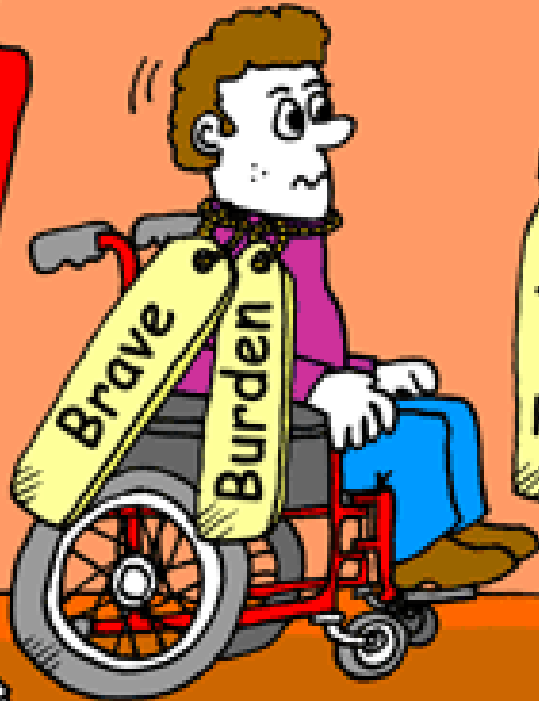
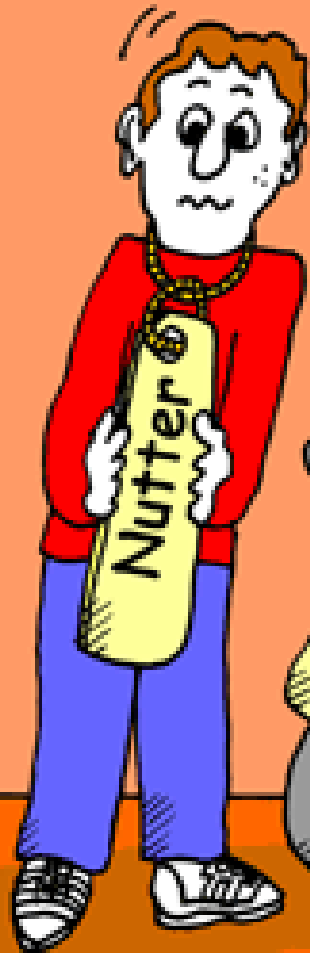


Come along now,
one more label and
you're ready to
face the world!

Department of
Dependency
and Care



Crippen



Right to legal capacity

Oliver Lewis

Today...

1. What is legal capacity?
2. What does CRPD say?
3. What are alternatives?
4. What can judges do?













Are YOU always capable of...

- rationally apprehending the world
- rationally processing information
- knowing all consequences for self and others
- rationally forming own preferences
- clearly able to express preferences
- hold an identity that is stable through time

....?

Functional approach

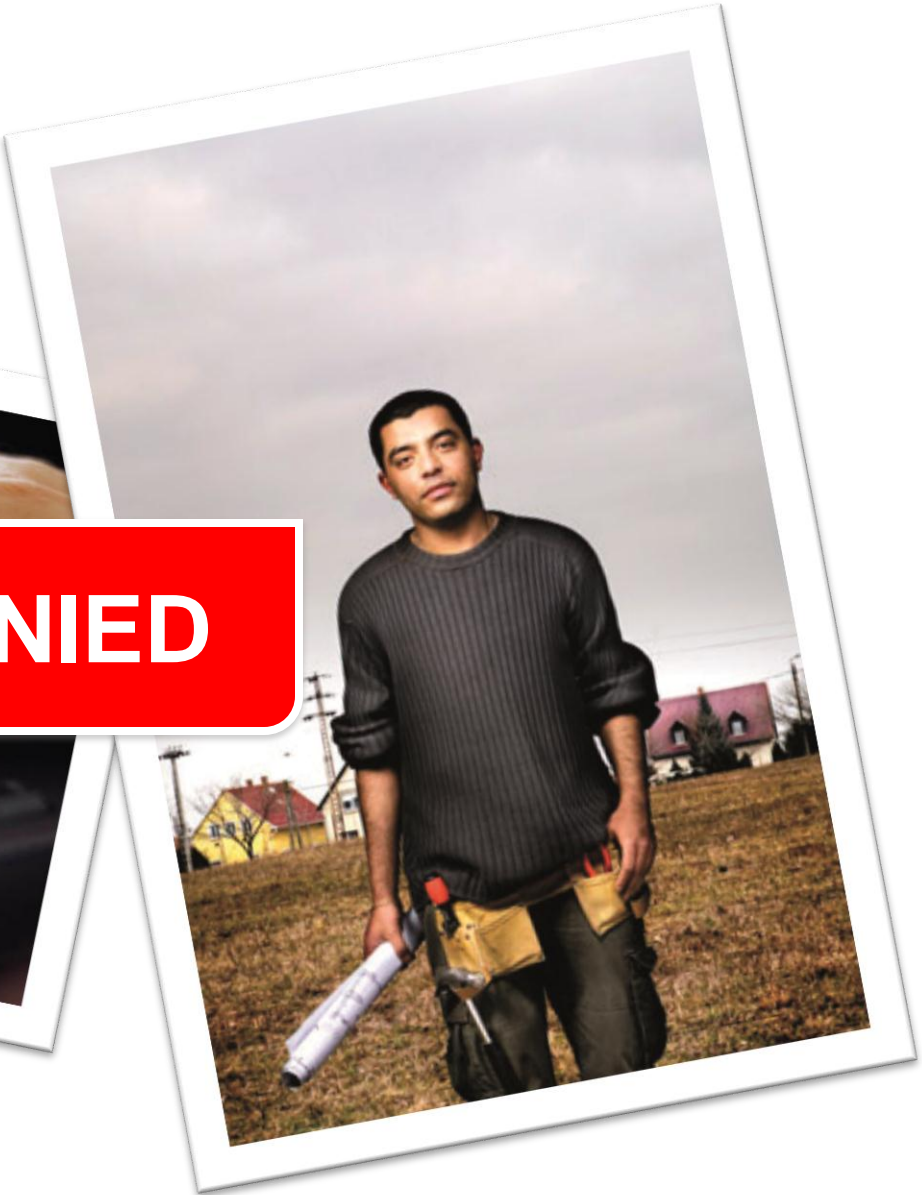
- Understanding relevant information
- Appreciating consequences of a decision
- Acting voluntarily, autonomously
- Communicating decisions



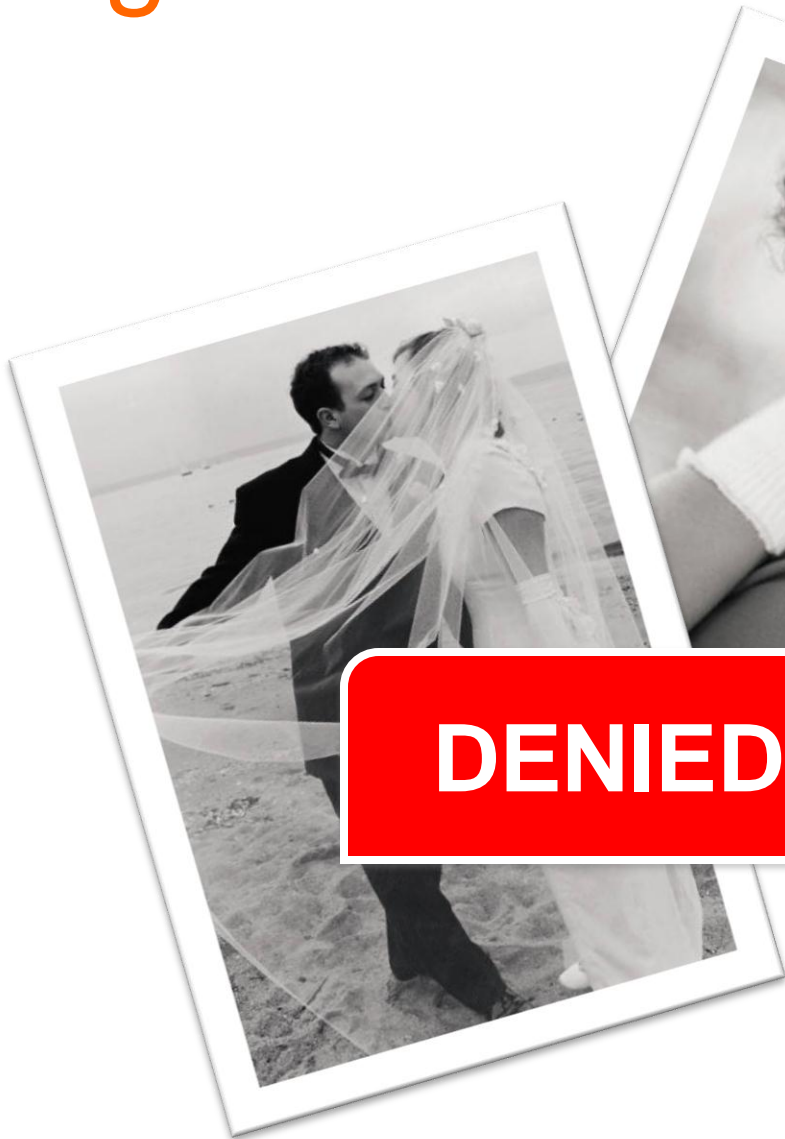
Right to work



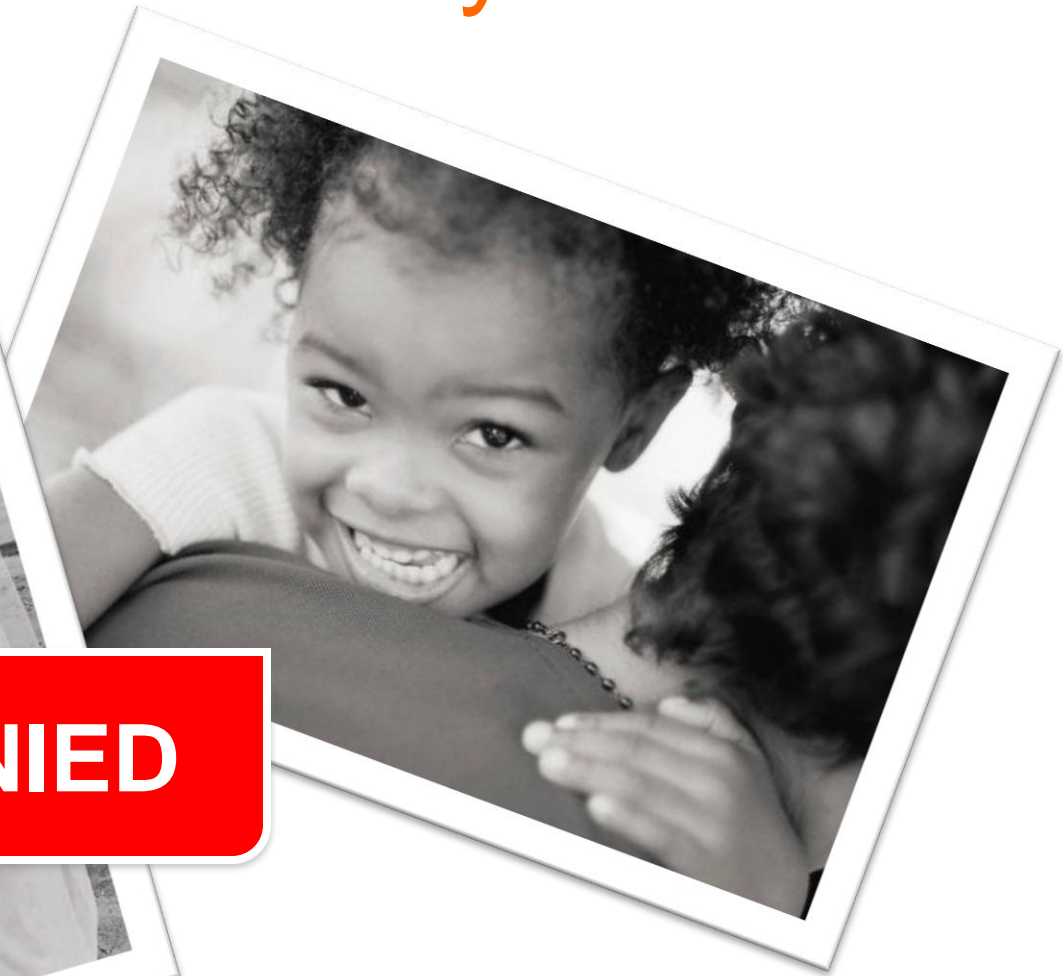
DENIED



Right to have a family



DENIED

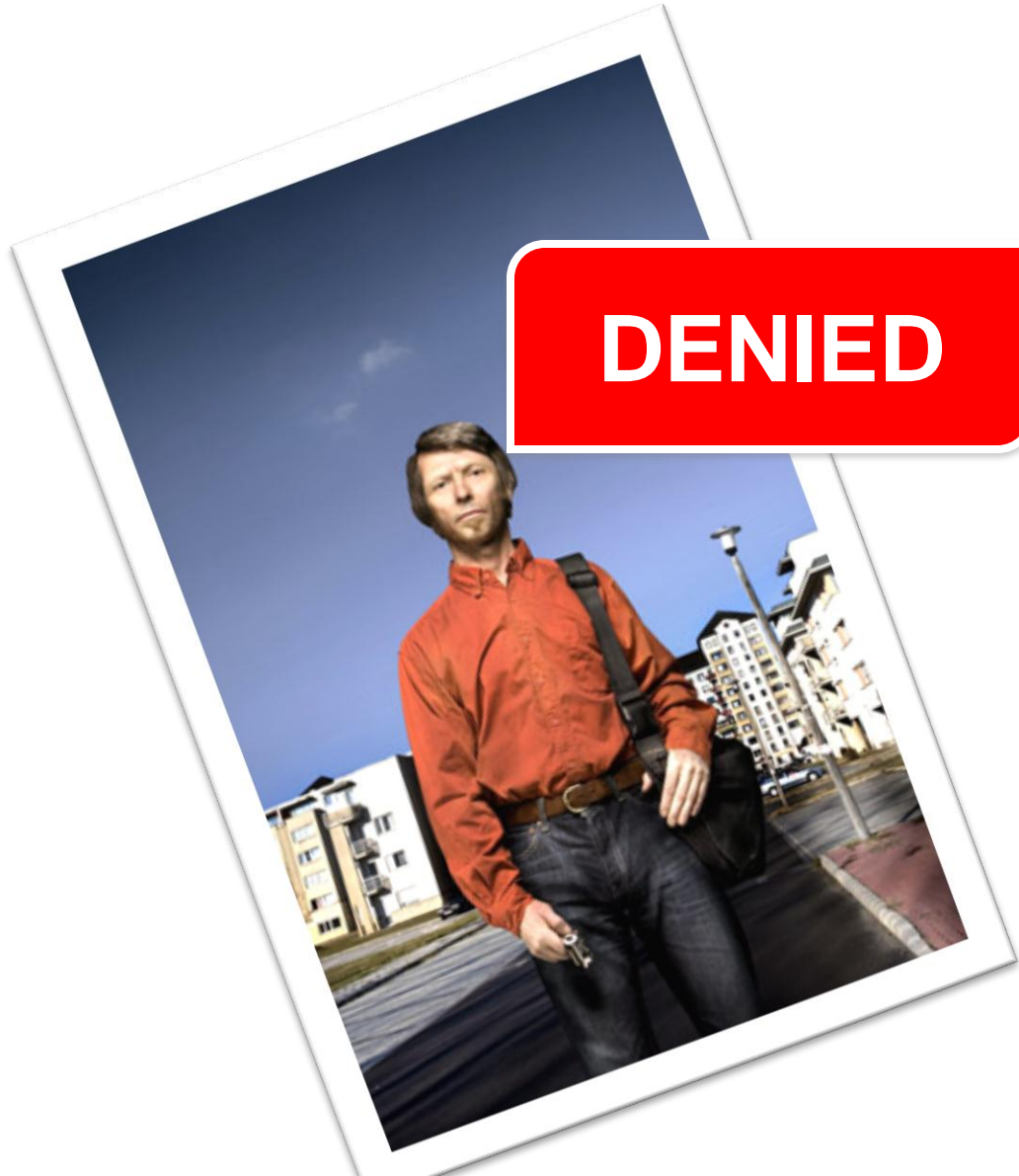


Right to use money and property



DENIED

Right to live in the community



Right to vote



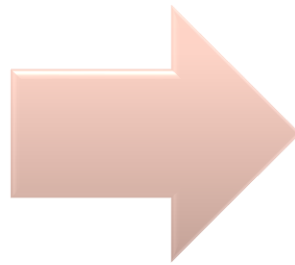
DENIED







object



subject

Two premises

We have the **right to make our own decisions** (autonomous decision-making)

We have the **right to receive adequate support** to do so (supported decision-making).

CRPD Committee

“take action to develop laws and policies to replace regimes of substitute decision-making by supported decision-making, which respects the person’s autonomy, will and preferences.” (CRPD/C/ESP/CO/1, Para 34.)

My hopes and
dreams

Who am I?

Places that
matter to me

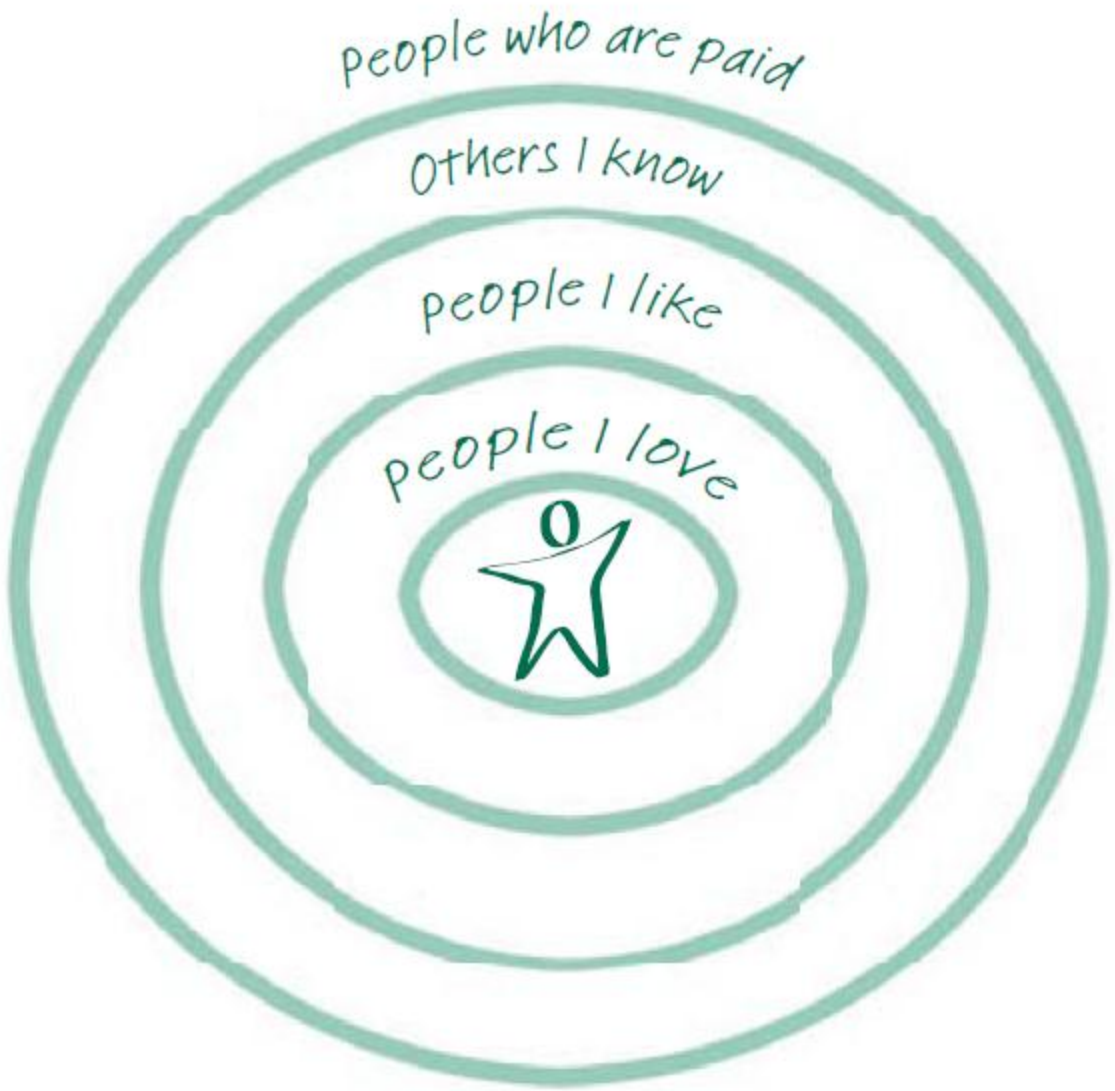
What's
important to me?

Important
people

My story



Relationships of trust



Supported decision-making

- An accommodation in legally-regulated decision-making processes to protect the right to exercise self-determination for those vulnerable to losing this right
- Provides legal recognition and status to trusted others to assist in any aspect of protecting the personhood of an individual
 - Decision-making
 - Reflective capacity
 - Personal identity – weaving narrative coherence

Principles (1)

- Right to self-determination irrespective of disability
- Presumption of capacity and identity], and to decision-making supports necessary to exercise capacity and reveal identity
- Decisions are made interdependently with others

Principles (2)

- Everyone has will and intentions
- Everyone is entitled to the supports and services necessary for full participation and equality.
- Interests and liability of others do not provide a valid justification for removing a person's decision-making rights.

Protection.... From

- A person's own decisions
- Decisions which we think are 'bad'
- Against exploitation, violence and abuse
(Article 16 CRPD)



How can judges...

1. Maximize autonomy?
2. Prevent and remedy exploitation, violence and abuse?
3. Ensure that supports are in place?
4. Create jurisprudence to abolish blanket forms of control?
5. Weave CRPD in your deliberations?

“Eventually the folly of this will dawn on people and we shall all joyously realize that we are all abnormal, disabled, impaired, deformed and functionally limited, because, truth be told, that is what it means to be a human being.”

JE Bickenbach, ‘Minority Rights or Universal Participation: The Politics of Disablement’



olewis@mdac.info

www.mdac.info



mentaldisabilityadvocacy