



# THE MONTREAL DECLARATION ON INTELLECTUAL DISABILITIES 2004 年 蒙特婁智障者權利宣言 ES · THE MONTREAL DECLARATION ON INTELLECTUAL DISABILITIES

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## 前 言

2004 年 10 月 5 日至 6 日在加拿大蒙特婁 (Montreal) Pan American Health Organization (PAHO) 和 WHO 的智障者聯席會議上通過了「蒙特婁智障宣言」 (the Montreal Declaration in Intellectual Disabilities)，有代表美洲 17 個國家 65 個人參與連署；目的在維護智障者的權益；宣言中也宣示智障者權益的合法標準，及相關法案的擬定，以支持智障者可以參與決策以維護其人權。

參與的代表包括政府單位、家長協會、非營利機構、智障者本人的相關協會、國際法等、人權代表及智障者代表等，共同討論智障者的基本人權。

宣言的目的在引導國際組織，含個人及政府單位，可以確保及落實智障者的公民權益；同時提醒國際社群重視智障者的獨特性以確保其基本權益。

此宣言可以摘要為三個基本權益，即：平等 (equality)、反歧視 (non dis-

crimination) 、及自決 (self-determination)；宣言首先在確保智障者的平等權利，並強調其有權利接受支持以獲得此基本權益，終極目的在促使其可以參與及與社會整合。

就智障者的基本權益而言，此宣言的獨特性包括：(1)這是第一次美洲各國代表可以有所共識，而這些人及單位都是非常具有影響力的；(2)為了智障者的平等權益可以落實而相互取得共識；(3)同時大家也在如何支持智障者的平等權益落實的方法、支持策略及決策過程取得一致性。

此宣言已經被聯合國在生心理健康及人權保障的標準法則中獲得支持，對這一族群人權保障是一個重要的里程碑；此宣言同時也獲得美國智障與發展障礙協會 (American Association on Intellectual and Developmental Disabilities; AIDD) 的簽署。

此宣言雖然在 2004 年才發表，但無庸置疑的其影響包括政治面、社會面、經濟面及文化面；因為此宣言被期許為智障

者人權保障的法制面的標準，並期許可以促進全球性對智障者基本人權的認知及支持。

以智障者選擇權為例，在宣言中的 6.a 指出：“智障者和其他人一樣對其生活有選擇權，即使其有做決定及溝通上的困難去做一個比較正面的選擇或喜好，以有助於他／她個人的發展、和人的關係及社區參與”；因此在宣言中 5.b 中指出“經由與智障者的溝通及被尊重，智障者應該獲得支持並協助他／她做決定”。因此針對那些有困難自己做決定者，必須訂定相關法律及政策以確保智障者在選擇過程得到應有的支持；國家應該提供相關服務以促使智障者在支持下針對其生活可以做有意義的選擇（Bach, 2006）；因此沒有任何情況說智障者是沒有能力選擇或自決他／她的生活（Bach, 2006）；而這也是此宣言的目的，期許所有的智障者，包括溝通能力被認為比較有困難者，都是在此國際法宣言的保障之下。

## 2004 年蒙特婁智障者權利宣言

本權利宣言共有 12 條。其中包括宣示（Declare that）、同意（agree）、同時（and）、呼籲（call upon）等 4 部分。

### 一、宣示（Declare）

1. 智障者如同所有的人，生而自由及擁有平等權利與尊嚴。

2. 和所有人一樣的特質，智力障礙也是他／她個人的一部分；智障者的智力障

礙和其他人一樣（如女人和男人），具有他／她的特質及個別差異性；智力障礙在不同的社會文化有不同的解釋，但其尊嚴、自決、平等及正義是國際社群的普遍價值。

3. 依據法律、國際人權憲章、宣言及標準，政府有責任保護、執行及確保智障者的公民權，其政治、經濟、社會與文化的權益，以及其基本自由。因此政府有責任保護智障者在未得到他／她能力所能理解下與被告知下，免於醫療及科學實驗，或免於任何形式的暴力、虐待、歧視、隔離、烙印、剝削、酷刑、不人性及不恰當的被對待或處罰。

4. 人權是不可被分割的、是通用的、是相互依賴及相互關聯的，因此促成最大可能的生理與心理健康的權益及福祉也是和其他公民權、政治權、經濟權、社會權、文化權及基本自由權是相互連結的。智障者和其他所有人一樣，健康權益的落實須建構在完全社會融合（full social inclusion），適當的居住與生活標準以促使得以接受融合教育、參與就業及使用社區服務。

5. a). 所有的智障者都是完整公民，在法律之前都是平等的，在尊重他／她的個別差異性及個人的選擇下，權益的落實是其法定權益。

b). 智障者的平等權利因此不只是機會，在他／她的選擇下，同時也包括制定適當的法案、正面行動、居住與支持。政府必須承諾上述的權利是存在的，即可用的以及依據智障者的需求、自由及被告知

下，他／她可以愉快的使用適當的服務。

c). 爲了尊重智障者的人權及其基本自由，必須促使其可以完全及與社區融合；因此，所有的智障者都必須得以接受教育、訓練和權益義務有關的資訊。

6. a). 智障者如同其他人一樣有權利選擇他／她的生活，即使是他／她有困難針對他／她的喜好，比較正面的選擇和決定，針對他／她的成長、關係及社區參與自己做選擇、溝通，如同落實 5b，智障者應該在被支持下以及在他／她溝通和被尊重下做選擇。因此，針對那些有困難獨立做選擇及決定的智障者，法律及政策應該要促進及確認這些智障者是被支持下做選擇；政府應該提供相關服務及必須的支持以促使智障者對其生活做有意義的選擇。

b). 沒有任何理由說智障者因爲他／她的障礙沒有能力做選擇；只有在特殊的情況下，爲了保障智障者的合法權益，在法律下其自我選擇可以被拒絕。這種拒絕接受他／她的選擇只是短時間的，而且必須是在獨立的及勝任的權益代理人的確認下。

最後「我們」參與蒙特婁 PAHO/WHO 智障者會議，就共同目標將在自己的國內及國際層面上團結起來。

## 二、同意 (Agree)

7. 支持及維護智障者的權利，宣導此保障智障者權利及基本自由的國際人權宣言，宣誓及標準；並且促進或發展此宣言，將這些權利整合到國家相關政策、法

案及計畫。

## 三、同時 (And)

8. 經由智障者、家人及其社會網絡與社區的參與，支持、促進及執行智障者進一步的社會融合與參與。

因此，「我們」蒙特婁 PAHO/WHO 智障者會議呼籲。

## 四、政府

9. a). 確認智障者在社會是完整公民。

b). 在國家及國際法案下，政府有義務確認及保護智障者的權益；智障者本人參與發展及評估與他們相關的法案、政策或計畫，並且確認有足夠的經濟及行政資源可以落實這些法案。

c). 政府要促使智障者得以與社會融合，以研究、立法、行政配套措施及教育方法等落實。

d). 政府應該提供給社區、智障者及其家人各種支持，以落實智障者的權益及促進和強化智障者的相關組織。

e). 政府應該發展及執行人權教育、訓練、及資訊方案給智障者。

10. 各種社會及公民實踐者：

a). 主動參與尊重、促進及保護智障者的人權及基本自由。

b). 經由創造及社會開放和非烙印化的維護，積極保護智障者的尊嚴、生理、道德及心理的完整與發展。

11. 智障者及其家人：

a). 認知智障者和所有的人一樣享有

同樣的權利和自由；他們有法律權益保障及獲得法律訴訟相關的有用資源，在法庭上其權利可以免於被侵犯；而這是依據國家與國際法。

b). 確認智障者有參與國內和他們相關的各種法案、政策及計畫的發展，包括上述這些評估工作。

c). 和國內、國際、政府、非政府障礙組織合作，以促使整合及強化國家與國際的障礙者基本權利的促進和維護。

12.國際組織：

a). 整合智障者在其分類方案上、工作上及發展上，回應智障者及其家庭得需求和聲音；以確認智障者的權利得以落實。

b). 和政府、智障者、非政府組織合作，包括資源及技術性的協助，促使此宣言的目標，包括支持障礙者完全參與社會及社區服務的整合得以實踐。

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## 附 件

### THE MONTREAL DECLARATION ON INTELLECTUAL DISABILITIES

1. Persons with intellectual disabilities, as other human beings, are born free and equal in dignity and rights.
2. Like all other human characteristics, intellectual disabilities are an integral part of the human experience and diversity. Intellectual disabilities are understood differently by cultures, and thus require the international community to respect its universal values of dignity, self-determination, equality and justice for all.
3. States have the obligation to protect, fulfill and ensure that all civil, political, economic, social and cultural rights, and fundamental freedoms of persons with intellectual disabilities are exercised in accordance with national laws, and international human rights conventions, declarations and standards. States therefore have the obligation to protect persons with intellectual disabilities against medical or scientific experimentation without their knowledgeable and unconstrained consent, or any form of violence, abuse, discrimination, segregation, stigmatization, exploitation, cruel, inhuman or degrading treatment or punishment.
4. Human rights are indivisible, universal, interdependent and inter-connected. Therefore, the right to the highest possible level of physical and mental health and well being is inter-connected with other civil, political, economic, social, and cultural rights and fundamental freedoms. For persons with intellectual disabilities, as for other persons, the exercise of the right to health requires full social inclusion, an adequate standard of living, access to inclusive education, access to work justly compensated and access to community services.
5.
  - a) All persons with intellectual disabilities are full citizens, equal before and under the law, entitled to exercise their rights on the basis of respect of their differences and of their individual choices;
  - b) The right to equality for persons with intellectual disabilities is thus not only of opportunity, but may also require, when they chose so, appropriate measures, positive actions, accommodations and supports. States must guarantee the presence, the availability, the access and the enjoyment of adequate services based on the needs and the free and in-

- formed consent of persons with intellectual disabilities;
- c) The respect of human rights and fundamental freedoms of persons with intellectual disabilities requires their full community inclusion. As such, all persons with intellectual disabilities must have access to education, training and information with regard to their rights and obligations.
6. a) Persons with intellectual disabilities have the same right as other people to make decisions about their own lives. Even persons who have difficulty making choices, formulating decisions and communicating their preferences can make positive choices and decisions that further their personal development, relationships and participation in their communities. Consistent with the duty to accommodate in paragraph 5b, persons with intellectual disabilities should be supported to make their choices and decisions, to communicate them and to have them respected. Accordingly, where individuals have difficulty making independent choices and decisions, laws and policies should promote and recognize supported decisionmaking. States should provide the services and the necessary support to facilitate persons with intellectual disabilities in making meaningful decisions about their own lives;
- b) Under no circumstance should an individual with an intellectual disability be considered completely incompetent to make decisions because of his or her disability. It is only under the most extraordinary of circumstances that the legal right of persons with intellectual disabilities to make their own decisions can be lawfully interrupted. Any such interruption can only be for a limited period of time, subject to periodic review, and pertaining only to those specific decisions for which the individual has been found by an independent and competent authority to lack legal capacity;
  - c) That independent and competent authority must find by clear and convincing evidence that, even with adequate and appropriate supports, all less restrictive alternatives to the appointment of a surrogate decision-maker have been exhausted. That authority must be guided by due process, including the individual's right to: notice; be heard; present evidence; identify experts to testify on his or her behalf; be represented by one or more well-informed individuals who he or she trusts and chooses; challenge any evidence at the hearing; and appeal any adverse finding to a higher court. Any surrogate decision-

maker must take account of the person's preferences and strive to make the decision that the person with an intellectual disability would make if he or she were able to do so. To this end, WE, the participants at the Montreal PAHO/WHO Conference on Intellectual Disability, in solidarity of efforts already taken at the national and international levels, do jointly and individually,

7. To support and defend the rights of persons with intellectual disabilities; to disseminate the international human rights conventions, declarations and standards that protect the human rights and fundamental freedoms of persons with intellectual disabilities; and to promote, or establish when they do not exist, the integration of these rights into relevant national policies, legislations and plans;

**AND**

8. To support, promote and implement actions in the Americas furthering social inclusion and participation of persons with intellectual disabilities through an intersectorial approach involving the persons themselves, their families, their social networks, and their communities. Accordingly, WE, the participants at the Montreal PAHO/WHO Conference on Intellectual Disability,
9. THE STATES:
  - a) To recognize that persons with intellectual disabilities are full citizens in society;
  - b) To fulfill their obligations, given by national and international laws, to recognize and protect the rights of persons with intellectual disabilities; to ensure their involvement in the development and evaluation of any law, policy or plan concerning them; and to assign the economic and administrative resources required for the effective implementation of those laws;
  - c) To develop, establish and take the legislative, judicial, administrative and educational means necessary in order to achieve the full social inclusion of persons with intellectual disabilities;
  - d) To provide to communities and to persons with intellectual disabilities and their families the support needed for the exercise of their rights; promoting and strengthening their organizations;
  - e) To develop and implement human rights education, training and information programs

to persons with intellectual disabilities.

**VARIOUS SOCIAL AND CIVIL ACTORS:**

10. a) To become actively involved in the respect, promotion and protection of the human rights and fundamental freedoms of persons with intellectual disabilities;

b) To vigilantly protect their dignity and physical, moral and psychological integrity by the creation and maintenance of social conditions of openness and non-stigmatization.

**11. PERSONS WITH INTELLECTUAL DISABILITIES AND THEIR FAMILIES:**

a) To be aware that they share the same rights and freedoms as all other human beings; that they are entitled to due process of law and that ultimately they have the right to a legal recourse or any other effective recourse to a competent court or tribunal for protection against acts that violate their fundamental rights recognized by national and international laws;

b) To make sure that they are involved in the development of all national legislation, policy and plan that concerns them, as well as their ongoing evaluation;

c) To work in collaboration with national and international, governmental and/or non-governmental disability organizations in order to mutually consolidate and reinforce themselves at the national and international level for the active promotion and defence of the fundamental rights of persons with a disability.

**12. INTERNATIONAL ORGANIZATIONS:**

a) To integrate “intellectual disabilities” in their classifications, programs, areas of work, and initiatives, in reference to “persons with intellectual disabilities” and their families in order to ensure the full exercise of their rights and determine the specific guidelines and actions in this area;

b) To collaborate with States, persons with intellectual disabilities, family members, and non-governmental organizations representing them, to dedicate resources and technical assistance to promote the goals of the Montreal declaration on intellectual disabilities, including support for full participation in society of persons with intellectual disabilities and integrated models of community services.