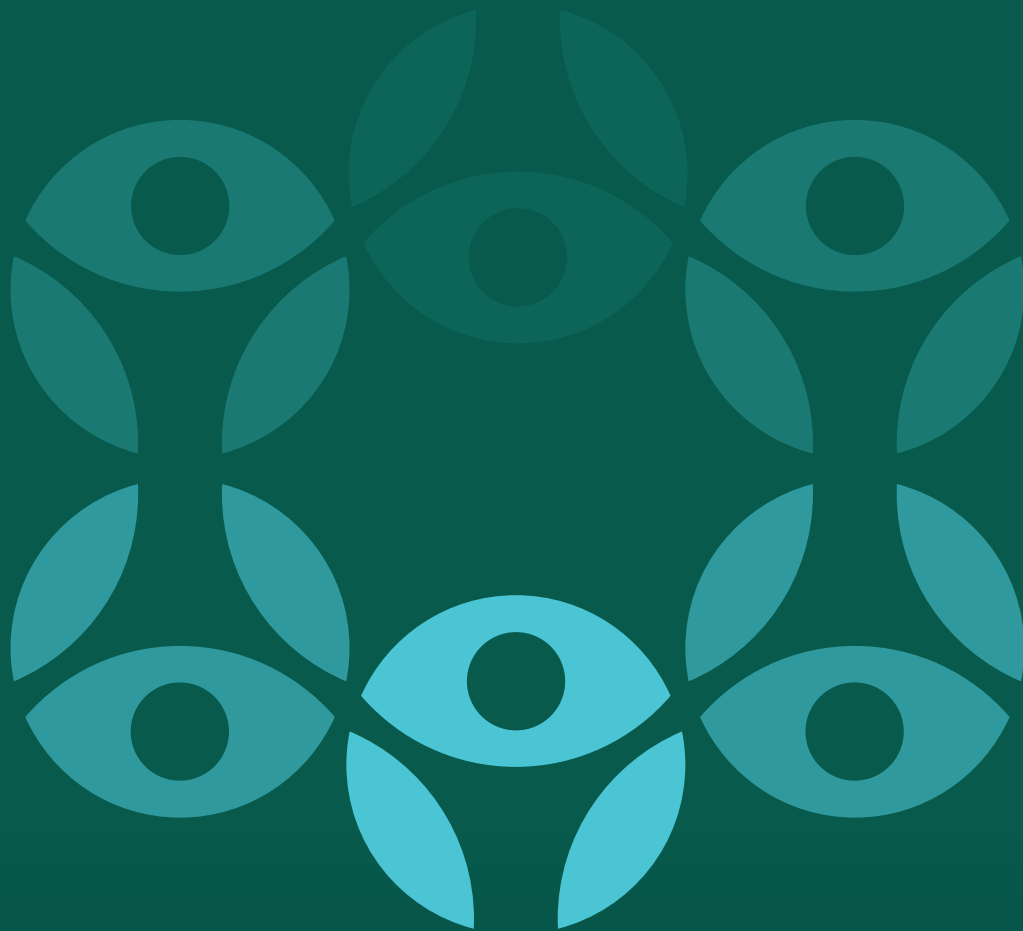




ACCOMMODATING PEOPLE IN EXERCISING THEIR RIGHT TO DECIDE



A PRACTICE GUIDE

from IRIS – Institute for Research and Development on Inclusion and Society

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About IRIS

Informed by the systemic exclusion that people with intellectual disabilities and other marginalized groups face, IRIS's mission is to seed and support transformative social development. Guided by the principles of full inclusion and human rights, we carry out research to identify issues and policy options. We foster social innovation to re-imagine inclusion and design new ways to meet unmet needs. Through capacity building, we strengthen leadership and constituencies for transformative change. For more information, visit us as at <https://irisinstitute.ca> or email contact@irisinstitute.ca.



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Introduction - What this guide is about

This is a planning guide to assist people with disabilities, and their supporters, in thinking about how best to support and accommodate a person in making decisions. The purpose is to assist people to direct their own lives, choose what is best for them, and have others respect their choices. In other words, to enjoy and exercise the right to make decisions on an equal basis with others.

People make decisions every day and expect that they are allowed to direct their own decisions. Having an equal right to decide means that a person with a disability has the authority and is supported to make decisions on an equal basis – in the same way as other members of society have the authority to do so. This can also be called an equal right to exercise legal capacity. Decisions can cover any part of life such as where to live, health care, banking, buying things and deciding to seek justice through legal proceedings. Being able to make decisions and exercise legal capacity are important to a person's dignity and sense of self-worth.

The equal right to decide is protected in the United Nations *Convention on the Rights of Persons with Disabilities*. The right to equality is also guaranteed in Canada's *Charter of Rights and Freedoms* and under federal, provincial, and territorial human rights laws.

People with disabilities often face barriers to exercising decision making power in their lives. Barriers result because of others' negative attitudes about disability, assumptions that a person cannot make or direct decisions, and because people are not able to access the communication, interpretive, and other supports they need. Sometimes the barrier is because others in the decision making process, like a doctor or bank teller do not make the time, or communicate in a way, that a person needs to arrive at an informed decision.

These barriers can be addressed by making the decision making process as inclusive and accessible as possible for a person with a disability.

Every person, and every decision-making setting requires a unique set of supports and accommodations. Anticipating, requesting, and arranging supports and accommodations can help make sure that others do not create barriers to a person exercising their right to decide.

This planning guide is designed to help people think about the supports and accommodations that would work best for them and the people they support.

It is divided into five main sections:

- I. Defining key terms and concepts
- II. The right to equality in decision making – what it means and what it requires.
- III. Supporting and accommodating a person in exercising their equal right to decide
- IV. Decision making support and accommodation worksheets.
- V. Challenging discrimination in exercising the right to decide.



I. Defining Key Terms and Concepts

In exercising the equal right to decide, and in supporting and accommodating a person to do so, it helps to keep certain terms and concepts in mind:

- **Accommodations** – are the steps taken by other parties to a decision to adapt the decision-making process so that a person may use their unique decision-making abilities and decision-making supports in guiding and in making a decision. Accommodations are adjustments to rules, policies, or practices to enable equality and full participation.
- **Decision making capability** – this is an approach to recognizing a person’s right to decide on an equal basis. Unlike the usual approaches to recognizing the right to decide, which requires that a person demonstrate a certain level of ability to understand information about a decision and appreciate consequences of a decision or non-decision, the decision making capability approach recognizes that we all need support to make decisions. The foundational decision-making ability in this approach is that a person has a will and preferences which guides planning for how they will be achieved in a particular decision-making circumstance. As needed, others can, to a lesser or greater extent, bring the understanding and appreciation needed to interpret a person’s will and preferences and apply them to a decision at hand.
 - **Independent** decision making capability – a person can carry out the understanding and appreciation needed for a valid decision, with only minimal support from others.
 - **Interdependent** decision making capability – a person requires significant or total support of others in interpreting and translating their will and preferences into a particular decision.
- **Decision-making process** – involves five main steps, including:
 - expressing a person’s will and preferences to others,
 - understanding and appreciating how the person’s will and preferences can be translated into a particular decision,
 - voluntarily making the decision (not coerced or unduly influenced), and
 - communicating the decision to others
 - implementing the decision
- **Decision-making support** – is assistance with any of the steps in decision making. It could be in the form of assistance from another person or persons, or an alternative or augmentative communication aid or device. It could also be an adaptation of the decision-making process to provide more time or incorporate decision-making supports.
- **Discrimination** – “is an action or a decision that treats a person or a group badly for reasons such as their race, age or disability.” <https://www.chrc-ccdp.gc.ca/eng/content/what-discrimination>
The right to live free from discrimination is a human right.
- **Undue hardship** – Human rights laws require accommodations up to undue hardship. This means that there are reasonable limits to what accommodations are required. Sometimes accommodation is not possible, for example, because it would cost too much or would cause health and safety risks.

II. Equality in Decision Making

A. What equality in decision making means and requires

Being treated equally in decision making means that people with disabilities:

- are recognized as able to direct decision making in their lives even when they want or need supports and accommodations to do so.
- are respected to make decisions even if they do not have the cognitive ability to understand all the details related to the decision.
- have access to the decision-making supports and accommodations they want or need for making decisions (such as communication aids/devices, personal support in understanding and communicating a decision, or additional time in appointments and other adaptations to decision-making processes) **and**
- their decisions are respected by others.

People make decisions because they want something to happen, or not to happen. The basis of a decision is a person's true intentions, will and preferences about the decision. Having a certain level of cognitive ability is not needed to be able to direct decisions about one's life.

People make decisions independently when they can understand the information that is relevant to making a specific decision to give effect to what they want/do not want to happen and can also appreciate consequences of one plan or choice over another.

When a person is unable to understand information or the possible consequences of a decision, they can still direct their decisions by being accommodated and/or relying on others, sometimes called supporters, who know what they want/do not want to have happen. The supporters act based on their understanding of what the person wants.

B. Right to Equality in Decision Making

The right to make decisions and exercise legal capacity on an equal basis with others is recognized in Article 12 of the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD).

Article 12 also obliges governments to ensure that people with disabilities have access to the supports they may require for making decisions. Article 12 has been interpreted to mean that people have a right to make decisions without discrimination based on the type or severity of disability. This means that people must be supported to make decisions independently or with the help of others.

The CRPD also contains a right to equality and a prohibition of discrimination. Denial of reasonable accommodation is a form of discrimination. This right also applies to decision-making.

Canada ratified the CRPD and is legally bound by it at international law.¹ Despite this, many laws in Canada still prevent some people with disabilities from having a right to make or direct their own decisions. Many laws insist that people have a minimum level of cognitive ability to make their own decisions. The

¹ While Canada made a declaration and reservation on Article 12 of the CRPD, indicating its understanding that Canadian law permits substitute decision making in some situations, it also recognized "that persons with disabilities are presumed to have legal capacity on an equal basis with others in all aspects of their lives." See United Nations Treaty Collection, Convention on the rights of persons with disabilities, online: https://treaties.un.org/Pages/View-Details.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en#EndDec.

exercise of legal capacity requires that there be understanding of the nature of the decision, and appreciation of reasonably foreseeable consequences of a decision or non-decision. These laws do not allow some people with disabilities who rely on supporters to make their own decisions. They are not treated equally and are excluded from society. Often people with more significant developmental, intellectual, and cognitive disabilities, and people who may be in a mental health crisis are excluded.

If people do not have the cognitive abilities required, another person (e.g., a guardian or substitute decision-maker) may make decisions for them, even if they do not want this. Those people do not have an equal right to decide. Because the law allows it, others may refuse to respect a person's decision and disregard the validity of the person's expressed will and preferences. Or they may refuse to respect the person's authority because the person is unable to independently understand information and appreciate consequences. When a person's authority is rejected in this way and as a result they are refused the power to exercise legal capacity, the person is being denied the right to make decisions on an equal basis with others.

These laws are beginning to change. Some laws in Canada now recognize decision-making supports and assistance in certain decision-making situations.

C. Human Rights Laws and Accommodations in Decision making

The Canadian Human Rights Commission defines human rights this way:

- Human rights describe how we instinctively expect to be treated as persons.
- Human rights define what we are all entitled to a life of equality, dignity, respect, and a life free from discrimination.
- You do not have to earn your human rights. You are born with them. They are the same for every person.
- Nobody can give them to you. But they can be taken away.
- Countries have human rights laws to make sure that people and governments are held accountable if your human rights are not respected. (Online at <https://www.chrc-ccdp.gc.ca/en/about-human-rights/what-are-human-rights>)

Human rights laws reinforce the right to decide on an equal basis. They protect people with disabilities from discrimination. Their goal is to make sure that each person can fully and equally participate in all aspects of society. This includes decision making. Each province and territory and the federal jurisdiction in Canada have human rights laws. They apply to a wide range of areas of life such as employers, schools, government services, landlords, health care providers, transportation, and financial institutions.

Human rights laws include a duty to accommodate people with disabilities. Accommodations are important for being treated equally. The duty to accommodate is an obligation to make adjustments which enable equality and full participation. The duty requires the entity to accommodate a person with a disability to the point of undue hardship. This means the entity must take all reasonable steps to accommodate a person up to the point that those steps cost too much or pose health or safety risks to the person or others.

The duty to accommodate applies to decision-making. But the human rights laws that require accommodation do not specify how people with disabilities should be accommodated in making decisions. Many people do not understand that there is a duty to accommodate people in decision making and what they can and should do to accommodate people to direct their own decisions. A person has a right to ask for accommodations when they are making decisions or if they are told they must have a capacity assessment before being able to make the decision.

The Canadian Charter of Rights and Freedoms also recognizes a right to equality in section 15 and is designed to protect people from discrimination, including based on disability. This applies to actions governments take in the form of laws, regulations, policies, programs, and actions by government officials or agents. It applies only to government and not to private individuals or businesses.

III. Supporting and Accommodating a Person in Exercising their Equal Right to Decide

A. Types of decision-making supports

A person may need a range of supports in decision making. Common types of supports include:

- *Person-directed planning facilitation* to assist a person and their network, if they have one, in identifying a path or plan to achieve their will and preferences, the decision-making support needs they may have, and ways of getting those needs met;
- *Independent advocacy and navigation support* to assist in developing and carrying out plans and needed decisions, and in making contracting and other arrangements with third parties;
- *Representatives* appointed by or on behalf of the person to act on their behalf under an advance planning document or power of attorney; as a decision-making supporter under a supported decision-making arrangement; or as a “personal ombudsperson” or navigator to assist in navigating needed supports, services, and legal relationships;
- *Communication assistance*, i.e., assisting the person to communicate their intentions, will, and preferences and, to the extent possible, helping them understand and appreciate the nature and consequences of legal relationships they make, and the use of adaptive communication technologies for this purpose;
- *Interpretive support* by decision-making supporters designated to assist a person in interpreting their will and preferences as a basis for decision-making;
- *Opportunity and relationship-building support* to provide community connections and experiences that assist a person to form and express their intentions; foster personal relationships that offer trust, dignity, and belonging; or help develop and sustain peer support and supported decision-making networks; and,
- *Administrative support* to help manage legal transactions and relationships.

Decision-making supporters for a particular person may provide one or more of these types of supports. A person may wish different support people to provide different decision-making supports. As well, someone who is not part of the person’s support network may provide one or more of these types of support – for example, a planning facilitator, an expert in communication assistance, or a person who provides accounting and administrative assistance to manage financial transactions.

B. Accommodating a person in decision making

Other parties to a decision have a legal obligation to accommodate a person in the decision-making process. As noted above, the right to make decisions on an “equal basis” with others is guaranteed in law. In the “decision-making capability approach” on which this guide is based, the equal basis for making decisions is that a person’s true intentions, will, and preferences are recognized as the basis for guiding and making decisions.

An accommodation is an adjustment in the usual decision-making policies and practices which make it possible for the person with a disability to participate and make decisions on an equal basis with others. Most accommodations are easy and inexpensive to make.

Accommodations are tailored to a particular decision and the process for making it. People may require different kinds of accommodations for different decisions and decision-making contexts.

1. General Principles of Accommodation

Accommodations must be:

- based on dignity, participation, and accessibility
- tailored to the person's individual needs (there is no set formula for accommodating people with disabilities)
- a shared responsibility

2. Accommodation responsibilities

In its brochure on “Disability and human rights,”² the Ontario Human Rights Commission defines the responsibilities as follows:

Everyone involved, including the person with the disability, should:

- work together
- exchange information
- look for accommodation solutions together

Accommodation Responsibilities of Person with a Disability:

- Tell the service provider, landlord, etc. what your disability-related needs are related to the service, tenancy, etc. – preferably in writing
- Provide supporting information about your disability-related needs, including medical or other expert opinions where needed
- Participate in finding accommodation solutions

Accommodation Responsibilities of Other Parties (Service Providers, etc.):

- Accept requests for accommodation in good faith
- Ask only for information which is required to provide the accommodation
- Take an active role in looking for accommodation solutions that meet the person's individual needs
- Deal with accommodation requests as quickly as possible. This may include a short term solution and a long term solution
- Respect dignity
- Keep personal information private

² Ontario Human Rights Commission, “Disability and human rights,” online: http://www3.ohrc.on.ca/sites/default/files/Disability%20and%20Human%20Rights%20brochure_revised_2016_English_accessible.pdf

3. Accommodations in decision making

These general principles and responsibilities in accommodating a person with a disability apply to the decision-making process. This includes:

- ***Respecting a person's unique decision-making abilities***
 - Some people may fully understand and appreciate the consequences of a decision. Others may need assistance in considering options, or in communicating with another party. For some people with more significant intellectual and cognitive disabilities, their ability is being able to communicate their will and preferences to at least one other person, as the basis for decision making.
- ***Identifying decision-making support needs***
 - To effectively accommodate a person, their decision-making support needs must be identified – these are supports that a person needs to demonstrate the understanding and appreciation required for making a valid decision.
- ***Recognizing, respecting, and including decision-making supporters³***
 - This applies to different roles supporters may play, including:
 - Interpreting a person's true intentions, will and preferences as the basis for decision making. Other parties have a duty to respect that support to the greatest extent possible
 - Assisting a person in understanding and communicating information
 - Providing emotional support to a person who has difficulty in communicating with people they do not know personally
- ***Arranging needed communication supports***
 - Making communication aids available, or arranging for a communication intermediary
 - Providing materials in plain language that give information about the decision being considered.
- ***Adjusting policies and practices***
 - This may involve providing more time as in a doctor's appointment, for example, or adjusting a policy to enable a support person to participate in an appointment and decision-making process.⁴

³ For a resource on accommodating a person who requires a support person, see ARCH Disability Law Centre, "Fact Sheet – Tips for Lawyers and Paralegals in Ontario: Accommodating clients requiring a support person," online: <https://archdisabilitylaw.ca/resource/fact-sheet-tips-for-lawyers-and-paralegals-in-ontario-accommodating-clients-requiring-a-support-person/>.

⁴ For a resource on accommodation persons who need additional time in an appointment or other setting, see ARCH Disability Law Centre, "Fact Sheet – Tips for Lawyers and Paralegals in Ontario: Accommodating clients who need extra time," online: <https://archdisabilitylaw.ca/resource/fact-sheet-tips-for-lawyers-and-paralegals-in-ontario-accommodating-clients-who-need-extra-time/>.

C. Key roles in supporting a person in decision making

There are many ways to support a person in decision making. Depending on the person's situation, a person's supporters may play one or more of these roles. Remember: playing these roles is about having a conversation in which the person is always at the centre.

1. Growing a person's network of decision-making supporters

- A person may be socially isolated or lack relationships with people who are committed to supporting them in decision making and to the guiding principles identified above. Or it may be that network members are changing, and new ones need to be engaged.
- If you are assisting a person who needs decision-making supporters, the first step is to map out a person's relationships and connections. A person may have very few relationships. It could start with a next door neighbour, a family member who lives in a different community, but could join the support network remotely. It could involve reaching out to a community group who engages volunteers to assist people who are isolated. If the person does not know the individuals, make sure you do your due diligence. Check to make sure the person is trustworthy.
- Have the person you are supporting identify who they would like to invite as a decision-making supporter. Reach out and invite them to meet. It is important to focus on building a relationship of trust, personal knowledge, and commitment to the person.

2. Exploring a person's will and preferences

- All decision making starts with a person's will and preferences. A person may not have had an opportunity to explore what matters to them, or to share it with others. Because this is the ground of all decision making, it is essential to spend time getting to know a person. This involves listening, sharing stories, inquiring into what others know about the person. If a person has had few opportunities to develop their interests, will, and preferences, it may involve creating new opportunities so a person and their supporters can learn about what they enjoy, their interests, what draws their attention, where they like to spend time, what they do not like to do.

3. Person-directed planning

- Person-directed planning in the context of decision making involves figuring out what steps are needed to put a person's will and preferences into action in different areas of their life. Planning starts with a person's will and preferences, as best as these can be understood. When a decision needs to be made, the process involves considering what steps will be needed to give effect to the best interpretation of the person's will and preferences in those circumstances – whether a financial, health care, or other personal life decision. The person should be supported to direct this planning process as much as possible.

4. Arranging supports and accommodations

- When a decision needs to be made that will involve others – a doctor for a health care decision, or a financial decision with the bank, etc. – it is helpful to think about the kinds of supports and accommodations that may be required. This will vary depending on the decision, and the person's situation at any point in time. You can use the worksheets below to have a conversation and plan for a specific decision-making process.
- A support and accommodation plan will identify what kinds of supports are needed, and what to ask of other parties to the decision-making process.

5. Decision making

- Supporting a person in decision making does not happen at one point in time. It involves all the steps discussed above – identifying who can be part of a person’s network, exploring a person’s will and preferences, making plans to put a person’s will and preferences into action, planning for and arranging supports and accommodations for a particular decision.
- A good decision is one that:
 - Reflects a person’s true intentions, will, and preferences
 - Results from a planning process which has centred and been directed by the person to the greatest extent possible
 - Maximizes the person’s decision-making abilities in the context – getting the right mix of support and accommodations

6. Safeguarding a person’s right to autonomy and to be free from abuse and harm

- Many people who require support and accommodation in decision making are vulnerable to having their right to decide denied, because:
 - They do not get the supports and accommodations they require
 - Others act in paternalistic and over-protective ways, or
 - Others coerce them into choosing things they do not want and abuse and harm them in the process.
- It is important to be attentive to how a person might be vulnerable in the decision-making process. You can take steps to safeguard their autonomy and protect them from harm
 - Make sure all supporters can be trusted
 - Make sure that more than one supporter is involved, so they can support each other and hold one another accountable
 - Create a ‘monitor’ role in the support network, someone whose role is to make sure supporters abide by the guiding principles and that the decision-making process reflects the person’s will and preferences
 - Document decisions so they can be reviewed in the future
- Sometimes another party to a decision may refuse to accept the decision of the person, or to accommodate them in the decision-making process as requested. In these situations,
 - Seek outside assistance to help mediate the situation or take other actions as appropriate (from a lawyer, another trusted professional, or a disability support organization)
 - Access information about the law and human rights as they apply to the situation and consider taking formal steps.

These kinds of roles are often called for in supporting a person’s right to decide. A person and their supporters are likely to evolve these roles over time.

D. Getting started on supporting a person in exercising their right to equality in decision making

Supporting and accommodating a person in decision making is an ongoing process. The person with a disability must be at the centre of the process.

In the area of decision making, a person's abilities are likely to change over time. New areas of decision making may become important at different stages of life. What we need in one area of decision making may not apply in others.

That is why this is called a planning "guide." It is meant to assist in what will be an ongoing conversation and planning process to support and accommodate a person in decision making through their lifetime.

Getting started in this conversation involves some main steps.

The steps below will help people who need supports for decision making, and their supporters. Not everyone who makes decisions with supports will want or need to take each of these steps.

1. Arrange for decision-making supporters

People draw on the assistance of people who support them (family, friends, professionals) for all kinds of reasons – assisting in daily life, planning for the future, for growing their friendship circle, or for managing personal affairs. Decision-making supporters are people who assist a person in exercising their equal right to decide.

Decision-making supporters assist a person in planning and accommodations in decision making, where a person needs this support. Often a person has a support network already in place who can play this role or be added to with other network members. However, many people with disabilities who require support in decision making are often socially isolated and alone. In these situations, it takes the intentional building of a support network around a person. The first step is to invite others to be in a relationship to a person and to assist in this way.

Decision-making support can be provided by:

- one other person – who commits to assisting in this way
- two or more people committed to assisting the person, and who together form a person's support network
- a peer support group, with whom a person shares their challenges, gets ideas, and offers their support to others.

Decision-making supporters should:

- Be chosen by the person
- Be in a trusting relationship with the person
- Be committed to assisting in helping with decision-making support and accommodations
- Have personal knowledge about the person's wishes and preferences, or be committed to learning about them
- Help create ideas about how a person could be accommodated

Remember: decision-making support arrangements vary from being very informal to a more formalized arrangement where supporters sign an agreement to play this role. Sometimes it is a mix of both: an informal gathering of supporters, with one person designated to play a more formal advocacy or representative role for the person in managing decision making with others.

2. Adopt guiding principles

In supporting a person to guide and make decisions there are important principles to keep in mind. Not all legal frameworks regulating legal capacity and decision making currently abide by these principles. They are beginning to change consistent with Article 12 of the UN Convention on the Rights of Persons with Disabilities.

1. Every person has a will and preferences. They reflect what matters to us and are the basis of our decision making.
2. We make decisions by applying our will and preferences to a particular situation – buying something at a store, getting or refusing a health care treatment, deciding where to live, what job we will do, how we will spend our time, who we will have relationships with.
3. No one makes decisions by themselves – we all rely on others, even if it is simply a shared language in which we can express our true intentions, will and preferences in the circumstances.
4. The understanding and appreciation required for a valid legal decision may be provided by the person, or by others who are singularly guided by how to put their best interpretation of the person's will and preferences into action.
 - Most often where a person is being supported in decision making, they and their decision-making supporters produce the needed understanding and appreciation together.
 - There are some “total support” situations where a person may have a significant intellectual or cognitive disability. Here, decision-making supporters' role is to interpret the person's true intentions, will, and preferences and make and carry out the plans to put them into effect in a particular decision-making situation.
5. We all make decisions differently, and so each of us need distinct types and arrangements of decision-making support and accommodations.

3. Consider a supported decision making facilitator

While it is not essential, it can be helpful to have a facilitator assist in identifying and arranging supports and accommodations in decision making. A facilitator is not a decision-making supporter or part of a person's support network. Rather, they help the person, their supporters, and other parties to decisions to maximize the person's equal right to decide.

Their job is to:

- assist the person and their supporters in creating a decision-making support arrangement
- help identify and reach out to decision-making supporters
- facilitate learning for the person, decision-making supporters, and other parties, about supported decision-making and accommodations
- guide supporters and other parties in how to ensure a person-directed and centred process
- arrange accommodations with other parties as required
- assist the person, supporters, and other parties in learning from their experience.

IV. Supports and Accommodations for a Particular Decision - Planning worksheets

Each decision-making situation provides new opportunities for a person to take greater choice, power, and control in their lives. Each situation may require different types of supports and accommodations.

The following worksheet is a tool you can use to plan for decision-making supports and accommodations for a particular decision-making situation, or for different types of decisions (like health care decisions, for example).

You can use the worksheet by “filling it in,” or simply as a guide for discussion among a person and decision-making supporters. The main thing to do is plan in advance of a decision-making situation with another party, where you can anticipate the need for accommodations.

A. Type of decisions to be made

In supporting a person in making decisions, it can be helpful to think about the kinds of decisions for which they may require support and accommodations:

- All decisions made with other people
- Health and wellness care – could be going to a doctor, dentist, or therapist
- Money – could be going to the bank to take money out of my account, deciding how to spend my monthly income, or meeting about getting a loan
- Where to live
- Personal relationships
- Hiring support staff
- Buying something – A cellphone, or buying some furniture
- Beginning a legal proceeding, such as making a human rights complaint

If not in the list above, think about other types of decisions a person may need help with:

- _____
- _____
- _____

B. What I expect from others in the decision-making process

Check all the boxes that apply. You can add more expectations:

- Respect me – what matters to me, my values, culture and that I can plan (asking questions about what is important to me, respecting my ways of making decisions and the values that guide me)
- Appreciate and support my ways of communicating (work with my ways of communicating, including communication aids/devices, and/or people who are my communication intermediaries and supporters)
- Communicate with me directly – not my support person (by addressing me personally, looking directly at me)
- Help me understand information I need to make a decision (providing information in plain

D. Finalize your accommodation plan and put it into action

You have made a plan:

- Made your expectations clear about how you would like decisions to be made
- Identified tips to help others meet your expectations

Now it is time to meet:

- It is time to agree on your accommodation plan with the other party you want to interact with (e.g., the landlord, health care provider, bank) – and put it into action

Actions you can take:

- **Arrange a meeting with the other party – service provider, bank, doctor:**
 - Bring a support person to the meeting, or you may be able to have them go on your behalf
 - To that meeting bring your ideas:
 - Your “expectations” for the decision-making process
 - Your ideas and “tips” on how other parties can best meet your expectations
 - Any information about your medical conditions or situation that you are willing to share in order to help the other party provide accommodations in decision making, with their agreement that they will keep your personal information confidential
- **At the meeting:**
 - Discuss the decision and any agreements to make
 - Outline your wishes and preferences
 - Go over expectations about the decision-making process, and your “tips” for meeting them
 - Make the request to the other party to accommodate and assist you in decision making
- **If you run into difficulty:**

If the other party is uncertain or questions a person’s capacity to make a decision with the decision-making supports provided, or is unclear about their duty to accommodate:

 - Share the information in this guide about the equal right to decide and the duty to accommodate in decision making
 - Reach out to a mediator, lawyer or someone who can assist in this process.

V. Challenging Discrimination in Exercising the Right to Decide

As discussed in section II, all persons have a right to make decisions on an equal basis with others, and without discrimination based on disability.

Even though the law in a jurisdiction may not yet fully recognize this right, a person or their supporters can take steps to ensure a person's right is recognized by how you treat, support, and accommodate them in decision making.

Where other parties to a decision-making process refuse to respect a person's right to make decisions, or to support and accommodate them in a decision-making process, these actions can be challenged through the human rights complaints system.

If a person or their decision-making supporters feel that the person was treated unequally in decision making and they were not able to get needed accommodations, they can consider taking legal steps.

Below are information resources about how to take the steps – at the federal level, and in each province and territory – to challenge discrimination, and about the duty to accommodate.

INFORMATION RESOURCES ABOUT STEPS TO TAKE WHEN A PERSON IS TREATED UNEQUALLY, AND THE DUTY TO ACCOMMODATE

If a person or their supporters feel that the person with a disability was treated unequally in decision making and they are not able to get the accommodation they feel is needed, they can consider taking legal steps.

Below are some resources issued by statutory human rights agencies about how to take these steps, and generally about human rights and the duty to accommodate.

Canada/Federal

Canadian Human Rights Commission

- Making a Complaint: <https://www.chrc-ccdp.gc.ca/en/complaints/make-a-complaint>
- Monitoring the Rights of People with Disabilities: <https://www.chrc-ccdp.gc.ca/en/monitoring-the-rights-of-people-with-disabilities>
- What is the Duty to Accommodate: <https://www.chrc-ccdp.gc.ca/en/about-human-rights/what-the-duty-accommodate>

Alberta

Alberta Human Rights Commission

- Making a human rights complaint: https://albertahumanrights.ab.ca/complaints/faqs/Pages/how_to_complain.aspx
- Employment – Duty to Accommodate: <https://albertahumanrights.ab.ca/Documents/EmplDutyToAccom.pdf>
- Mental or Physical Disabilities and Discrimination: <https://albertahumanrights.ab.ca/Documents/MentalPhysicalDisab.pdf>
- Duty to Accommodate – Human Rights Guide: [https://albertahumanrights.ab.ca/publications/bulletins_sheets_booklets/bulletins/Documents/Duty%20to%20accommodate%20\(April%202021\).pdf](https://albertahumanrights.ab.ca/publications/bulletins_sheets_booklets/bulletins/Documents/Duty%20to%20accommodate%20(April%202021).pdf)
- Duty to Accommodate Students with Disabilities in Post-Secondary Educational Institutions – Human Rights Guide: [https://albertahumanrights.ab.ca/publications/bulletins_sheets_booklets/bulletins/Documents/Duty%20to%20accommodate%20students%20with%20disabilities%20in%20post-secondary%20educational%20institutions%20\(April%202021\).pdf](https://albertahumanrights.ab.ca/publications/bulletins_sheets_booklets/bulletins/Documents/Duty%20to%20accommodate%20students%20with%20disabilities%20in%20post-secondary%20educational%20institutions%20(April%202021).pdf)

British Columbia

British Columbia Human Rights Tribunal

- Make a complaint: <http://www.bchrt.bc.ca/complaint-process/complain/index.htm>
- Resources to assist in the human rights process: <http://www.bchrt.bc.ca/whocanhelp/index.htm>
- Human rights and duties in employment: <http://www.bchrt.bc.ca/human-rights-duties/employment/index.htm>

British Columbia's Office of the Human Rights Commissioner

- <https://bchumanrights.ca/>

Manitoba

Manitoba Human Rights Commission

- Information on filing a complaint: <http://manitobahumanrights.ca/v1/complaints/index.html>
- [Guideline on reasonable accommodation in the workplace](http://manitobahumanrights.ca/v1/education-resources/resources/reasonable-accommodation.html) – sets out responsibilities of employees and employers: <http://manitobahumanrights.ca/v1/education-resources/resources/reasonable-accommodation.html>
- Requesting medical information from employees: <http://manitobahumanrights.ca/v1/education-resources/resources/fact-sheet-pages/fact-sheet-requesting-medical-information-from-employees.html>
- Commission Policy #G-2, “Reasonable Accommodation: Disability”: <https://manitobahumanrights.ca/v1/education-resources/resources/pubs/board-of-commissioner-policies/g-2.pdf>
- Commission Policy #I-4, “Physical and Mental Disability”: <https://manitobahumanrights.ca/v1/education-resources/resources/pubs/board-of-commissioner-policies/i-4.pdf>

New Brunswick

New Brunswick Human Rights Commission

- Filing a complaint <https://www2.gnb.ca/content/gnb/en/departments/nbhrc/the-complaint-process/filing-a-complaint.html>
- FAQ on employment, including the duty to accommodate: <https://www2.gnb.ca/content/dam/gnb/Departments/hrc-cdp/PDF/FAQ-employment.pdf>
- FAQ on services: <https://www2.gnb.ca/content/dam/gnb/Departments/hrc-cdp/PDF/FAQ-services-e.pdf>

Newfoundland and Labrador

Newfoundland and Labrador Human Rights Commission

- Guidelines regarding responsibilities of service providers – describes responsibilities of both service users (i.e., people with disabilities) and service providers. See <https://thinkhumanrights.ca/education-and-resources/guidelines/guidelines-regarding-responsibilities-of-service-providers/>
- Information on getting ready for a hearing - <https://thinkhumanrights.ca/how-to-prepare-for-a-hearing/>

Northwest Territories

Northwest Territories Human Rights Commission

- Complaint process: <https://nwthumanrights.ca/complaints/>
- Information on Accommodation: <https://nwthumanrights.ca/your-rights/accommodation/>

Nova Scotia

Nova Scotia Human Rights Commission

- How to file a complaint: <https://humanrights.novascotia.ca/resolving-disputes/how-file-complaint>
- Duty to accommodate in employment: <https://humanrights.novascotia.ca/know-your-rights/businesses-and-other-organizations/employers#duty-to-accommodate>

Nunavut

Nunavut Human Rights Tribunal

- Information on filing a Notification: http://www.nhrt.ca/english/how_do_i_file_a_notification
- Seeking legal counsel: http://www.nhrt.ca/english/seeking_legal_counsel

Ontario

Ontario Human Rights Commission

- Information for service providers <http://www.ohrc.on.ca/en/discrimination-based-disability-and-duty-accommodate-information-service-providers>. There is also a similar fact sheet for housing providers and employers.
- The Commission has also begun to focus on how the duty to accommodate could apply in decision making, pointing to examples of types of accommodation for this purpose. See <http://www.ohrc.on.ca/en/policy-preventing-discrimination-based-mental-health-disabilities-and-addictions/16-consent-and-capacity>.

Human Rights Legal Support Centre (Ontario)

- Provides legal services to people who have experienced discrimination
- Website contains information on the human rights process in Ontario and steps to making a complaint at <https://www.hrlsc.on.ca/en/how-guides-and-faqs#1>

Québec

Commission des droits de la personne et des droits de la jeunesse Québec

- Filing a complaint: <https://www.cdpcj.qc.ca/en/file-a-complaint/i-want-to/file-complaint-discrimination-or-harassment>
- Your rights at work: <https://www.cdpcj.qc.ca/en/your-rights/rights/at-work>

Prince Edward Island

Prince Edward Island Human Rights Commission

- Complaint form and guide: <https://www.peihumanrights.ca/complaint-process/complaint-form-and-guide>
- Duty to accommodate: <https://www.peihumanrights.ca/education-and-resources/duty-to-accommodate>

Saskatchewan

Saskatchewan Human Rights Commission

- Filing a complaint: <https://saskatchewanhumanrights.ca/filing-a-complaint/>
- Duty to accommodate: <https://saskatchewanhumanrights.ca/for-employers/duty-to-accommodate/>
- Policy on Persons with Disabilities as a Designated Equity Group: <https://saskatchewanhumanrights.ca/education-resources/policies-guidelines/persons-with-disabilities-as-a-designated-equity-group/>
- Employment Discrimination and the Duty to Accommodate Information Sheet: <https://saskatchewanhumanrights.ca/wp-content/uploads/2020/03/SHRCemploymentdiscrimination.pdf>

Yukon

Yukon Human Rights Commission

- Filing a human rights complaint <https://yukonhumanrights.ca/human-rights-complaints/>
- Information on the duty to accommodate: <https://yukonhumanrights.ca/what-is-the-duty-to-accommodate>

Endnotes

¹ While Canada made a declaration and reservation on Article 12 of the CRPD, indicating its understanding that Canadian law permits substitute decision making in some situations, it also recognized “that persons with disabilities are presumed to have legal capacity on an equal basis with others in all aspects of their lives.” See United Nations Treaty Collection, Convention on the rights of persons with disabilities, online: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en#EndDec.

² For a resource on accommodating a person who requires a support person, see ARCH Disability Law Centre, “Fact Sheet – Tips for Lawyers and Paralegals in Ontario: Accommodating clients requiring a support person,” online: <https://archdisabilitylaw.ca/resource/fact-sheet-tips-for-lawyers-and-paralegals-in-ontario-accommodating-clients-requiring-a-support-person/>.

³ Ontario Human Rights Commission, “Disability and human rights,” online: http://www3.ohrc.on.ca/sites/default/files/Disability%20and%20Human%20Rights%20brochure_revised_2016_English_accessible.pdf

⁴ For a resource on accommodation persons who need additional time in an appointment or other setting, see ARCH Disability Law Centre, “Fact Sheet – Tips for Lawyers and Paralegals in Ontario: Accommodating clients who need extra time,” online: <https://archdisabilitylaw.ca/resource/fact-sheet-tips-for-lawyers-and-paralegals-in-ontario-accommodating-clients-who-need-extra-time/>.

