



The United Nations Convention on the Rights of Persons with Disabilities

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Background

In 2006, the United Nations (UN) adopted an international treaty of utmost importance: the Convention on the Rights of Persons with Disabilities (CRPD). The CRPD's primary purpose is "to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."¹

The Canadian Psychiatric Association (CPA) fully supports the principles entrenched in the CRPD. No person suffering from a mental disorder or other disability should be discriminated against based on his or her disability. This principle is consistent with the principles underlying mental health legislation outlined by the CPA elsewhere.²

As of 2019, 161 countries have signed the CRPD. Canada signed this Convention in 2010, but with the following reservation: "To the extent Article 12 may be interpreted as requiring the elimination of all substitute decision-making arrangements, Canada reserves the right to continue their use in appropriate circumstances and subject to appropriate and effective safeguards."³

The CPA supports the government of Canada in maintaining this reservation, which is necessary to counter the contentious manner in which the CRPD Committee has interpreted the CRPD. The CRPD Committee is responsible for reviewing the reports that signatory countries submit every five years and for determining whether their legislation complies with the Committee's interpretation of the Convention. The CPA agrees with the World Psychiatric Association's position that the CRPD Committee's interpretation is

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Note: It is the policy of the Canadian Psychiatric Association to review each position paper, policy statement and clinical practice guideline every five years after publication or last review. Any such document that has been published more than five years ago and does not explicitly state it has been reviewed and retained as an official document of the CPA, either with revisions or as originally published, should be considered as a historical reference document only.

“unconvincing and potentially extremely harmful,”⁷⁴ as it would ban all involuntary treatment and admission, as well as abolish the defense of Not-Criminally Responsible on account of mental disorder (NCR-MD). The CPA notes that these interpretations would be highly detrimental to individuals with mental disorders.

Capacity to Consent to Treatment

The CRPD Committee has called for all substitute decision-making legislation to be eliminated and replaced by supported decision-making.⁵ Mental disorders are sometimes so severe that they impair a person’s ability to make specific decisions. For instance, a person with schizophrenia may lack insight into the fact that they have an illness which causes hallucinations and delusions and therefore not appreciate that medication can resolve their symptoms. Another example is a person with severe dementia whose cognitive deficits prevent them from making any treatment decisions.

In Canada, all jurisdictions use substitute decision-making legislation in which a third party, such a family member, can make decision on behalf of an individual who lacks the capacity to make the decision. The CRPD Committee demands that such legislation be replaced by a supported decision-making framework. The CRPD Committee suggest that individuals would then retain “legal capacity” to make treatment decisions, even though some may require more support than others to make decisions. While the CPA supports principles of supported decision-making, in practical terms, individuals would always have the right to refuse treatment under such a regime.

The CPA is concerned that such a drastic change would have severe consequences for individuals and deprive them of their rights to treatment. In addition to the prolonged suffering and physical harm that would inevitably result, this shift would create situations where an individual could be kept long-term in hospital or in other institutions without receiving treatment.

Involuntary Admission

The CRPD Committee also expressed its view that “committal of individuals to detention in mental health facilities, or imposition of compulsory treatment, either in institutions or in the community, by means of Community Treatment Orders” contravene the Convention and must be eliminated.⁵ The CPA notes

that such abolition would negatively affect the most vulnerable individuals of our society. The CPA supports compulsory admission to protect these individuals from themselves or, less frequently but importantly, to protect others, providing that appropriate procedural safeguards are in place.

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The CRPD Committee has also stated that “declarations of unfitness to stand trial or incapacity to be found criminally responsible in criminal justice systems and the detention of persons based on those declarations, are contrary to article 14 of the Convention since it deprives the person of his or her right to due process and safeguards that are applicable to every defendant.” The Committee has “called for States parties to remove those declarations from the criminal justice system.”⁷⁶

The CPA is strongly opposed to the removal of declarations related to fitness to stand trial and to criminal responsibility. The CPA believes that this would be discriminatory to individuals suffering from a mental disorder and indeed would contradict the principles of the CRPD. The fundamentals of these declarations are to ensure that individuals with mental disorders are not treated unfairly in legal proceedings and cannot be penalized for their disability.

Conclusion

The CPA supports the CRPD and its objectives. However, the CPA rejects the interpretation of the Convention by the CRPD Committee. If the signatory countries eliminated mental health legislation in relation to substitute decision-making, involuntary admission and criminal responsibility, the CPA believes that the most vulnerable individuals with mental disorders would suffer to a greater intensity, contrary to the primary objectives of the Convention. Canada should retain its reservation to prevent these unintended but devastating consequences from occurring.

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