



Chapter Eleven

Justice, Rights, & Legal Issues

We do not “earn” our rights; we have them because we are human beings. Knowing your legal rights is a powerful advocacy tool. Legally, people cannot be discriminated against because of their disabilities. As a parent, it is important to know how legislation supports your child’s rights and inclusion within society. If a policy or the way it has been interpreted discriminates against your child, it is good to know that there are places you can reach out to advocacy help or advice. There are organizations that exist to help people who are facing injustice or discrimination.

11.1 United Nations Conventions On The Rights Of Persons With Disabilities

The Convention on the Rights of Persons with Disabilities is an international human rights treaty that was created with the intention of protecting the rights and dignity of people with disabilities. In March 2010, the Government of Canada ratified the Convention.

There are eight guiding principles within the Convention:

1. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons.
2. Non-discrimination.
3. Full and effective participation and inclusion in society.
4. Respect for different and acceptance of persons with disabilities as part of human diversity and humanity.
5. Equality of opportunity.
6. Accessibility.
7. Equality between men and women
8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities

11.2 The Canadian Charter Of Rights And Freedoms

The *Canadian Charter of Rights and Freedoms* is the cornerstone of our human rights as citizens of Canada. The Charter is historically significant for people with a disability: it was the first time Canadian law specifically included people who have a disability. The inclusion of persons with mental and physical disabilities came about because of the strong advocacy of people who have a disability and other allies.

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



While Section 15(1) establishes the broad principle of our right to live without discrimination, Section 15(2) recognizes that because of centuries of discrimination, we still need laws that give people equity as well as equality under the law. Section 15 (2) of the Charter states: “Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.”

Based on Section 15 we have the right to live free from discrimination. According to the Government of Canada, “Discrimination occurs where, for example, a person, because of a personal characteristic, suffers disadvantages or is denied opportunities available to other members of society.” The Supreme Court of Canada states that this section is meant to protect groups that are disadvantaged in Canada.

All people have equal protection and equal benefits under the law. Equal protection means that a law (including regulation and policy) must apply equally to all Canadians. Beyond that, we are entitled to the equal benefit of the law. The outcome of a law, the benefit provided by the law, and the way it affects an individual, must be the same for all. For example, a law that says everyone has the right to go to school provides for equal protection, but unless the law also recognizes individual difference it will not ensure equal benefit of the law. It is not only the right of the individual to benefit from attending school, there is also a corresponding responsibility of educators to ensure that you benefit from attending school.

It is important to recognize that the *Canadian Charter of Rights and Freedoms* is meant to protect us from discrimination as a result of an act of government (federal, provincial and municipal) but does not protect us from discrimination by other citizens or businesses. Also the Charter, while providing the basis for our protection against discrimination, puts the onus on a citizen who believes they have been discriminated against, to prove their case.

11.3 The Saskatchewan Human Rights Code

As with the Charter of Rights and Freedoms, the *Saskatchewan Human Rights Code* specifically mentions people who have a disability as a protected group. People with disabilities are a protected group in the Code because they have been targets of discrimination in the past. However, it is important for parents to know that children are not protected from discrimination because of their age. The Code prohibits discrimination based on age but then limits that by defining age to mean “any age of eighteen years or more.”

Two areas of the Code that may be important for parents of children with disabilities are sections 12 (public services) and 13 (education). Being part of the community means having access to the same activities and services as everyone else. In section (12:1-a) of the Code, your child is entitled to have the same accommodations, services and facilities as other people. Your child cannot be discriminated against by any service that is offered to the public (13:1-b). This means that public education, health care, dental care, parks, pools, buildings, washrooms, restaurants, stores, hotels and government services must be accessible and available. It is important for parents to stand up for their child’s right to the same services as every other child. If your child is denied first-rate health care, dental care, counseling, mental health services, education or any other service, involve a human rights advocate.

11.4 Defending Your Child's Rights: Where To Go For Help

Discrimination or injustice comes in many forms. It can include not allowing a child to learn in a regular classroom, not having an accessible playground or denying someone the financial support they are entitled to from the government. When your family feels there has been discrimination, it is easy to get frustrated or angry, and feel that there is nothing you can do. However, in many situations, it is possible to challenge the system. Here is a list of both non-profit and government organizations that help citizens uphold their rights.

- [Inclusion Saskatchewan](#)

We are often involved in cases in which individuals believe their human rights as a Saskatchewan citizen are being neglected or ignored. Our website is www.inclusionsk.com and our phone number is (306) 955-3344.

- [The Saskatchewan Human Rights Commission](#)

If you think your child's rights have been violated, you can call the Saskatchewan Human Rights Commission for advice. It is a government-funded commission with offices in Regina and Saskatoon. The website is www.saskatchewanhumanrights.ca. By investigating complaints of discrimination, the Commission makes sure that the *Saskatchewan Human Rights Code* is followed and enforced.

- [The Ombudsman](#)

When people have problems with a provincial government department they can call the Ombudsman's office. The Ombudsman can investigate complaints if you feel that a government program or service has treated you or your family unfairly. They can review any decision made by a provincial government worker, department, branch, board, agency, or commission. The Ombudsman's office is independent from any government department, reporting directly to the Legislature. This allows them to make an independent decision. The website is www.ombudsman.sk.ca.

- [The Saskatchewan Advocate for Children & Youth](#)

The Advocate for Children and Youth is a provincial office, independent from other government departments, that investigates complaints on behalf of children. The Advocate for Children and Youth will intervene if a child or a parent makes a complaint. They will attempt to resolve the dispute or do an independent investigation. They cannot intervene in a complaint against the court, the federal government, the police, or a municipal body or school board. They can be contacted through the website www.saskadvocate.ca.

- [Anti-Poverty Advocates](#)

If an adult is having problems with a government income support program, there are anti-poverty advocates who can help by advocating with any government system such as Social Services. The following are anti-poverty groups in Saskatchewan:

- The Regina Anti-Poverty Ministry (Regina)
- The Saskatoon Anti-Poverty Coalition (Saskatoon)
- Poverty Free Saskatchewan



Chapter Eleven

Justice, Rights, & Legal Issues

- **Saskatchewan Voice of People with Disabilities**

The Saskatchewan Voice of People with Disabilities advocates for people with disabilities and their families. The Voice was a founding member of the Council of Canadians with Disabilities. The Voice advocates in the areas of citizenship, accessibility, employment, housing, human rights, health, income support, individualized funding, organizational development, public education, social policy and transportation. The Voice also offers a newsletter and other publications.

11.5 The Court System

Victims of a Crime

If your child is a victim of a crime, knowing what to expect in the justice system can be very helpful. Victim's Services is a Branch of the Ministry of Justice whose job it is to help the justice system better understand the needs of victims. Victim's Services can help your family make a decision about reporting the crime and give you information about the process you will need to go through to press charges and during court proceedings. The best way to advocate is to make sure that the police, the prosecutor (lawyer) and Victim's Services understand that your child has an intellectual disability and outline the supports they will need.

The Public Prosecutor's Division of the Department of Justice will assign your child a lawyer to represent their interests. You can speak with the lawyer assigned to the case and ask if your child will need to testify. It is important to let the lawyer know about your child's strengths, limitations, and if your child needs support in some way. The victim can have an advocate with them in court if it makes them more comfortable.

People Accused of a Crime

When a person is accused of a crime, it is important to get a lawyer. Low-income adults should qualify for a lawyer from the Saskatchewan Legal Aid Commission. If a person does not qualify, they can apply to the court to have a lawyer appointed. Interview potential lawyers to make sure they understand disability issues, or at least have a willingness to learn. It is best to have a lawyer who has some experience with people with disabilities.

Alternative Measures & Extrajudicial Sanctions Programs

Alternative measures/extrajudicial sanctions programs might be a good option for an accused individual, depending on the circumstances. These programs offer accused persons a chance to take responsibility for their behaviour and address the harm they have committed. They take a problem-solving approach to crime that emphasizes healing while helping repair relationships between the victim, the accused and the community as much as possible.

Alternative measures/extrajudicial sanctions programs frequently use restorative justice -- an approach that focuses on addressing the harm caused by crime while holding the offender responsible for his or her actions, by providing an opportunity for the parties directly affected by crime – victim(s), offender and community – to identify and address their needs in the aftermath of a crime. It supports healing, reintegration, the prevention of future harm and reparation, if possible.

Mental Health Strategy Court

Mental Health Strategy (MHS) Court is a collaborative model to coordinate treatment needs and criminal justice needs for individuals with mental health, Fetal Alcohol Syndrome Disorder (FASD), or cognitive issues who have

been charged with a crime. The Saskatoon Mental Health Strategy Court brings together the knowledge of health, social services and criminal justice professionals. It is designed to improve the Court's access to information in order to support and supervise offenders safely in the community.

Adults accused of a crime may be referred to the MHS Court through the Crown Prosecutor if the accused appears to have issues related to mental health, such as cognitive disability, FASD, brain damage, or psychiatric disorder. The mental health issue must be related to the criminal behaviour. Legal aid, defense counsel, social agencies, and individuals can contact the Crown Prosecutor and ask that the accused person be considered for this court.

Finding Legal Help

When a person with an intellectual disability enters the justice system, often the supports they need are simply not there. They will need you as their advocate more than ever. If there are any supports they need to have a fair trial, demand them. Help is available at the following places:

- [Legal Aid Saskatchewan](#)
Legal Aid Saskatchewan provides accessible and professional legal services in criminal and family law to eligible people. They provide legal services to people and organizations who are financially unable to secure services on their own. More information, including eligibility criteria, can be found on their website.
- [Lawyer Referral Service](#)
The Law Society of Saskatchewan helps people contact lawyers in their community who are interested in a particular area of law such as criminal, estates, wills and trusts, human rights, landlord and tenant, medical malpractice, and taxations. It allows you to search lawyers who are members of the Law Society of Saskatchewan.
- [Pro Bono Law Saskatchewan \(PBLs\)](#)
PBLs is a non-profit that improves access to justice in Saskatchewan by creating, facilitating, and promoting opportunities for lawyers to provide high-quality pro bono (free) legal services to persons of limited means.
- [The John Howard Society](#)
The John Howard Society of Saskatchewan offers advocacy, referrals, mediation, anger management, and counselling to youth and adult males in Saskatchewan. All programs are aimed at helping those affected by the criminal justice system to reintegrate into the community.
- [The Elizabeth Fry Society of Saskatchewan](#)
The Elizabeth Fry Society offers support to youth and adult women affected by the criminal justice system. The society offers information about court proceedings, resources, counselling, and reintegration programs.
- [Community Legal Assistance Services for Saskatoon Inner City \(CLASSIC\)](#)
CLASSIC is a non-profit and charitable organization that provides free, professional and confidential legal services for low-income members of Saskatoon who cannot otherwise afford legal advice or representation.



Chapter Eleven

Justice, Rights, & Legal Issues

- **ARCH: A Legal Resource Centre for Persons with Disabilities**

ARCH is a non-profit legal aid clinic in Ontario that provides free, confidential, basic legal information as it relates to disabilities. ARCH has a mandate to serve the citizens of Ontario, but you can phone for advice if you have had a hard time finding disability-related legal advice. Also, there are publications on the ARCH website that are written for lawyers explaining how to respect and support a person with a disability.

11.6 Planning For Your Child's Financial Future

To ensure that your child with an intellectual disability has a good quality of life, for their whole life, you need to plan ahead. It can be helpful to seek the advice of a lawyer in addition to a financial planner and/or accountant to help make your plan sustainable long term. More information can be found in our publication *Road Map to the Future: A Financial Planning Guide for Families of People with Disabilities*.

The Planned Lifetime Advocacy Network

A good way to make sure your child has a secure future is to check out the resources of the Planned Lifetime Advocacy Network (PLAN). PLAN is a non-profit organization created by and for families with children who have a disability. The organization offers books and online supports with excellent advice on building a safe and secure future for a person with an intellectual disability. You can learn about PLAN by accessing their website at www.plan.ca.

The Dependents Relief Act

When you are preparing your will, it is important to find out about current legislation that could affect how your estate is distributed. In Saskatchewan, the Dependents' Relief Act requires you to make "reasonable and adequate" provisions for your dependent child, regardless of their age. A "dependent" can be "a child of the deceased who is 18 years or older at the time of the deceased's death and who alleges or on whose behalf it is alleged that: (a) by reason of mental or physical disability, he or she is unable to earn a livelihood."

If your will does not adequately provide for your child with a disability, the Public Guardian and Trustee of Saskatchewan can ask the court for a maintenance payment from your estate. This means they will rewrite your will to allow financial support for your dependent child. If your adult child receives SAID or other social assistance and inherits money from your estate, this may mean forfeiting public assistance until all the inheritance money is used up.

Discretionary Trusts

We recommend that parents find a good financial planner and a lawyer who understands disability issues and consider setting up a third-party discretionary trust. A discretionary trust gives the trustee or trustees full discretion as to how and when to provide for the beneficiary. The trustee(s) will be able to spend your child's inheritance on improving your child's quality of life. They will be able to purchase those extra items that social assistance does not provide. If the money is in your child's name instead of a discretionary trust, Social Services can deny them assistance until the money is spent at a government rate on their basic needs. It has become a common practice in Saskatchewan to set up a discretionary trust under a will as means for providing for a dependent child.

11.7 Supported Decision Making & Guardianship

Supported Decision Making

Supported Decision Making (SDM) is a process of supporting a person's right to make informed choices about their life. SDM includes the person's support network as it recognizes the importance of meaningful, supportive relationships. The supporters (the person's circle of supports) work to empower the person to be the leader of their own life while ensuring they feel supported, respected and heard.

SDM requires established relationships between a person and their support network, an understanding of the underlying principles, and a respectful process for making decisions. SDM should be transparent, team-oriented, and focused on identifying the wishes and goals of the person. The best course of action should also be determined, including what decisions require support, the specific roles of each supporter, and how differences of opinion will be handled. SDM is intended to be carried out with the least restrictive measures possible. The success of SDM is not measured by outcomes; it is measured by how well a person is empowered to have choice in their life.

Principles of Supported Decision Making:

- Recognize that everyone has an inner drive to choose how they want to live.
- The person making the decision is at the center of the decision-making process.
- Every person has the right to self-determination -- making decisions is not limited or removed by disability.
- The right to make decisions includes the right to have the support needed to make decisions. This includes respecting the choices other people make and helping them achieve their goals.
- Decision making is a human right that is guaranteed in the *Canadian Charter of Rights and Freedoms* and in Canadian and provincial/territorial human rights laws.

The Supported Decision Making Process:

1. Determine what decision needs to be made. What does the person want? Do they need/want support to make a decision? What are their strengths? What areas may they need support with?
2. Include preferred supporters who understand what is important (both short term and long term) to the person. The supporter must work with integrity to support the person with an unbiased approach and awareness of a person's goals and wellbeing.
3. Present the options in a way that works best for the person. There may be many ways for the person to achieve what they want. This includes considering when is the best time for the person to make a decision, adapting to how the person likes to receive information, and including others who should be enlisted as a support.
4. Gather the person and their supporters to identify any additional information needed to make the decision. Map out who makes the final decision and be clear about who will be doing what. Make sure all information is shared, that the steps to the desired outcome are discussed and that everyone understands the options.



Chapter Eleven

Justice, Rights, & Legal Issues

Consider the advantages and disadvantages of each option, and outline challenges. Take as much time as is required, and do not try to accomplish too much at one single meeting. Consider how the person likes to receive information and go at their pace.

5. The person makes a decision and the supporters ensure they fully understand their decision. The outcome should be the most appropriate option for the person.
6. Check in with the person and evaluate the outcome. How do they feel? What did they learn? Was it what the person was hoping for? Why or why not? If new information comes forward, or the situation changes, continue communicating, as required.
7. What is the next decision the person would like support with? Every decision is an opportunity for people to exercise their autonomy. Begin the process again, but remember to begin at step one each time, as every decision is different and may require different supporters, sharing updated information, etc.

Co-Decision Making, Guardianship, and Power of Attorney

Many parents who have a child with an intellectual disability assume that once their child turns 18, the next step is to get guardianship. Guardianship, however, is only needed and is only effective in certain situations.

Guardianship: Guardians make decisions for an adult that takes away the adult's right to self-determination. The guardian manages main areas of the adult's life, depending on the type of guardianship that is obtained (personal, property, or both). The guardian is supposed to take the wishes of the adult into consideration when making decisions. A personal guardian makes decisions about an adult's personal welfare and a property guardian makes decisions about an adult's finances and property. Guardianship applications require two assessments from professionals (such as a doctor) who know the individual well and can assess the adult's capacity to make decisions. Once the application is complete, it is sent to the Court of Queen's Bench.

Co-Decision Making: Co-Decision Makers assist the adult with making choices about their lives. They ensure that the adult is well informed about their choices, that they understand the information to the best of their ability, and that they are made aware of the possible consequences of a decision. However, the vulnerable adult has the final say about what they would like to do. A personal co-decision maker makes decisions with the adult about personal matters and a property co-decision maker makes decisions with the adult about finances and property. Co-decision making is a formal type of supported decision-making tool that enables the person who is being supported to take more control over their own life. It allows for growth and learning in decision making through practice. An application to the Court of Queen's Bench is still required for formal co-decision making.

Power of Attorney: A power of attorney is a written document that grants the ability for an adult to help another adult make decisions on their behalf. A person may use an enduring power of attorney to appoint a personal attorney, a property attorney, or both a personal and property attorney. An adult may appoint the same person to be both their personal and property attorney, or can appoint different people to fulfill each role. An individual who has an intellectual disability but who has decision-making capacity can use this tool if they would like decision making support from someone they trust. An enduring power of attorney continues during the grantor's lifetime until death, but the grantor can also get rid of their Power of Attorney at any time, assuming mental capacity to do so exists. All the necessary forms are available for download at the Saskatchewan Justice website.

In Closing

As a parent, you are your child's best advocate. Parents advocate for inclusion and meaningful participation for their children because they want a rich, full, interesting life for each of them. Parents encourage their children to dream and to carve out their own place in the world. We believe that supporting a child with a disability to grow, learn and reach his or her potential is a lifelong journey of discovery for parents and their children.

Inclusion Saskatchewan is privileged to walk with families and self-advocates on this journey. We think of Navigating the System as having Inclusion Saskatchewan in your back pocket, as you encounter new forks in the road ahead. This guide is a compass: a navigational tool designed to point your searches in the right direction. We hope this book can help you navigate the systems of support currently in place, while helping you and your child to develop the self-advocacy skills necessary to help those systems evolve.

Navigating the System is a companion for the journey. There will be successes and failures, smooth highways and winding paths along the way. There will be issues that challenge families to be strong advocates for their children, and many stories to tell as children grow and change. As many families know, the journey may not always be easy but having current information and necessary resources will help to ensure that your loved ones are well supported and lead meaningful lives in their community. Families are encouraged to share this information with others who are experiencing some of the same challenges. We also encourage you to continue checking our website for downloadable updates to this guide.

Your child is a person with unique gifts and talents. Your community is a better place because your child is part of it. We sincerely hope that the information in this guide will help make your journey an easier one.