Submission to the Standing Committee on the Interior

Bill 140 - *An Act to enact two Acts and to amend various Acts*

Schedule 10:

Family Members' Authority to Act on Behalf of Disability Savings Plan Beneficiaries Act, 2026

November 17, 2026

55 University Avenue, 15th Floor, Toronto, ON, M5J 2H7

Phone: 416-482-8255 or 1-866-482-2724

TTY: 416-482-1254 or 1-866-482-2728

www.archdisabilitylaw.ca

@ARCHDisabilityLawCentre

@ARCHDisabilityLaw

@archdisabilitylaw.bsky.social

Table of Contents

Introduction 3
A. About ARCH 4
B. Section 2(3) Violates the Presumption of Capacity 5
C. Recognizing Decision-Making Supports 7
Duty To Accommodate Disability-Related Needs 8
D. ARCH's Recommendations 8
E. Conclusion 9

Introduction

ARCH Disability Law Centre welcomes the opportunity to provide written submissions to the Standing Committee on the Interior regarding Bill 140 *An Act to enact two Acts and to amend various Acts*, in particular Schedule 10, *Family Members' Authority to Act on Behalf of Disability Savings Plan Beneficiaries Act, 2026* ("Schedule 10")[1]. As written, Schedule 10 would authorize certain individuals to enter into a Registered Disability Savings Plan ("RDSP") on behalf of a beneficiary, act as the holder of the beneficiary's plan, or cease to be the holder of the plan.

ARCH provides the following submissions, focused on the issue of adults with disabilities who may be found incapable of entering into an RDSP contract and who do not have a guardian of property or formal substitute-decision maker. Many vulnerable persons with disabilities in Ontario who could benefit from the RDSP cannot access the plan due to restrictions related to their legal capacity. While ARCH supports the concept of a qualifying person(s) as a starting point to address this access barrier, we have serious concerns about how Schedule 10 undermines fundamental decision-making rights for beneficiaries. Our recommendations fall under two categories:

1) Removing section 2(3), which is contrary to capacity laws; and
2) Enabling decision-making supporters rather than substitute decision-makers.

[1] *Building Ontario Faster Act, 2026.*

A. About ARCH

ARCH Disability Law Centre is a specialty community legal clinic, primarily funded by Legal Aid Ontario, practicing exclusively in disability rights law. For over 40 years, ARCH has been dedicated to advancing and defending the equality rights, entitlements, fundamental freedoms, and the inclusion of persons with disabilities. ARCH provides a range of free legal services directly to persons with disabilities across Ontario, including the provision of legal information and summary legal advice, and the representation of persons with disabilities and disability rights organizations in precedent setting cases at all levels of courts and tribunals, including the Supreme Court of Canada. ARCH conducts an extensive law reform practice, working on a variety of initiatives related to advancing the rights of persons with disabilities, including decision-making rights. ARCH also offers accessible rights education to disability communities and engages in capacity building and community development initiatives.

Over the years, ARCH has been involved in this issue in a number of different ways, including by making submissions to the various government bodies[2], the Law Commission of Ontario's Reports on Capacity and Legal Representation for the Federal RDSP in 2014 and Legal Capacity, Decision-Making and Guardianship in 2017. ARCH conducts its work directly with our communities and it is the experiences of this work that informs the content of this submission. More information about our work is available on our website: www.archdisabilitylaw.ca.

[2] Including the Department of Finance, Tax Policy Branch in response to the Consultation on Ensuring the Effectiveness of RDSPs.

B. Section 2(3) Violates the Presumption of Capacity

ARCH has serious concerns that by proceeding with Schedule 10 as written, Ontario is legislating contrary to longstanding protections in the *Substitute Decisions Act*[3] and depriving RDSP beneficiaries of the *SDA*'s safeguards. Namely, the presumption of capacity and the obligation to consider alternative courses of action.

Sections 2 and 3 of Schedule 10 reference a beneficiary's "contractual competence" and situations where that competence is "in doubt" in the opinion of the RDSP issuer. Section 3, *Cessation of authority*, states two ways that a Qualifying Family Member ("QFM") might cease to be authorized to act on behalf of a beneficiary: either the beneficiary, "is determined to be contractually competent by a competent authority under the laws of Ontario" or, "in the issuer's opinion after reasonable inquiry, the beneficiary's contractual competence to enter into a disability savings plan is no longer in doubt".

Section 2(3), *Issuer's opinion re contractual competence* is particularly troubling. An issuer's opinion that a beneficiary's contractual competence is merely "in doubt" grants the issuer the authority to determine that the beneficiary does not have the capacity to enter into a disability savings plan. In ARCH's submission, the reliance on an issuer's opinion in this manner conflicts with the legal presumption of capacity, as set out in the *SDA*, which provides:

> **2** (1) A person who is eighteen years of age or more is presumed to be capable of entering into a contract.[4]

---

[3] *Substitute Decisions Act*, 1992, SO 1992, c 30.
[4] *Substitute Decisions Act*, 1992, SO 1992, c 30, s 2(1).

Schedule 10 effectively allows RDSP issuers to override this presumption, a cornerstone of Ontario capacity law. RDSP issuers are not capacity assessors and may not have training or knowledge about practical ways of supporting a person to make their own decisions. ARCH is concerned that his approach fails to ensure safeguards from the reliance on other improper considerations including assumptions or stereotypes factoring into an assessment of the person's decision-making capacity. Further, it is our experience that guardianship is often perceived as an easier and more efficient approach than supporting someone's ability to make their own decisions, despite its serious and long-lasting consequences.

Similarly, ARCH has also observed situations in which family members, friends and service providers obtain or request capacity assessments in situations where it may not be necessary. In some cases, it may seem easier to use the capacity assessment process to have a person declared incapable since this leads to the imposition of a substitute decision-maker who has clear legal authority and responsibility for certain decisions. In addition, once a substitute decision-maker is in place, there is an incorrect perception that it is no longer necessary to accommodate the "incapable" person or involve them in decision-making.

Given that ARCH has observed the use of capacity assessments where less restrictive measures may have been adequate, we are concerned that the wording of section 2(3) may have an unintended detrimental impact on persons with disabilities. If this occurs, more people may be subject to substitute decision-making, which is an extreme result that includes the loss of autonomy and authority to make property management decisions in all aspects of life, where less restrictive means would suffice.

C. Recognizing Decision-Making Supports

Schedule 10, at section 2(1), proposes that only three types of individuals can be legally authorized to enter into a disability savings plan or act as the holder if certain conditions are met: a parent, a spouse or common-law partner[5], or a sibling. These requirements are also referred to as the QFM rule, a defined term pursuant to the *Income Tax Act*. Any beneficiary without a family member that fits this narrow definition and who may not have the capacity to enter into a disability savings plan is excluded from the QFM measure. The only way for these individuals to access the plan is to have a statutory or court-appointed guardian for property – an extremely intrusive, last-resort measure that is difficult and expensive to terminate or reverse.

The *SDA* requires that guardianship not be appointed if there is an alternative if courts are: "satisfied that the need for decisions to be made will be met by an alternative course of action that,

> (a) does not require the court to find the person to be incapable of managing property; and
>
> (b) is less restrictive of the person's decision-making rights than the appointment of a guardian."[6]

Schedule 10 does not contemplate less-restrictive courses of action nor does it acknowledge

[5] Who is not living separate and apart from the beneficiary by reason of a breakdown of their marriage or common-law partnership.
[6] *Substitute Decisions Act*, 1992, SO 1992, c 30, s 22(3). S. 55(2) provides the same direction for guardians of the person.

that an adult's capacity for decision-making can be strengthened with accommodations and supports, including decision-making relationships. ARCH supports the legal recognition of a wider variety of decision-making relationships, consistent with Article 12 (Equal Recognition Before the Law) of the *United Nations Convention on the Rights of Persons with Disabilities* (*"CRPD"*).[7] Progressive realization of *CRPD* obligations requires that Ontario strike an appropriate balance between promoting autonomy, apportioning responsibility for decision-making, and safeguarding against abuse.

Duty To Accommodate Disability-Related Needs

Throughout all aspects of the process, issuers are obligated to adhere to Ontario's *Human Rights Code*, requiring the issuer to discharge its duty to accommodate disability-related needs to the point of undue hardship prior to making any determination on contractual competence or authorizing a QFM. ARCH is concerned with the lack of safeguards in place to ensure that a person is appropriately accommodated before any decisions about capacity are made. This is crucial to ensure that disability related barriers do not lead to a finding of incapacity. In ARCH's submission, Schedule 10 should make this obligation to accommodate clear.

D. ARCH's Recommendations

If Ontario proceeds with Schedule 10, ARCH makes the following recommendations:

[7] Convention on the Rights of Persons with Disabilities, 6 December 2006, 2515 UNTS 3 (entered into force 3 May 2008).

1. Remove the entirety of section 2(3) at Schedule 10: *Issuer's opinion re contractual competence*.
2. Explicitly incorporate the human rights duty to provide services free from discrimination and the duty to accommodate in any provisions which reference the assessment of capacity. This amendment would assist in clarifying the legal duties that are already in effect and would strengthen the understanding of the current state of the law that a person's legal capacity cannot be removed if any form of capacity assessments were made without appropriate disability-related accommodations pursuant to the *Human Rights Code*.
3. Expand the list of persons who may act as plan holders at section 2(1) to include grandparents, adult children, persons managing funds for the Passport program, and ODSP and Ontario Works trustees of RDSP beneficiaries.

E. Conclusion

A person whose legal capacity to manage a disability savings plan independently has been questioned should not be forced into guardianship to receive this benefit. Ontario requires a shift away from more restrictive cognitive assessments of capacity, to instead focus more on support and accommodation needs. While substitute decision-makers, family, friends, service providers and judicial institutions are all affected by legal capacity laws, it is individuals with perceived capacity issues whose fundamental rights to direct the course of their own lives are at stake. Reforms that protect these fundamental rights should be preferred to the greatest extent possible.