



PEOPLE FIRST NOVA SCOTIA

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Law Amendments

1672 Hollis St

October 16, 2017

Re: Bill 16 -Adult Capacity and Decision Making

My name is Dave Kent and I am the President of People First Nova Scotia. Our organization supports individuals who have been labelled with an intellectual disability to find their voice, speak for themselves and promote equality for all people who have been labelled with an intellectual disability.

We believe in the Canadian Charter of Rights, Human Rights and the United Nations Convention on the Rights on Persons with Disabilities. We spoke out when Landin Webb challenged the old Nova Scotia Incompetency Act. We were encouraged when the courts found that act to be unconstitutional and the Nova Scotia government agreed. People First Nova Scotia was pleased to be asked to be involved in talks on the new act.

We were disappointed in the new bill "Adult Capacity and Decision Making Act". The main problem with this bill is that it puts in place a substitute decision maker for a person instead of a supportive decision maker. Article 12 of the United Nations Convention on the Rights of Persons with Disabilities states that "proper measures shall be taken to provide access by persons with disabilities to the support they may require in exercising their legal capacity". This bill does not put any measures in place to provide support to the person to exercise their legal capacity. This bill does not protect the Nova Scotian individual with intellectual disabilities basic rights. This is not what we were promised in the NS Government document, the "Roadmap".

I outlined these concerns in my letter in early September to the Department of Justice, in response to a brief chance to review the draft law. People First of Canada's position paper on Legal Capacity was also sent. I have provided copies of these documents.

Another problem with this new law is that all current guardian orders will stay in place. This means none of the individuals who were under guardianship will be reviewed.

A Member of



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There could be another dozen Landin Webbs out there who would still be having their basic rights violated. No one is protecting these persons' rights.

There is no method to support adults who have had an application made, or their families, or professionals involved in the process. There is no supervision after a representative has been appointed. This means there is no way to ensure the rights of the individual are protected. We are concerned about the confusing process of capacity assessment, the tool to do it and training for those completing the work. It is scary that in this act a representative can get permission from the court to give consent for the adult to go through disturbing treatments that represent a violation of the adults' human rights.

There is no reference of the United Nations Convention on the Rights of Persons with Disabilities in the Act. Canada was one of the first countries to ratify this international law and this is something that can make every Canadian proud. This new law should directly reflect international law and it should be identified right in the act.

People First Nova Scotia is offering their assistance in aligning the current draft legislature to meet the acceptable current standards to protect and promote the legal capacity of people with intellectual disabilities.

Thank you.

Dave Kent
President
People First Nova Scotia



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Department of Justice
c/o Catherine Berliner
response to re: *The Adult Capacity and Decision-Making Act*
September 2017

People First Nova Scotia is a provincial non-profit organization that is controlled and directed by people labelled with intellectual disabilities.

We believe that all people, regardless of disability, have the basic right to make their own decisions and choices. The decisions and choices made by a person with an intellectual disability need to be respected and protected. If a person has a support network or decision-making team, this needs to be honoured in terms of the authority to act on behalf of the person.

In Nova Scotia, people who are labelled with intellectual disabilities are among those who will be most affected by the new *Act Respecting Representative Decision-Making*. People First NS is disappointed and concerned that the current Draft Act does not protect and promote the legal capacity of people with intellectual disabilities.

"Citizens with intellectual disabilities deserve to live in their communities with supports they need and have their voice and their choices heard. The Nova Scotia government should include this support in the new draft law."

Dave Kent, President - PFNS

We don't think the Draft Act uses a good, inclusive definition of the term 'capacity.' We think they should use the definition in the UNCRPD. The Draft Act also does not legally recognize supported decision making. This concerns us very much. We understand that some people may not be able to make decisions on their own. But we think they should have a right to their supported decision-making network. We believe people should be able to appoint their own support person.

A Member of

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"Supported Decision making is legally recognized in some of our provinces and territories already. It is also recognized internationally and in the United Nations Convention on the Rights of Persons with Disabilities as the accepted method for ensuring citizens with intellectual disabilities are provided rights equal to their fellow citizens. It is time to stop treating Nova Scotians with intellectual disabilities as second-class citizens."

Cindy Carruthers - Executive Director, PFNS

Furthermore, this is not what we were promised in the *Roadmap to Transformation – Choice, Equality and Good Lives in Inclusive Communities*. The recommendations in that document around equal recognition of legal capacity and supported decision making are not showing in this Draft Act.

People First Nova Scotia supports the People First Canada position statement on "Legal Capacity". A copy of this statement is attached. We also support Canadian Association of Community Living's brief on the "Statutory Framework for the Right to Legal Capacity and Supported Decision Making".

Narrow definitions, guardianship, and appointed decision making take away people's right to control decisions about their lives. It takes away their power over their own lives.

This is not acceptable. This is not inclusive. This is not citizenship.

People First Nova Scotia is offering their assistance in aligning the current draft legislature to meet the acceptable current standards to protect and promote the legal capacity of people with intellectual disabilities.

Thank you.

Dave Kent
Board President

Cindy Carruthers
Executive Director

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People First of Canada Position – Legal Capacity (Nothing about us without us)

People First of Canada (PFC) believes that all people, regardless of disability, have legal capacity. People have the right to make their own decisions and choices. The decisions and choices made by a person with an intellectual disability need to be honoured in terms of legal capacity and the authority to act. If a person has a support network or decision-making team, this needs to be honoured in terms of legal capacity and the authority to act on behalf of the person.

Issue and Context

Legal capacity is the foundation upon which we act – when we make decisions or enter into agreements, we do so based on our legal capacity as a person and a citizen. Most people are assumed to be competent but this is not always true for people with intellectual disabilities. Unfortunately and historically, persons with intellectual disabilities have had the opposite experience with legal capacity – they have been deemed incompetent unless it has been proven otherwise. Disability should never be used as a benchmark for competence.

Persons with intellectual disabilities are at risk to have their legal capacity removed. Many provinces and territories still have outdated legislation and policies that present people with intellectual disabilities as lacking legal capacity. Other systems and institutions of life – such as banks, insurance companies, and housing corporations – make judgments about people's capacity because of their disability. These policies and practices need to change to reflect that all citizens' are competent, unless it has been deemed otherwise.

Actions Needed

People First of Canada recommends that governments:

- Ensure that all citizens with intellectual disabilities have their legal capacity and basic right of law as a person, (Article 12, 23, 29 UNCRPD)
- Ensure that persons with intellectual disabilities do not have their capacity jeopardized because of their disability and/or diagnosis,
- Educate Canadians about the status of legal capacity for people with intellectual disabilities,
- Promote changes in legislature across Canada to reflect the competence of all citizens, regardless of disability,
- Promote changes in institutes beyond government so that policies reflect the assumption of legal capacity.