

Rights Restrictions 101

A **right restriction** is when a person has a **right restricted**. It is an artificial or temporary limitation imposed on a person's freedom to exercise their rights and freedoms. Generally, it is understood that something is restrictive when it impedes the opportunity for people to enjoy the same liberties as other citizens do.

Rights (human or civil) or best practice activities with respect to people's rights and freedoms are articulated in the UN Convention on the Rights of Persons with Disabilities, the Canadian Charter of Rights and Freedoms, Manitoba Human Rights Code as well as other legislations, regulations and rules such as Vulnerable Persons Act, Personal Health Information Act, Accessibility for Manitobans Act and policies of our funders.

An organization should not limit or restrict rights without due process and only in response to a health or safety concern. The organization should have a consistent and reliable process that identifies, assesses and determines whether restrictive practices are valid. If the organization determines that a practice that restricts someone's rights is required for health and safety reasons, they have an objective process to validate this practice with those external to the organization. The person and/or their decision maker can participate in that process if they wish.

Sometimes our systems both governmental and organizational restrict people's rights. These systemic restrictions require advocacy and creativity from the service provider to eliminate or mitigate the impact on people served.

At times, people with disabilities require enduring support in many areas of life. They may require support to get dressed, use the bathroom, or cross the street. This support helps them stay safe. At times, it can be challenging to determine whether activities are supportive or restrictive in nature. Some considerations that are critical to that determination are:

- Is everyone else's rights restricted in a similar fashion
- How does the person perceive the activity (enabling or restricting)
- Does the person actively and freely consent and/or request the activity?

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Human rights enshrined in the Canadian Charter and Manitoba Human Rights are not deferred or diminished just by the simple fact that the person may have a substitute decision maker (SDM). While there may be valid reasons for a right to be restricted, a formal process should still be followed that includes but is not limited to the SDM.

While the perception and the circumstances of each person and situation is unique, below are a few examples of activities that may be rights restrictions.

- Restriction in access to:
 - Food or drink
 - Engage in certain activities
 - People/relationships

- Restriction of movement/activity:
 - Mechanical
 - Environmental restrictions
 - Confining clothing
 - Medication for the purposes of sedation or behavior control in the absence of a therapeutic response to a diagnosis.
 - Unwanted supervision/lack of privacy
 - Being held
 - Enabling devices are removed (mobility, communication)

The uses of psychotropic medications, physical restraint or denial of food or possessions are all easily recognized restrictions. But due to a variety of reasons, persons served may be subjected to a variety of less obvious restrictions. A person's rights might be restricted if...

- Staff enter a person's room or home without permission.
- Staff go through the person's purse, pockets, drawers, etc.
- The person does not or is not allowed to make their own decisions or offered choices to do so.
- The person is not allowed or assisted to answer their phone or doorbell.
- Mail is removed from the person's mail before they see it.

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- The person has to ask permission to go anywhere in their own home (locked doors, refrigerator, cupboards)

Rights Should Not Be Restricted Just Because...

- It's always been done that way...
- House/Facility rules/staff convenience...
- The team/clinician/doctor/SDM proposed it...

In summary:

Except in emergency situations, rights should not be restricted without validation and considering the following:

- Rights are only restricted as a last resort due to high risk of significant harm to someone's wellbeing.
- Help the person acquire the skills necessary to obtain the necessary support to exercise his or her rights.
- Consider if changing the environment around the person or supports available may impact the need to restrict their rights
- Restrict only specific rights needed
- Use the least amount of restriction as possible
- Plan for review and reinstatement of rights.
- The person's participation in this decision making is an important part of due process

Rights may need to be limited when:

- Rigorous attempts to support the person to fulfill their responsibilities have failed
- The person is seriously jeopardizing his or her health and welfare or that of others. Indeed a failure to do so may abandon people to their choices with no support.
- People without disabilities would typically have rights limitations or restrictions in place in the same situation

If rights are to be limited, formal due process and objective review should be conducted to be sure bias or convenience have not influenced the organizations decisions. This review should be repeated regularly as long as the right continues to be restricted.

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