

Honouring the Capacity for Choice

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Denise Réaume, [Dignity, Choice, and Circumstances](#), in **Understanding Human Dignity** 33 (Christopher McCrudden, ed., Oxford University Press, 2013).

Denise Réaume is Canada's foremost legal theorist on the concept of dignity. She has committed much of her scholarly work to elucidating its contours and teasing out its complexities. One of my favourite of her earlier pieces is "[Indignities: Making a Place for Dignity in Modern Legal Thought](#)". In that piece, Réaume deduces a distinct dignity interest warranting legal protection in the common law through careful review of the evolving case law addressing intentional infliction of nervous shock.

Jump forward more than ten years and we find Réaume on to the interaction of dignity, choice, and circumstances. The title of her chapter is a little misleading, perhaps, since Réaume's focus is more on the capacity for choice than its availability.

I was engaged by the piece in its early paragraphs, where Réaume invokes the typical dichotomy: "Either we honour the choices of those with the legal status to choose by imposing responsibility for them, and in so doing refrain from responding to real needs or doing something about the circumstances that foster bad choices, or we pay more attention to the circumstances of choice and give little weight to the exercise of agency, and thereby stigmatize certain people as incapable of choosing for themselves" (Para. 3).

She then challenges herself to work through how to honour, in law, the capacity for choice. Typical of Réaume's work, she works backward into her interrogation of the potential of dignity by laying out three case examples and by using those as a way of deducing the work dignity might do to support the capacity of choice, given the circumstances of real people.

Insite, a decision about intravenous drug use in Vancouver's Downtown East Side, offers the first illustration. *Insite* is a safe-injection site open to addicts. It provides people with drug addictions with a space to access clean needles and the benefit of medical supervision. *Insite* originally operated under a Ministerial exemption to the *Controlled Drugs and Substances Act*. When the Conservative government was elected, they rejected the renewal of the exemption. *Insite* staff and clients challenged the Minister's decision under section 7 of Canada's *Charter* (the right to life, liberty, and security of the person). The Minister's defence was to blame the drug users – as summarized by Réaume: "whatever health risks drug users suffer in the absence of a safe injection site are not caused by the prohibition on the possession of drugs kept in force by the minister's refusal but by their decision to use illegal drugs" (Para. 27). Réaume contrasts the Minister's justification with the decision of the Supreme Court of Canada, and the actions of *Insite* itself, which support the ability of people with addictions to make choices that are as dignity-enhancing as possible under the circumstances.

Illustration two also takes as its foundation the actions of a legislature, although this time the government of Ontario. That government decided to redesign social service benefits by classifying potential recipients into two categories: one which was more financially supported than the other and one which did not require work-force preparation participation and one which did. In distinguishing between the people who fit each category, the Ontario government excluded people with alcohol and drug dependencies from inclusion in the high-benefit, fewer workplace requirement category, which included people with other types of disabilities. Again, the signal sent by the government was clear: those with addictions are personally responsible for their financially impoverished conditions in ways that those with other

disabilities are not. In exploring the results of the litigation that surrounded this legislation, Réaume beautifully observes that the legislation in this area, generally, leaves people in a position where one mistake can have catastrophic results: surely not conditions that support dignity.

The last illustration looks to a cluster of legislative and court responses to women who kill or attempt to kill an abusive partner. In these circumstances, Réaume presses on the need for proactive engagement of police and other social service agencies in aid of supporting women's dignity interests.

Ultimately, Réaume concludes by taking her theorizing of dignity to the concrete, which is a distinctive feature of much of her work. She urges state actors (presumably both courts and legislators) to make an effort to engage with the choices made by real people as the decision-makers have seen them with the hope that reorienting to supporting the capacity for choice in myriad circumstances will better facilitate our dignity interests.

It's worth reading this chapter by Réaume. You'll be catching a senior Canadian scholar, doing what she does so artfully: deductive explorations on the theme of dignity. And you build back into her previous work from this chapter and follow her into whatever comes next.

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