

## CAPACITY TO MARRY IN CANADA: CROSS-PROVINCIAL EXAMINATION OF MARRIAGE LEGISLATION

PROVINCE	LEGISLATION	IMPORTANT/RELEVANT SECTIONS	Definition of “capacity to marry”?
<b>ALBERTA</b>	<i>Marriage Act</i> , RSA 2000, c M-5	<p>Section 27 (1) – states that marriages cannot be issued where there is <b>reason to believe one of the parties is mentally incompetent</b> by way of a guardianship/trusteeship order or certificate of incapacity under the Adult Guardianship and Trusteeship Act or equivalent legislation of another jurisdiction, is a committee under The Mentally Incapacitated Persons Act, RSA 1970 c232, or equivalent legislation of another jurisdiction.</p> <p>However, section 27 (2) holds that a marriage licence may be issued with proof the trustee or guardian has been given 30 days’ notice and that no trustee or guardian has served an originating notice concerning the issuance of the marriage licence.</p> <p>Section 27 (4) States that punishment for issuing a licence in contravention of this is a fine of not more than \$1000 and in default of payment to imprisonment for a term not exceeding 30 days.</p>	<p>Despite addressing capacity issues, the <i>Marriage Act</i>, Alberta provides no definition of “capacity” or “capacity to enter into a marriage”</p> <p>At common law, a marriage may be found to be void <i>ab initio</i> if one or both of the spouses did not have the requisite mental capacity to marry.</p>
<b>BRITISH COLUMBIA</b>	<i>Marriage Act</i> , RSBC 1996, c 282	Section 23 states that <b>a caveat can be lodged with the issuer of marriage licences against issuing a licence</b> for the person’s named in the caveat.	No definition of “capacity” or “capacity to enter into a marriage”

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		<p>Once lodged, <b>the caveat prevents the issuing of a marriage</b> license until the issuer has inquired about the caveat and is satisfied the marriage ought not to be obstructed, or the caveat is withdrawn by the person who lodged it</p> <p>Section 35 states that it is a <b>criminal offence</b> to issue a license for a marriage, or to solemnize a marriage, when the authority in question knows or has reason to believe that either of the parties to the marriage is mentally disordered or impaired by drugs or alcohol.</p>	
<b>MANITOBA</b>	<i>The Marriage Act, CCSM c M50</i>	<p>Section <b>20</b> states that persons declared mentally disordered cannot be issued a marriage licence until a <b>psychiatrist certifies in writing</b> that they have the capacity to understand the nature of the contract of marriage and the duties and responsibilities which it creates. A person who contravenes this will be guilty of an offence and liable on summary conviction to a fine of not more than \$500.</p> <p>Section 30 states that a declaration that a valid marriage was not effected or entered into shall only be made after a trial relying on witness examination or depositions read into evidence.</p>	No definition of “capacity” or “capacity to enter into a marriage”
<b>NEW BRUNSWICK</b>	<i>Marriage Act, RSNB 2011, c188</i>	<p>Caveats against issuance of marriage licence</p> <p><b>19(1)</b> Any person on payment of a fee prescribed by regulation may lodge with any issuer a caveat</p>	No definition of “capacity” or “capacity to enter into a marriage”

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		<p>against the issuing of a licence for the marriage of any person named in the caveat, and if a caveat is lodged with the issuer and is duly signed by or on behalf of the person who lodges the caveat and states that person’s place of residence and the ground of objection on which that person’s caveat is founded, no marriage licence shall be issued by the issuer until either the issuer has examined into the matter of the caveat and is satisfied that it ought not to obstruct the issuing of the licence or the caveat is withdrawn by the person who lodged it.</p> <p><b>19(2)</b> The issuer may in case of doubt refer the matter of the caveat to the Registrar for his or her advice.</p> <p>Section 27 concerning validation holds that nothing in the section has the effect of confirming or rendering valid a marriage between parties who were not legally competent to enter into the marriage contract by reason of consanguinity, affinity or otherwise.</p>	
<b>NEWFOUNDLAND &amp; LABRADOR</b>	<i>Marriage Act</i> , SNL 2009, c M-1.02	<p>Newfoundland is silent on the capacity to marry.</p> <p>Section 18, however, holds that a marriage licence will not be issued to anyone under 16, under the influence of drugs and alcohol, or in respect of the issuer’s own marriage</p>	No definition of “capacity” or “capacity to enter into a marriage”
<b>NORTHWEST TERRITORIES</b>	<i>Marriage Act</i> , SNWT 2017, c2	Per section 19, the issuer of a marriage in NWT shall meet with each of the parties separately to	No definition of “capacity” or “capacity to enter into a marriage”

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		<p>ensure they understand the contents of the licence and its significance.</p> <p>Section 43 holds that an issuer shall not issue a marriage where they know or have reason to believe either of the party to the intended marriage is ineligible or incapable of freely consenting or under the influence of drugs or alcohol.</p> <p>Section 45 makes it a summary offence to issue or solemnize a marriage contrary to the <i>Act</i>.</p>	
NOVA SCOTIA	<i>Marriage Act</i> , RSNS 1989, c 436	<p>Nova Scotia’s <i>Marriage Act</i> is silent on the issue of capacity to marry.</p> <p>Section 46 holds that the determination a valid marriage was not effected or entered into shall only be rendered after a trial.</p>	<p>No definition of “capacity” or “capacity to enter into a marriage”</p> <p>Common law: a marriage may be found to be void <i>ab initio</i> if one or both of the spouses did not have the requisite mental capacity to marry</p>
NUNAVUT	<i>Marriage Act</i> , RSNWT (Nu) 1988, c M-4	<b>Section 18</b> holds that no one shall perform a marriage ceremony and no person shall go through with a form of marriage with any other person in Nunavut where they know or have reason to believe that either of the contracting parties are incapable of giving a valid consent.	No definition of “capacity” or “capacity to enter into a marriage”
ONTARIO	<i>Marriage Act</i> , RSO 1990, c M3	Ontario’s <i>Marriage Act</i> , at <b>section 7</b> holds that no person shall issue a licence or solemnize the marriage of any person who, based on what he or she knows or has reasonable grounds to believe,	No definition of “capacity” or “capacity to enter into a marriage”

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		lacks mental capacity to marry by reason of being under the influence of intoxicating liquor or drugs or for any other reason.	
<b>PRINCE EDWARD ISLAND</b>	<i>Marriage Act</i> , RSPEI 1974, c M-5	PEI at section 23 of its <i>Marriage Act</i> makes it a summary offence to issue a licence or solemnize a marriage where the issuer knows or has reason to believe that either of the parties to the intended marriage is mentally incompetent.	No definition of “capacity” or “capacity to enter into a marriage”
<b>QUEBEC</b>	<i>Civil Code of Quebec</i> , CQLR c CCQ-1991	Like the caveat provisions of British Columbia and New Brunswick, Quebec’s Civil Code at section 372 allows any interested person to <b>oppose the solemnization of a marriage between persons incapable of contracting it</b> . A minor may oppose a marriage alone. They may also act alone as defendant.	
<b>SASKATCHEWAN</b>	<i>The Marriage Act</i> , SSA 1995, c M-4.1	Section <b>32.1</b> of Saskatchewan’s <i>Marriage Act</i> , allows a number of interested parties to bring an action to declare that a valid marriage was not effected or entered into because of a lack of consent.  Any of the following parties can bring an action: (a) a party to the marriage; (b) a family member of one of the parties to the marriage; (c) any other person who has a close personal connection to one of the parties to the marriage; (d) the public guardian and trustee if the public guardian and trustee is acting pursuant to The Public Guardian	No definition of “capacity” or “capacity to enter into a marriage”

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		<p>and Trustee Act as a personal guardian, property guardian or administrator for one of the parties to the marriage.</p> <p>A declaration that a valid marriage was not effected or entered into shall only be made after a trial including evidence taken orally in open court or of witnesses examined de bene esse, where, according to the practice of the court, depositions of that nature may be read in evidence.</p>	
YUKON	<i>Marriage Act, RSY 2002, c.146</i>	<p>Yukon’s <i>Marriage Act</i> is silent on capacity, capacity to marry, or mental competency.</p> <p>Section 45 addresses the nullity of a marriage and holds that pursuant to s 45 (5), before a trial to determine the nullity of a marriage, <b>a Judge may order a physical examination of either of the parties by a medical practitioner or nurse practitioner appointed for the purpose by the Judge.</b></p>	No definition of “capacity” or “capacity to enter into a marriage”

*This table is intended for the purposes of providing information and guidance only and is not intended to be relied upon as the giving of legal advice and does not purport to be exhaustive. March 2022.*