliver services as approved, funded and authorized by the Minister;
 - (b) arrange for personal ombuds persons to be available to assist adults in exercising their legal capacity;
 - (c) advise the Minister of unmet needs for services;
- (4) Provide for the Office to have the capacity and resources it requires to fulfill its functions consistent with this Act; and
- (5) Provide for any other matters as identified through the consultation and planning process which are relevant to ensuring adults have access to the community-based supports required to exercise and enjoy their legal capacity on an equal basis with others, and to enabling designated agencies to fulfill this mandate.

PART 3 – DUTY TO ACCOMMODATE IN DECISION-MAKING PROCESSES

11. The duty to accommodate applies to all parties in the decision-making process to the full extent as parties are legally obligated pursuant to the letter and spirit of human rights laws, the *Canadian Charter of Rights and Freedoms*, and the United Nations *Convention On The Rights Of Persons With Disabilities*, and to this end:
- (1) The Minister shall develop and issue guidelines in relation to the duty to accommodate in decision-making processes;
 - (2) In developing and issuing guidelines pursuant to section 10(1) the Minister shall invite the [relevant] Human Rights Commission to participate in the development and issuance of guidelines, and shall ensure that civil society organizations, in particular of those representing people with disabilities and older adults are fully involved and participate in their development;
 - (3) Members of the public, and any public or private entity, may seek assistance from the Office about their duties to accommodate in decision-making processes;
 - (4) Any adult, decision-making supporter or representative, personal ombud or monitor under a supported or representative decision-making arrangement may seek advice and assistance from the Office where they suspect a third party is not meeting their duty to accommodate pursuant to Part 3.

PART 4 — ESTABLISHING SUPPORTED DECISION-MAKING, REPRESENTATIVE OR FACILITATED DECISION-MAKING ARRANGEMENTS

Establishing a supported decision-making arrangement through an adult's appointment of decision-making supporters

12.

- (1) A valid supported decision making arrangement may be established by agreement between the adult and the decision-making supporter(s) where:
 - (a) the adult demonstrates his or her desire for the decision-making supporter to provide support to exercise his or her legal capacity;
 - (b) the supporter(s) has a proven, trusting relationship with the adult;
 - (c) the supporter(s) is committed to the adult's well-being; and
 - (d) the supporter (s) is able to communicate with the adult and reasonably interpret his or her will and preferences for others.
- (2) Such an agreement shall:
 - (a) be in writing;
 - (b) be signed by the adult and decision-making supporters, and witnessed by two adults who are not involved in the arrangement;
 - (c) be notarized by a notary public;
 - (d) include a statement signed by the supporters stating that they have read and understand the agreement, understand that they are not to act as substitute decision makers for the adult to whom they are providing support to exercise legal capacity, and fully understand their roles and responsibilities pursuant to section 18;
 - (e) adhere to the requirements of Part 6.
- (3) Under this section, an adult may establish different agreements with different decision-making supporters to provide support to exercise legal capacity with respect to different decisions or types of decisions the adult wishes to make, or appoint different decision-making supporters to assist with different decisions or types of decisions covered by an agreement.

Establishing a supported decision-making arrangement through application to be appointed as decision-making supporters

13.

- (1) A valid supported decision-making arrangement may be made by Application in a prescribed form to the Office by one or more individuals who wish to be appointed as decision-making supporter(s);
 - (a) does not have another decision-making arrangement in place;
- (2) An application made pursuant to section 13 must include information providing evidence that applicants have:
 - (a) a proven trusting relationship with the adult;
 - (b) the ability to understand the adult's form of communication and reasonably interpret their will and preferences and apply that interpretation to specific decision-making situations;
 - (c) a commitment to the adult's well-being and to supporting them in decision making on basis of their reasonable interpretation of the adult's will and preferences, and to acting on that interpretation;
- (3) An application shall be in a form determined by the Office and outline the terms of the supported decision-making arrangement, including:
 - (a) areas of decision making in which supporters will provide support and how decisions will be made;
 - (b) whether, and in what circumstances, support to exercise legal capacity will be provided jointly and severally, or jointly;
 - (c) when, or under what circumstances, the arrangement takes effect, is to be updated and renewed, and can be terminated;
 - (d) any other terms identified by the adult or applicants;
- (4) An application shall include signed statements by each applicant seeking to be appointed as a decision-making supporter, and by any other individual in support of the application. These statements shall address the matters set out in subsection (2);
- (5) An application must include names and contact information of three individuals who are not the applicants and who, taken together, have knowledge about whether the applicant(s) satisfy all the criteria in subsection (2), and can provide references in respect of the application;
- (6) More than one application may be made to be a decision-making supporter for the same adult, provided that each application is to provide support to exercise legal capacity with respect to different decisions or types of decisions (for example, some supporters who are not to be named as beneficiaries in an adult's will may apply to

provide support to the adult for the purpose of making the adult's will pursuant to section 29);

- (7) The Office shall not approve an application under this section unless:
 - (a) it is satisfied that the adult does not object to the arrangement;
 - (b) it is satisfied that no other valid supported decision-making arrangement is already in place for the adult with respect to the decisions or types of decisions that are to fall under the agreement;
 - (c) that the adult is not able to act legally independently with supports to exercise legal capacity and is not able to make an appointment pursuant to section 12;
 - (d) the individual(s) applying to be decision-making supporter(s) consults with one of the following about the making of such a statement,
 - i. a member of Law Society of [Province/Territory];
 - ii. anyone who belongs to a prescribed class of persons; and
 - (e) the person who is consulted completes a consultation certificate in the prescribed form;
- (8) Prior to approval of any proposed arrangement under section 13:
 - (a) The applicant or the Office shall serve notice on all of the following persons who are known, by ordinary mail sent to the person's last known address:
 - i. the adult;
 - ii. the spouse or partner of the adult;
 - iii. the adult's children who are at least 16 years old
 - iv. the adult's parents;
 - v. the adult's siblings who have attained the age of 16;
 - vi. agencies or individuals providing support services to the adult; and
 - vii. persons who have legal authority over the adult under other statutory provisions;
 - (b) Such notice shall indicate that any person may provide the Office with information relevant to the application;
 - (c) Prior to considering and application, the Office shall wait 15 days from the time notices are sent, or an abridged amount of time if the matter requiring a supported decision-making arrangement is of an urgent nature;
- (9) The Office shall establish a timely review process of applications, including:

- (a) Making in-person with the adult and the applicants in a convenient and familiar environment and with some or all of the individuals providing references;
 - (b) Review of the information contained in the written materials;
 - (c) Provision for an expedited review process depending on the urgency of the situation.
- (10) As a result of the review process, the Office may:
- (a) Approve the application as submitted;
 - (b) Suggest amendments necessary for its approval; or
 - (c) Deny the application;
- (11) Where the application is denied applicants may appeal a decision by the Office, to the Tribunal.

Establishing a representative decision making arrangement

This section could consolidate provisions for Powers of Attorney, advance directives and other advance planning tools authorized under other statutes.

14.

A valid Representative Decision Making Arrangement can be established to authorize a decision-making representative of an adult to make any or all decisions on behalf of the adult, through a Planning Document which:

- (1) is authorized by an adult who
 - (a) with support to exercise legal capacity and accommodations as may be required, understands and appreciates the nature and consequences of making such an arrangement; including
 - (b) an adult with a supported decision making arrangement;
- (2) identifies the triggering event(s), upon which the adult authorizes an individual to make decisions for the adult in areas identified in the document; and
- (3) identifies decisions or types of decisions to be made by the individual and any guidelines for decision making.
- (4) Where an adult seeks to establish a representative decision-making arrangement pursuant to section 1(b), application must be made to the Tribunal to authorize the arrangement.
- (5) In considering an application pursuant to subsection (4), the Tribunal must be satisfied that the adult is expressing his or her will and preferences to establish such an arrangement and has demonstrated at least some appreciation and understanding, by him or herself, of the nature and consequences of the decision.

Establishing a facilitated decision-making arrangement

15.

- (1) A valid Facilitated Decision-Making Arrangement can be established to authorize a decision-making facilitator to facilitate the making of specific decisions on behalf of the adult through an appointment by the Tribunal on application from the Office or any person, where:
 - (a) the adult is not able to act legally independently even with supports to exercise legal capacity;
 - (b) a valid supported or representative decision-making arrangement is not already in place for the adult which would cover the decision(s) to be made in the circumstance;
 - (c) no decision-making supporters are available to seek appointment for a supported decision-making arrangement pursuant to section 13, or have been approved as such by the Office;
 - (d) there is no person willing or able to act as a decision-making supporter who can understand the adult's will and preferences; or
 - (e) the adult requires a decision or decisions to be made, and appointment of the facilitator is reasonable in the circumstances;
 - (f) the Office or designated agencies have made all reasonable efforts in the circumstances to support an adult to exercise his or her legal capacity, including through the support of a personal ombud where that would be feasible; and
 - (g) the Office presents evidence to the Tribunal that the criteria in subsections (a)-(f) have been met.
- (2) If the application is made by any person, the Office shall be named as a party to the proceeding for the purpose of providing evidence as to whether subsections (d) and (e) are met.

16. Where appointments are made pursuant to section 15:

- (1) The Tribunal shall,
 - (a) be satisfied that at the time of the application the criteria under section 15 are met;
 - (b) acquire any additional evidence as it may deem necessary from a qualified person, as defined in regulations to this Act, that the adult meets the criteria in section 15;
 - (c) appoint a decision-making facilitator to facilitate the making of needed decisions in the immediate and short term;
 - (d) review any facilitated decision-making arrangement established under this section, within a period of one year, to determine if it

- is still required, or if it can be replaced by any other arrangement that better maximizes the adult's autonomy;
- (e) specify a time-limited period for which facilitation will be authorized, and for which particular decision, decisions or types of decisions, and any parameters or limitations on the authority of the facilitator;
 - (f) take into account, in authorizing a person to act as a facilitator,
 - i. the nature and closeness of the relationship of the adult to the person to be appointed as a facilitator;
 - ii. the proximity of the person to be appointed as a facilitator to the adult; and
 - iii. any known wishes of the adult regarding who he/she would choose as a facilitator; and
 - iv. the ability of the person to meet their duties as a facilitator.
- (2) The Tribunal may issue an order
- (a) To the facilitator setting out the terms for the facilitator's duties including:
 - i. decisions to be covered
 - ii. the process for decision making, including any other parties to be included in the process
 - iii. the parameters for decision making, including any exclusions of particular options based on the adult's religion, gender, or any other factor the Tribunal considers relevant
 - iv. any other matters as determined by the Tribunal;
 - (b) to the Office to
 - i. identify any support to exercise legal capacity the adult may require and arrange for or apply to the Minister to authorize such support pursuant to any arrangements in accordance with section 8;
 - ii. take reasonable steps to ensure development of longer-term decision-making relationships for the adult;
 - iii. ensure the decision-making facilitator has access to education to promote decision making assistance that optimizes an adult's opportunity to direct decision making;
 - iv. as soon as reasonably possible to take steps to establish a supported decision-making arrangement, if it is determined that this would most maximize the person's decision-making autonomy; or

- v. act as facilitator of last resort, where no other person is available who meets the criteria of subsection (1)(f) and where all other criteria for appointing a facilitator have been met;
- (3) At any time after the appointment of the Office as facilitator of last resort, a person can apply to the Tribunal to become a decision-making supporter pursuant to section 12.

Appointment of monitors

17. Persons, who are not decision-making supporters, representatives or facilitators or in a conflict of interest, may be appointed to monitor a supported, representative or facilitated decision-making arrangement made pursuant to sections 12, 13, 14 or 15 and 16 and to fulfil the duties specified in section 21. In order to maximize the adult's autonomy, the Office or Tribunal may not require appointment of monitors for arrangements with a personal ombud.
- (1) Monitors may be appointed:
 - (a) by the Office on request by an adult, a decision-making supporter, representative or other interested person;
 - (b) by the Office to replace a monitor named in a supported, representative or facilitated decision-making arrangement if the named monitor is unsuitable or is no longer able to act, or has ceased to act, as monitor; or
 - (c) by the Tribunal, pursuant to subsection 42(1);
 - (2) To be named as a monitor in a supported, representative or facilitated decision-making agreement, the proposed monitor must:
 - (a) be able to act legally independently;
 - (b) be willing and able to perform the duties and to exercise the powers of a monitor as defined in sections 22 and 23;
 - (c) complete a monitor's certificate in the prescribed form.

PART 5 — DUTIES, POWERS AND LIABILITY OF DECISION-MAKING SUPPORTERS AND REPRESENTATIVES, PERSONAL OMBUD AND MONITORS

Duties of decision-making supporters

- 18.** Subject to all applicable legislation, decision-making supporters appointed under this Act have the duty to:
- (a) Act diligently, honestly and in good faith, and in accordance the principles of this Act set out in section 6;
 - (b) Be guided by the will and preferences of the adult;
 - (c) Be guided by the values, beliefs, wishes, and cultural, spiritual and religious norms and traditions that an adult holds;
 - (d) Despite ss. (b) and (c), act in a manner which respects the adult’s dignity of risk, without placing him or her in grave and imminent risk of a situation of serious adverse effects or without failing to address a situation of serious adverse effects;
 - (e) Invest in and maintain a personal relationship of trust and connection with the adult;
 - (f) Act in accordance with all laws and legislation;
 - (g) Act in accordance with any relevant agreements or Tribunal orders;
 - (h) Keep personal information about the adult, and his/her affairs, confidential;
 - (i) Keep records in relation to all aspects of their role;
 - (j) Treat the adult in all respects as a party to the agreement;
 - (k) Involve supportive family members and friends, as indicated by the adult’s will and preferences;
 - (l) Be accountable solely to the adult and not to health care, social services or any other authority or person;

Duties of personal ombud

- 19.** Subject to all applicable legislation, a personal ombud has the duty to:
- (a) Act diligently, honestly and in good faith, and in accordance the principles of this Act set out in section 6;
 - (b) Be guided by the will and preferences of the adult;
 - (c) Be guided by the values, beliefs, wishes, and cultural, spiritual and religious norms and traditions that an adult holds;
 - (d) Despite ss. (b) and (c), act in a manner which respects the adult’s dignity of risk, without placing him or her in grave and imminent

- risk of a situation of serious adverse effects or without failing to address a situation of serious adverse effects;
- (e) Invest in and maintain a personal relationship of trust and connection with the person;
 - (f) Act in accordance with all laws and legislation;
 - (g) Act in accordance with any relevant agreements or Tribunal orders;
 - (h) Keep personal information about the adult, and his/her affairs, confidential;
 - (i) Involve supportive family members and friends, as indicated by the adult's will and preferences;
 - (j) Be accountable solely to the adult and not to health care, social services or any other authority or person.

Duties of decision-making representatives

20. Subject to all applicable legislation, decision-making representatives appointed under this *Act* have the duty to:

- (a) Act diligently, honestly and in good faith, and in accordance the principles of this Act set out in section 6, and in particular with any directions provided by the adult prior to the decision-making arrangement being established;
- (b) Be guided by the will and preferences of the adult as expressed under the arrangement;
- (c) Be guided by the values, beliefs, wishes, and cultural, spiritual and religious norms and traditions that an adult has held, and holds;
- (d) Despite ss. (b) and (c), act in a manner which respects the adult's dignity of risk, without placing him or her in grave and imminent risk of a situation of serious adverse effects or without failing to address a situation of serious adverse effects;
- (e) Commit, to the greatest extent possible, to creating and maintaining a trusting relationship with the adult, and to establishing relationships with others who are involved with the person with the purpose of enhancing the representative's personal knowledge and understanding of the adult;
- (f) Commit to liaising with community resources to assist the adult in establishing a wider network of trusting and committed personal relationships
- (g) Act in accordance with any relevant agreements or Tribunal orders;

- (h) Keep personal information about the adult, and his/her affairs, confidential;
- (i) Keep records in relation to all aspects of their role;
- (j) Involve supportive family members and friends, as indicated by the adult's will and preferences;
- (k) Be accountable solely to the adult and not to health care, social services or any other authority or person;

Duties of Decision-Making Facilitators

- 21.** Subject to all applicable legislation, decision-making facilitators appointed under this *Act* have the duty to:
- (a) Act diligently, honestly and in good faith, and in accordance the principles of this Act set out in section 6;
 - (b) Take reasonable efforts to learn about the values, beliefs, wishes, and cultural, spiritual and religious norms and traditions that an adult holds;
 - (c) Be guided in facilitating decision making by the facilitator's best interpretation of a person's will and preferences as previously and currently expressed to the greatest extent that these can be determined, and where these cannot be determined in the circumstances, be guided by what is reasonably determined to be a decision for the sole benefit of the adult;
 - (d) Despite ss. (b) and (c), act in a manner which respects the adult's dignity of risk, without placing him or her in grave and imminent risk of a situation of serious adverse effects or without failing to address a situation of serious adverse effects;
 - (e) Commit, to the greatest extent possible, to creating and maintaining a trusting relationship with the adult, and to establishing relationships with others who are involved with the person with the purpose of enhancing the representative's personal knowledge and understanding of the adult;
 - (f) Commit to liaising with community resources to assist the adult in establishing a wider network of trusting and committed personal relationships
 - (g) Act in accordance with any relevant agreements or Tribunal orders;
 - (h) Keep personal information about the adult, and his/her affairs, confidential;
 - (i) Keep records in relation to all aspects of their role;

- (j) Involve supportive family members and friends, as indicated by the adult's will and preferences;
- (k) Be accountable solely to the adult and not to health care, social services or any other authority or person;

Duties of monitors

22. Subject to all applicable legislation, monitors appointed under the provisions of this *Act* have a duty to:

- (a) Act diligently, honestly and in good faith, and in accordance the principles of this Act set out in section 6;
 - (b) Respect the roles and relationships of decision-making supporters or representatives with respect to the adult they are supporting or representing in decision making;
 - (c) Abide by the values, beliefs, wishes, and cultural, spiritual and religious norms and traditions that an adult holds;
 - (d) In fulfilling the monitoring role specified for them under any particular supported decision making or representative decision making arrangement, carry out their activities with full respect for the duties of decision-making supporters or representatives under that arrangement;
 - (e) Act in accordance with any relevant agreements or Administrative Tribunal orders;
 - (f) Keep personal information about the adult, and his/her affairs, confidential;
 - (g) Keep records in relation to all aspects of their role;
 - (h) Exercise the care, diligence and skill of a reasonably prudent person;
 - (i) Be accountable solely to the adult and not to health care, social services or any other authority or person;
 - (j) Fulfil any other duties as mandated by the Office;
- (2) If after taking steps under section 22 the monitor still has reason to believe the supporter or representative is not complying with their duties and reasonable requests of the monitor, the monitor shall:
- (a) notify the adult, the decision-making supporter or representative and all other decision-making supporters or representatives of the monitor's reason(s) for the belief;
 - (b) promptly inform the Office of his or her concerns pursuant to section 43.

Powers of monitors

23. A monitor named by or appointed for an adult has the following powers must make reasonable efforts to determine whether a decision-making supporter or representative of the adult is complying with their duties, and has the following powers for this purpose:
- (1) At any reasonable time, the monitor may visit and speak with the adult.
 - (2) Anyone having custody or control of the adult shall not hinder the monitor from visiting or speaking with the adult.
 - (3) If the monitor has reason to believe that a decision-making supporter or representative is not complying with their duties, the monitor may require the decision-making supporter or representative to:
 - (a) produce accounts and other records required to be kept under this Act, and
 - (b) report to the monitor on the matters specified by the monitor;

Rights of decision-making supporters, representatives and facilitators to information

24. Notwithstanding any provisions of privacy legislation,
- (1) A decision-making supporter, representative or facilitator of an adult has the right to all information and documents to which the adult is entitled and that relate to the supporter's or representative's area of authority under the relevant agreement or arrangement;
 - (2) A person who has custody or control of any information or document referred to in subsection (1) shall, at the supporter(s)'s, representative(s)'s or facilitator's request, disclose that information to the decision-making supporter or representative and produce that document for inspection and copying by them;
 - (3) This section is subject to any restriction in the supported, representative or facilitated decision-making agreement, but the section overrides:
 - (a) any claim of confidentiality or privilege, except a claim based on solicitor-client privilege; and
 - (b) any restriction in an enactment or the common law about the disclosure or confidentiality of information, except a restriction made pursuant to section 51 (1) of the *Canada Evidence Act*;
 - (4) The provisions of this section do not apply to personal ombud;

Liability of decision-making supporters and representatives, and personal ombud

25. A decision-making supporter, representative, facilitator or personal ombud is not liable for injury to or death of the adult or for financial damage or loss to the adult if the decision-making supporter or representative or personal ombud complies with their legislated duties as specified in this Act.

Liability of monitors

26. A monitor is not liable for any act or failure to act of a decision-making supporter or representative if the monitor acts in accordance with their legislated duties as specified in this Act.

PART 6 – PROCEDURES AND RULES GOVERNING THE CONTENT AND USE OF DECISION-MAKING ARRANGEMENTS

Contents of supported decision-making agreements

27.

- (1) A supported decision-making agreement made pursuant to sections 12 or 13 shall include:
 - (a) a description of the nature of the adult's difficulty in making or communicating decisions on their own, and the unique ways they express their will and preferences;
 - (b) the name of at least one decision-making supporter;
 - (c) a description of the types of decisions in respect of which the decision-making supporter is authorized to assist; and
 - (d) a description of the types of decisions, if any, in respect of which the decision-making supporter is not authorized to assist; and
- (2) Such an agreement may:
 - (a) designate more than one decision-making supporter;
 - (b) authorize each to assist with respect to different types of decisions; and
 - (c) provide for an alternate to act in the place of a decision-making supporter in such circumstances as may be specified in the agreement; and
- (3) Where more than one decision-making supporter is designated to assist with respect to the same type of decision, the agreement shall indicate whether they are to act jointly, or jointly and severally; or where it does not so indicate, the decision-making supporters shall be deemed to be designated to act jointly.

Decisions which may fundamentally affect personal integrity or human dignity for adults with a supported or facilitated decision-making arrangement

28.

- (1) Where decisions which may fundamentally affect the adult's personal integrity or human dignity are being considered for adults in a supported or facilitated decision-making arrangement, including:
 - (a) sterilization that is not medically necessary to protect the adult's health;
 - (b) removal of tissue from the adult's living body:
 - i. for implantation in the body of another living person pursuant to the (relevant Human Tissue and Organ Donation) Act; or

- ii. for medical education or research purposes;
 - (c) participation by the adult in research or experimental activities, if the participation offers little or no potential benefit to the adult;
 - (d) despite any objection of the adult, to restrain, move or manage the adult and authorize another person to do these things, if necessary to provide personal care or health care to the adult;
 - (e) decisions which are likely to place the adult in grave and imminent risk of a situation of serious adverse effects; or
 - (f) any other matter prescribed in the regulations;
- (2) decision-making supporters or facilitators or the adult must apply to the Tribunal for review and authorization of the decision prior to its execution;
- (3) In approving any such applications, the Tribunal must be satisfied that:
- (a) the adult is expressing his or her will and preferences specific to that decision and has demonstrated at least some appreciation and understanding, by him or herself, of the nature and consequences of the decision;
 - (b) where there appears conflict between the adult's contemporaneously expressed preferences, and a decision-making supporter's or facilitator's assessment of the adult's previously expressed longer-term will, that:
 - i. the adult's expressed preferences cohere with a reasonable understanding of the adult's longer-term will, and reasonably correspond to the current context; and
 - ii. the decision-making supporters or facilitator have provided reasonable evidence that the adult's previously expressed longer-term will would require not abiding by the adult's contemporaneously expressed preferences.
 - (c) in the case of an application for the purposes of subsection 1(d), the decision would be for the sole the benefit of the adult.
- (4) Where the Tribunal makes an order pursuant to subsection (3) that conflicts with the adult's contemporaneously expressed preferences, such an order shall not be deemed to be a decision of the adult.

Making and revising a will within a supported decision making arrangement

29. An adult who requires a supported decision-making arrangement may make a will through an arrangement, established under sections 12 or 13, with decision-making supporters who are not named as beneficiaries in the will,

or whose immediate family members (spouse, children, etc.) are not named as beneficiaries.

Making and revising a will within a facilitated decision making arrangement

30. An adult who is in a facilitated decision-making arrangement may not make a will while in that status.

Adults with a supported decision-making agreement who are in a state of unconsciousness

31. Supported decision-making arrangements established prior to an adult being in a state of unconsciousness shall continue to apply to decisions taken during the state of unconsciousness that are covered under the supported decision-making agreement, and provided that decision-making supporters continue to meet their obligations and duties under this Act.

Contents of representative decision-making agreements

32. In a representative decision-making agreement made pursuant to section 14, an adult may authorize his or her representative to:

- (1) do anything that the representative considers necessary in relation to the property, personal care or health care of the adult; or
- (2) do one or more things in relation to the property, personal care or health care of the adult, including any of the following:
 - (a) decide where the adult is to live and with whom, including whether the adult should live in a care facility;
 - (b) routine management of the adult's financial affairs;
 - (c) the making of investments;
 - (d) obtaining legal services for the adult and instructing counsel to commence proceedings, except divorce proceedings, or to continue, compromise, defend or settle any legal proceedings on the adult's behalf;
 - (e) decide whether the adult should participate in any educational, social, vocational or other activity;
 - (f) decide whether the adult should have contact or associate with another person;
 - (g) decide whether the adult should apply for any licence, permit, approval or other authorization required by law for the performance of an activity;
 - (h) make day-to-day decisions on behalf of the adult, including decisions about the diet or dress of the adult;

- (i) give or refuse consent to health care for the adult, including giving or refusing consent, in the circumstances specified in the agreement, to specified kinds of health care, even though the adult refuses to give consent at the time the health care is provided;
- (3) Unless expressly provided for in a representative agreement made pursuant to sections 14, a representative shall not:
 - (a) give or refuse consent on the adult's behalf to any type of health care;
 - (b) make arrangements for the temporary care and education of the adult's minor children, or any other persons who are cared for or supported by the adult; or
 - (c) interfere with the adult's religious practices;
- (4) If a representative is authorized under a representative decision-making agreement to give or refuse consent to health care for the adult, the representative may give or refuse consent to health care necessary to preserve life.

Decisions which may fundamentally affect personal integrity and human dignity for adults with a representative decision-making agreement

33. Representatives shall not make any decisions that fundamentally affect personal integrity and human dignity of the adult unless authorized in a representative decision-making agreement made by the adult, and in particular, with clear instructions that enable the representative(s) to make decisions for the adult in the following matters:
- (a) sterilization that is not medically necessary to protect the adult's health;
 - (b) removal of tissue from the adult's living body:
 - i. for implantation in the body of another living person pursuant to the (relevant Human Tissue and Organ Donation) Act; or
 - ii. for medical education or research purposes;
 - (c) psychiatric treatments which fundamentally affect the mental or physical integrity of the adult (for example, ECT);
 - (d) participation by the adult in research or experimental activities, if the participation offers little or no potential benefit to the adult;
 - (e) despite any objection of the adult, restrain, move or manage the adult and authorize another person to do these things, if necessary to provide personal care or health care to the adult; or
 - (f) any other matter prescribed in the regulations;

34. A provision in a representative decision-making agreement that authorizes a representative to do anything described in section 33 is invalid unless the adult authorizing the representative consults with one of the following about the provision:
- (1) a member of the Law Society; or
 - (2) anyone who belongs to a prescribed class of persons; and
 - (3) the person who is consulted completes a consultation certificate in the prescribed form;

Making and revising a will within a representative decision-making arrangement

35. No adult with a representative decision-making arrangement in place that covers property shall be able to make a will as long as this arrangement is activated.

Health care decisions

The provisions in this section may have implications for existing Mental Health, Health Care Directives or Health Care Consent legislation.

- 36.
- (1) Except as otherwise provided for under provisions for emergency health care treatment, a health care provider shall not administer any treatment, including treatments for mental health purposes without free and informed consent:
 - (a) of an adult acting legally independently, with supports and accommodations as required;
 - (b) as communicated through a supported decision-making arrangement where an adult has such an arrangement in place; or
 - (c) of an adult's representative as appointed under a representative decision-making arrangement authorized pursuant to this Act, and which covers the health care decision(s) in the circumstances.
 - (2) Where an adult has a supported, representative or facilitated decision-making arrangement in place that covers a health care treatment decision, the terms of that arrangement shall apply to health care decision making, even where the adult has been admitted to a psychiatric facility for assessment and/or treatment.
 - (3) A health care provider may raise concerns about a health care decision made through a supported, representative or facilitated decision-making agreement by applying to the Tribunal for an order with respect to the decision.

- (4) In making an order pursuant to an application made under s. 36(3), the Tribunal shall assess:
 - (a) whether the decision is consistent with the terms of any existing supported, representative or facilitated decision-making arrangement; and
 - (b) whether acting upon the terms of such agreement would seriously endanger the physical or mental health or safety of that person or another person.
- (5) Where an adult does not have a supported, representative or facilitated decision-making arrangement in place which covers a health care treatment offered by a health care provider, and the provider believes that the adult is not able to make the treatment decision legally independently, the health care provider is obligated, pursuant to legal duties to accommodate in the decision-making process in Part 3, to maximize the adult's ability to make the health care decision legally independently;
- (6) If the health care provider has accommodated the adult in accordance with all legal requirements that attach to the duty to accommodate and continues to believe that the adult is not able to make a decision legally independently in relation to the treatment, the health care provider shall refer the adult to the Office;
- (7) Upon referral from a health care provider pursuant to subsection (6) , the Office may:
 - (a) assist the adult to establish a supported, representative or facilitated decision-making arrangement pursuant to sections 12, 13, 14 or 15 and 16;
 - (b) on the adult's behalf, make arrangements with a designated agency to provide supports to the adult to assist him or her to exercise legal capacity, or apply to the Minister for funding for supports for this purpose; or
 - (c) apply to the Tribunal for an order related to:
 - i. whether the health care provider is meeting its duty to accommodate in the decision-making process;
 - ii. whether the adult can act legally independently; or
 - iii. any other matter the Office considers appropriate in the circumstances;
- (8) In the event that a health professional recommends a psychiatric treatment for an adult in a supported, representative or facilitated arrangement that may fundamentally affect the adult's physical or mental integrity as defined in the regulations, and as provided for in

the relevant mental health legislation, application must be made to the Tribunal to authorize the decision.

- (9) In considering any applications pursuant to subsection (8), the Tribunal must be satisfied that the adult is expressing his or her will and preferences specific to that decision and has demonstrated at least some appreciation and understanding, by him or herself, of the nature and consequences of the decision.
- (10) At any time, the adult, or an agent on his or her behalf, may apply to the Tribunal for an order with respect to:
 - (a) his or her legal capacity to make health care decisions;
 - (b) whether a health treatment decision is inconsistent with the duties of a decision-making supporter or representative;
 - (c) whether any restrictions on the adult are justified; or
 - (d) whether a less restrictive, community-based alternative should be ordered;
- (11) Where the Tribunal issues an order pursuant to subsection (8)(d) it shall refer the matter to the Office to make referrals to designated agencies and applications to the Minister as required to give effect to the order.
- (12) Any decision or order made pursuant to section 35 must be guided by the adult's right to have the least restrictive, community-based alternative considered.

Validity of decisions made

37. A decision made or communicated through a supported, representative or facilitated decision-making arrangement made pursuant to sections 12, 13, 14 or 15 and 16 shall:
 - (1) be recognized for the purposes of any provision of law as the decision of the adult
 - (a) subject to the laws regarding fraud, misrepresentation, and undue influence; and
 - (b) provided that the decision-making supporter(s), representative(s) and facilitator complies with duties as prescribed in this Act and as may be prescribed in regulations;
 - (2) be binding on the adult, even after the decision-making supporter or representative no longer has authority under the arrangement.

Effect of failing to consult a decision-making supporter, representative or facilitator

38. Where there is evidence that a legal relationship that is either legally binding or has legal implications has been entered into by the adult which could bring harm to the adult's interests, an adult or the adult's decision-making supporter, representative, or facilitator may apply to the Tribunal to have the relationship declared void where:
- (a) the subject matter of the legal relationship with the third party is within the areas of decision-making covered under the supported, representative or facilitated decision-making arrangement; and
 - (b) the adult entered into the legal relationship with the third party without consulting the decision-making supporter, representative or facilitator.

Protection of third parties in decision-making processes

- 39.
- (1) Prior to entering into a relationship that is either legally binding or has legal implications, third parties shall be entitled to be provided with an original or notarial copy of a decision-making agreement upon which the adult is relying.
 - (2) Third parties shall be entitled to rely upon the exercise of a supported, representative or facilitated decision making arrangement entered into under this Act as evidence of a valid decision.

Registration of agreements

40. Adults and decision-making supporters and representatives may register their supported decision making or representative agreements on a voluntary basis, in a registration system as established by the Office.
41. Facilitated decision-making arrangements authorized by the Tribunal shall be registered in a registration system as established by the Office.

PART 7 — RENEWING, AMENDING, REVOKING OR TERMINATING SUPPORTED OR REPRESENTATIVE DECISION-MAKING ARRANGEMENTS

42.

- (1) A supported, representative or facilitated decision-making arrangement may be amended or revoked at any time where:
 - (a) an amendment to such an arrangement and associated agreement is made in accordance with the procedures for its establishment;
 - (b) in the case of an arrangement established under section 13, an adult applies to the Office for an amendment to or termination of the arrangement to which the adult is subject;
 - (c) in the case of an adult who wishes to revoke an arrangement with a personal ombud, an adult indicates their wish to end the arrangement;
 - (d) any criteria for revoking or terminating that are set out in the agreement are met; and
 - (e) in the case of a revocation of an arrangement under subsections (2) or (3), written notice of the revocation is given to:
 - i. each personal ombud, decision-making supporter, representative or alternate, or facilitator; and
 - ii. the monitor, if any;
- (2) A supported, representative or facilitated decision-making arrangement or arrangement made with a personal ombud is terminated:
 - (a) on the death of the adult who made the arrangement;
 - (b) on the effective date of the revocation of the arrangement; or
 - (c) on the Tribunal cancelling the arrangement pursuant to an application made by the Office;
- (3) Unless other decision-making supporters, representatives facilitators or personal ombuds are named in an arrangement, any such arrangement will also terminate:
 - (a) if the adult who made the arrangement and the adult's decision-making supporter, representative, facilitator or personal ombud are spouses, on the termination of their marriage; or
 - (b) on the resignation or death of the decision-making supporter, representative, facilitator or personal ombud.

Resignation of decision-making supporters, representatives, facilitators or personal ombud

43.

- (1) A decision-making supporter, representative, facilitator or personal ombud,
 - (a) shall resign if he or she is unable or unwilling to comply with his or her roles and responsibilities as defined in this Act; and
 - (b) may resign from their role in an arrangement for any other reason.
- (2) A decision-making supporter's, representative's, facilitator's or personal ombud's resignation becomes effective when written notice is given to the adult, each decision-making supporter, representative, facilitator personal ombud, or monitor, as the case may be, and where the Office is a party to the agreement written notice must be given to the Office.

Orders of the Tribunal

44.

- (1) On application by the adult, a decision-making supporter, representative, facilitator a personal ombud or the Office, the Tribunal may make an order:
 - (a) renewing, confirming a change to, or revoking a supported, representative, facilitated decision-making arrangement or cancelling all or part of such an arrangement;
 - (b) appointing a monitor under any arrangement established pursuant to sections 12, 13, 14 or 15 and 16, provided there is a bona fide need;
- (2) When making an order pursuant to subsection (1), the Tribunal shall consider the current wishes, instructions, values and beliefs of the adult who is the subject of the arrangement;
- (3) The Tribunal may not make an order that overrides the adult's will and preferences,
 - (a) unless it would be inconsistent with another provision of the Act to do so; and
 - (b) the Tribunal gives reasons for making the order.

PART 8 — RECEIVING AND RESPONDING TO OBJECTIONS AND CONCERNS REGARDING DECISION-MAKING ARRANGEMENTS

45. Any person may register a concern, or make an objection to the Office if there is a reason to believe that one or more of the following has occurred in relation to an adult who is in a supported or representative decision-making arrangement or a relationship with a personal ombud:
- (1) as a result of an adult's supported, representative or facilitated decision-making arrangement or a relationship with a personal ombud, the adult's interests are being compromised;
 - (2) fraud, undue influence or some other form of abuse or neglect is being or was used
 - (a) in the context of a supported or representative decision-making arrangement or relationship with a personal ombud;
 - (b) by a decision-making supporter or representative induce an adult to make, change or revoke a supported decision-making or representative agreement;
 - (3) the making, use or revocation of an agreement or a change to a supported, representative or facilitated decision-making agreement is clearly inconsistent with the current wishes, values, or beliefs of the adult for whom the agreement was made;
 - (4) There is an error in a decision-making agreement or an error was made in executing, witnessing or registering the agreement;
 - (5) anything improper has occurred in the making, use or revocation of a decision-making arrangement;
 - (6) a decision-making supporter, representative or personal ombud is not qualified to serve in their role;
 - (7) a decision-making supporter, representative or facilitator is,
 - (a) failing to follow the instructions in the respective decision-making agreement;
 - (b) incapable of acting as decision-making supporter, representative or facilitator; or
 - (c) otherwise failing to comply with the respective agreement or the duties of a decision-making supporter, representative or facilitator;
 - (8) a decision-making supporter, representative or facilitator has given or proposes to make or participate in a health care decision that is not authorized by the respective decision-making agreement;
 - (9) any criteria specified in a decision-making agreement as grounds for termination of a supporter, representative or facilitated have been met;

- (10) a decision-making supporter, representative or facilitator does not resign in accordance with their obligation to do so pursuant to section 43(1)(a);
 - (11) an adult does not require a decision-making arrangement as provided for under this Act in order to exercise his or her legal capacity;
 - (12) a designated agency has failed to meet its responsibilities pursuant to Part 2.
- 46.** On receiving notice of a concern or objection pursuant to section 45, the Office shall promptly review the concern or objection and may do one or more of the following:
- (1) conduct an investigation to determine the validity of the objection and then advise the objector of the outcome;
 - (2) pursuant to section 8, offer services to the adult, and/or his or her supporters or representatives to address any concerns about the integrity of the supported or representative decision-making arrangement;
 - (3) pursuant to section 8, arrange for services to be provided to an adult, and/or his or her decision-making supporters or representatives either through the Office, a designated agency or by application to the Minister for this purpose;
 - (4) apply to the Tribunal for an order,
 - (a) confirming a change to, or the revocation of a decision-making agreement, including a change in supporters, representatives or facilitators cancelling all or part of an agreement;
 - (b) appointing a monitor of an arrangement made pursuant to this Act and specifying associated duties and powers; or
 - (c) for any other action the Office considers necessary;
- 47.** Where a person registers a concern with the Office that an adult who is in a supported, representative or facilitated decision-making arrangement or relationship with a personal ombud, or in a situation of, or at substantial risk of being in a situation of, serious adverse effects, the Office shall give notice to the Provincial Director of Adults in Need of Protective Intervention;
- 48.** Where the Office receives from any person a concern or complaint about a situation related to an adult in a facilitated decision-making arrangement, the Office shall,
- (1) refer the person, as appropriate in the circumstances
 - (a) to the Tribunal; or
 - (b) Provincial Director of Adults in Need of Protective Intervention;
 - (2) initiate proceedings before the Tribunal in accordance with this Act.

49. Where the Office receives notice of concerns with respect to a designated agency pursuant to section 45(12), it shall report such concerns to the Minister.

PART 9 – RESPONDING TO SITUATIONS OF SERIOUS ADVERSE EFFECTS

50. An adult is in a situation of serious adverse effects as a result of his or her actions or those of others, if the adult:

- (1) Experiences loss of a significant part of a person's property, or a person's failure to provide necessities of life for himself or herself or for dependants; or
- (2) Experiences serious illness or injury, *and* deprivation of liberty or personal security; or
- (3) Has threatened or attempted or is threatening or attempting to cause physical and/or psychological harm to himself or herself; or
- (4) Has behaved or is behaving violently towards another person or has caused or is causing another person to fear physical and/or psychological harm from him or her;

51. This section could replace the section(s) of emergency intervention or adult abuse/protection provisions contained in other legislation, which set out under what circumstances intervention is currently triggered.

An adult in need of protective intervention means an adult who:

- (1) is in a situation of serious adverse effects; and
- (2) is unable to act legally independently in the circumstances.

52. This section could amend the relevant provisions for intervention

When the adult protection authority receives notice that an adult is in need of protective intervention it shall undertake jointly with the Office any investigations or remedies required to:

- (1) determine whether the adult has, or is in need of, supports to exercise his or legal capacity, or has a personal ombud or a supported, representative or facilitated decision-making arrangement as provided for under this Act;
- (2) as a result of an investigation pursuant to subsection (1), take any necessary steps to establish, change or terminate a decision-making arrangement made pursuant to this Act;
- (3) facilitate whatever processes are provided for under this Act to ensure that the least intrusive and most autonomy-enhancing support arrangement is put into place that maximizes the adult's enjoyment of the equal right to legal capacity and to live independently in the community;

- (4) facilitate access to any health care services the adult may require to ameliorate the situation of serious adverse effects, in a manner consistent with the principles pursuant to section 6.
- 53. Where, as a result of the investigation, the Authority and the Office find that the adult is legally independent the Office offers to the adult any steps available pursuant to Part 2 of this Act.
- 54. To the best of its ability the Office shall consult with the adult concerned and any other person the adult wishes to have involved, as part of any investigations or remedies it seeks or establishes under this Act.

PART 10 – COMPLAINTS AND APPEALS

55.

- (1) The Tribunal shall establish a process for reviewing complaints made to it by a person about matters, including:
 - (a) A decision by the Office regarding,
 - i. application for a supported decision-making, facilitated or representative decision-making arrangement; or
 - ii. appointment of monitors for arrangements pursuant to sections 12, 13, 14 or 15 and 16;
 - (b) A decision by the Office or Adult Protection Authority regarding the investigation and/or response to a situation of serious adverse effects;
 - (c) Denial by a designated agency or other third party of accommodations or supports needed to exercise legal capacity;
 - (d) Any disputes arising out of the duty to accommodate set out in this Act;
 - (e) That the Minister has not fulfilled his/her obligations to provide supports an adult requires to exercise his or her legal capacity pursuant to section 8; and
 - (f) Any other matter that falls under the provisions of this Act or its regulations.
- (2) In issuing any orders under this Act, the Tribunal shall be guided by the principle of establishing the most autonomy-enhancing, community-based support arrangement possible.

PART 11 – LEGAL CAPACITY AND SUPPORT OFFICE

This part establishes the Office, Governance, Authorities and mandates.

PART 12 – PUBLIC AWARENESS AND COMMUNITY CAPACITY BUILDING

Public Education About the Right to Legal Capacity

56. The Minister

- (1) shall issue guidelines and undertake public education activities to increase awareness among the legal profession, service providers and the general public about the following:
 - (a) the rights and obligations in this Act and its regulations;
 - (b) the reality that supported and representative decision making are fully and equally valid ways of exercising legal capacity, and as alternatives to guardianship;
 - (c) the different types of legally valid methods of making decisions including through the assistance decision-making supporters, representatives, facilitators and personal ombud;
 - (d) the support to exercise legal capacity provided by the Minister;
 - (e) designated agencies and their roles;
 - (f) the duty to accommodate in the context of decision making; and
 - (g) any other matters related to the purpose of this Act;
- (2) may contract designated agencies for this purpose;
- (3) shall engage disability community and seniors' community representatives in the development of guidelines and delivery of public education pursuant to subsection (1).

PART 13 – LEGAL CAPACITY TRIBUNAL

This part establishes the Tribunal, appointment of Tribunal members, proceedings and application process.

PART 14 – LEGAL SUPPORT

This part provides for provision of independent legal support services to advise on applications and proceedings provided for under this Act. It may be incorporated into existing legal support provisions, for example under the ‘Human Rights Legal Support Centre’ provided for in the *Ontario Human Rights Code*.

PART 15 - REGULATIONS

This part provides for the making of Regulations under the Act, and should provide that before the Minister makes a regulation under this Act, he or she shall be obligated to engage the disability and seniors community in development of regulations, and provide a public notice and comment procedure on those matters which are left to the regulations.

PART 16 - REVIEW

This part provides for terms of the review of the Act, and should include that:

- within four years after this Act comes into force, and for every three years after that, the Lieutenant Governor in Council shall, after consultation with the Minister, appoint a person who shall undertake a comprehensive review of the effectiveness of this Act and the regulations and report on his or her findings to the Minister;
- a person undertaking a review under this section shall consult with the public and, in particular, with persons with disabilities;
- a report may include recommendations for improving the effectiveness of this Act and the regulations; and
- the Minister shall submit the report to the Lieutenant Governor in Council and shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session.

Conclusion

Article 12 holds immense promise to end the harm and exclusion that guardianship and substitute decision making have often caused in the lives of people with intellectual, cognitive and psychosocial disabilities. Designed to protect people, these laws have too often undermined self-determination, on which rests the possibility for inclusion, participation and equality in society.

The statutory framework outlined in this document starts with the core assumptions of the CRPD about the right to equality and governments' obligation to provide support and accommodation to people with disabilities in exercising their legal capacity. We have sought to identify the core elements that are needed for governments to fulfil their obligations under Article 12, and that would be practical in people's lives and communities.

We invite others to draw upon this framework and sample statutory text in their efforts to advance law reform, and changes in policy and practice in their particular jurisdictions. We look forward to continuing our work with civil society and governments in Canada and internationally on how to enable all people to be fully recognized as equal and contributing citizens, able to enjoy and exercise their right to legal capacity and equal recognition under the law.

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