



International Disability Alliance (IDA)

Member Organisations:

Disabled Peoples' International, Down Syndrome International, Inclusion International, International Federation of Hard of Hearing People, World Blind Union, World Federation of the Deaf, World Federation of the DeafBlind, World Network of Users and Survivors of Psychiatry, Arab Organization of Disabled People, European Disability Forum, Red Latinoamericana de Organizaciones no Gubernamentales de Personas con Discapacidad y sus familias (RIADIS), Pacific Disability Forum

Joint submission by the Canadian Association for Community Living (CACL), Inclusion International (II) & the International Disability Alliance (IDA) on Canada, 61st session of the UN Committee on the Rights of the Child

Introduction

This submission provides supplementary information from the Canadian and international disability movement to the third and fourth periodic reports (*hereinafter* State Report) submitted by the Canadian government to the CRC Committee in November 2009. In particular, it provides responses to the List of Issues (p 1-6) and proposes recommendations for the Concluding Observations (p 7).

The submitting organisations are described in Annex II (p 18) to the report and preceded by Annex I which includes extracts of State report, list of issues (p 8) and treaty body Concluding Observations with respect to Canada referring to children with disabilities (p 14).

CANADA

Canada ratified the UN Convention on the Rights of Persons with Disabilities (CRPD) on 11 March 2010. It is clear that the human rights standards of the CRPD and the CRC intersect and reinforce each other when it comes to the rights of children with disabilities.

Data Collection and Analysis – List of Issues questions I.5, III.2, III.3, III.4 (Articles 2, 4, 23, CRC)

The Participation and Activity Limitation Survey (PALS) has been Canada's 'flagship' disability survey. This survey was conducted every five years with the last collection being in 2006. The Government of Canada has discontinued this data collection tool and no further information beyond the 2006 survey will be available. Also discontinued are the National Longitudinal Survey of Children and Youth (NLSCY) and Youth in Transition Survey.

Civil society organizations, as well as independent consultants, have expressed concerns and advised that the cancellation of PALS puts the database for information about disability at risk. The Government of Canada has stated that a new data collection tool will replace PALS and that this new strategy will provide data that is of equal quality to the information

that had been collected by PALS. While there have been consultations with the disability community and stakeholders, as yet there has not been a public release of a new strategy that could confirm that a proposed data collection mechanism will provide information that is as reliable, and of the same quality as that which was provided by PALS. Based on work undertaken on the new strategy to date, there would not seem to be a focus on children with disabilities aged birth to 14 years.

The ending of PALS coincided with the cancellation of Canada's Long Form Census. The Long Form Census is replaced by a voluntary National Household Survey. There are concerns due to a high non-response rate to this survey which makes data available through this method much less reliable.¹ These concerns are due in particular to the fact that people with low incomes, lower levels of education, marginal attachment to employment and groups who are otherwise marginalized tend to have lower response rates to voluntary surveys. People with disabilities and their families have disproportionately low incomes and face various other disadvantages raising deep concerns that data related to persons with disabilities gathered through a voluntary survey will be particularly unreliable.

Without such sources for data and analysis there is at present a diminished capacity to measure adherence and compliance to the Convention on the Rights of the Child and other international treaties. In particular, the obligation to collect appropriate information, including statistical and research data, is set out in Article 31 of the CRPD to enable the formulation and implementation of policies to give effect to the rights of children and adults with disabilities.

Children with disabilities deprived of family environment and placed in institutions – List of Issues questions III.2 and III.3 and I.8 (Articles 2, 3, 9, 18, 20, 23)

Different sources have indicated that children with disabilities are over-represented in provincial/territorial child welfare systems in Canada. In the Province of Ontario, a 2006 review of Crown wards by the Ministry of Children and Youth showed that 82 % of children and youth have special needs related to behavioural, developmental, physical or mental issues.² Other findings have made similar estimates that the number of children in care who have disabilities range from 50-60%.

There is not ready access or capacity for national organisations for the collection and analysis of such data on numbers of children with disabilities deprived of a family environment or being placed in institutions, however the anecdotal evidence is that the majority of children entering these systems are children with disabilities. Evidence such as cited above shows that such data and information on children with disabilities does exist, yet publication of such data occurs only inconsistently and infrequently. There is need for aggregation and analysis of such data at a federal level but no existing mechanisms.

An added issue of concern are reports of parents placing their children with disabilities into care or custody for the sole reason of securing the supports that are necessary. This matter was reported on by the Ombudsman of Ontario in 2005 in the report *Between a Rock and a Hard Place*.³ Parents of children with disabilities were being forced to surrender their children to Child Welfare officials in order to obtain access to the care that was needed. Instances of this practice continued to be reported in 2011-2012. It is not known whether such practices and issues have occurred in other provinces or territories. These practices violate children's right to live in the community; Article 19 of the CRPD requires the State to take effective and appropriate measures including by ensuring access to a range of in-home,

¹Statistics Canada, National Household Survey: Data Quality. <http://www.statcan.gc.ca/survey-enquete/household-menages/nhs-enm-eng.htm>.

² Ontario Ministry of Children and Youth Services, *Crown Ward Review 2006*. Queen's Printer of Ontario, 2006.

³ Ombudsman of Ontario, *Between a Rock and a Hard Place*, Toronto: Queen's Printer of Ontario, 2005.

residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.

Child and Family Poverty – List of Issues question I.9 (Articles 2, 23, 27, CRC)

Children with disabilities and their families endure greater and disproportionate rates of poverty and low-income than others in Canada. The Low Income Cut Off (LICO) is used in Canada to measure the point at which a family will likely devote a larger share of its income on the necessities of food, shelter and clothing than the average family. 19.1% of children with disabilities live in households that fall below the LICO, compared to 13.4% of children who do not have a disability.⁴ It should be pointed out that the LICO does not take into account the non-reimbursed costs related to disability. Therefore, the low-income situation of children with disabilities and their families is likely understated.

Parents of children with disabilities report that as a result of their child's condition they worked fewer hours (38.4%), changed their work hours (36.5%), did not take a job (26.4%), quit work (21.6%), or did not take a promotion (19.7%). The employment situation of mothers (64%) is most affected. Of the many parents needing additional help, nearly three quarters cite cost as the primary reason that they cannot get it and more than a third of parents report having out of pocket expenses for getting the assistance that they need.⁵

An example of the needs for support can be taken from the province of Ontario where there are currently 6 657 families on waiting lists for support for their children. These numbers have grown from zero in 2008, when government had addressed waiting lists on a yearly basis, to the current number of 6 657 over a period of four years.⁶

Financial support mechanisms to families, and in particular families of children with disabilities, exist as a patchwork of programs administered federally, provincially and territorially. It is not clear whether the current blend of programs has been effective in closing the deeply concerning gap experienced by families that have a child with a disability. Capacity for research and analysis in this area is needed in order to understand the effectiveness and impacts of such programs and to guarantee children's right to an adequate standard of living and social protection in accordance with Article 28 of the CRPD.

Decision Making and Supports – List of Issues questions I.8 and I.9 (Articles 12, 23 CRC)

Children and adults with disabilities in Canada have been vulnerable to having their decision-making rights and legal capacity restricted or removed altogether through provincial and territorial guardianship and decision-making statutes. Article 12 of the Convention on the Rights of Persons with Disabilities recognizes that all persons with disabilities enjoy legal capacity on an equal basis with others, and secures the right to use support in exercising one's legal capacity. Without clear commitments to preservation of legal capacity and decision making rights, there is a danger that children with disabilities reaching the age of majority may have their decision making rights limited or removed.

This issue has come into play in relation to income security programs in Canada, and so the issues identified below are also of relevance to question I.9 discussed above. The

⁴ Statistics Canada, Participation and Activity Limitation Survey 2006 : Families of Children with Disabilities in Canada. Ottawa: Statistics Canada, 2010.

⁵ Statistics Canada, Participation and Activity Limitation Survey 2006 : Families of Children with Disabilities in Canada. Ottawa: Statistics Canada, 2010.

⁶ Numbers obtained from Ministry of Community and Social Services, Ontario.

Registered Disability Savings Plan (RDSP) was launched by the Government of Canada in 2008 as a registered investment tool allowing people with disabilities to invest and save for their future. Since it was launched approximately 55 000 people have opened RDSPs and have contributed \$220 M. The Government of Canada has made contributions to this program nearing \$450 M. These plans are of undoubted benefit to the future financial security of persons with disabilities who are able to access and contribute to them.

However, people with intellectual disabilities have encountered barriers and disincentives to opening RDSPs because of reluctance on the part of financial institutions to recognize their legal capacity and decision-making authority to open the savings plan and enjoy its benefits. With the exception of the province of British Columbia, provincial and territorial legislation requires that legal authority to manage finances of an adult requires that the another person assume decision making authority — usually achieved through costly and complicated processes of adult guardianship. This process strips an individual's personhood and decision making rights.

There is particular concern that children with disabilities who have had a plan created, upon reaching the age of majority, will encounter this situation and would be pulled into systems of guardianship and removal of rights to legal capacity. This is of particular concern with regard to the needs of children in care. Active steps must be taken to ensure that children with disabilities, including children with intellectual disabilities, have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realise that right, in conformity with Article 7 of the CRPD.

In 2012, the Government of Canada introduced measures that would temporarily allow family members to stand as the plan holders for an RDSP. This provision was introduced with a four year window in order that provinces and territories may undertake steps to make the necessary legislative changes to recognise the legal capacity and decision making rights of all persons. Critical action is currently required in provincial and territorial jurisdictions to bring such legislation into compliance with the Article 12 of the CRPD. This pressure is reinforced by the temporary measures introduced to accommodate the RDSP and allowing time for governments to engage the legislative change that is necessary.

Inclusive Education – List of Issues questions III.3 and III.4 (Articles 28, 23, 2, CRC)

The right to inclusive education of children with disabilities is recognised in Article 24 of the CRPD. Inclusive education forms the foundation for lifelong patterns of inclusion for children with disabilities. These patterns of inclusion are established for children in the early years in family life, early childhood education, pre-schools, and in classrooms in neighbourhood schools.⁷ Research has shown that children with disabilities who experience inclusion in early years enjoy more inclusive outcomes as adults and that inclusive education is better for all children, also producing better learning outcomes.⁸ However, we know that inclusive education is not a reality for many children with disabilities in Canada. Investments continue to be directed toward segregated school systems and segregated classrooms for children with disabilities.

When the last Participation and Activity Limitation Survey (PALS) was conducted in 2006, more than 4 out of every 10 children with disabilities aged 5 to 14 years were receiving some form of education outside of the regular classroom during the 2005 and 2006 year. Of these 70 600 children, 62.4% received part-time special education while the remaining children

⁷ Vianne Timmons and Maryam Wagner, Inclusive Education Knowledge Exchange Initiative: An Analysis of the Statistics Canada Participation and Activity Limitation Survey. Regina: Canadian Council on Learning, 2010.

⁸ OECD, Inclusive Education at Work: Students with Disabilities in Mainstream Schools. OECD Publishing 1999.

attended segregated classes full time. Nearly half of the children attending segregated classes went to a segregated school full time.⁹

There are jurisdictions in Canada that have policies for inclusive education and have taken steps to ensure that all children have access to and enjoy an inclusive education. The Province of New Brunswick is internationally recognised as a center of excellence for inclusive education and provides models for transformation of educational systems that remain heavily invested in segregated education for children with disabilities.

In other jurisdictions, an inclusive education is a distant reality for all but a few children with disabilities. In Canada's largest province of Ontario, 6 school boards continue to operate completely segregated schools for students with intellectual and other disabilities. Other data on the degree of segregation and degree of inclusion is more difficult to ascertain due to the manner in which this data is collected. We know that in 2011 Ontario students with an identification of intellectual disability at the elementary level spent 68.7% of their day in partially or fully segregated settings. For students at the secondary level this figure is 80%. Moreover, these statistics remain essentially unchanged from prior findings of 68.8% and 81% in 2001.¹⁰ However, experiences of families, people with disabilities and their organisations attest that segregation of students with intellectual disabilities is the norm in this province. For students with intellectual disabilities in Ontario a quality inclusive education is essentially off-limits. They encounter barriers in policy, funding formulas, attitudes and practices. These are barriers to equal enjoyment of rights. But moreover, they are barriers to quality education, friendships and the dream and pursuit of a good life.

This gap in experience between provincial and territorial jurisdictions, and between school boards within the same province, demonstrates that inclusive education is most certainly possible and can be realised throughout the country. The tools needed for this task are knowledge sharing and networks of policy leadership, community development, professional development and leadership initiatives, and inter-jurisdictional exchange of knowledge and best-practices. This role has been played by the not-for-profit sector in Canada by organisations like the Canadian Association for Community Living (CACL) in partnership with local communities, school boards, educators and professionals, families, governments and students. The national Community Inclusion Initiative, delivered via CACL and People First of Canada, has over the past years demonstrated much success in advancing inclusive policy and practice within education systems across Canada; and in fact the Government of Canada reported on the success of this program in its report to the United Nations in September 2011 on the implementation of the Convention on the Rights of Persons with Disabilities.

Violence and abuse (Articles 19, 39, CRC)

There are few studies of violence and abuse against children with disabilities to confirm the estimated high rates. In one of the few Canadian population studies of substantiated instances of maltreatment of children aged birth to 15, 11% of cases or 9 805 children had been identified as having an intellectual disability. These rates need to be treated with caution as intellectual disability was only identified in the course of "child impact assessments."¹¹ Estimates of rates of victimisation and abuse of children with disabilities are high. A large British Columbia survey of high school students found that students with disabilities were more than two times as likely as their peers to have been physically abused,

⁹ Statistics Canada, Participation and Active Limitation Survey 2006: A Profile of Education for Children with Disabilities in Canada. Ottawa: Statistics Canada, 2008.

¹⁰ Sheila Bennett and Tiffany L Gallagher, *The Delivery of Educational Services for Students who have an Intellectual Disability in the Province of Ontario*. Toronto: Community Living Ontario, 2012

¹¹ Public Health Agency of Canada, Canadian Incidence Study of Reported Child Abuse and Neglect: 2008 Major Findings. Ottawa: Public Health Agency of Canada, 2010.

or sexually abused and were three times more likely to have experienced both physical and sexual abuse.¹²

In some cases there has been reluctance among the general public and professionals to report instances or suspicions of abuse or maltreatment of children with disabilities. This reluctance and uncertainty about reporting abuse and maltreatment may be due to attitudes toward disability generally.

Filicide, the killing of children by parents, is an issue of dire concern to the disability community in Canada. While data is not officially gathered on such cases, a review of 40 cases of apparent filicide or attempted filicide finds that the Canadian justice system has been lax in response to such cases. While some advocates of 'mercy killing' have called for changes to statutes to enable a category of "compassionate" or "altruistic homicide", Canada has not made those changes.¹³ In the case of the murder of Tracy Latimer, Canadian courts ruled against the claims of the father to a category of 'compassionate homicide.' Nevertheless, the issue remains a frequent source of public debate. This gap in public opinion, understanding and acceptance of disability calls for measures that promote the dignity and personhood of children with disabilities. Article 16 of the CRPD in particular requires that the State put in place effective legislation and policies, including women- and child-focused legislation and policies, to ensure that instances of exploitation, violence and abuse are identified, investigated and where appropriate prosecuted. Equal application of the law without discrimination on the basis of disability to cases of homicide, violence, abuse and neglect are critical to ensuring the equal rights of children with disabilities.

¹² Smith A, Stewart D, Peled M, Poon C, Saewyc E, and the McCreary Centre Society. *A Picture of Health: Highlights of the 2008 British Columbia Adolescent Health Survey*. Vancouver: McCreary Centre Society, 2009

¹³ Sobsey, Dick. Filicides of Children with Disabilities. In N.A. Jackson (Ed.), *Encyclopedia of Domestic Violence* (pp. 327-333). New York: Routledge. 2007.

CACL, II & IDA suggested recommendations for Concluding Observations:

Articles 2, 4, 23

- Ensure that the effective collection of adequate data on children and adults with disabilities, including women and girls with disabilities and aboriginal children with disabilities, will continue through new and improved data collection tools. Use disaggregated data and results of studies to develop policies and programmes to promote equal opportunities for them in society.

Articles 2,12, 23

- Ensure that children and young people with disabilities have the right and opportunity to freely express their views on matters of treatment, services and support, and for their views to be given due weight in accordance with the age and maturity of the child, without any discrimination based on disability, and that they have access to age- and disability-appropriate support to exercise these rights.
- Ensure that children and youth with disabilities enjoy the right to legal capacity on an equal basis with their age-related peers in areas of decision-making, and that there are appropriate supports available for children with disabilities in making and articulating their decisions. Take appropriate and effective measures to ensure the equal right of children with disabilities reaching majority to take part in the Registered Disability Savings Plan (RDSP) and have the right to control their own financial affairs and are not arbitrarily deprived of their property.

Articles 2, 19, 39

- Address the heightened risk for children with disabilities, in particular girls, of becoming victims of violence, exploitation, abuse, filicide and other harmful practices, and ensure the requisite sanctions for perpetrators, and urgent measures to ensure that both services and information for victims are made accessible to children with disabilities living in institutions and the community.

Articles 2, 3, 9, 18, 20, 23, 27

- Address the disproportionate rate of poverty among families with a child with disabilities by providing sufficient and timely support to families, including increased social assistance and welfare benefits and access to disability related aids and assistive devices for children, in order to ensure that all children can live and be raised in family environments in the community.
- Devise a general plan for the deinstitutionalisation of children with disabilities and the development of community based services and support to children with disabilities and to their families, including foster families, in close consultation with organisations of persons with disabilities.

Articles 2, 23, 28

- Take steps to ensure that inclusive education is available across all provinces and territories by promoting, establishing and implementing programmes for knowledge sharing, networks of policy leadership, community development, professional development and leadership initiatives, and inter-jurisdictional exchange of knowledge and best-practices.
- Include inclusive education as an integral part of core teacher training curricula in universities to ensure that the values and principles of inclusive education are infused at the outset of teacher training and teaching careers of *all* teachers. Make available support in classrooms, and the accessibility of educational materials, curricula, and school environments. Ensure the law provides enforceable remedies to children with disabilities and their families who have been refused access to inclusive education, or who have been denied the provision of reasonable accommodation with respect to education.
- Adopt measures to ensure that all education, information, healthcare and services relating to sexual and reproductive health, HIV and STIs, are made accessible to children and adolescents with disabilities in age-appropriate formats.

ANNEX I - Selected references to children with disabilities in the State report:

State report

16. In 2007, there were an estimated 6,941,011 children under 18 years of age in Canada. Census data from 2006 indicates that there were 599,945 children under 18 years of age of Aboriginal ancestry in Canada. Appendix 4 contains further detailed statistics on Canadian children, disaggregated by sex, age, province or territory, area of residence, family type, household income level, disability, youth in custody, and *Criminal Code* offences.

33. A number of reports regarding the inclusion of persons with disabilities have been published at the following web site: www.hrsdc.gc.ca/en/disability_issues/reports/index.shtml.

57. In 2005, the maximum annual Child Disability Benefit increased to \$2,000 from \$1,681 per child and has been indexed since. In 2006, the maximum was again increased to \$2,300 per child.

59. The Registered Disability Savings Plan (RDSP) helps parents and others save to ensure the long-term financial security of a child with a severe disability. The RDSP is a tax assisted savings vehicle that allows investment income to grow on a tax-deferred basis. The Government of Canada also provides direct assistance through Canada Disability Savings Grants and Canada Disability Savings Bonds.

134. The Poverty Reduction Strategy supports a broad mix of policy and programs to prevent, reduce and alleviate poverty. The five main goals of the strategy are improved access to services, a stronger social safety net, improved earned incomes, a strong focus on the needs of children and families, and a better educated population. There is an annual \$100 million investment in this strategy including a series of targeted investments for persons with disabilities, families with low income, women vulnerable to poverty, youth and seniors in the province. Measures include: increased grants for the province's women's centres; increases to the minimum wage; increase and indexation of Income Support rates; and increased availability of family law support services. In order to better protect people who live with poverty from discrimination, changes were made to the *Human Rights Code* to prevent discrimination based on source of income.

267. The Government of New Brunswick collects data on children with disabilities for effective program planning and budget allocations and to identify students at-risk of learning challenges. In addition, the government collects enrolment, achievement, and dropout data on First Nation students attending public school and living on reserve in order to improve education programs and services for Aboriginal children.

276. The Government of New Brunswick has worked with a committee of Ministers and stakeholders on developing a definition of inclusive education. In partnership with stakeholders, the government has also developed an *Autism Strategy* and a *Provincial Learning Disabilities Strategy* built around early intervention, ongoing support, and reducing wait times for services. In October 2007, the Government of New Brunswick developed a new guideline on the duty to accommodate students with a disability in public and private schools from kindergarten to Grade 12 ([www.gnb.ca/hrccdp/ PDF/pamphlet-accommodating-students-disability.pdf](http://www.gnb.ca/hrccdp/PDF/pamphlet-accommodating-students-disability.pdf)).

279. Child care costs are eligible to be deducted from income and reduce taxable income. As a result, New Brunswick residents' taxable income and personal income tax payable are reduced. The annual deduction per child is as follows:

- Under age seven – maximum deduction of \$7,000
- Over age seven and under age 16 – maximum deduction of \$4,000
- Children eligible for disability tax credit – maximum deduction of \$10,000

323. In December 2004, the *Mesure exceptionnelle de soutien à l'intégration dans les services de garde pour les enfants handicapés ayant d'importants besoins*, came into effect in Québec. This measure supports the integration in the day-care system of children with disabilities that have special needs. It consists of an allowance provided to daycare service providers to cover part of the additional costs incurred due to the extra hours required to support a child with a severe disability.

329. The CIRSE, which came into effect on January 1, 2005, replaced the Québec Family Allowance, the non-refundable tax credit for dependent children under the age of 18 and the tax reduction for families, and provided increased benefits. The CIRSE offers financial assistance to every family with a dependent child under 18 years of age to help cover costs for their essential needs, and provides higher benefits to low-income families. The level of the benefits is established according to marital status and the number of children in the household. For example, in 2008, families with two dependent minor children were eligible for annual benefits of up to \$1,365 (single-parent families) or \$1,924 (couples). This is an increase from benefits under the previous family allowance plan in 2004. In addition to the child support benefits, the CIRSE offers a \$167 monthly supplement for children with disabilities, irrespective of family income or marital status. In 2007, more than 870,000 families received this tax credit, representing more than \$2 billion.

399. Also in November 2006, the Government of Ontario increased the maximum allowable deduction for recipients of the Ontario Disability Support Plan for informal child care costs to \$600 per child per month and the up-front child care benefit for informal child care to \$600. Where child care is provided by a licensed provider, the costs of child care (with no maximum costs) are eligible as a deduction from the recipient's monthly net employment earnings, training wages, or business income. For unlicensed providers, the costs of child care are eligible as a deduction up to a maximum of \$600 per child per month. The amount is the same for all children, including children who require child care for special circumstances.

Non-discrimination

479. The Government of Manitoba funds a variety of newcomer youth projects that support the goals of non-discrimination and cultural diversity. During the reporting period, a number of projects and initiatives were introduced:

- The New Settlement Strategy identifies the need for project-based activities to meet the specific needs of immigrant and refugee groups, such as women, youth, persons with disabilities and vulnerable populations. This includes a range of programs to address psycho-social needs related to adaptation, family violence, intergenerational communication, parenting, youth development and crime prevention.

487. Training is available for staff in the areas of childhood disability, intervention techniques and family-centred practice. These topics assist staff to better understand the unique needs of the child and support the family to make decisions that are in the "best interests" of their child. Training is also provided to tutors and educators to deliver the Applied Behaviour Analysis program to children with a diagnosis on the autism spectrum.

497. Manitoba tax credits for the benefit of children include the following:

- Budget 2007 raised the Eligible Dependent amount from \$6,482 to \$8,034, matching the Basic Personal Amount.
- Effective January 1, 2008, the Manitoba Family Tax Benefit has been enhanced and is folded under the non-refundable tax credit block. Manitobans can claim \$2,065 for an eligible dependent and \$2,752 for each dependent 18 years of age or younger.
- The Children's Fitness Tax Credit is a non-refundable tax credit based on eligible fitness expenses paid to register a child in a prescribed program of physical activity. Parents can claim up to \$500 per year per child who is under 16 years of age (\$1,000 for children with disabilities).

506. Information on the *Applied Behaviour Analysis for Children with Autism Spectrum Disorders* is provided in Canada's response to advance questions with regard to the review of its Second Report on the *Convention on the Rights of the Child*. As of December 2007, 58 pre-school and 47 school-age children with Autism Spectrum Disorders receive this intervention.

525. The Government of Manitoba has entered into a number of agreements with Manitoba First Nations Education Resource Centre, which focus on sharing of training and resources for students with special needs, in particular those who are deaf, blind or have speech and language disabilities.

Pregnancy and early childhood development

545. The Cognitive Disabilities Strategy (CDS) enhanced its services and supports for the Fetal Alcohol Spectrum Disorder population, beginning in April 2006. Multi-disciplinary assessment teams have been established to allow for increased ease of access to assessment services. Travelling clinics provide services to select rural and remote areas. Intervention and Prevention Training was provided, and prevention support to high-risk communities was enhanced. A total of 10 CDS consultant positions were created in communities throughout the province to provide assistance to families and individuals aged six to 24 years with cognitive disabilities.

571. The CYFE Act and *Family Support for Children with Disabilities* (FSCD Act) entrench the right to appeal key decisions. The CYFE Act specifically directs the panel to focus on "the best interests of the child". The CYFE Regulation is available at www.qp.alberta.ca/574.cfm?page=2004_160.cfm&leg_type=Regs&isbncIn=9780779736072. The FSCD Act is available at www.qp.alberta.ca/574.cfm?page=F05P3.cfm&leg_type=Acts&isbncIn=9780779727988

Child care and support services

584. In October 2005, the Government of Alberta Five-Point Child Care Investment Plan was launched. The five points include: affordable child care, support for parents who stay home with their children, improved child care services for children with disabilities improved quality of child care, and enhanced access to early intervention programs.

Data collection and dissemination

629. The Government of British Columbia collects and analyzes data on programs to support evaluations and planning. The government also collaborates on specific research with other governments and agencies, including by providing funding for significant external research such as the Human Early Learning Partnership, an interdisciplinary university based research network working to advance early years knowledge (www.earlylearning.ubc.ca/). Funding has also been provided for the inclusion of 100 British Columbia children in a five-year (2005-2009) national research project on autism spectrum disorder.

Child and family benefits and other initiatives addressing child poverty

661. A number of measures have been implemented by the Government of British Columbia to reduce the risk of poverty for families, thereby benefiting children. For example, the 10 by 10 Challenge invites communities and industry to increase employment for persons with disabilities (www.10by10challenge.gov.bc.ca/).

670. Services for children and youth with special needs and their families have expanded in British Columbia, and a new framework was completed in 2007 to improve service coordination and accessibility between provincial ministries/agencies. Some initiatives include:

- expansion of autism resources with direct funding that allows eligible families more choice in choosing interventions for their children (www.mcf.gov.bc.ca/autism/funding_programs.htm);
- establishment of a national autism research chair at Simon Fraser University to build capacity and improve treatment and intervention options (www2.news.gov.bc.ca/news_releases_2005-2009/2007CFD0043-001334.htm);
- increase in some programs for persons with hearing impairments including transitioning, addictions and mental health services (www.mcf.gov.bc.ca/psdhh/); and
- development of new key worker and parent support approaches for families of children and youth with Fetal Alcohol Spectrum Disorder (FASD) and similar conditions to improve prevention, diagnosis, assessment, intervention and support for children and youth with FASD and their families (www.mcf.gov.bc.ca/fasd/ten_year_plan.htm).

694. In order to improve access to housing for those most in need, changes were introduced to the application process to give priority access to housing to those who face severe risk to their health and/or safety, such as those who are homeless, or experience serious health, medical or social needs. This includes those at risk of homelessness, people with mental or physical disabilities, women and children fleeing abusive relationships, or those living in severely inadequate housing.

Non-discrimination

792. In December 2007, the Government of Yukon passed a *Safe and Caring Schools Policy* (www.education.gov.yk.ca/policy/safe_schools.html), which targets bullying, harassment, discrimination, intimidation or any unwelcome behaviour that degrades a person on the basis of personal characteristics, gender, sexual orientation, race or disability.

Article 23: Rights of a child with a mental or physical disability

R. v. D.B. (2004), 252 Sask.R. 1: The issue in this case was the appropriate disposition under the *Criminal Code* for D.B., who was a young person with partial Fetal Alcohol Syndrome who had been designated unfit to stand trial by reason of mental disorder. This case was somewhat unusual as D.B. would never become fit to stand trial. D.B. was alleged to have touched a neighbour's daughter (4 years old) and was charged with sexual assault. The CRC provides for the rights and for special dispositions for children with disabilities, as appropriate to their wellbeing and proportionate to their particular circumstances and offences. These normative principles are relevant for the interpretation of sections 7 and 15(1) of the Charter, which the Saskatchewan Provincial Court found were breached in this case. The Crown did not present any evidence or argument on justification under section 1 of the Charter, so the Court considered remedies. D.B.'s foster family was found to be able to meet his needs and he did not pose a public risk. D.B. received an absolute discharge

Appendix 5 – Government of Canada Response to the Senate Standing Committee on Human Rights

Part 1 – Implementing the International Human Rights of Children at Home

The Standing Senate Committee's Report included six recommendations relating to this theme:

Recommendations 1, 19, 21, 22, 23, and 24.

International treaty-making and implementation in Canada Government departments directly involved in international treaty negotiations may also contact non-governmental organizations who have an interest in the subject matter of the treaty. As well, representatives of non-governmental organizations may sometimes participate in Canadian delegations to international treaty negotiations. For example, representatives from the Council of Canadians with Disabilities and the Canadian Association for Community Living recently participated in Canada's delegation to the negotiations on the United Nations *Convention on the Rights of Persons with Disabilities*.

These new measures build on other direct supports to parents, including the Canada Child Tax Benefit, the National Child Benefit Supplement for low-income families, the Child

Disability Benefit for families caring for a child with disabilities, maternity and paternity benefits, and the Child Care Expense Deduction. Taken together, these initiatives will provide families with over \$17 billion in direct support this year.

Support for low-income families with children

The Government is also working to improve the self-reliance of families. Budget 2007 announced a Working Income Tax Benefit to reward work for low-income Canadians. Through Labour Market Agreements for Persons with Disabilities, the Government provides funding to provinces to enhance the employability of persons with disabilities, so they can obtain and maintain employment. The Aboriginal Skills and Employment Partnership initiative helps to ensure that Aboriginal Canadians receive skills and employment training to increase their participation in economic development projects across Canada !

Support for families with children with disabilities

Policies concerning persons with disabilities fall under federal, provincial and territorial jurisdictions. By working together and in collaboration with the non-profit and the private sectors, the goal of full participation of persons with disabilities in all dimensions of Canadian society can be achieved.

Through initiatives and tax policies, the federal government aims to reduce the barriers that persons with disabilities face at various stages of life. For instance, the Child Disability Benefit provides monthly financial assistance for qualified low- to moderate-income families caring for children with severe and prolonged mental or physical impairments, and the Medical Expenses Tax Credit (METC) is available to caregivers to cover some of the costs of medical- and disability-related expenses for dependents. The federal government also provides support for children with disabilities through the Social Development Partnerships Program. In addition, financial assistance is offered under the Residential Rehabilitation Assistance Program for Persons with Disabilities (RRAP-D) to homeowners and landlords. RRAP-D supports accessibility work to modify dwellings occupied by, or intended to be occupied by, low income people with disabilities, including families with children. In recognition of the additional expenses faced by families with a disabled child, the Federal Disability Tax Credit is deducted from a household's income for applications to RRAP-D and other renovation programs.

In 2006, the federal government announced a package of initiatives to improve knowledge and research on Autism Spectrum Disorder, to enhance the evidence base on this condition and to help affected children and their families. These initiatives will contribute to Canada's capacity to share information on this important issue, and to provide effective, evidence-based treatments and early intervention. Similarly, Canada's Fetal Alcohol Spectrum Disorder initiative helps prevent alcohol-affected births and provides Canadians with identification, screening, and diagnostic tools.

The Government of Canada recognizes that an important consideration for parents and grandparents of a child with a severe disability is how best to ensure the child's financial security when they are no longer able to provide support. Budget 2007 proposed a new Registered Disability Savings Plan (RDSP) with a Canada Disability Savings Grant program and Canada Disability Savings Bond program. An individual eligible for the disability tax credit, their parent or other legal representative, may establish an RDSP. The Government of Canada is working with financial institutions to put the necessary administrative mechanisms in place to allow financial institutions to begin offering RDSPs to Canadians in 2008.

The Government of Canada is determined to improve the well-being of children with disabilities and to protect and promote the rights of persons with disabilities, a commitment demonstrated by Canada's active participation in the negotiation of the United Nations *Convention on the Rights of Persons with Disabilities* and by its signing of the *Convention* on March 30, 2007.

Adoption

Adoption provides a family to a child who would not otherwise enjoy adequate parental support. Although adoption falls within the jurisdiction of the provinces and territories, the

Government of Canada plays an important role in this area, in particular with respect to Aboriginal children who find themselves without a family.

The delivery of adoption services on reserve has recently been enhanced through new authorities, which enable Indian and Northern Affairs Canada to offer services comparable to those provided by the provinces and territories. Positive, permanent placements should result from a better range of options for adoptive families living on reserve including kinship care (care provided by extended family members), post-adoption subsidies (monthly payments to the adoptive parents), and supports (including counselling services and special needs support for children with disabilities).

[List of issues](#)

Part I

5. Please inform the Committee on whether the State party has a unified system for data collection and analysis with a child-rights focus, covering all groups of children, with **disaggregated data** by age, sex, provinces/territories, socio-economic background and ethnic origin.

8. Please provide detailed information and data, based on research or analysis, regarding respect for the views of the child, especially in judicial and administrative proceedings affecting the child, as established in article 12 of the Convention.

9. Please provide information on the actual impact in poverty reduction, disaggregated by sex, age, minority and ethnic origin, of the various child and family benefits introduced since 2005 (**Child Disability Benefit**, the Universal Child Care Benefit, **the Registered Disabilities Service Plans**, the Child Tax Credit and the Working Income Tax Benefit), at national, provincial and territorial levels.

11. Please provide information on **specific measures taken to reduce inequities affecting children belonging to minorities and other groups of children in vulnerable situation**, such as Roma children, Afro-Canadians, refugee and migrant children, at national, provincial and territorial levels.

Part III

Data, statistics and other information, if available

2. Please provide data (disaggregated by age, sex, socio-economic background and ethnic group) regarding the situation **of children deprived of a family environment** and separated from their parents, for the last three years on the number of children:

(a) Separated from their parents; (b) **Placed in institutions**; (c) Placed with foster families; (d) Adopted domestically or through inter-country adoptions.

3. **Please specify the number of children with disabilities, up to the age of 18, disaggregated by age, sex and ethnic group, for the last three years, regarding children:**

(a) **Living with their families**; (b) **In institutions**; (c) **Attending regular schools**; and (d) **Attending special schools**.

Disability references by other treaty bodies and special procedures mandate holders with respect to Canada:

CAT Committee Concluding Observations, CAT/C/CAN/CO/6, 2012

Detention conditions

19. While noting a Transformation Agenda launched by the Correctional Service of Canada (CSC) with a view to improving its operations, the Committee remains concerned at: (arts. 2, 11 and 16)

- a) The inadequate infrastructure of detention facilities to deal with the rising and complex needs of prisoners, in particular those with mental illness;
- b) Incidents of inter-prisoner violence and in-custody deaths resulted from high-risk lifestyles such as drug and alcohol abuse which, as acknowledged by the delegation, still circulate in places of detention; and
- c) The use of solitary confinement, in the forms of disciplinary and administrative segregation, often extensively prolonged, even for persons with mental illness.

The State party should take all necessary measures to ensure that detention conditions in all places of deprivation of liberty are in conformity with the UN Standard Minimum Rules for the Treatment of Prisoners, adopted by the Economic and Social Council in its resolutions 663 C (XXIV) and 2076 (LXII). It should, inter alia:

- a) Strengthen its efforts to adopt effective measures to improve material conditions in prisons, reduce the current overcrowding, properly meet the basic needs of all persons deprived of their liberty and eliminate drug;
- b) Increase the capacity of intermediate and acute mental health treatment centres for prisoners;
- c) Limit the use of solitary confinement as a measure of last resort for as short a time as possible under strict supervision and with a possibility of judicial review; and
- d) Abolish the use of solitary confinement for persons with serious or acute mental illness.

Report of the Independent Expert on Minority Issues, A/HRC/13/23/Add.2, 2010

II. Legal framework and enforcement mechanisms

12. The Charter of Rights and Freedoms, as part of the Canada Act, 1982, applies to all government legislation and action, federal, provincial and territorial, which must be in conformity with it. It also applies to actions of municipalities. Section 15 (1) states that: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability." The Charter allows for affirmative action measures to ensure equality under Section 15 (2). Although the Charter does not apply to purely private action, human rights legislation does apply in the areas of employment, accommodation and services.

14. The purpose of the Canadian Human Rights Act (1977) is: "to give effect ... to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated ... without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, marital status, family status, disability or conviction for an offence for which a pardon has been granted". The Act applies only to the federal Government and to federally regulated bodies and activities throughout Canada. The Act established the Canadian Human Rights Commission, mandated to investigate claims of discrimination, and the Canadian Human Rights Tribunal to judge discrimination cases. Each province and territory has its own anti-discrimination law, and concerns related to discrimination by such organizations as retail and hospitality businesses, hospitals or health-care providers,

educational institutions and most manufacturers come under provincial or territorial jurisdiction.

C. Employment

40. Employment discrimination on the basis of race is prohibited by the Canadian Human Rights Act and provincial and territorial human rights codes. The federal Employment Equity Act of 1995 (which amended the 1986 Act) applies to federally regulated employers and industries including banks, broadcasters, telecommunications companies, railroad companies, airlines and transportation companies – approximately 12 per cent of Canada's labour market, totalling about 1,527 employers and 1.94 million employees. The majority of private employers and their staff fall under provincial and territorial jurisdiction. The Act aims to provide equal opportunities in employment to designated protected groups: women; persons with disabilities; aboriginal peoples; and visible minorities. The Canadian Human Rights Commission monitors compliance and conducts employment equity audits of employers, including their implementation of special measures and the "accommodation of differences".

Special Rapporteur on the Right to Housing, [A/HRC/10/7/Add.3](#), 2009

23. During his mission, the Special Rapporteur had the opportunity to visit a number of centers and shelters accommodating homeless people, women fleeing from violence, Aboriginal women, persons living with HIV- AIDS, children with disabilities, and those suffering from drug addictions that were fully or partially funded by State programmes.

50. Despite the legal prohibition of discrimination with respect to housing, investigations into social and private housing in Canada reveal the persistence of discrimination against some groups, including on the basis of race, country of origin, sex, age, marital status, family status, sexual orientation, disability and social condition (including poverty and reliance on social assistance).

51. Many landlords operating in the private market continue to engage in discriminatory practices such as: screening- out tenants based on their social condition, source of income or because they receive social assistance; refusing to rent to single mothers, families with children; precluding young people and new immigrants from accessing accommodation because of their inability to provide landlord references, credit history, and substantial work history; refusing to accommodate persons with disabilities; and denying accommodation to 16 and 17 year olds living independently of parents.

59. In its most recent review of Canada's periodic report, the Committee on Economic, Social and Cultural Rights called upon "federal, provincial and territorial governments to address homelessness and inadequate housing as national emergency by reinstating or increasing, where necessary, social housing programmes for those in need, improving and properly enforcing anti- discrimination legislation in the field of housing, increasing shelter allowances and social assistance rates to realistic levels, and providing adequate support services for persons with disabilities".[37]

60. The CESCR has also called on Canada to "implement a national strategy for reduction of homelessness that includes measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms, in keeping with ICESCR standards"

77. During his mission, the Special Rapporteur met with many aboriginal women and associations. Aboriginal women face some of the most severe housing conditions and challenges in the country - whether they live off or on reserve or in rural, urban, northern or remote communities. Aboriginal women are often forced to relocate to urban areas as a result of circumstances beyond their control. Major issues affecting Aboriginal women include family and matrimonial real property laws on reserves, overcrowding, violence and

homelessness. Aboriginal women with disabilities suffer from further barriers to affordable housing, both on and off reserve.

91. The Special Rapporteur also supports the recommendation of the CESCR that homelessness and inadequate housing in Canada be addressed by reinstating or increasing, where necessary, social housing programmes for those in need, improving and properly enforcing anti-discrimination legislation in the field of housing, increasing shelter allowances and social assistance rates to realistic levels, and providing adequate support services for persons with disabilities”.

99. Discriminatory practices in housing should be addressed by ensuring that victims have access to legal representation and, where a quick settlement is not reached, prompt access to hearings and remedies. Systemic and widespread discrimination should be investigated by human rights commissions and legal and practical solution implemented. Specific funding should be directed to groups particularly vulnerable to discrimination including women, Aboriginal people, the elderly, people with mental or physical disabilities, youth and migrants, to ensure they can challenge housing discrimination effectively.

109. Aboriginal women must have effective participation in decision-making - at all levels, and Aboriginal women with disabilities. For example, equitable representation of all Aboriginal women in modern day treaty negotiations and agreements could ensure that shelter and housing needs of Aboriginal women are adequately considered.

CEDAW Committee Concluding Observations, [CEDAW/C/CAN/CO/7](#), 2008

13. The Committee notes that federal funds to support social assistance are provided to provinces and territories through the Canada Social Transfer (CST) and welcomes information indicating that the CST budget increased in the past year and will continue to increase in future. Nevertheless, the Committee is concerned at the fact that decisions on expenditure of funds from the CST are completely at the discretion of the provinces and territories and that there is no federal accountability mechanism to ensure minimum standards across the country for the provision of funding to social assistance programmes for women. The Committee is also concerned at reports of cuts in social assistance schemes in many provinces and at the resulting negative impact on the rights of vulnerable groups of women, such as single mothers, aboriginal women, Afro-Canadian women, immigrant women, elderly women and disabled women, who rely on social assistance for an adequate standard of living.

14. The Committee calls upon the State party to establish minimum standards for the provision of funding to social assistance programmes, applicable at the federal, provincial and territorial levels, and a monitoring mechanism to ensure the accountability of provincial and territorial governments for the use of such funds so as to ensure that funding decisions meet the needs of the most vulnerable groups of women and do not result in discrimination against women. The Committee also calls upon the State party to carry out an impact assessment of social programmes related to women’s rights.

30. The Committee recommends that the State party continue to give priority attention to combating violence against women, in accordance with general recommendation 19, on violence against women. The Committee also recommends that the State party enact legislation specifically addressing domestic violence against women, making it a criminal offence and ensuring that women who are victims of domestic violence have access to immediate means of redress and protection and that perpetrators are prosecuted and adequately punished, and that it put in place “primary aggressor” policies. The Committee further recommends that adequate shelters and appropriate support services be provided in all jurisdictions for women and adolescent girls who are victims of violence, and that the shelter and services needs of aboriginal women, women with disabilities, immigrants, refugees and trafficked women and rural and northern women be addressed. The State party is also urged to implement legislation requiring that domestic violence convictions be taken into account in child custody or visitation decisions.

51. The Committee notes that States' adherence to the nine major international human rights instruments enhances the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. Therefore, the Committee encourages the Government of Canada to ratify the treaties to which it is not yet a party, namely, ..the Convention on the Rights of Persons with Disabilities, and the International Convention for the Protection of All Persons from Enforced Disappearance.

Concluding Observations of the CESCR Committee, [E/C.12/CAN/CO/4](#) [E/C.12/CAN/CO/5](#), 2006

15. The Committee is concerned that, despite Canada's economic prosperity and the reduction of the number of people living below the Low-Income Cut-Off, 11.2 per cent of its population still lived in poverty in 2004, and that significant differences in levels of poverty persist between provinces and territories. The Committee also notes with particular concern that poverty rates remain very high among disadvantaged and marginalized individuals and groups such as Aboriginal peoples, African Canadians, immigrants, persons with disabilities, youth, low-income women and single mothers. In a number of jurisdictions, including British Columbia, poverty rates have increased among single mothers and children in the period between 1998 and 2003. The Committee is also concerned by the significant disparities still remaining between Aboriginal people and the rest of the population in areas of employment, access to water, health, housing and education, and by the failure of the State party to fully acknowledge the barriers faced by African Canadians in the enjoyment of their rights under the Covenant.

52. The Committee recommends that the State party undertake a detailed assessment of the impact of the reduction of federal transfers for social assistance and social services to provinces and territories, on the standard of living of people depending on social welfare, in particular women, children, older persons, persons with disabilities, Aboriginal people, African Canadians and members of other minorities. The Committee strongly recommends that the State party reconsider all retrogressive measures adopted in 1995.

62. The Committee reiterates its recommendation that the federal, provincial and territorial governments address homelessness and inadequate housing as a national emergency by reinstating or increasing, where necessary, social housing programmes for those in need, improving and properly enforcing anti-discrimination legislation in the field of housing, increasing shelter allowances and social assistance rates to realistic levels, and providing adequate support services for persons with disabilities. The Committee urges the State party to implement a national strategy for the reduction of homelessness that includes measurable goals and timetables, consultation and collaboration with affected communities, complaints procedures, and transparent accountability mechanisms, in keeping with Covenant standards.

Human Rights Committee Concluding Observations, [CCPR/C/CAN/CO/5](#), 2006

17. The Committee is concerned about information that, in some provinces and territories, people with mental disabilities or illness remain in detention because of the insufficient provision of community-based supportive housing (arts. 2, 9, 26). The State party, including all governments at the provincial and territorial level, should increase its efforts to ensure that sufficient and adequate community based housing is provided to people with mental disabilities, and ensure that the latter are not under continued detention when there is no longer a legally based medical reason for such detention.

18. The Committee expresses concern about the situation of women prisoners, in particular Aboriginal women, women belonging to ethnic minorities and women with disabilities. While welcoming the information provided by the State party on measures adopted or planned in response to the findings of the Canadian Human Rights Commission, the Committee remains concerned by the decision of the authorities to maintain the practice of employing male front-line staff in women's institutions (arts. 2, 3, 10 and 26).

ANNEX II - About the Organisations

The **Canadian Association for Community Living (CACL)** is a national association of over 40,000 members, 400 local, family led Associations for Community Living and 13 provincial/territorial Associations. We are families, people with intellectual disabilities and our supporters working together to ensure all people:

- Have the same rights and access to choice, supports and services as all other people.
- Have the same opportunities as others to live in freedom and dignity, and have the needed support to do so.
- Are able to voice and realize their aspirations and rights.

Founded in 1958, CACL provides leadership on the issue of inclusion and human rights of people with intellectual disabilities. We promote public awareness of our cause and foster leadership of families in their communities. CACL leads community change through partnerships with key sectors; and puts research to work to inform, lead and support efforts for full inclusion of people with intellectual disabilities in Canada and around the world.

Canadian Association for Community Living
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Inclusion International (II) is a global federation of family-based organizations advocating for the human rights of people with intellectual disabilities worldwide. For over forty years Inclusion International has been committed to the promotion of these human rights and our organization now represents over 200 member federations in 115 countries throughout five regions including the Middle East and North Africa, Europe, Africa and the Indian Ocean, the Americas, and Asia Pacific. II is a member of the International Disability Alliance.

Inclusion International
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The **International Disability Alliance (IDA)** is a unique international network of global and regional organisations of persons with disabilities, of which II is a member. Established in 1999, each IDA member represents a large number of national disabled persons' organisations (DPOs) from around the globe, covering the whole range of disability constituencies. IDA thus represents the collective global voice of persons with disabilities counting among the more than 1 billion persons with disabilities worldwide, the world's largest – and most frequently overlooked – minority group. IDA's mission is to advance the human rights of persons with disabilities as a united voice of organisations of persons with disabilities utilising the Convention on the Rights of Persons with Disabilities and other human rights instruments.

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