

Parallel Report for Canada

Contributors

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Introduction

This submission is presented by the Canadian Civil Society Parallel Report Group, an ad hoc group comprised of sixteen Disabled Peoples Organizations (DPOs) and supporters, representing a cross-section of Canadians with disabilities, including persons with mobility disabilities, persons who are culturally Deaf, deaf and hard of hearing, persons with vision disabilities, persons labeled with psycho-social and/or developmental disabilities, persons with dementia, women with disabilities, children with disabilities and Indigenous persons with disabilities.¹

Our report seeks to provide responses to selected priority areas identified by the committee in its September 2016 “List of Issues. For Canada.”

Methodology used for development of the reporting group and the preparation of this submission

In December of 2015 Canadian DPOs met in Ottawa to review preliminary comments on Canada’s Report, and to consider mechanisms for the preparation of submissions to the CRPD Committee as it prepared the List of Issues (LOI) and a subsequent parallel report. It was agreed that the most effective approach would be to form a temporary coalition with a secretariat and seek funding from the Government of Canada to support its work.

Funding support was obtained in June of 2016 and very quickly the coalition prepared a submission for consideration by the Committee as it developed the LOI. The Secretariat initiated a call for submissions for the List of Issues. DPOs from across Canada responded, providing written submissions about CRPD implementation and the barriers facing persons with disabilities in Canada. The Secretariat then worked with DPOs to compile this submission. Members of the Coalition traveled to Geneva in September of 2016 to meet with the committee to discuss our submission and priority areas for Canadians with disabilities in the preparation of the LOI.

Following the September publication of the LOI the secretariat, on behalf of the Coalition again contacted Canadian DPOs first seeking a written response to the Issues raised in the LOI. These responses were compiled into the first draft of the Parallel Report. Coalition members then met again in person, in December of 2016 and spent the day prioritizing their concerns and refining the framework for the Parallel report.

Following this meeting a second draft was developed and shared electronically with DPOs across the Country with an invitation for final comments. These were received until mid February and then edited and refined into the final document with follows.

This submission then is based on the observations, experiences, work and expertise of DPOs and persons with disabilities across Canada. The process of consultation and dialogue between and amongst Canadian DPOs and supporters has been very well received and will no doubt continue to be of benefit in the future.

¹ See cover page for a complete list of organizational members.

Executive Summary

Canada is a relatively wealthy country, with established social security policies and programs, entrenched Constitutional rights and freedoms, and respect for the rule of law. Despite this, persons with disabilities experience significantly higher rates of poverty, unemployment, exclusion from education, and discrimination compared to persons without disabilities in Canada. The DPOs that contributed to this Report are very encouraged by the steps that the present Government of Canada has taken to protect and promote the human rights of persons with disabilities. However, we remain concerned that many of the CRPD's general obligations and specific rights are not being implemented or realized in Canada. There is still much that needs to be done to achieve full accessibility, inclusion and true citizenship for persons with disabilities in Canada.

Equality and non-discrimination, Article 5: Canada's Constitution guarantees equality before the law, and provincial and territorial human rights laws prohibit discrimination in employment, services, housing and other spheres of life. Despite these legal protections, almost 50% of discrimination complaints filed in Canada involve persons with disabilities.² Indigenous adults and children with disabilities experience intersecting discrimination, and often do not have access to the same supports and programs as non-Indigenous Canadians with disabilities.

Equal Recognition Before the Law, Article 12: Canada has not withdrawn its reservation to Article 12(4). Substitute decision-making laws continue to exist in all provinces and territories. As a result persons with disabilities are regularly denied their right to legal capacity. Canada should immediately withdraw its reservation, and work with provincial and territorial governments to encourage the development of supported decision-making regimes. Canada must ensure that adequate and culturally appropriate safeguards and services are available to support persons with disabilities to exercise their legal capacity.

Living Independently and Being Included in the Community, Article 19: People with disabilities still live in large institutions in several Canadian provinces, and these institutions continue to receive new admissions. Lack of adequate services to support independence and life in the community is a key concern for persons with disabilities in Canada. Canada must ensure that persons with disabilities are not institutionalized. Canada must work with the provincial and territorial governments to provide people with disabilities the supports they need to live and participate in the community. This includes ensuring that persons with disabilities have access to housing that is affordable and accessible.

Education, Article 24: Students with complex disabilities who have medical needs, students with multiple disabilities, and the majority of students with intellectual disabilities are excluded from regular classrooms, and many only have the option of attending segregated schools. Deaf, deaf-blind and blind students face significant barriers to accessing education on an equal basis as students without disabilities. Several provinces and territories encourage inclusion, but only one province has actually implemented an inclusive education policy and invested accordingly. Given how fundamentally important

² Canadian Human Rights Commission (CHRC), *The Rights of Persons with Disabilities to Equality and Non-Discrimination: Monitoring the Implementation of the UN Convention of the Rights of Persons with Disabilities in Canada* (Ottawa: CHRCH, 2015).

education is to the enjoyment and exercise of full citizenship, Canada should take steps to ensure that inclusive education is implemented in all provinces and territories.

Work and Employment, Article 27: Persons with disabilities experience significantly higher rates of unemployment than persons without disabilities in Canada. Women and youth with disabilities, Deaf, deafened or hard of hearing persons, and blind persons have lower rates of employment than other persons with disabilities. Racialized persons with disabilities, new immigrants and Indigenous persons with disabilities are disproportionately represented among those relying on precarious employment. Segregated day programs and sheltered workshops persist as the dominant model of support for persons with intellectual disabilities. Canada must work with provinces, territories, unions, employers and civil society to remove existing barriers to employment. Canada should create a national accommodation fund to ensure that employers are able to hire persons with disabilities.

National Implementation and Monitoring, Article 33: Canada has not designated an independent mechanism to promote, protect and monitor the implementation of the Convention, as required by article 33.2. The Canadian Human Rights Commission, with the appropriate mandate and resources, should be designated as the monitoring mechanism.

A. Purpose and general obligations (Articles 1-4)

Article 4: General Obligations

Issue 2: Please inform the Committee whether the State party intends to withdraw the reservation to article 12(4).

Details: Canada has not signalled any intention to withdraw its reservation to article 12(4).

Canada's reservation to Article 12 is inconsistent with the UN's General Comment No 1. Specifically, Canada reserves the right to continue to permit substitute decision-making. In addition, many legal capacity laws use a functional test of capacity. Canada's reservation contradicts the object and purpose of the Convention as enshrined in Article 1 and prevents the full application of many other Convention rights.

Legal capacity falls under provincial/territorial legislative jurisdiction in Canada. Most provinces and territories still have substitute decision-making laws.

In most provinces and territories there are many laws, policies and programs that impact legal capacity. It is essential that Canada consider what safeguards are necessary in order to support persons with disabilities to exercise their legal capacity, in accordance with article 12.

When considering safeguards, particular attention must be paid to the needs of children with disabilities, indigenous persons with disabilities, persons with dementia and other disability communities.

Indigenous persons with disabilities require culturally appropriate disability services and supports to exercise their legal capacity. Canadian law provides that children are entitled to make certain decisions.

Issue 3: Please indicate the steps taken towards the full harmonization of the State party's existing and draft legislation and relevant strategies with the obligations under the Convention.

Details: Canada has not advanced any policies or legislation aimed specifically at implementing or enforcing the Convention obligations. In Canada international treaties like the Convention are not automatically incorporated into Canadian domestic law. Although Canada has ratified the Convention, Canada has not enacted legislation to implement the Convention into Canadian domestic law. This presents legal and practical barriers to enforcing Convention rights in Canada. Canadian courts generally do not view the Convention as binding law in Canada, and will not adjudicate the Convention or directly apply any of its articles in Canadian cases. Rather, Canadian courts typically view the Convention, and all international treaties, as sources of law, which inform the interpretation

of Canadian domestic law. Where possible, Canadian courts will interpret and apply domestic law in a manner consistent with the Convention.³

In Canada, some Convention rights, such as the right to be free from discrimination, are legally protected and enforced by Canadian domestic law. However, other Convention rights, such as the right to live independently and be included in the community (Art 19), the right to adequate standard of living (Art 28), and the right to participate in cultural life (Art 30), are not guaranteed by law or policy. Although Canadian courts can interpret and apply domestic law in a manner consistent with the Convention, a review of existing court and tribunal decisions demonstrate that judges and adjudicators are reluctant to consider the values or specific obligations of the Convention when making their decisions. To date, only 20 (meaning the court or tribunal's decision was informed by the Convention).⁴ This is a surprisingly small number, given that Canada ratified the *Convention* close to seven years ago, and given that a disproportionately large number of cases before provincial/territorial and federal human rights tribunals are complaints of disability discrimination. The cases also demonstrate that judges will not overrule domestic legislation that explicitly conflicts with the Convention. For example, in one case a Canadian court ruled that a father had custody of his son with disabilities, even though the son was an adult and had asserted his Article 12 right to legal capacity. Despite Article 12, the court found that the adult with disabilities was a "child of the marriage" under Canada's Divorce law.⁵ The failure to implement the Convention into Canadian domestic law significantly limits harmonization of existing Canadian law and policy with the Convention.

Issue 4: Please inform the Committee about intergovernmental bodies and other mechanisms in place to ensure consistent implementation of the Convention at the federal, provincial and territorial (FTP) levels.

Details: The absence of a transparent FPT coordinating mechanism regarding accessibility causes discrepancies in legislation and policies among provinces and territories, meaning that Canadians with disabilities experience varying levels of social inclusion depending on where they live in the country. People with dementia often face stigmatization that can limit their social inclusion. Living in rural and remote areas can further exacerbate the social isolation. There is an inequitable distribution of supportive services for persons with disabilities across provinces and territories.

A good way to address this situation would be to put in a place an FPT body on accessibility and other issues related to disability. Such intergovernmental forums already exist in other matters such as health and housing. If the proposed body is created, Disabled People's Organization (DPO) participation should be ensured. This is consistent with Articles 4(3) and 33(3) of the Convention.

³ *R v Hape*, [2007] 2 SCR 292, 2007 SCC 26 (CanLII)

⁴ ARCH Disability Law Centre, *Discussion Paper: Proposed Federal Accessibility Legislation and the Convention on the Rights of Persons with Disabilities* (February 8, 2017) available online: http://www.archdisabilitylaw.ca/Discussion_Paper_FedAccessibilityLegislation_CRPD

⁵ *Cole v Cole*, 2011 ONSC 4090 [Cole].

Issue 5: Please also inform the Committee about the participation of organizations of persons with disabilities in decision-making processes concerning legislation, public policies and other measures, including their involvement in the preparation of the State Party's report.

Details: Individuals and organizations of persons with disabilities are often involved in consultations regarding legislation and policies that will impact upon them. Federal, Provincial and Territorial (FPT) Governments hold public consultations on new laws, policies and programs and/or proposed changes to existing laws, policies and programs. In many cases, however, public consultations are not meaningful and do not lead to the adoption of community recommendations.

DPOs have been involved in the development of provincial accessibility laws in several provinces, and more recently at the federal level. Significant criticism has been raised regarding the extent to which processes for involving persons with disabilities were inclusive and truly reflected of the interests of persons with disabilities.⁶

With regard to the preparation of the present report, a wide range of civil society organizations were invited to comment upon a draft outline of the report at the beginning of the process. No further public consultation took place.

Issue 6: Please give an update on the preparation of the Canadians with Disabilities Act, including the participation of persons with disabilities in its preparation.

Details: When the current government was elected in November 2015, the Prime Minister created a Minister of Sport and Persons with Disabilities whom he mandated to "...lead an engagement process with provinces, territories, municipalities, and stakeholders that will lead to the passage of a Canadians with Disabilities Act."⁷

The initial consultation process was launched in July 2016 and will continue until February 2017. To date, DPOs are pleased to see that the government is seeking participation from persons with disabilities and DPOs from all across Canada in various manners, and is ensuring an inclusive and accessible process.⁸ DPOs are equally pleased to note that funding has been allocated for their own internal consultations on the subject.

Suggested Recommendations:

- Canada should withdraw its reservation to Article 12(4).

⁶ See, for example, David Lepofsky, *What Should the Canadians with Disabilities Act Include? A Discussion Paper* (Toronto: 2016), online: The AODA Alliance, <https://www.google.ca/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0ahUKEwj6v9Kyn6zQAhUL7GMKHX3fDpQQFggpMAI&url=http%3A%2F%2Fwww.aodaalliance.org%2Fstrong-effective-aoda%2Faugust-19-2016-discussion-paper-on-a-Canadians-with-DisabilitiesActbyDavidLepofsky.docx&usg=AFQjCNEFpbdCH6FXWWQQS9mftN2Bs5ZkA&sig2=zv9yxqlKiNryTC7nsRy2LA>, p 12-16.

⁷ Office of the Prime Minister of Canada, *Minister of Sport and Persons with Disabilities Mandate Letter* (Ottawa: Office of the Prime Minister, 2015) online: Office of the Prime Minister <<http://pm.gc.ca/eng/minister-sport-and-persons-disabilities-mandate-letter>>.

⁸ Employment and Social Development Canada, *Consulting with Canadians on accessibility legislation* (Ottawa: Government of Canada, 2015) online: Employment and Social Development Canada <http://www.esdc.gc.ca/en/consultations/disability/legislation/index.page?&_ga=1.229840476.1997265178.1465577015>.

- Canada should work with provincial and territorial governments to encourage development of supported decision-making regimes. It should also include timelines within which the provinces and territories agree to ensure that legal capacity laws comply with Article 12.
- Canada must work with provincial, territorial and First Nations governments to ensure that adequate and culturally appropriate disability services are available to safeguard and support persons with disabilities to exercise their legal capacity.
- Canada should include conducting a comprehensive audit of federal legislation, policies and programs that include requirements regarding legal capacity. It should also include timelines within which the provinces and territories agree to ensure that legal capacity laws comply with Article 12
- Canada should enact legislation that implements the Convention into Canadian domestic law, including the legal recognition of Canada's two official sign languages, ASL and LSQ.

B. Specific rights (Articles 5-30)

Article 5: Equality & non-discrimination

Issue 7: Please indicate whether discrimination based on “future impairment” is covered by the Canadian Human Rights Act?

Details: The *Canadian Human Rights Act* likely covers “future impairment” as a prohibited ground of discrimination. Section 25 of the Act clarifies that “disability means any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug”. The Canadian Human Rights Tribunal uses the common law definition of disability articulated in *Quebec v. Boisbriand (City of)* (“*Mercier*”) to determine whether a complainant has a disability and is protected by the Act.

The law prohibiting discrimination based on “perceived disability” is well developed.⁹ There is comparatively little jurisprudence on “actual or perceived future disability.” It should be noted that little has been said about anticipated or perceived or future disabilities that are beyond employment.

Issue 8: Please provide information on legal remedies available and used regarding disability-based discrimination.

Details: Canada has a federal Human Rights Commission and several provincial and territorial Human Rights Commission's, each governed by its own Act. Canada also has a constitutional *Canadian Charter of Rights and Freedoms*¹⁰ under which every ordinary court has competency. The Charter is the supreme law of Canada and any law that is inconsistent with it has no force or effect. Remedies for discrimination, vary accordingly with the relevant law

⁹ *Brideau v Air Canada*, 1983 4 CHRR D/1314; *Villeneuve v Bell Canada*, (1984), 9 CHRR D/5093 [FCA]; *Mills v VIA Rail Canada Inc.*, [1996] CHR D No 7 (QL).

¹⁰ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

It is important to note that according to a recent report by Canadian Human Rights Institutions (including federal, provincial and territorial institutions), almost 50% of all discrimination complaints filed in Canada involve persons with disabilities.¹¹ Moreover, Human Rights Commissions that operate on a provincial or territorial level deal with CRPD issues within these jurisdictions, Human Rights Codes emphasizes reasonable accommodation in all areas to the point of undue hardship. Again, the majority of complaints to provincial Human Rights Commissions relate to matters of discrimination based on disability

Issue 9: Please provide updated information on the status of Bill S-201.

Details: Bill S-201 prohibits any person from requiring an individual to undergo a genetic test or disclose the results of a genetic test as a condition of providing goods or services to, entering into or continuing a contract or agreement with, or offering specific conditions in a contract or agreement with, the individual. Exceptions are provided for health care practitioners and researchers. The enactment provides individuals with other protections related to genetic testing and test results. It should be noted here that this Bill might be considered to have implications for Canada's CRPD obligations under CRPD Articles 14, 17 and 22, on personal security, integrity and privacy.

The enactment amends the Canada Labour Code to protect employees from being required to undergo or to disclose the results of a genetic test, and provides employees with other protections related to genetic testing and test results. It also amends the Canadian Human Rights Act to prohibit discrimination on the ground of genetic characteristics.¹²

Deaf people are concerned about Bill S-210 because hearing people could decide not to continue with the pregnancy if baby is Deaf and this conflicts with Article 30 of this Convention which stipulates support of a specific cultural and linguistic identity, including Sign languages and Deaf culture.

Disclosure of genetic testing for dementia is discriminatory because of the future impairment of individuals. It impacts people with dementia by denial of many types of insurance and possible job opportunities.

Issue 10: Please elaborate on measures to eliminate multiple and intersectional discrimination against persons with disabilities, including indigenous persons with disabilities. Please elaborate on effective remedies and redress provided at all levels.

Details: Indigenous persons with disabilities face discrimination on multiple, intersecting grounds; they experience higher rates of unemployment, lower rates of education, and socio-economic marginalization in general. Due to differences in funding and provision of services for First Nations people under the Indian Act, many indigenous Canadians with

¹¹ Canadian Human Rights Commission (CHRC), *The Rights of Persons with Disabilities to Equality and Non-Discrimination: Monitoring the Implementation of the UN Convention of the Rights of Persons with Disabilities in Canada* (Ottawa: CHRCH, 2015).

¹² Bill S-201, *An Act to prohibit and prevent genetic discrimination*, 1st session, 42nd Parl, 2016. Online: <<http://www.parl.gc.ca/HousePublications/Publication.aspx?Language=E&Mode=1&DocId=8185825>> .

disabilities do not have access to the same supports and programs as non-indigenous Canadians with disabilities. In many cases, less funding is provided for services for First Nations people for education, social services and healthcare meaning that services are often unavailable or are of poor quality. In addition, when individuals attempt to seek services on or off reserve, they are often the victims of jurisdictional disputes in which different levels of government cannot agree over who will pay for the services, and this often leads to no service provision whatsoever.

Indigenous children with disabilities are particularly vulnerable to these issues. There are now more indigenous children in the care of Canadian welfare services than there ever were in residential schools. Many of these children have disabilities, and they are often removed from their homes not because of neglect but because of the lack of the appropriate support services in indigenous communities. And, despite recent policy changes (such as the adoption of Jordan's Principle) and a Canadian Human Rights Tribunal decision (CRHT T1340/7008) that were meant to address some jurisdictional issues and funding inequalities, these barriers persist and have not yet been adequately addressed by the Canadian government.

Deaf, deaf-blind and blind people experience discrimination on multiple grounds. Along with this it should be noted that access to sign language interpretation and intervenor services is still very limited in Canada, both geographically (limited to urban centers), and for other reasons such as adequate training and availability to create equal access to public services. In the area of health care, loved ones sometimes must still serve both as emotional support and simultaneously as interpreter / intervenor.

Suggested Recommendations:

- Canada must fully, immediately and properly implement Jordan's Principle,¹³ as directed by the Canadian Human Rights Tribunal decision (2016 CHRT 2) and its subsequent rulings (2016 CHRT 10 and 2016 CHRT 16), and as called for in the unanimously passed Motion to Parliament, presented by Member Charlie Angus on November 1, 2016.
- Canada must review Bill S-210 to ensure that it includes principles of equality and non-discrimination apply to distinct communities, such as people who are Deaf.

Article 7: Children with Disabilities

Issue 13: Please elaborate on measures taken to assist children with disabilities to enjoy their human rights on an equal footing with others, including specific budgetary lines and programs in this regard.

Details: Canada has not collected data on children with disabilities since 2006. Canada's current data collection tool, the Canadian Survey on Disability, excludes children from birth

¹³ **Jordan's Principle** is a child first principle used in [Canada](#) to resolve jurisdictional disputes within, and between governments, regarding payment for government services provided to [First Nations](#) children. Retrieved from https://en.wikipedia.org/wiki/Jordan's_Principle

to age 14. Without these data, it is not possible to formulate targeted programs to address and improve the situation of children with disabilities in Canada. There is a need for more metrics on disabled children and their families, to identify their needs and areas of disparity across the country. Children with disabilities have the right to preserve their identities and culture. This includes the Deaf identity and Deaf children have a right to Deaf culture, and especially sign language.

Children with disabilities experience similar challenges as adults in terms of inclusion, integration, participation, and accessing other human rights, but experience added barriers, as they often do not have a voice in matters that affect them. Children with disabilities are not consulted in decision-making or in determining what is in the 'best interest of the child.' Children, of varying disability types and severities, are frequently not represented in advocacy, policy or service delivery.

There is significant variation in the provision of services in different sectors (e.g. health, education, social, and community/recreational) that support families of children with disabilities across provinces and territories, indigenous children in and off reserve, and children living in rural and urban areas.¹⁴ This results in gross inequities in the availability and access to supportive services and intensive interventions across the country, depending on geographical location.

Measures taken to assist in providing supportive services to ensure children with disabilities enjoy their human rights on equal footing with peers include evidence-based lobbying that supports resource investment in intensive therapies and supports.

Participation in sports and physical activities is crucial for the physical and mental health and development of children with disabilities and for them to enjoy their rights.¹⁵ It is well documented that children and youth with disabilities experience barriers to participation in sports, social and other leisure activities of their choosing. National programs¹⁶ such as ParticipAction and Sports for Life are now receiving supports from non-governmental sources to adapt and include children with disabilities of all severities and types. Families of children with disabilities are largely unsupported. They need to have access to system navigators to access supports needed to realize the rights of their children

When addressing the needs of children with disabilities, society needs to address the challenges faced by family caregivers. There is mounting evidence¹⁷ that reveals that the burden of care overwhelmingly falls on family members (usually women) rather than the state. This has been especially prevalent among women. In support of Article 6, appropriate caregiver support must be provided to caregivers, in order to minimize the mental and physical effect on caregivers, which at times results in their eventual disability as well. Given the opportunity cost (i.e. reduced hours of paid work) family caregivers experience, particular budgetary lines to consider could include respite care, intermittent leave to bring child to appointments, tax breaks and caregiver income.

Suggested Recommendations:

¹⁴ The Jordan's Principle Working Group (2015) Without denial, delay, or disruption: Ensuring First Nations children's access to equitable services through Jordan's Principle. Ottawa, ON: Assembly of First Nations.

¹⁵ Dahan-Oliel, N., Shikako-Thomas, K., & Majnemer, A. (2012). Quality of life and leisure participation in children with neurodevelopmental disabilities: A thematic analysis of the literature. *Quality of Life Research*, 21(3), 427-439. Retrieved from <http://www.jstor.org/stable/41445069>

¹⁶ Shikako-Thomas K, Shevell M, Lach L, Law M, Schmitz N, Poulin C, Majnemer A and the QUALA group. Are you doing what you want do? Leisure preferences of adolescents with cerebral palsy, *Developmental Neurorehabilitation*, 18: 234-240, (2015).

¹⁷ Ibid. (Raina, P., et al. (2004). Caregiving process and caregiver burden: conceptual models to guide research and practice. *BMC pediatrics*, 4(1), 1

- Canada should consider the collection of data concerning children with disabilities and their families to address the existing data gap to ensure evidence-based decisions on policies, programs and services to best meet the needs of this population and their families.
- Canada should develop navigator systems to support families accessing services and resources and give families autonomy to decide how they want to spend funds related to their child.
- Canada should increase its capacity to support services on reserves and in rural communities to address the needs of children with disabilities.
- Canada should develop mechanisms to share success stories and models across provinces to equalize the provision of services, including transition to adult services, across the country that supports full integration and participation.
- Canada should, include the needs of children with disabilities in leisure, sports, parks and recreation, and community development that focus on participation in leisure.
- Canada must establish a benchmark for language equality and acquisition of Sign language with a view to ending language deprivation.

Article 9: Accessibility

Issue 15: Please elaborate on measures to monitor the implementation of accessibility measures in all areas of the Convention and sanctions in case of lack of compliance with accessibility requirements.

Details: Canada currently has no formal mechanisms to specifically ensure that Convention accessibility rights are implemented and enforced in all jurisdictions. Federally, however, Canada is currently conducting consultations in preparation for a National Accessibility Act. It is imperative that the outcomes from these consultations result in a national act is both consistent with the CRPD and enforceable in order to provide Canadians with disabilities with the tools they need to address discrimination.

At the same time, several Provinces, including British Columbia, Saskatchewan, Nova Scotia and Newfoundland, have announced a plan to enact, accessibility legislation or policies, while Ontario and Manitoba already have such legislation. Existing Provincial accessibility laws have been widely criticized. Existing provincial accessibility laws do not address all aspects of accessibility elaborated by Article 9. For example, people with dementia are routinely denied accessibility because measurement is focused on physical limitations and not cognitive impairments. Provincial accessibility laws and governments have been criticized for failing to appropriately enforce accessibility requirements. In Ontario, for example, 2 independent reviews of Ontario's accessibility legislation have found significant lack of enforcement.¹⁸

With emerging technology and particularly the proliferation of non-audible information systems in public spaces, many new barriers are being created for Canadians unable to read or comprehend signs and print information. For example, on most aircraft call buttons have

¹⁸ Mayo Moran, *Second Legislative Review of the Accessibility for Ontarians with Disabilities Act, 2005*, (November 2014) online at: <https://dr6j45jk9xcmk.cloudfront.net/documents/4019/final-report-second-legislative-review-of-aoda.pdf>

been moved from above a client's seat to an inaccessible touch screen. Equally most pre-boarding information is presented audibly over public address systems.

“(A)ppropriate measures” as elaborated by Article 9 include the “elimination of obstacles and barriers” to ensure equal access. For people who are Deaf, deaf-blind and blind this is important for a range of accessibility services including transportation, information and communication, and emergency services. Currently people who are Deaf, deaf-blind and blind do not have equal access to these accessibility services because there are still many barriers that cause on-going social exclusion and access issues.

There are inaccessible communication systems in transportation facilities that create barriers where Deaf people are not able to receive the communications and information services such as at the Canadian airports regarding any flight changes or any updates on the announcement from the airlines regarding the travel status. Also, lack of closed captioning for the entertainment and emergency information during their flight in Canada is a denial of equality rights. There are also inaccessible communications systems in transportation for people who are blind. Entertainment systems do not provide descriptive video and the emergency call button is placed on an inaccessible touch screen. For people who are blind, entertainment systems...

Deaf people report experiencing difficulties using texting with "911" for emergency services.

Canada's State Report indicates that it requires broadcasters to caption 100 percent of their programming and imposes quality standards for closed captioning. However, Canada has still not attained the objective of fully captioned programming. There are still issues on French-language captioning because it has always been behind English-language captioning in its development. Also, there are accessibility issues where Deaf people are not able to access to online captioning content on the website and social media.

This is also a concern for people who are blind with a lack of descriptive video services provided by Canadian broadcasters. The Canadian Radio and Television Commission, (CRTC) has an extensive body of policy and guidelines that have been developed in consultation with industry and civil society, including Canada's disability community. The CRTC also provides licenses for all Canadian broadcasters. In theory failure to meet guidelines (including guidelines on access) can result in the denial of a license. However, in practice failure to comply with CRTC access guidelines does not result in license denial.

Treasury Board of Canada has developed a new 'Web Accessibility Standard' (WAS) to replace their 'Common Look and Feel' standard for all federal government websites. The WAS is in compliance with the current WCAG AA level of website accessibility conformance. The majority of the government's web pages are in compliance with these guidelines.

The Marrakesh Treaty is a legal accord that aspires to end the "book famine" for those who are blind, partially sighted or otherwise have a print disability, worldwide. Canada's leadership helped ensure this groundbreaking Treaty came into full force, September 30,

2016. The Treaty allows signatory states to import and export alternative format print materials without infringing on copyright.

Suggested Recommendations:

- Canada should work with provincial and territorial governments to review existing and planned accessibility laws and policies to ensure that they address accessibility in a comprehensive manner and that they comply fully with Article 9.
- Canada should incorporate or adopt Article 9 of the CRPD when developing National Accessibility Legislation, and should give due consideration to the CRPD Committee's General Comment No. 2 on Accessibility.
- Canada must ensure that all levels of Government commit to robust enforcement of accessibility requirements enshrined in Law.
- Canada must ensure that communications and information services on the transportation systems are designed and constructed so that they can be used, or reached by people who are Deaf, deaf-blind or blind.
- Canada must address to improve accessibility on telecommunication services for Text with 911 services that requires a faster response time between 9-1-1 responders and Deaf person in order to meet the functional equivalency.
- Canada must ensure that broadcasters are required 1) to provide French-language audiences with access to captioned programming that is fully equal to English-language access in both quantity and quality; 2) online captioning and descriptive video content for the website and social media; and 3) improve quality standards and to provide captioning and descriptive video for 100 percent of their programming.
- Canada must strengthen the mandate of regulatory bodies to allow for license denial in the event of non-compliance with accessibility standards and guidelines.

Article 10: Right to Life

Issue 16: Please inform the Committee about measures to ensure that the State party's legislation on assisted dying is in compliance with the Convention.

On June 17, 2016, the Government of Canada amended the Criminal Code to permit Medical Assistance in Dying (MAiD). The legislative purposes of this new law are set out clearly in its preamble. Central to the law is the fundamental principle that "vulnerable persons must be protected from being induced, in moments of weakness, to end their lives"¹⁹.

While the reassuring declarations of the preamble are consistent with the spirit of Article 10, the present situation with regard to MAiD in Canada falls far short of the law's rhetorical commitments. While the law prescribes certain procedural and eligibility safeguards, and authorizes the Minister of Health to make regulations "for the purpose of monitoring medical assistance in dying", no such regulations exist. As a result, no data are available to

¹⁹ *Ibid.*, Preamble.

assure compliance with the spirit of this law or to support civil society engagement with and monitoring of this practice. Moreover, no complementary programming has been undertaken at the federal, provincial or territorial levels to address vulnerability or inducement, or to ensure that all Canadians have access to palliative care, disability supports, home care and other measures that would ease suffering, boost resilience and offer meaningful choices other than assisted death. . Finally, where safeguards have been breached,²⁰ no action has been taken to prevent ineligible people from being euthanized.

At present, there is no coordinated record keeping supporting federal oversight of the practice. Decision-making protocols, assessment procedures and guidelines for assisted dying are inconsistent across the country and within individual provincial/territorial jurisdictions. There is no systematic approach to assessing vulnerability, inducement or coercion, although the law requires that requests be “not made as a result of external pressure”.²¹ In the absence of federal regulations, individual Colleges of Physicians and Surgeons oversee MAiD through whatever practice guidelines these self-regulating bodies choose to adopt. This patchwork of largely unregulated arrangements risks producing lethal outcomes that falls disproportionately on people with disabilities.

Of equal concern, the law’s most important substantive safeguard – that a person’s natural death must be “reasonably foreseeable” – leaves considerable scope for individual physician discretion. A patient who is denied access to an assisted death by a physician, who does not consider that patient eligible, may continue to seek out a more sympathetic physician willing to interpret the threshold of “reasonably foreseeable natural death” more liberally. Without data to track requests and the reasoning for their denial or granting, it is impossible to know the extent to which “negative perceptions of the quality of life”²² of disabled persons factor in calculations of eligibility. Without data to monitor how requests for MAiD are received and negotiated with health practitioners, the risk is high that disability stigma, stereotypes and prejudice are factoring heavily in MAiD decision-making and practice.

Recent research from other jurisdictions shows that women with psychosocial disabilities are using the system to die at a disproportionate rate.²³ As well, people with autism spectrum disorder and intellectual disabilities are accessing the system with alarming frequency.²⁴

Communication is fundamental to the negotiation around assisted death. With nearly 400 Canadians now reported²⁵ as having died by MAiD and with no descriptive data available or likely to be available in the foreseeable future, it is impossible to know the extent to which

²⁰ http://www.ledevoir.com/documents/pdf/rapport_csfv2016.pdf, p. 19

²¹ *Act, supra* note 2, s 241.2 (1)(d).

²² *Act, supra* note 1.

²³ Scott Y.H. Kim et al, “Euthanasia and Assisted Suicide of Patients with Psychiatric Disorders in the Netherlands 2011 to 2014” (2016) 73:4 JAMA Psychiatry 362-368.

²⁴ *Ibid.*

²⁵ See Kelly Grant, “Incomplete stats paint fuzzy picture of assisted-death impact in Canada”, *Globe and Mail*, (6 October 2016), online: <<http://www.theglobeandmail.com/news/national/despite-assisted-dying-law-barriers-still-remain-doctors-say/article32286253/>> and subsequent data from Nova Scotia and New Brunswick in Jack Julian, “Nova Scotia Health Authority reveals assisted-dying numbers”, *CBC News*, (9 November 2016), online: <<http://www.cbc.ca/news/canada/nova-scotia/nova-scotia-health-authority-assisted-dying-numbers-1.3843758>>.

lack of access to qualified interpreter services may be a factor in any of these and future deaths.

Suicide rates among Canada's indigenous peoples are known to be at catastrophic levels, especially among youth²⁶. Although the preamble to Canada's law acknowledges that "suicide is a significant public health issue that can have lasting and harmful effects on individuals, families and communities"²⁷, without adequate screening or reporting mechanisms in place, the personal and cultural impacts of Canada's permissive approach to medical assistance in dying with regard to indigenous persons with disabilities remains unknown.

By failing to address the relationship between unmet need, social stigma and suicidal desire among persons with disabilities, and by providing assisted death in response to intolerable suffering at end-of-life, whatever its source, Canada is failing to meet its obligations under Article 10 to take "all necessary measures" to ensure effective enjoyment by persons with disabilities of the right to life on an equal basis with others.

Suggested recommendations:

- Canada must ensure that all persons who might seek an assisted death have access to alternative courses of action and to a dignified life made possible with appropriate palliative care, disability supports, home care and other social measures that support human flourishing.
- Canada must move quickly to establish regulations pursuant to the law requiring collection and reporting of detailed information about each request and intervention for Medical Assistance in Dying.
- Canada must ensure that these data are "anonymized" and made publicly available in a timely manner and in formats that are accessible to laypersons and useful for researchers.
- Canada must ensure that representatives of Canada's disability community play an integral role in the development and evaluation of the database.
- Canada must develop and implement a clear standard for informed consent in either the federal statute or regulations, pursuant to the existing eligibility criterion that a person must not be subject to "external pressure."²⁸
- Canada must develop an effective and independent mechanism to ensure that compliance with the law and regulations are strictly enforced, that violations are punished, and that problems are corrected.
- Consistent with Concluding Observations issued by the United Nations Human Rights Committee in respect of assuring protection for the right to life for vulnerable persons under the system in the Netherlands, Canada should require prior review of each request by an independent authority in order to "guarantee that this decision was not the subject of undue influence or misapprehension."²⁹

²⁶ Health Canada, *First Nations & Inuit Health*, (Ottawa: Health Canada, 2016) online: <<http://www.hc-sc.gc.ca/fniiah-spnia/promotion/suicide/index-eng.php>>.

²⁷ *Act, supra*, note 2, preamble.

²⁸ *Act, supra* note 2, s 241.1(2)(d).

²⁹ U.N. Human Rights Committee, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant*, para. 7, U.N. DOC. CCPR/C/NLD/CO/4 (Aug. 25, 2009). See also U.N. Human Rights Committee, *Concluding Observations of the Human Rights Committee: Netherlands*, para. 5–6, U.N. DOC. CCPR/CO/72/NET (Aug. 27, 2001).

- Canada must ensure that all persons who might seek an assisted death have access to alternative courses of action and to a dignified life made possible with appropriate palliative care, disability supports, home care and other social measures that support human flourishing.
- Canada should limit the expansion of MAiD in order to protect people with psychosocial disabilities, children with disabilities and people with dementia from being specifically targeted for assisted suicide and euthanasia.

Article 12: Equal recognition before the Law

Issue 18: Please inform the Committee about the number of adult persons with disabilities, at the federal, provincial and territorial levels, who are under guardianship or a similar regime of substituted decision-making. Since 2010, what kinds of decisions have been made on behalf of persons with disabilities (e.g. medical treatment, financial affairs, housing and contracts)? How many persons with disabilities receive supported decision-making services? Have there been any decreases in substitute decision-making since 2010? Are there any innovative projects or research planned in this regard?

Presently there is no publicly available data on the number of persons with disabilities who are under a substitute decision-making regime. There is also no publicly available data on the number of persons with disabilities who are in supported decision-making situations. The lack of publicly available data is a barrier to DPOs and the public who want to conduct research and analysis on decision-making practices in Canada.

Provisions exist in all provincial/territorial jurisdictions for substitute decision-making either through guardianship or through informal appointment of substitute decision makers for health care decisions. These provisions are regularly used across Canada with the consequence of denying people with disabilities, including people with a medical diagnosis of dementia, the right to legal capacity.

Federally, Canada requires under its *Income Tax Act* that otherwise eligible persons with severe disabilities be “contractually capable” to open a registered disability savings plan and take advantage of significant government contributions. This is an important vehicle for future financial security for persons with disabilities. However, this provision is significantly undersubscribed because many individuals are not considered legally capable by financial institutions, and their family members are not willing to have them declared incapable and open a plan on their behalf.

Suggested recommendations:

- In order to ensure that it is meeting its obligations under article 12, Canada must actively collect data on the number of persons with disabilities who are subject to substitute or supported decision-making regimes.
- In order to advance the monitoring and implementation of article 12, Canada must ensure that data about the number of persons with disabilities who are subject to substitute or supported decision-making is made available to the public.

- Canada should remove the criterion for ‘contractual capacity’ in the *Income Tax Act* for the purposes of the registered disability savings plan, and make provision in the *Act* for persons to open such plans through a supported decision making arrangement.
- Canada should convene Ministers of Justice from its respective provincial/territorial jurisdictions to develop a shared agenda for reform of substitute decision making laws, that would be guided by the following principles and directions for reform:

Article 14: Liberty and Security of the Person

Issue 21: Please inform the Committee about the number of criminally accused persons with disabilities who have been declared incompetent to stand trial and/or incompetent to be guilty since 2010. What measures are taken in regard to those persons with disabilities? Are these individuals transferred to and/or detained in forensic psychiatric institutions? Please clarify whether in regard to criminal procedure they have the same rights as defendants such as right to information or judicial review.

Details: Persons who are found not criminally responsible on account of mental disorder (NCR) are typically sent to a provincial or territorial Review Board.³⁰ Review Boards are tribunals comprised of at least 4 members, including a judge and a psychiatrist. The Review Board may order an absolute discharge, a conditional discharge or detention in custody in a hospital.³¹ The Board must order the disposition that is the least restrictive to the accused person. The Board must balance protecting the public from dangerous persons, the mental condition of the accused person, and reintegration of the accused into society and any other needs of the accused.³² A conditional discharge means the person is in the community but has restrictions on his/her liberty such as residing in a particular place, not using illegal drugs or alcohol, submitting to urine testing, abiding by a specific treatment plan, or reporting to a psychiatrist regularly.

Persons who are found unfit to stand trial are also sent to a provincial or territorial Review Board for a disposition hearing. The Review Board may order a conditional discharge or detention in custody in hospital. The Board may not order an absolute discharge. If the accused person becomes fit to stand trial, s/he returns to court for a trial.

Review Boards must hold a hearing each year to review the disposition.³³ In most provinces and territories there is a right to appeal a Review Board’s disposition to a court.

Issue 22: Please inform the Committee whether the federal and provincial legislation, including the Charter of Rights and Freedoms, the Criminal Code and legislation in the area of mental health, provide effective protection against arbitrary detention of persons with disabilities at the federal, provincial and territorial levels. In this regard,

³⁰ *Criminal Code*, RSC 1985, c C-46, s 672.38

³¹ *Criminal Code*, RSC 1985, c C-46, s 672.54

³² The Supreme Court of Canada, in *Winko v. British Columbia (Forensic Psychiatric Institute)*, [1999] 2 SCR 625, 1999 CanLII 694 (SCC), provided guidance on section 672.54 and ruled that if the accused does not pose a significant threat to the safety of the public, the court or Review Board must order an absolute discharge. The Court found that while the protection of society is paramount, there must be clear evidence of a significant risk to the public before a court or Review Board can impose a conditional discharge or detention order.

³³ *Criminal Code*, RSC 1985, c C-46, s 672.81

please also inform the Committee about the measures taken towards abolishing the practice of indefinitely detaining persons with disabilities, especially with intellectual and/or psychosocial disabilities who, based on their impairment, are found to be “unfit for trial”.

Details: Most provinces and territories in Canada have laws that permit involuntary detention of persons with psychosocial disabilities in psychiatric institutions and/or coercive administration of psychiatric drugs.³⁴

A recent decision of the Court of Appeal for Ontario, *Thompson and Empowerment Council v. Ontario*, found that involuntary detention in hospital due to “substantial mental deterioration” and coercive administration of psychiatric drugs did not violate the right to liberty and security of the person under Canada’s Charter, nor did it violate the right to equality guaranteed by Canada’s Charter.³⁵ Although article 14 of the Convention was raised, the Court of Appeal did not discuss it in the decision.

Issue 23: Please provide information about the number of persons with disabilities who have been detained since 2010 on the grounds of impairment (disaggregated by gender, age and ethnicity). Has the number decreased or increased since the ratification of the Convention?

Details: We are still seeking a data source.

Issue 24: Please also provide information about the number of persons with disabilities in prison and how many of them are provided with reasonable accommodation.

Details: Correctional Services Canada [CSC] provides statistics on the prevalence of some disabilities among prisoners in federal prisons. The CSC’s Departmental Performance Report in 2012-2013 reports 15,056 offenders in federal custody, regardless of disability status and including temporary detainees.³⁶ Between 2008-2014, the number of people in federal prisons increased.³⁷ Between 2014 and 2015 there was a 3% decrease in the federal in-custody population.³⁸ The number of people in provincial/ territorial prisons increased 13.4% from 2004-2012.³⁹ From 2012 to 2014 this number decreased 11.2% to 9,889 people.⁴⁰ In 2014/2015 the proportion of prisoners in federal custody was about 10.5% greater for Indigenous prisoners than for non-Indigenous prisoners.⁴¹

A report on the mental health needs of federal women offenders indicated that 94% of women offenders sampled had experienced symptoms consistent with a lifetime diagnosis

³⁴ See for example, section 15 of Ontario’s *Mental Health Act*, RSO 1990, c M.7.

³⁵ 2013 ONSC 5392 (CanLII)

³⁶ Correctional Service Canada, *2012-13 Departmental Performance Report* (2013) online: <http://www.csc-scc.gc.ca/publications/005007-4500-2012-2013-eng.shtml>

³⁷ Public Safety Canada, *2014 Annual Report Corrections and Conditional Release Statistical Overview* (2015) online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pbltms/cerso-2014/index-en.aspx>

³⁸ Public Safety Canada, *2015 Annual Report Corrections and Conditional Release Statistical Overview* (2016) online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pbltms/cerso-2015/index-en.aspx#>

³⁹ Public Safety Canada, *2014 Annual Report Corrections and Conditional Release Statistical Overview* (2015) online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pbltms/cerso-2014/index-en.aspx>

⁴⁰ Public Safety Canada, *2015 Annual Report Corrections and Conditional Release Statistical Overview* (2016) online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pbltms/cerso-2015/index-en.aspx#>

⁴¹ Public Safety Canada, *2015 Annual Report Corrections and Conditional Release Statistical Overview* (2016) online: <https://www.publicsafety.gc.ca/cnt/rsrscs/pbltms/cerso-2015/index-en.aspx#>

of a psychosocial disability.⁴² 80% of the sample had experienced a lifetime dependence on at least one substance.⁴³ The CSC elsewhere reports that 13% of men and 24% of women offenders in custody are identified with “very serious mental health problems.”⁴⁴ No information was found on the number of prisoners who are blind, Deaf, or hard of hearing.

Many prisoners with disabilities, including incarcerated women with psychosocial disabilities, brain injuries and intellectual disabilities are not given appropriate care or disability supports, and are instead placed in solitary confinement.⁴⁵ Solitary confinement is very prevalent in the Canadian correctional system, especially at the federal level. Indeed, in its recent review of Canada, the CESCRC committee stated that it is concerned by the increased rate of incarceration of persons with disabilities and the excessive use of solitary confinement.⁴⁶ Solitary confinement is often imposed for non-disciplinary reasons such as protection of an inmate or medical reasons. A review by the Ontario Ministry of Community Safety and Correctional Services⁴⁷ found that only 4.3% of all prisoner placements into solitary confinement were disciplinary, while 17% were for “administrative” medical reasons. Of the 4,178 inmates who spent at least a day in solitary confinement between October and December 2015, 38.2% had a “mental health alert” on file. Despite UN standards that deem solitary confinement longer than 15 days to be tantamount to torture, the review found that the average time spent in solitary confinement reached 16.2 days.

Research has documented that women with disabilities in federal prisons are subject to a mental health strategy that is overly focused on assessment rather than treatment and security classification that lead to women with mental health issues and Aboriginal women being housed in more secure environments than required to manage their risk. It has also been documented that staff in federal prisons are authorized to use force against women with serious mental health issues without regard for the woman’s underlying health concerns. In addition, concern has been expressed about care and support for persons with dementia in the Prison system.

A 2013 Alberta court case, *R v. Myette*⁴⁸, exposed the lack of appropriate disability accommodations for blind prisoners. The provincial prison had no policy regarding

⁴² Correctional Service Canada, *Mental health needs of federal women offenders* (2012) online: <http://www.csc-scc.gc.ca/research/005008-0267-eng.shtml>

⁴³ Correctional Service Canada, *Mental health needs of federal women offenders* (2012) online: <http://www.csc-scc.gc.ca/research/005008-0267-eng.shtml>

⁴⁴ Correctional Service Canada, *Profile of a Canadian Offender* (2010) online: <http://www.csc-scc.gc.ca/publications/005007-3004-eng.shtml>

⁴⁵ There are several recent examples of women with disabilities who have died in solitary confinement. In 2013, Kinew James, a 35-year old indigenous woman who was diabetic and had psychosocial disabilities died from an apparent heart attack. During her nearly 15 year prison sentence, she had been transferred from one prison to another and spent months at a time in solitary confinement. An inquest into her death is ongoing. In 2007, Ashley Smith was 19 years old when she died by self-inflicted strangulation while she was incarcerated at the Grand Valley Institution for Women, a federal prison. Smith had psychosocial disabilities and was under suicide watch at the time of her death. In 2013 a coroner’s inquest found her death to be a homicide and made dozens of recommendations for improving the care, support and treatment provided to incarcerated persons with psychosocial disabilities. See: *Smith (Re)*, 2013 CanLII92762 (ON OCCO). In 2001, Kimberly Rogers died while she was alone under house arrest for welfare fraud. Rogers had received government loans to pay for her education while also receiving welfare payments. Rogers had psychosocial disabilities. A coroner’s inquest made a number of recommendations aimed at ensuring that persons under house arrest have adequate access to food, shelter and medication. Before her death, Rogers brought a number of court cases against Ontario. See: *Rogers v. Sudbury (Administrator of Ontario Works)*, 2001 CanLII 28086 (ON SC)

⁴⁶ See UN Document E/C.12/CAN/CO/6, point 45.

⁴⁷ Indirectly through statistics reported by Jim Rankin, “Inmate in solitary for four years alarms rights commission”, *The Toronto Star* (October 19, 2016) online: <https://www.thestar.com/news/canada/2016/10/19/inmate-in-solitary-for-four-years-alarms-rights-commission.html>; The full report is available on request from the Ontario Ministry of Community Safety and Correctional Services: <http://www.mscs.jus.gov.on.ca/english/default.html>.

⁴⁸ 2013 ABCA 371 (CanLII)

accommodations for blind prisoners, no staff training on accommodating blind prisoners, prison rules and computers were not accessible, nor were guide dogs permitted in the prison.

Similarly, Deaf people who are in prison report a lack of Sign language interpreters making communication with other prisoners and staff very difficult or impossible. As well, Deaf prisoners do not enjoy equal access to any programs and elements of daily existence in prisons.

Suggested Recommendations:

- Canada must take steps, at all levels, to review laws, policies and practices that permit involuntary detention of persons with psychosocial disabilities and coercive administration of psychiatric drugs. Such laws, policies and practices must be amended in order to comply fully with Article 14.
- Canada, at all governmental levels, must review the use of solitary confinement and put in place policies and training to reduce the use of solitary confinement and ensure that solitary confinement is not used in a discriminatory manner.
- Canada must ensure that policies, practices and training support the provision of appropriate accommodation, services and supports to prisoners with disabilities, in both provincial and federal institutions.

Article 16: Freedom for exploitation, violence and abuse

Issue 25: Please inform the Committee about the existence of a monitoring system in line with article 16(3) at the federal, provincial and territorial levels.

Details: There are no independent entities responsible of monitoring the access to facilities and programs that aims at preventing exploitation, violence and abuse of persons with disabilities. Both federal and provincial/territorial governments have disability offices, but those are governmental offices, not independent as mandated by Article 16(3).

This is a concern, especially considering that person with disabilities, women in particular, are at greater risk of experiencing violence than are their able-bodied peers. The lack of publicly funded legal assistance (legal aid), support and representation for disabled women to access their rights keeps women with disabilities in poverty and prevents them from accessing the supports and services they need to survive. It also keeps them in abusive situations by failing to provide legal protection needed to escape abuse.

Instead of a monitoring process, some provinces, like Quebec, have specific legal protection against abuse of persons with disabilities ⁴⁹ that gives recourse against such practices.

Issue 26: Please inform the Committee about violence against women and children with disabilities, including indigenous women and children with disabilities, and about measures to prevent and eliminate all forms of violence in different settings, including at school, and to facilitate reporting of violence by victims. Please also indicate the

⁴⁹ *Charte des droits et libertés de la personne*, 1975 L.R.Q. c.C-12, art.48.

steps taken to implement the recommendations of the Truth and Reconciliation Commission and to repeal section 43 of the Penal Code.

Women with disabilities are at greater risk of experiencing violence and bullying than are their able-bodied peers. The lack of publicly funded legal assistance (legal aid), support and representation for disabled women to access their rights keeps women with disabilities in poverty and prevents them from accessing the supports and services they need to survive. It also keeps them in abusive situations by failing to provide the necessary legal protection needed to escape abuse.

It has also been reported that women with disabilities who experience violence and sexual assault often have to remain living with the perpetrator as many shelters are inaccessible and support service such as attendant care is not always available.⁵⁰

Suggested recommendations

- Canada must take steps to establish an independent mechanism at all levels to monitor facilities and programs provided to persons with disabilities. This mechanism should place priority on women and children with disabilities.
- Canada must work with Indigenous leaders to establish a parallel mechanism in First Nations communities across the country.
- Canada must ensure that victims of violence have access to both appropriate legal assistance and fully accessible emergency shelters.

Article 19: Living independently and being included in the community**Issue 31. Please indicate how many children and adults with disabilities live in residential institutions and how large these institutions are. Has the number of persons with disabilities in institutions decreased or increased since 2010, including at the federal, provincial and territorial levels?**

Details: According to the 2011 Census of Population, there were 448,735 Canadians living health-related institutions or group homes representing 1.3% of the population. This number has increased from 381,145 or 1.2% as recorded in the 2006 Census of Population. While no data are available on the nature and extent of disability experienced by these residents, it can be assumed that some level of care was required on a daily basis and that they had to move into care to obtain the daily supports that were needed. While the majority of institutional residents are aged 75 years and over, there were 3,100 children under the age of 15 years, 77,130 adults aged 15 to 64 years and 43,805 adults aged 65 to 74 years (Statistics Canada).

While changes in health care in Canada have included a shift toward more community services, it is estimated that 71 percent of people with dementia live in institutions such

⁵⁰ While there is growing literature pertaining to violence toward women and girls with disabilities, there is little research into the role of violence as a causal factor in a) physical, mental and cognitive impairment and other disabilities for women and girls; b) as a contributing factor to additional and or increased impairments to women and girls with pre-existing disabilities; c) violence toward women earlier in their lives may be a causal factor for the onset of later life impairments such dementia and related disorders. (Ford, Hanes, March in M. Owens et.al., 201

as nursing homes or long-term care facilities. Many are inappropriately segregated in locked wards that are often used to isolate people with dementia from their communities.⁵¹

Issue 32. What is the public budget spent on community-based services for independent living as opposed to residential services? Please inform the Committee about measures towards deinstitutionalization and the provision of community-based living arrangements since 2010. How many persons with disabilities receive independent living support, including personal assistance services? Please provide data disaggregated by sex, age and ethnic background at all levels.

Details: At present we are not able to locate National-level data, but some provinces have reported the following: In 2010, Manitoba, Saskatchewan and Alberta (three of thirteen) Provincial and Territorial jurisdictions reported approximately 900 Canadians were still institutionalized in three large (100 or more beds) provincial institutions designated for people with intellectual disabilities.

In 2012, it was announced Saskatchewan would close in 2016, and that date was then moved to 2018. In 2013, there were 197 residents living in the Centre, with an average age of 59, by December of 2016 the Centre reported a reduced number (124) of residents.

In 2013, it was announced the Alberta residential centre would close, but with a 2014 change in government plans for closure have come to a halt, and in December of 2015 there were still 227 residents in the Centre.

In 2015 Manitoba reported that at one time the Manitoba Development Centre [MDC] provided care for over 1,000 residents, but it presently provides care to approximately 180 residents and work is underway to transition another 10 residents to community placements within the next year.⁵²

In December 2014, the Ontario Ministry of Community and Social Services determined that of the 33,615 adults receiving some form of developmental services, 15,246 were receiving residential services, with almost as many on waitlists. In March 2012, there were 10,900 people on waitlists for some form of residential services. By April 1, 2014, that number had grown to 12,808.⁵³

Research from Disability Rights Promotion International (DRPI) with individuals with disabilities across Canada indicates that support within the community and the social participation that results from such support is the primary areas of concern for individuals with disabilities throughout the nation. The lack of accessibility and of adequate supports for community living and social participation meant individuals experienced a lack of dignity and lack of autonomy – two key guiding principles of the CRPD.⁵⁴

⁵¹ *Prevalence and Monetary Costs of Dementia in Canada*, Alzheimer Society of Canada, 2016, the full report is online at http://www.alzheimer.ca/~media/Files/national/Statistics/PrevalenceandCostsofDementia_EN.pdf

⁵² About the Manitoba Development Centre: <https://www.gov.mb.ca/fs/mdc/index.html>

⁵³ Dubé, Paul (2016). *Nowhere To Turn*. Toronto, ON: Ombudsman Ontario:

<https://www.ombudsman.on.ca/Files/sitemedia/Documents/NTT-Final-EN-w-cover.pdf>

⁵⁴ DRPI Canada: <http://drpi.research.yorku.ca/north-america/north-america-publications-resources/>

Suggested recommendations:

- Canada must ensure that people with disabilities are not institutionalized, and that all large institutions make plans to close and accept no new admissions.
- Canada must work with the provinces and territories to ensure the people with disabilities are provided with the supports needed to live independently in the community
- Canada should incorporate measures in its National Housing Strategy announced in 2016 to ensure financing is available to ensure access to affordable and accessible housing for Canadians with disabilities
- Canada should incorporate measures, in collaboration with provinces and territories, to ensure that the financing announced by Canada for home care, is delivered in a manner consistent with Article 19, respecting individualization, community-based supports, self-direction, and supports for inclusion.
- Canada should work with provinces and territories to implement the proposals put forward by DPOs and recognized in Parliamentary reports for a basic income program financed by the federal government to address poverty of persons with disabilities, and thereby creating fiscal room for provinces and territories to increase investment in disability supports, which largely fall under their jurisdiction.

Article 24: Education**Issue 35: Please give an update about learners with disabilities who receive education in segregated settings as opposed to learners with disabilities who are in mainstream settings, across each of the provinces and territories.**

Details: K-12 education is under provincial/territorial jurisdiction exclusively, and no national comparable data on inclusive education is collected or available.

The vast majority of students with intellectual disabilities are still largely excluded from the common learning environment in the education system. There is no national-level comparable data, the 2010 data (latest readily available) from Ontario, the largest provincial jurisdiction, and points to violation of the right to inclusive education on a massive scale. Seventy-six percent (76%) of primary school students with intellectual disabilities spend the majority of their day in segregated classrooms, and at the secondary level the figure is even higher at 87%.

There is significant variation across provinces in terms of service provision for learners with disabilities. Children with disabilities in Quebec, for example, are often placed in segregated schools and only children with mild disabilities are integrated into regular settings⁵⁵. According to the 2001 Participation and Activity Limitation Survey (PALS): “The proportion of 5 to 14 year-old students with disabilities who were in regular classes (that is, not in special education classes or schools) was highest in Prince Edward Island (73%), New Brunswick (72%) and Nova Scotia (67%), and lowest in Quebec (48%) and British Columbia (51%).

⁵⁵ <http://www.statcan.gc.ca/pub/81-004-x/2007001/9631-eng.htm>

The percentage of students in regular classes in the other provinces was close to the national average (59%). In all provinces, most of the children with reported disabilities who were not in regular classes attended some special education classes or went to a special education school^{56,57}.”

Moreover, children with complex disabilities who require some medical attention, or children with multiple disabilities (e.g. intellectual and physical) only have the option of segregated school settings, making their neighborhood school not accessible. Children in segregated schools usually do not benefit from after school programs, reducing their ability to engage in leisure and physical activities that are essential for their health and development. Research shows that children with disabilities integrated in regular schools participate more in physical activities, but have less opportunity to engage in social activities, and are often not fully integrated into the school activities⁵⁸.

In terms of academic achievement, and specifically literacy, “across all provinces, students with cognitive disabilities score significantly lower than those without disabilities. This difference was most pronounced in Newfoundland and Labrador, Ontario and Alberta and least pronounced in Prince Edward Island. In Alberta, students with no disabilities had the highest scores in Canada, but those with cognitive/emotional difficulties had reading literacy levels comparable to those for students with cognitive/emotional disabilities in the other provinces.⁵⁹”

Issue 36: Please inform the Committee about the situation of deaf, deaf-blind and blind learners with disabilities.

Details: In Canada Deaf, deaf-blind and blind people still face accessibility barriers to some of the educational institutions; therefore, equal access is not protected enough under the law. In Ontario, for example, the Provincial Education Act affirms Sign language as a language of instruction of education for Deaf children, but it is not promoted, protected or encouraged. In practice, Ontario still promotes speech-language rehabilitation and mainstream schools for Deaf students. Other Provinces and Territories report similar experience.

There are insufficient resources for school education of deaf-blind children across Canada and few places where deaf-blind children can have an accessible environment and opportunity to reach their full potential academic terms and social development. The challenges relate especially to insufficient interveners and funding shortfalls for the diverse needs of deaf-blind children.

Approximately 85% of Canada’s estimated 678 students who use braille are being educated in the inclusive, public school setting with 70% spending the majority of their day in the same classrooms as their same-aged peers. Braille is critical for gaining knowledge of literacy and moving into successful employment. For anyone born blind or

⁵⁶ Children with disabilities and the educational system — a provincial perspective, Dafna Kohen, Sharanjit Uppal, Anne Guevremont, and Fernando Cartwright. Health Analysis and Measurement Group. Statistics Canada.

⁵⁷ The PALS was discontinued in 2006 and there is no information about childhood disability being collected at the national level since 2006.

⁵⁸ Shikako-Thomas et al., 2013; Law et al., 2006

⁵⁹ (<http://www.statcan.gc.ca/pub/81-004-x/2007001/9631-eng.htm>).

partially sighted as a youth, it provides them with a significant amount of additional learning, Blind and partially sighted children in an integrated setting are not being provided an adequate amount of materials in an accessible format and are not getting adequate instruction in learning to read Braille.

In post-secondary institutions, Deaf people are still faced with accessibility barriers in various provinces because reasonable accommodations such as Sign language interpretation, closed captioning in the classroom are not provided properly. For instance, there are concerns that Deaf students at the post-secondary institutions are required to pay Sign language interpreters first in order to obtain the student grants later, which indicates that it is a negative effect on these Deaf students to obtain an equal basis in the higher education.

According to the Canadian Survey on Disabilities only 44% of Canadian with seeing disabilities have completed post-secondary education compared to 61% of Canadians who do not have a disability. Barriers include lack of access to educational print materials in alternative formats such as Braille, large print and accessible audio and lack of access to technology. Students are not able to access materials in different languages.

In Canada, there is ongoing closure of Deaf schools because provincial governments do not promote the rights of using Sign languages in education. Deaf children who are not exposed to Sign languages will experience language deprivation. In order to ensure schools with Deaf children are environments which maximize academic and social development, direct instruction in Sign language must be provided along with opportunities to study Sign language as a school subject and access bilingual learning materials in Sign language and qualified Sign language interpreters.

The Deaf community strongly believes that bilingual and bicultural education will ensure that Deaf children reach their full educational potential. As ASL and LSQ are the only fully accessible languages for Deaf children, bilingual education programs must be provided to ensure Deaf children achieve on the same level as their non-Deaf peers.

Issue 37: Please explain in detail how the State party is working towards inclusive education, in particular for children with high-level support needs across all provinces and territories; please also provide information about reasonable accommodation and support measures for students with disabilities, including blind, deaf and deaf-blind learners at all levels of the mainstream education system, with a particular emphasis on Aboriginal children.

Details: In *Moore v British Columbia*⁶⁰ the Canadian Supreme restored classroom supports for teachers in classrooms in BC the Court agreed that 'education is a service' under human rights legislation to which children with disabilities are entitled to equal access, saying, "Adequate special education... is not a dispensable luxury... it is the ramp that provides access to the statutory commitment to education made to all children in British Columbia." This standard, as mandated by the Supreme Court, has yet to be fully realized across the country.

⁶⁰ *Moore v. British Columbia (Education)*, 2012 SCC 61, [2012] 3 S.C.R. 360

Provincial/territorial (PT) governments for the most part have not established a clear legislative framework and mandate for inclusive education and to uphold the rights of Deaf learners. New Brunswick is the one jurisdiction that has mandated inclusive education and invested significantly in resource teachers to enable teachers in the general classroom/common learning environment to teach to the diversity of all students and to adapt curriculum and teaching methods to enable full inclusion. New Brunswick has been internationally recognized for its leadership.

Suggested recommendations:

- Given how fundamental education is to the enjoyment and exercise of full citizenship, Canada should proactively encourage the Council of Ministers of Education (which brings all PT Ministers together) to extend the New Brunswick law, policy and practice standards across the country.
- Canada must provide comprehensive resources/supports for full and effective classroom supports to ensure inclusive education – this includes training of staff to support inclusion of children with disabilities in all aspects of school life such as physical education and social opportunities
- Canada must uphold the rights of Deaf and deaf-blind children to inclusive education via direct instruction in and study of ASL and English, and French and LSQ in Deaf schools and other schools, and other methods of communication for deaf-blind students.
- Canada must adopt and enforce laws, regulations and policies to recognize Sign languages as languages of instruction in all schools, including Provincial Schools for the Deaf, and to allow Deaf students to attend Provincial Schools for the Deaf or local schools which provide direct instruction in Sign language in addition to qualified Sign language interpreters, access to bilingual learning materials, and opportunities to study Sign language as a school subject.
- Canada must recognize and provide resources for more post-secondary programs to train professional interveners' and interpreters.
- Students who use braille and are learning to read must receive daily braille literacy instruction from a Teacher for Students who are Blind or Visually Impaired.
- School Districts with students who use braille access and use individuals certified in Unified English Braille Code (UEB) to produce the day-to-day braille materials.
- Canada must provide students who are blind or partially sighted with educational material in an appropriate alternative format such as Braille, large print and accessible audio.
- Canada must restore a national data collection mechanism for children with disabilities to be able to generate accurate estimates to guide policy-making, benchmarking and monitoring progresses in different aspects such as education and service provision for students with disabilities.

Article 27: Work and Employment

Issue 38: Please give an update on further measures taken to increase the levels of employment by persons with disabilities, including persons with intellectual and/or psychosocial disabilities.

Details: In 2011, the employment rate among persons aged 15 to 64 with a reported disability was 47% compared to 74% among those without a disability. Some groups within the population with disabilities experienced even lower employment rates. Among women

with disabilities, the rate was 45%. Among youth aged 15 to 24 years, 52% of youth without disabilities were employed compared to only 32% among youth with disabilities. Only 26% of Canadians with very severe disabilities were employed. Only 22% of people who were Deaf, deafened or hard of hearing were employed. Only 37% of working age Canadians who are blind are employed.

Approximately 500,000 workers in Canada are injured or acquire work-related illnesses each year. About 10% have serious injuries that become permanent disabilities. Of this 10%, approximately half are able to return to work. The other 50% (or 25,000 people) end up unemployed or under employed, depressed and suffer deteriorating health status. Many who attempt to return to work become injured a second or their time, leading to greater impairments and eventually lose their attachment to the labour market.

Canada has failed to effectively ensure access to work for persons with disabilities. Recent years have seen a dramatic rise in part-time or precarious employment that provides no access to benefits. People with disabilities and among them women, racialized persons, immigrants, Indigenous people, older adults and young people are disproportionately represented among those relying on precarious employment. The federal government's response to address these disparities has been ineffective.

The federal government provides millions of dollars in wage subsidies, through a variety of federal-provincial/territorial agreements. Yet many who work in the field argue that subsidies are not effective in the long term. While there has been an evaluation process of employment programs for people with disabilities, the effectiveness of subsidies has not been measured and these wage subsidies remain at the heart of this program.

In 2014, Canadian business and government established "SenseAbility" to promote employment for people with disabilities. The focus is on employers who are already hiring people with disabilities - mainly large firms. This has turned attention away from small and medium-sized businesses, where the majority of jobs in Canada are found. These small and medium employers need financial support to lessen the cost of accommodation.

The lack of harmonization of employment-related laws and policies, such as Employment Standards, Labour Relations, Workers Compensation, Human Rights, Employment Insurance, CPP-Disability and Social Assistance, creates barriers for people with disabilities seeking employment. In 2012, a change to the employment equity legislation found federally regulated employers are no longer held to the same standards as the federal government.

The Government of Canada allocates \$222 million annually to provinces and territories through Labour Market Agreements for Persons with Disabilities (LMAPDs) to design and deliver programs and services to increase employment opportunities for persons with disabilities. The Government of Canada indicated in their report that a new generation of these agreements will include stronger accountability regimes. While well intentioned, the Government of Canada has little to no control over the allocation of the resources within the LMAPDs. This funding often does not focus on employment, but is rather redirected to health.

Securing employment is an important first step! Retaining employment and having the opportunity to experience progression within the workplace is an important next step (Article 27.1(e)). In 2010, 41% of people with disabilities who reported employment income

were earning less than \$15,000. Among people without disabilities, only 28% reported this level of employment income.

Issue 39. Please provide information about the number and places for sheltered workshops or similar segregated employment settings for persons with disabilities. Has the number increased or decreased since 2010?

Details: Although enrollments in sheltered workshops are slowly declining, segregated day programming and enclave-based employment persist as a dominant model of support for persons with disabilities, particularly intellectual disabilities, in Canada. With below minimum wage compensation, they constitute a form of financial exploitation and social and economic exclusion with substantially lower quality-of-life outcomes than employment-focused approaches.

It is extremely difficult to get any data about the number of people with disabilities working in sheltered workshops throughout Canada. The Government of Ontario surveyed agencies that provide segregated employment settings. Of the 50% that did respond, it was reported that 3,463 individuals were involved in 52 'workshops.'

Suggested recommendations:

- Canada should initiate a robust evaluation of the effectiveness of wage subsidies to lessen the gap in employment rates between Canadians with disabilities and Canadians without disabilities.
- Canada should create a national accommodation fund that is operated on a continuous basis by an NGO, to ensure employers are able to hire without undue hardship.
- Canada should work with other levels of government, unions, employers and the civil society to create a harmonized approach to remove barriers to employment that are imbedded in current laws, programs and policies.
- Canada must develop a reporting mechanism that includes indicators of effectiveness of the initiatives undertaken through programs funded by the LMAPDs.
- Canada must develop a robust definition of retention that can be utilized to ensure that employees with disabilities experience comparable job retention and career advancement opportunities to those afforded to people without disabilities.
- Canada should initiate an effective transition from sheltered workshops and day programs to Employment First approaches incorporating a framework that includes clear definitions and principles, cross-departmental and inter-jurisdictional policy and ongoing processes of capacity development at the local level.
- The federal government should create a targeted fund within the Opportunities Fund for Persons with Disabilities to develop a national partnership and local demonstration initiatives focused on transitioning from sheltered workshop and day programs to Employment First programming.
- The federal government should fund new priorities within the federal-provincial Multilateral Framework Agreement for Labour Market Agreements for Persons with Disabilities, and the federal-provincial/territorial Labour Market Agreements.

Article 28: Adequate standard of living and social protection

Issue 40: Please provide disaggregated information about the percentage of persons with disabilities, particularly indigenous persons with disabilities and women with disabilities, who receive funding for housing and adaptation. Please provide information about poverty reduction strategies that include persons with disabilities.

Details: *Housing:* Canada is conducting consultation concerning the development of its first national housing strategy. Civil society has been engaged in this exercise and has been bringing forward concerns related to Canadians with disabilities. According to the 2012 Canadian Survey on Disability, 10.7% of Canada's adult population with disabilities are living in housing does not meet one or more of the adequacy, suitability or affordability standards, **and** have to spend 30% or more of its before-tax income to access acceptable local housing.⁶¹

Among people with disabilities living on a low income, 15.5% live in housing that is in need of major repairs because of plumbing problems, electrical wiring and structural issues, compared with 9.8% of people without disabilities who live on low incomes.⁶² 15.1% of working-age women with disabilities in low income households live in places that are in need of major repairs, such as for defective plumbing or electrical wiring, or for structural repairs to walls, floors or ceilings. This is the case for 12.1% of their counterparts who live above the LICO ("Low Income Cut Off," sometimes called the poverty line) and for 6.4% of women without disabilities.⁶³

The 2011-14 "Investment in Affordable Housing Strategy" aimed to increase the supply of affordable housing, but no data have been provided to indicate the number of people with disabilities who have benefited from this program.

Income assistance: Canadians with disabilities, tend to have a lower standard of living than others due to factors such as low income, lower educational attainment, lack of affordable housing, and unmet needs for aids and devices.

Income assistance programs across Canada must have regular increases that respond to the cost of living. People on income support should have access to maximum support from all levels of government without deduction. For example, if someone is on Canada Pension Plan Disability (CPPD), they should be able to receive their provincial social allowance without deduction until they reach the LICO.

Moreover, if people are able to work, they should also be able to work without deduction until their income reaches the LICO. This is not the case in most jurisdictions.

Suggested recommendations:

⁶¹ Unpublished data, 2012 Canadian Survey on Disability

⁶² "On the Home Front: Poverty, Disability, Housing and Help with Everyday Activities"

<http://www.ccdonline.ca/en/socialpolicy/poverty-citizenship/demographic-profile/on-the-home-front>)

⁶³ "Gender, Disability and Low Income" <http://www.ccdonline.ca/en/socialpolicy/poverty-citizenship/demographic-profile/gender-disability-low-income>

- Canada's proposed national housing strategy must ensure access to affordable and accessible housing for persons with a disability.
- Canada's income assistance programs must have regular increases that reflect increases to the cost of living. People on income assistance should have access to maximum support from all levels of government without deductions based on access to other programs.

C. Specific obligations (Articles 31-33)

Article 31 – Statistics and Data collection

Details: In 2010, the federal government announced the implementation of a new Data and Information strategy (DIS) concerning Canadians with disabilities and it was embraced by civil society. There is now a new short and long set of screening questions to identify adults with disabilities. These questions were used in the 2016 Census of Population, the 2012 Canadian Survey on Disability, and on some cycles of the General Social Survey and the Canadian Income Survey. They will be included in the 2017 Canadian Survey on Disability.

However, there has been little progress in other areas. In terms of **coverage**, Canada is missing close to one million adults and children with disabilities from estimates by limiting surveys to adults residing in private households.

These surveys exclude adults living in households in First Nations communities. The 1991 Aboriginal Peoples Survey showed that the rate of disability was higher among residents in these communities than in the rest of Canada.

Children with disabilities have not been included since the 2006 Participation and Activity Limitation Survey. In that survey, the rate of disability among children under the age of 15 years was 3.7% (an estimated 202,000 children). While the new Canadian Health Children and Youth Survey includes questions to identify children and youth with disabilities, the pilot survey questionnaire does not include any questions on the nature and extent of barriers encountered by the child/youth with disabilities or the impact on the family. The survey is also using different questions to identify youth with disabilities (aged 15 to 17). This will result in two different estimates for this age group.

Adults with disabilities living in health-related institutions have not been included since the 1991 Health and Activity Limitation Survey. According to the 2011 Census of Population there were an estimated 445,000 individuals residing in long-term care facilities, residential care facilities, group homes and other health-related institutions. It is assumed that the majority of these individuals have some level of disability but little is known about the nature and extent of neither their disability nor their need for supports. Given the federal government's focus on housing and caregiving, such data are needed to explore issues such as what prompted the move into care, etc. to inform the development of the housing strategy and discussions related to supports for caregivers.

Deaf people have not been included in the Data gathering techniques in Canada because it does not distinguish between levels of hearing loss, so no accurate information on the number of Deaf people in Canada exists in particular to our Sign languages.

Little is known about **youth and adults with disabilities in correctional facilities and penal institutions** except that it is known anecdotally that many have mental health issues and learning disabilities. According to the 2011 Census of Population, there were an estimated 21,855 individuals with disabilities living in such facilities.

Data on the homeless is sparse and information about disability among the homeless is anecdotal only. The new "Point-in-Time" (PIT) Count survey is scheduled for 2018 but the questionnaire does not include any question about disability. This might be an opportunity to expand the PIT to include one or more disability questions.

Suggested recommendations:

- Canada should explore opportunities to collect pertinent information on these missing populations to ensure that they are addressing the needs of ALL Canadians with disabilities.
- According to Canada's State Report, the new DIS was supposed to produce an information platform that brought together all data concerning people with disabilities as derived from administrative data and survey data and that these data were to be made more accessible to civil society. This has not happened.
- Canada must make good on its promise to develop an information platform so that available data are accessible to civil society.

Article 33: National implementation and Monitoring

Issue 43: Please provide information about any measures taken towards establishing an independent mechanism in compliance with article 33(2). Please also provide information about measures to ensure participation of persons with disabilities in line with article 33(3).

Canada has not designated an independent mechanism to promote, protect and monitor the implementation of the Convention, as required by article 33.2. The Canadian Human Rights Commission, with the appropriate mandate and resources, should be designated as the monitoring mechanism. The Canadian Human Rights Commission has the legislative basis to promote, protect and monitor human rights in accordance with the Paris Principles. However, the Commission cannot effectively fulfill this function within its existing resources or a narrowly focused federal mandate. To be effective in this role, the Commission needs a clear mandate to monitor the implementation of the Convention nationally, not just federally. To do this effectively, the Commission will need to collaborate with provincial and territorial statutory human rights institutions and consult with disability communities.

Canada is not fully involving people with disabilities and their organizations in all stages of planning, implementation and monitoring of the Convention. The 2013 decision by Canada (Social Development Partnerships Program – Disability) to move from its historic on-going financial support of disabled peoples' organizations to an open competitive process has had

a devastating impact on the organizations that represented numerous factions within the Canadian disability community. Canada has a robust network of organizations that can support the diverse needs of this heterogeneous population to ensure that all disabilities and all ages are truly represented. Indigenous persons with disabilities must also have opportunities to be involved in monitoring and implementation efforts. Indigenous persons with disabilities require resources to support their involvement.

The Government of Canada can demonstrate leadership on national implementation of the Convention by creating a federal-provincial-territorial mechanism that includes a mandate for consultation with the disability communities, for ongoing collaboration between federal, provincial and territorial governments, and for the development of a shared implementation strategy. This recommendation is critical if Canada is to make further progress toward improving the living conditions, in general, for persons with disabilities. It is also required in order to comply with articles 33(1) and 4(3) of the Convention. Experience shows that for such a mechanism to be effective, it has to function at least at the assistant deputy minister level and avoid the practice of downward delegation to working-level officials who do not have the authority to advance the policy leadership required for full implementation of the Convention.

Canada's report (Para 41) refers to an 'F-P/T Persons with Disability Advisory Committee' as an important way in which Canada is fulfilling its obligations under Article 33. This committee is not known to the disability community and has not consulted with DPOs.

Suggested recommendations:

- Canada must designate the Canadian Human Rights Commission as the independent mechanism to promote, protect and monitor the implementation of the Convention. Additional resources must accompany this designation in order to enable the Commission to adequately fulfill the role.
- Canada must designate funding to support disability organizations to fulfill their role in planning, implementing and monitoring the Convention. Particular attention must be paid to ensure that children and youth with disabilities, indigenous persons with disabilities, Deaf persons and women with disabilities must also have sufficient resources and opportunities to participate in monitoring and implementation efforts.
- Canada, through the existing federal-provincial-territorial mechanism and in consultation with the disability community, must develop and execute a shared plan to implement the Convention.