

**Submission for Universal Periodic Review of Canada**

**Submitted by:**

Canadian Civil Society CRPD Parallel Report Group<sup>1</sup>

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<sup>1</sup> Organizations involved: ARCH Disability Law Centre, Alzheimer's Society of Canada, Canada Without Poverty, Canadian Association for Community Living, Canadian Association of the Deaf, Canadian Council on Rehabilitation and Work, Canadian Centre on Disability Studies, Canadian National Institute for the Blind, Canadian Labour Congress, Council of Canadians with Disabilities, Disability Rights Promotion International (York University), DisAbled Women's Network, Independent Living Canada, MAD Canada, National Network on Mental Health, Ontario Network of Injured Workers, Participation & Knowledge Translation in Childhood Disability Lab (McGill University), People First Canada

## **Universal Periodic Review Submission**

**1. Introduction** - In 2015 Canadian Disabled Peoples Organizations (DPOs) met to consider mechanisms for preparing a Civil Society submission to the CRPD Committee. A temporary coalition formed and prepared a submission for the CRPD Committee's 16<sup>th</sup> Session (March 20 - April 7, 2017).<sup>i</sup> We share selected content from that report to contribute information concerning the human rights of Canadians with disabilities.

**Equality and non-discrimination:** Canada's Constitution guarantees equality, and human rights laws prohibit discrimination. Nevertheless, almost 50% of discrimination complaints filed in Canada involve disability.<sup>ii</sup> Women, Indigenous persons and others with disabilities experience intersecting discrimination.

### **2. Populations most vulnerable to inequality and discrimination**

2.1. Women with disabilities face discrimination on multiple, intersecting grounds. For example, the lack of publicly funded legal assistance (legal aid), support and representation for disabled women to access their rights keeps women with disabilities in poverty and prevents them from accessing the supports and services they need to survive. It also keeps them in abusive situations by failing to provide legal protection needed to escape abuse.

2.2 Indigenous persons with disabilities face discrimination on multiple, intersecting grounds. Due to differences in funding and provision of services for First Nations people under the Indian Act, many indigenous Canadians with disabilities do not have access to the same supports and programs as non-indigenous Canadians with disabilities. In many cases, less funding is provided for services for First Nations people for education, social services and healthcare meaning that services are often unavailable or are of poor quality. In addition, when individuals attempt to seek services on or off reserve, they are often the victims of jurisdictional disputes over who will pay for the services, and this often leads to no service provision.

Indigenous children with disabilities are particularly vulnerable to these issues. Many of these children have disabilities, and they are often removed from their homes not because of neglect but because of the lack of the appropriate support services in indigenous communities. Despite recent policy changes (such as the adoption of Jordan's Principle) and a Canadian Human Rights Tribunal decision (CRHT T1340/7008) addressing some jurisdictional and funding issues, these barriers persist and have not yet been adequately addressed by Canada .

**2.3.** Deaf, deaf-blind and blind people experience severe discrimination. Access to sign language interpretation and intervenor services is still very limited. In the area of health care, sometimes loved ones must serve as interpreter / intervenor.

### **Recommendations:**

- Canada must fully, immediately and properly implement Jordan's Principle,<sup>iii</sup> as directed by the Canadian Human Rights Tribunal decision (2016 CHRT 2) and its subsequent rulings (2016 CHRT 10 and 2016 CHRT 16), and as called for in the unanimously passed Motion to Parliament, presented by Member Charlie Angus on November 1, 2016.

- Canada must review Bill S-210 to ensure it includes principles of equality and non-discrimination that apply to distinct communities, such as people who are Deaf<sup>iv</sup>.
- Canada should enact legislation implementing the Convention into Canadian domestic law, including the legal recognition of Canada's two official sign languages, ASL and LSQ.

**3. Equal Recognition before the Law:** Canada has not withdrawn its reservation to CRPD Article 12(4). Substitute decision-making laws continue to exist in all provinces and territories. As a result persons with disabilities are regularly denied their right to legal capacity.

**Recommendations:**

- Canada should immediately withdraw its reservation, and work with provincial and territorial governments to encourage the development of supported decision-making regimes and ensure that adequate and culturally appropriate safeguards and services are available to support persons with disabilities to exercise their legal capacity.

**4. Living Independently and Community Inclusion:** In several Canadian provinces people with disabilities, particularly persons with intellectual disabilities and psychosocial disabilities, still live in large institutions, which continue to receive new admissions. Lack of adequate services to support independence in the community is a concern. Canada must ensure persons with disabilities are not institutionalized and work with the provincial and territorial governments to provide people with disabilities supports to live and participate in the community, including ensuring persons with disabilities have access to affordable and accessible housing.

**Recommendations:**

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

**5. Education:** Students with complex disabilities who have medical needs, students with multiple disabilities, and the majority of students with intellectual disabilities are excluded from regular schools and classrooms. Many only have the option of attending segregated schools. Deaf, deaf-blind and blind students face significant barriers to accessing education on an equal basis as students without disabilities. Several provinces and territories encourage inclusion, but only one province, New Brunswick (NB), has implemented an inclusive education policy and invested accordingly.

## **Recommendations:**

- Canada should encourage the Council of Ministers of Education (which brings all Provincial / Territorial Ministers together) to extend nationally the NB law, policy and practice standards.
- Canada must provide comprehensive resources/supports for full and effective classroom supports to ensure inclusive education for all, including training of staff to support inclusion of children with disabilities in all aspects of school life, including physical education and social opportunities.
- Canada must uphold the rights of Deaf and deaf-blind children to inclusive education via direct instruction in and study sign language in Deaf schools and other schools, and other methods of communication for deaf-blind students.
- Canada must adopt and enforce laws, regulations and policies to recognize Sign languages as languages of instruction in all schools, including Schools for the Deaf, and allow Deaf students to attend Provincial Schools for the Deaf or local schools which provide direct instruction in Sign language in addition to qualified Sign language interpreters, access to bilingual learning materials, and opportunities to study Sign language as a school subject.
- Canada must recognize and provide resources for more post-secondary programs to train professional interveners' and interpreters.
- Students who use braille and are learning to read must receive daily braille literacy instruction from a Teacher for Students who are blind or visually impaired.
- School Districts with students who use braille should use individuals certified in Unified English Braille Code (UEB) to produce day-to-day braille materials.
- Canada must restore a national data collection mechanism for children with disabilities to generate accurate estimates to guide policy-making, benchmarking and monitoring progresses in education and service provision for students with disabilities.

**6. Work and Employment:** Persons with disabilities experience significantly higher rates of unemployment than nondisabled Canadians. Women and youth with disabilities, Deaf, deafened or hard of hearing persons, blind persons, and persons with intellectual disabilities have lower rates of employment than other persons with disabilities. Racialized persons with disabilities, new immigrants and Indigenous persons with disabilities are disproportionately represented among those relying on precarious employment. Segregated day programs and sheltered workshops persist as the dominant model of support for persons with intellectual disabilities. Canada must work with provinces, territories, unions, employers and civil society to remove existing barriers to employment.

## **Recommendations:**

- Canada should initiate a robust evaluation of the effectiveness of wage subsidies to lessen the gap in employment rates between Canadians with and without disabilities.
- Canada should create a national accommodation fund operated on a continuous basis by an NGO, to ensure employers are able to hire without undue hardship.
- Canada should work with other levels of government, unions, employers and civil society to create a harmonized approach to remove employment barriers in current laws, programs and policies.
- Canada must develop a robust definition of retention that can be utilized to ensure employees with disabilities experience comparable job retention and career advancement opportunities to those afforded to people without disabilities.

- Canada should initiate effective transition from sheltered workshops and day programs to Employment First approaches, with clear definitions, principles, cross-departmental and inter-jurisdictional policy and ongoing processes of local capacity development.
- The federal government should create a targeted fund within the Opportunities Fund for Persons with Disabilities to develop a national partnership and local demonstration initiatives focused on transitioning from sheltered workshop and day programs to Employment First programming.
- The federal government should fund new priorities within the federal-provincial Multilateral Framework Agreement for Labour Market Agreements for Persons with Disabilities, and the federal-provincial/territorial Labour Market Agreements.

**7. Accessibility:** Canada has no formal mechanisms to specifically ensure that CRPD accessibility rights are implemented and enforced in all jurisdictions. Federally, however, Canada is currently conducting consultations in preparation for a National Accessibility Act. It is imperative these consultations result in an enforceable national act consistent with the CRPD.

#### **Recommendations:**

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

**8. Liberty and Security of the Person:** Most provinces and territories in Canada have laws permitting involuntary detention of persons with psychosocial disabilities in psychiatric institutions and/or coercive administration of psychiatric drugs.<sup>v</sup> A recent decision of the Court of Appeal for Ontario, *Thompson and Empowerment Council v. Ontario*, found involuntary detention in hospital due to “substantial mental deterioration” and coercive administration of psychiatric drugs did not violate the right to liberty and security of the person under Canada’s Charter, nor did it violate the right to equality guaranteed by Canada’s Charter.<sup>vi</sup> Although article 14 of the CRPD was raised, the Court of Appeal did not discuss it in the decision.

Many prisoners with disabilities, including incarcerated women with psychosocial disabilities, brain injuries and intellectual disabilities are not given appropriate care or disability supports, and are instead

placed in solitary confinement.<sup>vii</sup> Solitary confinement is very prevalent in the Canadian correctional system, especially at the federal level. Indeed, in its recent review of Canada, the CESCR committee stated that it is concerned by the increased rate of incarceration of persons with disabilities and the excessive use of solitary confinement.<sup>viii</sup> Solitary confinement is often imposed for non-disciplinary reasons such as protection of an inmate or medical reasons. A review by the Ontario Ministry of Community Safety and Correctional Services<sup>ix</sup> found that only 4.3% of all prisoner placements into solitary confinement were disciplinary, while 17% were for “administrative” medical reasons. Of the 4,178 inmates who spent at least a day in solitary confinement between October and December 2015, 38.2% had a “mental health alert” on file. Despite UN standards deeming solitary confinement exceeding 15 days to be tantamount to torture, the review found the average time spent in solitary confinement reached 16.2 days.

#### **Recommendations:**

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

**9. Domestic Implementation and Monitoring of the CRPD:** Canada has not designated an independent mechanism to promote, protect and monitor the implementation of the Convention on the Rights of Persons with Disabilities as required by CRPD article 33.2. The Canadian Human Rights Commission (CHRC), with the appropriate mandate and resources, should be designated as the monitoring mechanism. Similar resources should be made available to civil society as mandated by CRPD Article 33.3.

#### **Recommendations:**

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

## 10. Endnotes:

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<sup>i</sup> The organizations involved were: ARCH Disability Law Centre, Alzheimer's Society of Canada, Canada Without Poverty, Canadian Association for Community Living, Canadian Association of the Deaf, Canadian Council on Rehabilitation and Work, Canadian Centre on Disability Studies, Canadian National Institute for the Blind, Canadian Labour Congress, Council of Canadians with Disabilities, Disability Rights Promotion International (York University), DisAbleD Women's Network, Independent Living Canada, MAD Canada, National Network on Mental Health, Ontario Network of Injured Workers, Participation & Knowledge Translation in Childhood Disability Lab (McGill University), People First Canada

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

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

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

<sup>v</sup> See for example, section 15 of Ontario's *Mental Health Act*, RSO 1990, c M.7.

<sup>vi</sup> 2013 ONSC 5392 (CanLII)

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

<sup>viii</sup> See UN Document E/C.12/CAN/CO/6, point 45.

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