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FOR COMMUNITY LIVING

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A RIGHT TO HOUSING FOR ALL: ENSURING A HUMAN RIGHTS APPROACH INCLUSIVE OF ALL PERSONS WITH DEVELOPMENTAL DISABILITIES

“In a day and age where we’ve closed down all of our orphanages and residential schools this government continues to find and support an outdated system of care that other states and provinces have now rejected too.” – Harry Wolbert, Self-advocate

“Article 19 (UNCRC) is not properly implemented if housing is only provided in specifically designed areas and arranged in a way that persons with disabilities have to live in the same building, complex or neighbourhood” – UNCRC General Comment no. 5

THE CANADIAN ASSOCIATION FOR COMMUNITY LIVING (CACL)

The Canadian Association for Community Living (CACL) is a national not-for-profit association with a long-standing history of defending the rights of and advocating for the interests of persons with intellectual disabilities. CACL was founded in 1958. Over the years, CACL has become one of Canada’s ten largest charitable organizations. It is composed of ten provincial and three territorial associations, with over four hundred local associations spread across the country and more than forty thousand members. CACL is dedicated to promoting the participation of persons with intellectual disabilities in all aspects of community life. CACL has extensive experience in law, policy, and life outcomes for persons with intellectual disabilities. The organization promotes public awareness of both inclusion and intellectual disability, and fosters leadership of families in their communities. It leads community change through partnerships with key sectors and puts research to work to inform, lead, and support efforts for full inclusion of persons with intellectual disabilities in Canada and around the world.



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INTRODUCTION

Canadians who have a developmental disability and their families are often not able to enjoy the right to affordable housing and supports to live independently in the community. Their rights are recognized throughout international legal instruments and specific to the person with developmental disabilities under articles 19 and 28 of the UN Convention on the Rights of Persons with Disabilities (CRPD). While the Canadian Association for Community Living generally uses the term 'intellectual disability,' we use 'developmental disability' in this brief, as that is the term used in the National Housing Strategy released November 22nd, 2017.

There are over 500,000 adults with developmental disabilities in Canada. Most of these individuals live in poverty. Twice as many people with developmental disabilities need affordable and supportive housing compared to other Canadians meaning 100,000 Canadians with developmental disabilities need housing and more supports to end their exclusion and become included in their communities. Many are living at home with ageing parents, who do not have the income or community services needed for more independent options. Canada's legacy of institutionalization serves as a valuable reminder that while we can debate what inclusion means if you group a whole lot of people based on their disability they will always be seen as less than a part of the community.

EVIDENCE

- The Canadian Association for Community Living estimates that between 100,000 and 120,000 adults with developmental Disabilities face housing and supports gap. Almost 25,000 Canadians with more significant developmental disabilities have core housing need.¹
- Adults with developmental disabilities are over-represented among the estimated 35,000 homeless population in Canada on any given night.

¹ Alzheimer Society of Canada, ARCH Disability Law Centre, Canadian Association for Community Living, Canadian Mental Health Association, Toronto Branch, Council of Canadians with Disabilities, Institute for Research and Development on Inclusion and Society, Social Rights Advocacy Centre, and Wellesley Institute. *Housing Issues for People with Disabilities in Canada*. March 2017. Submitted to: The UN Committee on the Rights of Persons with Disabilities For its Review of Canada's initial report under the CRPD, <http://www.cacl.ca/sites/default/files/Housing%20Issues%20for%20People%20with%20Disabilities%20in%20Canada%20-%20Final%20-%20March%2014%2017.pdf>



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Available evidence points to a much higher likelihood of being homeless than in the general population, with a developmental disability a predisposing factor to homelessness and vulnerability for this group.²

- 13,200 adults with developmental disabilities aged 30 and older live with their parents because they do not have the resources or community support to live in their own homes. Their families have unsustainable caring responsibilities, are draining life savings, and have 'Nowhere to Turn' – as a recent Ombudsman's report names the problem for the estimated 10,000 adults with developmental disabilities waiting for residential services in Ontario. For too many people with developmental disabilities, lack of access to housing and supports results in "institutionalization by default."³
- Almost 30,000 adults with developmental disabilities are residing in congregate residential facilities and group homes, based on their diagnostic label. Many want a home of their own but cannot achieve this because of the scarcity of affordable housing and staff support outside the residential facility. There appears to be a re-emergence of these congregate options.⁴
- An estimated 10,000 adults with developmental disabilities under the age of 65 are living in hospitals, nursing homes or long-term care facilities because they cannot get the personal supports and affordable housing they need.⁵
- An estimated additional 60,000 Canadians with mild developmental disabilities have never been identified in surveys of Canadians with disabilities. Studies of people with developmental disabilities on a global level point to an estimated 1% to 3% of the population having mild to severe developmental disability, which equates to 0.3–1.0 million in

² Housing Issues for People with Disabilities in Canada, 4.

³ Ibid.

⁴ Ibid.

⁵ Ibid.



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A RECOGNIZED RIGHT TO ADEQUATE HOUSING

New legislation that will be put forward by the Government of Canada to promote a 'human rights-based' approach to housing in Canada should explicitly give recognition to the right to adequate housing for all. Ensuring Canada's major initiatives coming forth from the National Housing Strategy are not out of line with normative international laws, specific to persons who have a disability, which aligns with Canada's obligations as a signatory and ratifying country of the United Nations Conventions of the Rights of Persons with Disabilities. A right to adequate housing recognizes specific services and necessary infrastructure to ensure essential amenities such as safe drinking water and sources of energy. The legislation must acknowledge that housing must come with the availability of potable water, electricity, sanitation, sewage. To have a fully inclusive approach the Government of Canada needs to recognize that people who have developmental disabilities need additional supports to realize a right to housing.

The Office of the United Nations High Commissioner for Human Rights has outlined that adequate housing must provide more than four walls and a roof. For housing to be fair, it must, at a minimum meet the following criteria:⁷

SECURITY OF TENURE: housing is not adequate if its occupants do not have a degree of tenure security which guarantees legal protection against forced evictions, harassment, and other threats.⁸

AVAILABILITY OF SERVICES, MATERIALS, FACILITIES, AND INFRASTRUCTURE: housing is not adequate if its occupants do not have safe drinking water, adequate sanitation, energy for cooking, heating, lighting, food storage or refuse disposal.⁹

⁶ Housing Issues for People with Disabilities in Canada, 4.

⁷ UN Office of the High Commissioner for Human Rights (OHCHR), Fact Sheet No. 21, The Human Right to Adequate Housing, November 2009, Fact Sheet No. 21/Rev.1, available at: <http://www.refworld.org/docid/479477400.html> [accessed 12 May 2018]

⁸ Ibid, 3-4.

⁹ Ibid.



AFFORDABILITY: housing is not adequate if its cost threatens or compromises the occupants' enjoyment of other human rights.¹⁰

HABITABILITY: housing is not adequate if it does not guarantee physical safety or provide sufficient space, as well as protection against the cold, damp, heat, rain, wind, other threats to health and structural hazards.¹¹

ACCESSIBILITY: housing is not adequate if the specific needs of disadvantaged and marginalized groups are not taken into account.¹²

LOCATION: housing is not adequate if it is cut off from employment opportunities, health-care services, schools, childcare centres and other social facilities, or if located in polluted or dangerous areas.¹³

CULTURAL ADEQUACY: housing is not adequate if it does not respect and take into account the expression of cultural identity.¹⁴

Canada's obligations under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) should be incorporated as an indivisible dimension of a rights-based approach to housing in Canada that is fully inclusive of persons with developmental disabilities. The right to support and live in the community is inseparable from the right to housing. The proposed new housing framework should ground the recognition of the right to adequate housing in Canada's international commitments. Including, the UNCRPD, and the country's global commitments to the United Nations sustainable development goals, under which goal eleven on inclusive and sustainable cities focus on ensuring access for all to adequate, safe and affordable housing and basic services by 2030.¹⁵

¹⁰ Fact Sheet No. 21, *The Human Right to Adequate Housing*, 3-4.

¹¹ *Ibid.*

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ "Goal 11 Targets." UNDP, United Nations Development Programme, www.undp.org/content/undp/en/home/sustainable-development-goals/goal-11-sustainable-cities-and-communities/targets/



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Delivering on these commitments will require that access to disability-related, and other personal supports be incorporated into a rights-based approach to housing. Personal assistance to live in and make a home in the community, and access to personal and support networks that ensure safety and community inclusion, are as essential for people with disabilities to live in the community as are a functioning electrical grid, heating sources or sanitation and sewage.

Furthermore, the right to adequate housing should include protections against discrimination on the basis of disability and other Charter-protected grounds, including protections against forced evictions.

Within the discussion paper on the national housing strategy is not clear on whether a rights-based approach recognizes a right to housing. We repeat the concerns outlined by Bruce Porter in his ideas paper on the housing strategy that government may be suggesting a distinction between a “rights-based” housing strategy and housing strategy based on the right to housing.¹⁶ Porter posits that a “rights-based” strategy is an approach, which merely complies with existing legal obligations under the Canadian Charter of Rights and Freedoms and other human rights related instruments. However, a commitment to the realizing a right to housing holds all levels of government accountable to a higher, more progressive standard.

We urge that the government take that approach in its proposed legislation. In addition to physical accessibility, persons with developmental disabilities must also have a right to the support they need to access housing and live independently in the community. The costs of housing must incorporate recognition of disability-related expenses. Again, echoing Porter, the right to adequate housing cannot be the only right protected within the framework. It must also address systemic patterns of discrimination on the grounds of race, gender disability, LGBTQ2S status, and the effects of colonialization and other disadvantages.¹⁷ The right to housing must be understood through an equality lens and is interdependent with many other fundamental human rights.¹⁸ Substantive equality and priority must infuse all aspect

¹⁶ Porter, B. (2018). Enhancing the Rights-Based Framework for Canada's National Housing Strategy: An Ideas Paper. [online] Socialrights.ca. Available at: <http://www.socialrights.ca/publications.htm> [Accessed 7 May 2018]. Pg. 7.

¹⁷ Porter, *An Ideas Paper*, 7.

¹⁸ Ibid.



of housing strategies. Due to the precarious housing that marginalized groups face the legislation should fully recognize a right to adequate housing.¹⁹

THE CORE PRINCIPLE OF INCLUSION

The National Housing Strategy discussion paper outlines four core guiding principles – accountability, participation, non-discrimination, and inclusion. CACL fully supports the four principles of the framework. However, we also believe that the legislation should highlight features of a core principle of inclusion. Canada's history is steeped in the institutionalization of persons with developmental disabilities. It has become apparent that new forms of institutionalization for persons with developmental disabilities are emerging in congregate housing projects now coming on to the market and being proposed and approved for public investment. Grouping persons with developmental disability into a new wave of congregate housing options creates the image that persons with developmental disabilities are something other than valued members of the community. New and 'shovel-ready' developments promise modern state of the art facilities, with large separate rooms for residents, and recreational and other programming. However, these developments pose a significant threat to advancing the principle of inclusion.

Congregate housing is where disproportionate numbers of persons with disabilities are brought together to live in one location, facility, or campus for example. Its history is rooted in the social segregation of persons who have developmental disabilities, and it is manifesting itself again as increasing numbers are being placed in long-term care facilities and new purpose-built congregate housing is getting funded and developed. Unfortunately, congregate housing represents many of the same challenges that decades of segregation presented. People will not be seen and valued by congregating them. Adults with developmental disabilities need appropriate options to move their birth family homes or group residential services to more independent housing options in their communities. Studies have demonstrated that large concentrations of poverty in a single area can reduce the opportunities for low-income residents to improve their situation. The promotion of social mix may reduce this adverse effect, or, if viewed as a preventative measure, stop it from developing. Consequently, the presence of a

¹⁹ Porter, 7.



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population that is socio-economically diverse helps to ensure a district's economic vitality as well as access to higher quality services.

CACL recommends that the Government of Canada commit to investing national housing funds only into housing developments that meet the test of inclusion. The principle of a social mix in a housing development should be a paramount guideline. While CACL is currently supporting research on the precise indicators for inclusive housing development, we would recommend a social mix benchmark for inclusive, affordable housing that is no higher than between 5-10% of units in multi-unit development preliminary. Also, there should be a requirement in all federal allocation to housing developments under the strategy including bilateral and multilateral agreements with provinces and territories that investments will not go into congregate housing options with people with developmental and other disabilities.

There are almost 30,000 adults who have a developmental disability residing in congregate residential facilities and group homes, on the basis of their diagnostic label. Many want a home of their own but cannot, because of a scarcity of affordable housing and staff support outside the residential facility. Alarming, after years of working toward deinstitutionalizing the country, there appears to be a re-emergence of congregate options. Many people who are managing to find housing and support are only able to access it in larger segregated settings. Sometimes these are newly created housing options; other times there is an increase in the number of people living in an existing location. This trend is in direct opposition to decades of effort to desegregate Canada's social housing markets.

Canada's international obligations are outlined openly in the United Nations General Comment 5 on article 19 of the convention, which provides clarification on what states obligations are concerning the principle of inclusion and housing:

33. Accessibility of community facilities, goods, and services, as well as the exercise of the right to inclusive, accessible employment, education and healthcare, are essential conditions for the inclusion and participation of persons with disabilities in the community. Guidelines on the right to liberty and security of persons with disabilities. Various deinstitutionalization programmes have shown that the closure of



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institutions, regardless of their size and the relocation of inhabitants in the community, in itself is not enough...

34. ...article 19 covers access to safe and adequate housing, individual services and community facilities and services. Access to housing means having the option to live in the community on an equal basis with others. Article 19 is not implemented correctly if housing is only provided in specifically designed areas and arranged in a way that persons with disabilities have to live in the same building, complex or neighbourhood. Accessible housing giving accommodation to persons with disabilities, whether they live alone or as a part of a family, must be available in sufficient number, within all areas of the community, to provide the right of persons with disabilities to choose and the possibility to do so. To this end, barrier-free new residential.²⁰

We urge the development of the indicators to guide the requirements of articles 19 of the UNCRPD. Additionally, under this obligation under article 19 would require that the construction of multi-unit dwellings not have a disproportionate number of people with disabilities placed in them. Even in circumstances where people have their apartment in a multi-unit building, but the clear majority of units are dedicated to people with developmental disability, an isolating environment is created.

While we commend the presence of the core principle of inclusion as guiding principle, it is necessary to provide a caveat of the widespread misuse and history of the word inclusion. A genuinely inclusive society is one where people with developmental disabilities are fully included in their communities, and are *seen* to be included, have full access to needed health care and other public services and personal supports, and are safe from violence and abuse.

We encourage the Government of Canada to be diligent in discerning investments and to restrain from investing in shovel-ready projects that involve “congregated” enterprises designed to serve more significant numbers of individuals in single settings, beyond the 5-10% threshold we propose as a preliminary benchmark, awaiting the results of the research we now support. While the readiness

²⁰ UN Committee on the Rights of Persons with Disabilities (CRPD), General comment No. 5 (2017), Article 19: Right to live independent living, 31 August 2017, CRPD/C/GC/5, available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx> [accessed 12 May 2018]



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of these projects makes them attractive to officials, they would undoubtedly run the risk of repeating mistakes of the past.²¹ They are also contrary to the historical progress of the disability movement in Canada, our international obligations, and the spirit of the core principle of inclusion. Based only on a diagnostic label, thousands of adults with developmental disabilities live together in 'group homes' receiving congregate services from a community agency.²²

You cannot see people as equal if you can point to them and say that's where they've been grouped and live. When we invest in brick and mortar congregate housing projects, we are committing to the next half-century of institutionalization, which will be extremely difficult to undo. These efforts are housing solutions of the past. People with developmental disabilities and their families want housing choice and opportunity: affordability, supports at home, safety, dignity, and inclusion in their communities. Federal Investments should not be directed to congregate housing models.

CONCLUDING DIRECTIONS

The principle of core inclusion also means that any procedural mechanisms that are emerging from the framework of the national housing strategy be genuinely inclusive of persons with developmental disabilities. CACL recommends the development of a comprehensive set of indicators of inclusion to guide investments by federal and province territorial governments. These indicators should also set performance benchmarks for housing design, finance, and development. The creation of an independent monitoring system to assess and report on the impact of government measures on achieving CRPD Article 19 and 28 housing and support rights²³ CACL appreciates the investment in new machinery to monitor and report on the implementation of the NHS and the realization of the right to housing and urges that it be designed to fully respect and promote the principle of inclusion and incorporate the experience and perspectives of persons with developmental and other disabilities. For these purposes, we urge the following:

²¹ "End the Wait: An Action Agenda to Address the Housing Crisis Confronting Ontario Adults with Developmental Disabilities." Developmental Services Ontario, Housing Study Group (Developmental Services Sector– Ministry of Community and Social Services Partnership Table), Sept. 2013, http://www.dsontario.ca/files/www/Ending_the_Wait_final_sep6.pdf.

²² Ibid.

²³ Ibid.



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- Housing council have a representation of people with disabilities and their families;
- The office of the housing advocate be equipped with tools to undertake systemic inquiry and advocacy to address the disproportional and precarious housing that people with developmental and other disabilities face and in particular to monitor housing investments according to fulsome lends for inclusion as discussed above;
- The core principle of inclusion within the framework have clear indicators and metrics to guide all investments by federal and provincial-territorial governments.
- Lastly, participatory processes surround the national housing strategy ensure adequate representation of persons who have a developmental disability in any manifestation of a claim mechanism through the courts or otherwise.

We estimate that a growing proportion of those who find themselves homeless or in precarious housing situations in communities across Canada are people with developmental disabilities who are unable to access needed disability or personal supports or meet eligibility requirements for affordable housing. There exists a “lost generation” living in insecure situations rooming houses and shelters. We urge the Government of Canada to ensure this initiative gives attention to housing and support needs of tenants who have developmental disabilities even those who fall through the gaps of housing programs; and, that it provide funding for inclusive local initiatives that help address these systemic issues. We also recommend that a portion of the public engagement component of the strategy is dedicated to raising awareness for these forms of housing needs. Tenant initiatives should explicitly support and enable the voices of the most marginalized to share experiences and views.



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Finally, many persons with disabilities are unaware of their rights and these rights are often neglected. The UNCRPD recognizes that persons with disabilities have the same rights as everyone else and that they should enjoy them on an equal basis with people without disabilities. However, it is not possible to see people as equal if you can point to them and say that is where they have been grouped living in congregate housing. When we invest in brick and mortar congregate housing projects, we are committing to the next half-century of institutionalization, which will be extremely difficult to undo. Finding a place in the national housing strategy for the 100,000 Canadians with developmental disabilities who have 'core housing need' will require a multi-faceted approach, an approach that justly recognizes the right to adequate housing and truly embodies the core principle of inclusion.