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## **Submission of Canadian Civil Society Organizations to the Committee on the Rights of Persons with Disabilities**

On the List of Issues Prior to Reporting [Canada] to be  
adopted during the 22nd Session of the Committee on the  
Rights of Persons with Disabilities

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## Executive Summary

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In 2017, the Committee on the Rights of Persons with Disabilities, in its Concluding Observations, asked Canada to provide information on the measures taken to implement the Committee's recommendations to: withdraw its declaration and reservation to Article 12(4) and bring federal, provincial and territorial legislation in line with the CRPD; and to set criteria for addressing multiple and intersecting forms of discrimination through legislation, policies and programs for women and girls with disabilities, Indigenous persons with disabilities and migrants with disabilities. Since then, Canada has provided funding to civil society organizations to conduct work to address these recommendations. In particular, funding was provided for projects related to legal capacity, intersectionality and the situation of women and girls with disabilities. These projects have resulted in concrete recommendations to Canada and have strengthened the capacity of civil society to engage with government on these issues. Legal capacity, intersectionality and the situation of women and girls with disabilities remain significant areas of concern for persons with disabilities in Canada.

The DPOs that contributed to this submission are very encouraged by the steps that the present Government of Canada has taken to protect and promote the human rights of persons with disabilities. However, as detailed below, we remain concerned that many of the CRPD's general obligations and specific rights are not being implemented or realized in Canada. There is still much that needs to be done to achieve full accessibility, inclusion and true citizenship for persons with disabilities in Canada.

In particular, there exists a lack of a rights-based approach to disability services and supports in Canada. This was noted by the Special Rapporteur on her recent country visit. Her report stated that she "...noticed that discussions about the rights of persons with disabilities are still framed in terms of social assistance, rather than from a human rights-based approach. While the Canadian Charter of Rights and Freedoms enshrines the right to non-discrimination, and federal, provincial and territorial human rights laws recognize a duty to accommodate ... this is insufficient to ensure a systemic transformation of society."

Canada is a relatively wealthy country, with established social security policies and programs, entrenched Constitutional rights and freedoms, and respect for the rule of law. Despite these legal protections and social programs, persons with disabilities experience significantly higher rates of poverty, unemployment, exclusion from education and other services, and discrimination compared to persons without disabilities in Canada.

Many communities of persons with disabilities do not have sufficient, sustainable resources to build capacity to effectively participate in local, national and international CRPD implementation and monitoring.

In Canada, some CRPD rights fall within federal jurisdiction, but many fall within provincial and territorial jurisdiction. This results in an uneven array of disability-related services, supports, programs, policies and laws. There is a need for a comprehensive plan, coordinated between the federal, provincial and territorial governments, to ensure that the CRPD is fully implemented in all jurisdictions in Canada.

## About this Submission: Process and Contributing Organizations

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On May 11, 2019, immediately following Canada's first National Summit on Disability, a day-long meeting of DPO leaders was held in Ottawa. This meeting was supported with financial assistance from the Canadian Human Rights Commission (Canada's NHRI). Approximately 25 leaders from across Canada met to discuss the LOIPR process and develop a plan to share our views with the Committee on the Rights of Persons with Disabilities ("Committee").

Together we decided that individual DPOs would take responsibility for each Article of the CRPD (from 1-33). They in turn would work with the broader disability communities to gather and synthesize their views, especially as they related to the 2017 Concluding Observations. We further agreed that the process should also take note of both positive and negative developments since 2017, and offer suggestions that participants felt would be useful questions for the Committee to put to Canada at the Committee's upcoming 22<sup>nd</sup> Session.

Over the following 8 weeks this is exactly what happened. A list of organizations that contributed to this submission is provided below. It includes DPOs and their supporters representing a cross-section of persons with disabilities in Canada, including persons with mobility disabilities, persons who are culturally Deaf, deaf, and Hard of Hearing, persons with vision disabilities and Blind persons, persons with intellectual and developmental disabilities, persons with psychosocial disabilities, persons with dementia and Alzheimer's, persons who use Guide and Service Dogs, women with disabilities, children with disabilities and Indigenous persons with disabilities.

Processes by which groups contributed their views varied, but generally took the form of email and telephone exchanges, and in some cases the development and deployment of surveys that were made available through a centralized website (<http://www.bcands.bc.ca/convention-on-the-rights-of-persons-with-a-disabilities-crpd-preparation-for-canadas-2nd-review/>).

From this information gathering exercise, the lead DPO on each Article developed a submission and achieved consensus from those organizations who had provided their views. The consensus document was then provided to a centralized secretariat, which put together an unedited compilation document. This compilation document was shared with all organizations that contributed to it and will be used as a resource going forward. The secretariat then edited the compilation document (which was very long) to conform to the Committee's standard of 10,700 words.

This draft was recirculated to all organizations who participated for them to provide feedback.

The final suggestions were then compiled into the document which follows.

**Contributing Civil Society Organizations:**

Abilities Centre Durham

Abilities Centre Ottawa

Accessibility for All

Action Canada for Sexual Health and Rights

Alliance for Equality of Blind Canadians (AEBC)

Alzheimer Society of Canada

ARCH Disability Law Centre

British Columbia Aboriginal Network on Disability Society (BCANDS)

Canada Without Poverty (CWP)

Canadian Association for Community Living (CACL)

Canadian Association of the Deaf (CAD)

Canadian Centre on Disability Studies Incorporated (CCDS) o/a Eviance

Canadian Council on Rehabilitation and Work (CCRW)

Canadian Disability Participation Project

Canadian Health Coalition

Canadian Labour Congress (CLC)

Canadian National Institute for the Blind (CNIB)

Canadian Paralympic Committee

Carleton University

CNIB Deafblind Community Services



Communication Disabilities Access Canada (CDAC)

Council of Canadians with Disabilities (CCD)

Disability Alliance British Columbia (DABC)

DisAbled Women's Network Canada (DAWN)

Easter Seals Canada

Inclusive Education Canada (IEC)

Independent Living Canada (ILC)

Institutes for Research and Development on Inclusion and Society (IRIS)

International Federation of Adapted Physical Activity, Mount Royal University

International Network on the Disability Creation Process (INDCP)

Keremeos Measuring Up Team

Kéroul

Mad Canada Shadow Reporting Group

March of Dimes Canada

McGill University

Mouvement PHAS

National Coalition of People who use Guide and Service Dogs in Canada

National Educational Association of Disabled Students (NEADS)

National Network for Mental Health (NNMH)

Not Dead Yet

Participation & Knowledge Translation in Childhood Disability, McGill University (PARKT Lab)

People First of Canada (PFC)

Dementia Alliance International

Québec Accessible

Realize

Rehabilitation International

Revved Up, Queen's University

Rick Hansen Foundation

Spinal Cord Injury Canada (SCI)

Sport for Life

The Steadward Centre for Personal & Physical Achievement, University of Alberta

Toronto Accessible Sport Council

Universal Design Network

University of British Columbia

University of Ottawa

## Glossary

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**ASL:** American Sign Language

**CRPD:** Convention on the Rights of Persons with Disabilities

**DPO:** disabled persons organization

**LGBTQI2S+:** lesbian, gay, bisexual, transgender, queer, intersex, two-spirited, and others not enumerated

**LSQ:** Langue des Signes Québécoise

**MAiD:** medical assistance in dying

**SLCDs:** speech, language and communication disabilities

## Information about Implementation of CRPD Articles in Canada and Suggested LOIPR Questions

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### **ARTICLES 1-4: General principles and obligations**

**No national action plan for CRPD implementation:** The 2017 Concluding Observations to Canada recommended Canada enact a comprehensive national action plan to implement the CRPD in collaboration with Provinces/Territories and persons with disabilities. Since Canada ratified the CRPD in 2010, civil society organizations have advocated for the adoption of a national action plan, including implementation benchmarks and timelines. Canada has not yet developed such a plan. Additionally, Canada has not convened Indigenous and First Nations leaders to discuss CRPD implementation within First Nations jurisdictions.

**No rights-based approach to inclusive disability services and supports:** Federal, provincial, and territorial governments do not recognize a right to disability services and supports. Benefits are provided on a discretionary, rather than universal, basis to people who meet specific eligibility criteria—often based on a medical model of disability.

**Lack of accountability framework for implementation:** Canada does not have a sustained, independent civil society monitoring mechanism; a permanent, coordinated government mechanism to ensure CRPD implementation in all jurisdictions; or a process for independent reporting to Parliament.

**Lack of full and effective participation of all disability communities:** Many disability communities, including Blind, D/deaf and Deaf-Blind communities, do not have sufficient, sustainable resources to build community capacity to effectively participate in local, national, and international CRPD implementation.

**Few domestic legal mechanisms to enforce many CRPD rights:** Canada has not enacted domestic legislation to implement all CRPD rights into Canadian law.<sup>1</sup> Consequently, Canadian courts and tribunals generally do not view the CRPD as binding law, and will not adjudicate CRPD violations or directly apply its articles. At most, they will interpret and apply domestic law consistently with Canada's CRPD

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<sup>1</sup> Canadian courts and tribunals generally follow a legal doctrine which requires international treaties to be incorporated into domestic law in order to be legally enforceable in Canada. See *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] S.C.J. No. 39 at paras. 69, 79, [1999] 2 S.C.R. 817 (S.C.C.), citing *Francis v. Canada*, [1956] S.C.J. No. 38, [1956] S.C.R. 618 at 621 (S.C.C.) and *Capital Cities Communications Inc. v. Canadian Radio-Television Commission*, [1977] S.C.J. No. 119, [1978] 2 S.C.R. 141 at 172-73 (S.C.C.)

obligations. Federal and provincial governments continue to urge on courts an interpretation of Canada's *Charter of Rights and Freedoms*, denying the justiciability of economic, social and cultural rights.<sup>2</sup> These positions undermine a rights based approach to CRPD implementation, and diminish the availability of domestic legal remedies.

## **Canada has not removed its reservation and interpretive declaration on Article 12.**

### **Suggested Questions**

1. When will Canada and the Provinces/Territories develop and implement a systematic approach to CRPD implementation, including a national action plan ensuring that disability rights are addressed in all laws, policies and programs, not just those that are disability-specific?
2. When will Canada enact legislation to implement all CRPD rights into domestic law, and when will the federal, provincial and territorial governments stop taking legal positions that undermine the CRPD as legally binding or deny the justiciability of economic, social and cultural rights?
3. When will all levels of government implement their CRPD obligations, ensuring CRPD rights are enforceable through federal, provincial and territorial laws, policies, programs and services? Will the CRPD be fully enforced in all jurisdictions by the time of Canada's third CRPD review?
4. What is Canada doing to fulfill article 4.3 and ensure there is ongoing, sustainable funding to build capacity and enable all disability communities to participate fully and effectively in CRPD implementation? How much new funding will Canada allocate?

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<sup>2</sup> Canadian courts have repeatedly rejected affirmations of economic, social and cultural rights, such as the right to health and the right to adequate housing. See, for example, *Toussaint v Canada*, 2010 FC 810, aff'd 2011 FCA 213, leave to appeal to SCC refused, 36283 (25 June 2015) and *Tanudjaja v Canada (Attorney General)*, [2013] ONSC 5410, aff'd 2014 ONCA 852, leave to appeal to SCC refused, 36283 (25 June 2015). Canadian courts have consistently found that the *Canadian Charter of Rights and Freedoms* does not protect freestanding economic, social and cultural rights. Successful cases involving economic, social and cultural rights have generally been framed as negative rights claims, meaning that where government creates laws or programs to address economic, social and cultural rights issues, those laws or programs must not discriminate (*Eldridge v British Columbia (AG)*, [1997] 3 SCR 624 at para 73, 1 WWR 50, *Chaoulli v Québec (Attorney General)*, 2005 SCC 35 at para 104). For example, in *Abbotsford (City) v Shantz*, the BC Supreme Court stated "[t]here has been no recognition by courts in Canada that the *Charter* creates positive obligations in relation to social and economic interests" (2015 BCSC 1909 at para 177). While this claim concerned housing, the claimants successfully challenged a by-law preventing street-involved people from sleeping in parks, rather than claiming a positive right to housing requiring government action. See also, *Canadian Doctors for Refugee Care v Canada (AG)*, [2014] FC 651 and *Victoria (City) v Adams*, [2008] BCSC, aff'd *Victoria (City) v Adams*, [2009] BCCA 172.

## ARTICLE 5: Equality and non-discrimination

The Canadian Constitution, and federal, provincial and territorial human rights laws prohibit discrimination on the basis of disability. Despite these legal protections, persons with disabilities regularly experience discrimination, including economic and social exclusion, and barriers to participation in all aspects of society. 23% of those who report having a disability also report having a low-income, as compared to 9% of those without a disability.<sup>3</sup> Persons with disabilities experience discrimination in employment, and encounter barriers to accessing services. Many students with disabilities do not receive appropriate accommodations in primary, secondary and post-secondary education. Disability discrimination is the most common type of discrimination complaint filed by people in Canada.<sup>4</sup>

Of people with developmental disabilities, 61.3% felt disadvantaged in employment, and 34.6% report being refused a job because of their disability.<sup>5</sup> Adults with developmental disabilities have the lowest employment rate of all persons with disabilities.<sup>6</sup>

For LGBTQI2S+ persons with disabilities, heterosexism, ableism, and homophobia in health, social services, education, and disability services remain significant barriers.

People with episodic disabilities experience barriers to qualifying for income security benefits, as definitions of disability often rely on being either fully disabled or fully able to work.

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<sup>3</sup> Katherine Wall, “Low income among persons with a disability in Canada” (11 August 2017), online: *Statistics Canada* <<https://www150.statcan.gc.ca/n1/pub/75-006-x/2017001/article/54854-eng.htm>>.

<sup>4</sup> 52% of complaints accepted by the Canadian Human Rights Commission cited disability as a ground of discrimination. Canadian Human Rights Commission, “By the numbers”, online: <<http://chrcreport.ca/by-the-numbers.php>>. 56% of Ontario Human Rights Tribunal applications brought in 2017-2018 cited disability as a ground of discrimination. Read Tribunals Ontario, Social Justice Division “Social Justice Tribunals Ontario 2017-2018 Annual Report” at 25, online (pdf): <<http://www.sjto.gov.on.ca/documents/sjto/2017-18%20Annual%20Report.html>>

<sup>5</sup> 31.4% believed they had been denied a promotion because of their disability, and 28.3% felt they had been denied a job interview. Read Statistics Canada, “Developmental disabilities among Canadians aged 15 years and older, 2012” by Christine Bizier, et al (3 December 2015) Catalogue No. 89-654-X2015003 at 8, online (pdf): <<https://www150.statcan.gc.ca/n1/en/pub/89-654-x/89-654-x2015003-eng.pdf?st=Z4466E5g>>.

<sup>6</sup> Among adults with developmental disabilities, 71.8% are out of the labour force, 6.0% are unemployed, and there is only a 22.3% employment rate (the lowest of any type of disability). While there is no breakdown available in terms of gender, the median income for working aged adults with developmental disabilities was reported as only \$10,800—less than one third that of those without disabilities (\$31,200)—with 71.9% of adults with developmental disabilities relying on government transfers as their major source of income. Read Statistics Canada, “Developmental disabilities among Canadians aged 15 years and older, 2012” by Christine Bizier, et al (3 December 2015) Catalogue No. 89-654-X2015003 at 11, online (pdf): <<https://www150.statcan.gc.ca/n1/en/pub/89-654-x/89-654-x2015003-eng.pdf?st=Z4466E5g>>.

Indigenous persons with disabilities face discrimination on multiple, intersecting grounds; they experience higher rates of unemployment, inadequate health standards, lower rates of education, and socio-economic marginalization.

### **Suggested Questions**

1. What are Canada and the Provinces/Territories doing to combat inequality and discrimination faced by persons with disabilities through affirmative action measures that include clear targets and the collection of data on progress achieved disaggregated by age, sex, Indigenous and racialized background?
2. Are there initiatives aimed at addressing multiple and intersecting forms of discrimination through legislation and public policies, including through affirmative action programs for women and girls with disabilities, Indigenous persons with disabilities and migrants with disabilities, which provide effective remedies for discrimination?

## ARTICLE 6: Women with disabilities

24% of Canadian women report having a disability<sup>7</sup>. Women with disabilities in Canada have the highest rates of unemployment and poverty, and lack full access to education and healthcare, including sexual and reproductive services. There is emerging evidence that they are criminalized and incarcerated due to their disabilities, and that women are becoming disabled (or further disabled) due to intimate partner violence.<sup>8</sup>

Women with disabilities face well-documented barriers in labour force participation. They are less likely to participate in the labour force with only 61.3% of women with disabilities between the ages of 25-54 participating and a 13.4% unemployment rate. More than 2 in 5 women with disabilities report part-time employment, which is significant because it affects income and access to income supports like Employment Insurance. Women with disabilities report feeling disadvantaged in their employment because of their disability (44.5%), while 12.6% of women with disabilities share that they were refused a job in the last 5 years because of their disability.<sup>9</sup>

Women with disabilities continue to experience significant barriers in accessing affordable, safe, and adequate housing. 46% of women who report having been homeless also have a disability.<sup>10</sup> Housing, like other determinants of health, is not an isolated experience but is shaped by poverty, availability of support, location, and violence.

Women with disabilities continue to face stigmatization and barriers regarding sexual and reproductive rights, including limited contraception options, inaccessible equipment/facilities, and a lack of knowledge about disability from healthcare providers.

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<sup>7</sup> Stuart Morris et al, "A demographic, employment and income profile of Canadians with disabilities aged 15 years and over, 2017" (28 November 2018), online: *Statistics Canada* <<https://www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2018002-eng.htm>>.

<sup>8</sup> DisAbleD Women's Network of Canada, "More Than A Footnote: A Research Report on Women and Girls with Disabilities in Canada" (2019) at 13, 70, 94-95, online (pdf): *DAWN Canada* <[https://dawnCanada.net/media/uploads/news\\_data/news-279/more\\_than\\_a\\_footnote\\_research\\_report.pdf](https://dawnCanada.net/media/uploads/news_data/news-279/more_than_a_footnote_research_report.pdf)>.

<sup>9</sup> DisAbleD Women's Network of Canada, "More Than A Footnote: A Research Report on Women and Girls with Disabilities in Canada" (2019) at 51-52, online (pdf): *DAWN Canada* <[https://dawnCanada.net/media/uploads/news\\_data/news-279/more\\_than\\_a\\_footnote\\_research\\_report.pdf](https://dawnCanada.net/media/uploads/news_data/news-279/more_than_a_footnote_research_report.pdf)> and Statistics Canada, "Women with Disabilities" by Amanda Burlock (29 May 2017), online: <<https://www.statcan.gc.ca/pub/89-503-x/2015001/article/14695-eng.htm>>.

<sup>10</sup> DisAbleD Women's Network of Canada, "More Than A Footnote: A Research Report on Women and Girls with Disabilities in Canada" (2019) at 69, online (pdf): *DAWN Canada* <[https://dawnCanada.net/media/uploads/news\\_data/news-279/more\\_than\\_a\\_footnote\\_research\\_report.pdf](https://dawnCanada.net/media/uploads/news_data/news-279/more_than_a_footnote_research_report.pdf)> and Statistics Canada, "Violent victimization of women with disabilities, 2014" by Adam Cotter (15 March 2018) Catalogue No 85-002-X at 3, online (pdf): <<http://www.statcan.gc.ca/pub/85-002-x/2018001/article/54910-eng.pdf>>.



As a result of these barriers, women with disabilities are more prone to coercion, abortion, and loss of child custody.

### **Suggested Questions**

1. What steps have been taken to ensure that the federal strategy against gender-based violence includes lines of action, specific programs and benchmarks to address all forms of violence against women and girls with disabilities?
2. How is Canada working to ensure that Indigenous women with disabilities have access to education programs, are made aware of their CRPD rights, and are supported to claim these rights?
3. What steps have been taken to ensure women with disabilities' full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life?

## ARTICLE 7: Children with disabilities

**Encouraging views of all children with disabilities:** All children with disabilities should be represented in forums and public life opportunities, including typically underrepresented groups, such as younger children, children from rural or Indigenous communities, children with multiple and severe disabilities, and children who use non-verbal forms of communication.<sup>11</sup>

**Need for federal, provincial, territorial collaboration:** Most areas related to children fall within provincial/territorial jurisdiction. There is a lack of transition services to community living; employment and post-secondary education; individual accommodations for diverse learning, coordination of care and support for caregivers; and opportunities for community participation and leisure.

**Insufficient data**<sup>12</sup>: The 2019 Canadian Health Survey on Children and Youth will provide updated information on health-related issues experienced by children with disabilities.<sup>13</sup> However, many other areas of life remain non-documented.<sup>14</sup> Data should be consistently

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<sup>11</sup> CRPD indicator 7.2 All legislation, policies and national action plans/strategies concerning children or persons with disabilities, should include references to children with disabilities, require a consultative process and ensure systematic provision and availability of disability and age-appropriate assistance, in particular for them to express their views. For a description of CRPD human rights indicators, read generally UNOHCHR, “EU and OHCHR project Bridging the Gap I” online:

<<https://www.ohchr.org/EN/Issues/Disability/Pages/EUAndOHCHRProjectBridgingGapI.aspx>>.

<sup>12</sup> The Committee previously commented on the lack of available data regarding children with disabilities. Following Canada’s first reporting to the Committee on the Rights of Persons with Disabilities, the Committee recommended collecting disaggregated information on the situation of, and discrimination faced by children with disabilities, particularly Indigenous children with disabilities, so as to formulate targeted programs to tackle the exclusion they face. Read UNCRPD, “Concluding observations on the initial report of Canada” (8 May 2017) UN Doc CRPD/C/CAN/CO/1 at para 18.

<sup>13</sup> Questions included in the survey address child functioning, long-term health conditions, accessing healthcare for various conditions, difficulties experienced when accessing services, and services received/required from various healthcare professionals. Read Statistics Canada, “Canadian Health Survey on Children and Youth” (2019), online:

<<http://www23.statcan.gc.ca/imdb/p2SV.pl?Function=getSurvey&SDDS=5233>>.

<sup>14</sup> Examples of data that should be collected include expenditure spending specifically earmarked for children and families, proportion of staff trained and involved in disability and child-related programs, poverty indicators, enrolment of children with disabilities in schools, living and housing conditions for children of all disability levels and foster care and group homes, number of children undergone painful and invasive medical procedures. CRPD indicators include: 7.15 Percentage of public expenditure directed to girls and boys with disabilities across sectors. 7.16 Proportion of awareness raising and information campaigns concerning children and/or targeted at children which are fully accessible and inclusive of children with disabilities. 7.17 Proportion of staff involved in the delivery of programs and services related to children, trained on disability. 7.20 Under-five mortality rate (SDG indicator 3.2.1) disaggregated by sex, disability. 7.21 Prevalence of undernourishment of children (SDG indicator 2.1.1) disaggregated by sex, age, and disability. 7.22 Prevalence of malnutrition among children under 5 years of age, by type (wasting and overweight) (SDG indicator 2.2.2), disaggregated by sex, age, and disability. 7.23 Proportion and number of children aged 5-17 years engaged in child labour, by sex and age (SDGs indicator 8.7.1) and disability. 7.24 Enrolment rate of children with disabilities in regular schools,

collected on children with disabilities across key areas of program and service delivery such as health, education, housing, community leisure and transport.

**Children with disabilities, who also belong to other marginalized groups,<sup>15</sup> face multiple layers of discrimination:** There is limited information on what actions have been taken to address this discrimination.

**Supporting transition from childhood to adulthood:** As children with disabilities grow into adulthood, their capacities evolve and support needs change.<sup>16</sup> Resources should be allocated to provide universal supports, while also accommodating individual needs.

**Deaf children are not given opportunities to develop their cultural and linguistic identities:** Early intervention programs often do not recognize Deaf children's identities or provide adequate opportunities to acquire sign languages.<sup>17</sup>

### **Suggested Questions:**

1. What mechanism will Canada put in place to include all children with disabilities and their families in future consultations on implementing legislation and CRPD compliance?
2. How will Canada include, address and measure gaps experienced by children with disabilities in the implementation of the *Accessible Canada Act* and federal/provincial/territorial policies and guidelines?
3. How will Canada improve data collection on children with disabilities, to document progressive realization of CRPD rights, and to inform policy and program development at all levels of government?
4. How will Canada develop targeted strategies to address intersectional discrimination faced by children with disabilities?

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disaggregated by age, sex and disability. 7.25 Number and proportion of children with disabilities living in alternative care different from family settings in the community, disaggregated by age, sex and disability. 7.26 Number of children with disabilities having undergone invasive, painful and irreversible medical and related interventions and treatments, that might amount to ill-treatment and/or torture

<sup>15</sup> Children with disabilities, who experience multiple forms of marginalization, such as Indigenous children, girls, immigrant and refugee children, and low socio-economic children.

<sup>16</sup> Examples where transitional support is needed, include transitioning from the education system into the workforce, or to alternative day care programs for individuals with severe or multiple disabilities; providing options for independent and assisted living; and transitioning from paediatric healthcare to adult healthcare.

<sup>17</sup> Delayed access to sign language can have profoundly negative effects on a child's linguistic development.

5. What supports are being put in place to address the needs of children with disabilities transitioning to adulthood, to ensure their dignity, autonomy and contributions to society as they grow older?
6. Will Canada establish a benchmark for Deaf babies and children's opportunities to acquire sign languages to ensure their literary and educational development?

## **ARTICLE 8: Awareness-raising**

Disability discrimination is the most common type of discrimination experienced by people in Canada.<sup>18</sup> 22% of Canada's population report having at least one disability.<sup>19</sup> Despite these statistics, Canada has not effectively implemented awareness strategies to ensure the rights, dignity, and full participation of people with disabilities.

There is limited awareness and information regarding invisible disabilities and Indigenous people with disabilities.

There are limited consultation processes with historically marginalized groups, including ethno-racial communities, children and youth from disadvantaged populations, people with Alzheimer's, families of children with complex care needs, and suburban and Indigenous communities.

There is a lack of targeted and culturally specific communication (i.e. through ethnic media) by government to address disability stigma in immigrant, racialized, and Indigenous disability communities.

Disability awareness campaigns are not reflective of diverse communities, and are not always developed in consultation with disability communities.

### **Suggested Questions**

1. When will Canada fully implement Indigenous Disability Awareness Month?
2. How will Canada collaborate with national/local/diverse organizations, health and educational institutions on awareness building to reduce stigma and discrimination against people with disabilities?
3. How will Canada ensure that adequate and sustained resources are available for disability rights awareness campaigns, and will these campaigns adopt an intersectional approach?

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<sup>18</sup> Canadian Human Rights Commission, "By the numbers", online: <<http://chrcreport.ca/by-the-numbers.php>>.

<sup>19</sup> Statistics Canada, "New Data on Disability in Canada 2017", online (pdf): <<https://www150.statcan.gc.ca/n1/en/pub/11-627-m/11-627-m2018035-eng.pdf?st=h2dXZOsB>>.

## **ARTICLE 9: Accessibility**

Canada recently passed federal accessibility legislation (*Accessible Canada Act*),<sup>20</sup> and three provinces (Ontario, Manitoba and Nova Scotia)<sup>21</sup> have provincial accessibility legislation. The *Accessible Canada Act* includes “communication”, recognizing the interactive accessibility needs of people with speech, language, and communication disabilities (SLCDs).

Inaccessible information systems and physical facilities—compounded by lack of training for public and private service providers—create barriers to accessibility and full societal participation for people with SLCDs, people who are Blind, Deaf-Blind, D/deaf, Hard of Hearing and people with low vision.

Laws governing broadcasting and telecommunications are being updated, but these processes have not adequately included persons who are D/deaf, Deaf-Blind or Hard of Hearing.<sup>22</sup>

Government-funded housing projects and the Canada Mortgage and Housing Corporation are not mandated to use universal design principles.

Wayfinding should be in plain language<sup>23</sup> to meet the needs of persons with<sup>24</sup> intellectual disabilities.<sup>25</sup>

People with SLCDs lack necessary communication support services to enable communication in critical situations, such as exercising legal capacity and informed consent in medical treatment, admission to long-term care, end-of-life directives, and disclosing abuse and crimes to police.<sup>26</sup>

### **Suggested Questions**

1. The *Accessible Canada Act* gives the federal government and federal agencies powers to develop accessibility regulations, but does not actually require them to do so.<sup>27</sup> How can Canada ensure that future governments regulate to advance accessibility?
2. What lessons have been learned about developing strong, effective accessibility legislation from provincial experiences? Will Canada commit to following international best practices to effectively implement the *Accessible Canada Act*?

<sup>20</sup> Bill C-81, *An Act to ensure a barrier-free Canada*, 1st, 42nd Parl, 2019 (assented to June 21, 2019) [*Accessible Canada Act*], online: <<https://www.parl.ca/DocumentViewer/en/42-1/bill/C-81/royal-assent>>.

<sup>21</sup> *Accessibility for Ontarians With Disabilities Act*, 2005, SO 2005, c 11; *Accessibility for Manitobans Act*, CCSM c A1.7; *Accessibility Act*, SNS 2017, c 2.

<sup>22</sup> The Broadcasting and Telecommunications Legislative Panel is currently reviewing the *Broadcasting Act*. This review has not adequately incorporated lived experience from accessibility groups such as people who have mobility impairments, are D/deaf, Deaf-Blind, or Hard of Hearing who use ASL and LSQ in Canada. D/deaf, Deaf-Blind and Hard of Hearing persons are often behind in receiving information through broadcasting systems due to their lack of ability to receive information through our first languages, which the current review process must address. The *Telecommunications Act* is also under review, and also lacking adequate representation from people who are D/deaf, Deaf-Blind, Hard of Hearing, or have mobility impairments. Text with 911 systems are critically flawed; for instance, it takes up to 2 minutes for 911 respondents to initiate a 911 call through text between D/deaf, Deaf-Blind or Hard of Hearing persons and the Public Safety Answering Points.

<sup>23</sup> The term “plain language” is used in this submission. We acknowledge that other formats, including clear language and Easy Read, may provide information that is accessible for persons with intellectual and/or developmental disabilities.

<sup>24</sup> The term “people with intellectual disabilities” is used in this submission. We acknowledge that People First and other DPOs use the term “people labelled with intellectual disabilities”.

<sup>25</sup> The UN Committee on the Rights of Persons with Disabilities has stipulated that universal design be strictly applied to all new goods, products, facilities, technologies, and services. Universal design “should contribute to the creation of an unrestricted chain of movement for an individual from one space to another,” meaning that all users “should be able to move in barrier-free streets, enter accessible low-floor vehicles, access information and communication, and enter and move inside universally designed buildings, using technical aids and live assistance where necessary.” Canada’s present accessibility situation greatly diverges from this standard. Read UN Committee on the Rights of Persons with Disabilities, “General Comment No 2 (2014), Article 9: Accessibility” (22 May 2014) CRPD/C/GC/2 at para 15.

<sup>26</sup> See generally Communication Disabilities Access Canada, “Public Consultation on Federal Accessibility Legislation” (2018), online (pdf): [https://www.cdacanada.com/wp-content/uploads/2018/01/Final\\_Community\\_Consultation\\_for\\_Federal\\_Accessibility\\_Legislation\\_Digital\\_2.pdf](https://www.cdacanada.com/wp-content/uploads/2018/01/Final_Community_Consultation_for_Federal_Accessibility_Legislation_Digital_2.pdf) and Communication Disabilities Access Canada, “Communication Intermediaries in Justice Services” (2018), online (pdf): <<https://www.cdacanada.com/resources/access-to-justice-communication-intermediaries/resources/report-communication-intermediaries-in-ontario-sept-2018/>>.

<sup>27</sup> The *Accessible Canada Act* states that the government “may” pass regulations. The language “may” is permissive, rather than directive. It does not require the government to pass these regulations. Read *Accessible Canada Act* at s 117.

3. What practical, specific and regularly evaluated steps will Canada take to advance universal design and improve accessibility?
4. How is Canada ensuring alternative formats of communication, in particular plain language versions of public documents and fundamental legislation, such as the *Canadian Charter of Rights and Freedoms*, are available to persons with intellectual, cognitive, and/or psychosocial<sup>28</sup> disabilities?
5. How will Canada promote and interpret the *Accessible Canada Act* in order to enhance the full inclusion of persons with disabilities, in addition to removing barriers?<sup>29</sup>

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<sup>28</sup> The term “psychosocial disability” is used in this submission. We acknowledge that there are many terms used, including psychosocial disability, mental health disability, consumer/survivor, and others, and that there is no consensus within legal and disability communities about the appropriate terminology.

<sup>29</sup> It is critical to recognize the inherent worth of people with disabilities in order to change attitudes, and stop the perpetuation of discrimination. It is notable that Canada’s new federal accessibility legislation does not include “inclusion” in its official name.



## ARTICLE 10: Right to life

**Right to life not protected in medical assistance in dying (MAiD) system<sup>30</sup>:** MAiD deaths increased 300% in three years,<sup>31</sup> and people with disabilities are being pressured to access it.<sup>32</sup> MAiD is normalizing the idea that disability can justify terminating life. A Québec court granted leniency to a man convicted of murdering his wife with Alzheimer’s disease, in part because she was ineligible for MAiD, and required significant caregiving.<sup>33</sup> Unlike MAiD, there is no right to palliative care, despite massive unmet need,<sup>34</sup> and no rights-based approach to disability supports, violating Article 19.<sup>35</sup>

**Right to life threatened by pressure to expand MAiD access based solely on disability:** Legal,<sup>36</sup> academic,<sup>37</sup> and advocacy<sup>38</sup> actors seek to eliminate MAiD’s restriction to those whose death is “reasonably foreseeable,” and make disability-related “suffering” eligible on its own. Disability organizations are challenging these arguments through courts<sup>39</sup> and a national platform.<sup>40</sup> Eliminating the end-of-life requirement would signal that disability justifies terminating lives. This will have a devastating impact on people with disabilities’ self-esteem, equal recognition and equal protection of the right to life.

**Canada has rejected proposals to responsibly monitor MAiD,** including those made by the Committee<sup>41</sup> and Canadian experts.<sup>42</sup> There is no arm’s length, independent monitoring of MAiD.

**No requirement for assessing external pressure to pursue MAiD,** despite evidence that coercion, inducement and socio-economic vulnerability are motivating factors.<sup>43</sup>

### Suggested Questions

1. How will Canada amend the MAiD monitoring system to ensure impartiality, address identified gaps, and implement the Committee’s Concluding Observations?
2. How will Canada implement independent risk-assessment for external pressure on those seeking MAiD?

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<sup>30</sup> Also known as assisted suicide or euthanasia.

<sup>31</sup> Data provided in Government of Canada, “Fourth Interim Report on Medical Assistance in Dying in Canada” (April 2019), online: <<https://www.canada.ca/en/health-canada/services/publications/health-system-services/medical-assistance-dying-interim-report-april-2019.html>>.

<sup>32</sup> Read, for example, Penny Daflos, “B.C. man with ALS encouraged by UN watchdog’s ‘urgent’ call for services” (12 April 2019), online: *CTV News Vancouver* <<https://bc.ctvnews.ca/b-c-man-with-als-encouraged-by-un-watchdog-s-urgent-call-for-services-1.4378396>>; CTVNews.ca Staff, “Chronically ill man releases audio of hospital staff offering assisted death” (2 August 2018), online: *CTV News*

<<https://www.ctvnews.ca/health/chronically-ill-man-releases-audio-of-hospital-staff-offering-assisted-death-1.4038841>>; Charlie Fidelman, “Saying Goodbye to Archie Rolland, who chose to die: ‘It is Unbearable’” (21 October 2016), online: *Montreal Gazette* <<http://montrealgazette.com/news/local-news/saying-goodbye-to-archie-rolland>>; Geoff Bartlett, “Mother says doctor brought up assisted suicide option as sick daughter was within earshot” (24 July 2017) online: *CBC News* <<https://www.cbc.ca/news/canada/newfoundland-labrador/doctor-suggested-assisted-suicide-daughter-mother-elson-1.4218669>>. Significant risk factors underlying increasing requests for MAiD include growing discrimination, violent victimization and suicidality among people with disabilities. Over 50% of human rights complaints in Canada are disability based. Read Canadian Human Rights Commission, “Speak Out: The Canadian Human Rights Commission’s 2018 Annual Report to Parliament” (April 2019), online (pdf): <<https://www.chrc-ccdp.gc.ca/eng/content/annual-report-2018>>. People with disabilities experience hugely disproportionate rates of violent victimization in Canada. Read, for example, Statistics Canada, “Violent victimization of women with disabilities, 2014” by Adam Cotter (15 March 2018) Catalogue No 85-002-X, online (pdf): <<http://www.statcan.gc.ca/pub/85-002-x/2018001/article/54910-eng.pdf>> and Statistics Canada, “Criminal victimization and Health: A profile of victimization among persons with activity limitations and other health problems” by Samuel Perreault (2009) Catalogue No 85F0033M—No 21, online (pdf):<<https://www150.statcan.gc.ca/n1/en/pub/85f0033m/85f0033m2009021-eng.pdf?st=9rmtnkLV>>. Rates of suicidality among people with disabilities are also much higher than the general population. Read Ontario Centre of Excellence for Child and Youth Mental Health, “Suicide in adolescents with developmental disabilities” (2014), online (pdf): <<http://www.excellenceforchildandyouth.ca/resource-hub/suicide-adolescents-developmental-disabilities>>; Erica Ludi et al, “Suicide risk in youth with intellectual disabilities: the challenges of screening” (June 2012) *Journal of Developmental Behavioural Pediatrics* 33:5 431; Statistics Canada, “Canadian Survey on Disability: A demographic, employment and income profile of Canadians with disabilities aged 15 years and over, 2017” (2018), online:<<https://www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2018002-eng.htm>>; David McConnell et al, “Suicidal Ideation Among Adults with Disability in Western Canada: A Brief Report” (2006) *Journal of Community Mental Health* 52:5 519. All of these factors have been shown to motivate requests for MAiD. Read Michael Bach, *Assessing Vulnerability in a system for physician assisted death in Canada* (Toronto: Canadian Association for Community Living, 2016) online (pdf): <<https://static1.squarespace.com/static/56bb84cb01dbae77f988b71a/t/5991cc9546c3c49f9a734e61/1502727322654/CACL%2BVulnerability%2BAssessment%2BApr%2B8%2B-%2BFinal%2B-%2Bfor%2BWEB.pdf>>.

<sup>33</sup> In this Québec case, the husband was sentenced to two years less a day for murdering his wife who had Alzheimer’s disease. In doing so, the judge took account of the caregiving burden on the husband, and denial of her eligibility for MAiD. See *R. c. Cadotte*, [2019] QCCS 1987 (CanLII), at paras. 110-112, online: <<http://canlii.ca/t/j011h>>.

<sup>34</sup> More than 75% of Canadians wish to die at home, only 15% have access to palliative care they need to do so. Read Canadian Institute for Health Information, “Access to Palliative Care in Canada” (2018), online (pdf): <<https://www.cihi.ca/sites/default/files/document/access-palliative-care-2018-en-web.pdf>>.

<sup>35</sup> Read United Nations, Office of the High Commissioner for Human Rights, “End of Mission Statement by the United Nations Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas-Aguilar, on her visit to Canada” (12 April 2019), online: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24481&LangID=E>>.

<sup>36</sup> *Lamb v Canada (Attorney General)* [2016], Vancouver, SCBC, S-165851 (notice of civil claim) filed 27 June 2016; and, *Jean Truchon and Nicole Gladu v Attorney General (Canada) and Attorney General (Québec)* [2017], Montreal, CQ (Civ Div) (notice of Application to Proceed for Declaratory Relief) Filed 13 June 2017.

<sup>37</sup> In 2016, the Government of Canada funded the Council of Canadian Academies to consider implications of expanding access to MAiD: 1) for mature minors; 2) based solely on a mental illness; and, 3) based on advance directives (for a future time when a person could not consent). Expanding access to groups 2) and 3) would equate disability with a fate worse than death, significantly contributing to disability-based stereotypes and ableism in Canada. Terminating the lives of increasing numbers of people diagnosed with a “mental disorder”, including elderly people with dementia who may not be dying and who cannot consent to their death by euthanasia, would certainly do so. The final report, prepared

3. Is Canada committed to the end-of-life requirement for MAiD, as necessary to achieve the legislation's purpose "to affirm the inherent and equal value of every person's life and to avoid encouraging negative perceptions of the quality of life of persons who are elderly, ill or disabled"?<sup>44</sup>

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with input from many academics lays out evidence and arguments both for expanding access and for maintaining the law as it currently stands. Read Council of Canadian Academies, "The State of Knowledge on Medical Assistance in Dying for Mature Minors, Advance Requests, and Where a Mental Disorder is the Sole Underlying Medical Condition" (Ottawa, Council of Canadian Academies, December 2018), online: <<https://cca-reports.ca/reports/medical-assistance-in-dying/>>.

<sup>38</sup> Read, for example, Dying with Dignity Canada, online: <<https://www.dyingwithdignity.ca/>>.

<sup>39</sup> The Canadian Association for Community Living and the Council of Canadians with Disabilities, both long-standing national, representative disability organizations are intervening in these legal cases. For an overview of this national platform, the "Vulnerable Persons Standard" and its expert advisors and supporting civil society organizations, refer to [www.vps-npv.ca](http://www.vps-npv.ca).

<sup>40</sup> For an overview of this national platform, the "Vulnerable Persons Standard" and its expert advisors and supporting civil society organizations, refer to [www.vps-npv.ca](http://www.vps-npv.ca).

<sup>41</sup> These recommendations called on Canada to: a) ensure access to alternative courses of action; b) collect and report detailed information about each request; and, c) establish a national data standard with an independent mechanism to ensure that no person is subject to external pressure. Read UN Committee on the Rights of Persons with Disabilities, "Concluding observations on the initial report to Canada" (8 May 2017) at paras 23-24, CRPD/C/CAN/CO/1 online:

<[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCAN%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCAN%2fCO%2f1&Lang=en)>

<sup>42</sup> Read Advisors to the Vulnerable Persons Standard, *Towards a More Robust Monitoring Regime for Medical Assistance in Dying: Recommended Changes to the Draft Monitoring of Medical Assistance in Dying Regulations* (Toronto: Vulnerable Persons Standard, February 2018), online (pdf): <<https://static1.squarespace.com/static/56bb84cb01dbae77f988b71a/t/5a845f84ec212da3285ab163/1518624645431/VPS+Submission+on+Federal+MAiD+Monitoring+Regulations+-+FINAL.pdf>>.

<sup>43</sup> Read Michael Bach, *Assessing Vulnerability in a system for physician assisted death in Canada* (Toronto: Canadian Association for Community Living, 2016) online (pdf): <<https://static1.squarespace.com/static/56bb84cb01dbae77f988b71a/t/5991cc9546c3c49f9a734e61/1502727322654/CACL%2BVulnerability%2BAssessment%2BApr%2B8%2B-%2BFinal%2B-%2Bfor%2BWEB.pdf>>.

<sup>44</sup> Read Bill C-41, *An Act to amend the Criminal Code and to make related amendments to other Acts (medical assistance in dying)*, 1st Sess, 42nd Parl, 2016, preamble (assented to June 17, 2016), online: <<https://www.parl.ca/DocumentViewer/en/42-1/bill/C-14/royal-assent>>.

## ARTICLE 11: Situations of risk and humanitarian emergencies

Disaster planning and response have been under-inclusive of people with disabilities.<sup>45</sup> People with disabilities have 2-4 times the mortality rate of the general population in acute-onset disasters.<sup>46</sup> It is imperative that disaster relief planning frameworks include input from people with disabilities, and are rooted in a “cross-disability” paradigm reflecting complex and various needs.<sup>47</sup>

There has been a slow—but progressive—increase in the availability of more accessible disaster warning systems, including text message disaster warnings and visual fire alarms. Public Safety Canada, in collaboration with Emergency Management Ontario, has developed an Emergency Preparedness Guide for People with Disabilities/Special Needs.<sup>48</sup> However, the Guide has been translated into accessible formats for some—but not all—communities; for example, the Guide is not available in ASL/LSQ, closed captioning, plain language, or Indigenous languages. While the Guide recommends establishing personal evacuation plans, regular drills, and specialized training for emergency responders, implementation monitoring is lacking. Particular challenges arise in long-term care facilities housing large numbers of older persons with memory and/or mobility impairments.<sup>49</sup>

There is incomplete health coverage for asylum seekers. The absence of sign language interpretation services for D/deaf, Deaf-Blind or Hard of Hearing asylum seekers at the border and during the admission process is a cause of concern.

### Suggested Questions

1. How will Canada improve the collection of census data to capture disaggregated information--particularly on people with disabilities—for effective preparedness and response to disasters?
2. How will Canada provide accessible information for D/deaf, Deaf-Blind and Hard of Hearing people who use ASL/LSQ as primary languages?

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<sup>45</sup> Gregor Wolbring, “A Culture of Neglect: Climate Discourse and Disabled People,” (2009) *M/C Journal*, 12:4.

<sup>46</sup> Katsunori Fujii, “The Great East Japan Earthquake and Disabled Persons: Their High Mortality Rate” (2012). Factors that Hindered the Support and the Current Challenges. [Provisional Translation] prepared for the United Nations Expert Group Meeting on Building Inclusive Society and Development through Promoting ICT Accessibility: Emerging Issues and Trends, 20 April, Japan. In: ESCAP (2015) *Overview of Natural Disasters and their Impacts in Asia and the Pacific, 1970 – 2014*, ESCAP Technical Paper, Information and Communications Technology and Disaster Risk Reduction Division.

3. How will Canada ensure disaster-related trainings and information are accessible to people with disabilities?
4. How will Canada structure and finance research on disaster-related training and information accessibility, so as to promote good practices and increase the resilience of persons with disabilities?
5. Does Canada have a comprehensive plan for disability-inclusive Disaster-Risk Reduction and Climate Change Adaptation, with attached funding, performance/impact indicators, and reporting mechanisms?

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<sup>47</sup> Disability-inclusive Disaster-risk Reduction (DRR) strategies and Climate Change Adaptation (CCA) are promoted as key approaches for reducing impact on people with disabilities in disasters. Current recommendations are to address DRR and CCA concurrently. We have considered them as interconnected in this analysis, and in light of the Committee's past statements linking Disaster Risk Reduction to Article 11. See Laura Stough & Donghyun Kang, "The Sendai Framework for Disaster Risk Reduction and Persons with Disabilities" (13 June 2015) *International Journal of Disaster Risk Science* 6:140.; John Twigg, "Disaster Risk Reduction: Good Practice Review 9" (2015). Commissioned by the Humanitarian Practice Network; and John Twigg et al, "Disability and Climate Resilience: A literature review" *Leonard Cheshire Research Centre*.

<sup>48</sup> Public Safety Canada, *Emergency preparedness guide for people with disabilities/special needs*, Catalogue No PS4-26/1-3-2010E (2010), online (pdf): <https://www.getprepared.gc.ca/cnt/rsrscs/pblctns/pplwthdsblts/pplwthdsblts-eng.pdf>.

<sup>49</sup> For example, in 2014 in Isle-Verte, Québec, 32 residents of a seniors' home were killed in a fire as they were unable to evacuate their building.

## **ARTICLE 12: Equal recognition before the law**

**Pervasive discrimination in exercising legal capacity:** Persons with intellectual, cognitive, psychosocial, and communication disabilities face pervasive discrimination in exercising legal capacity, largely because of perceived inability to meet discriminatory cognitive capacity tests and lack of supports.<sup>50</sup> Consequently, many people with disabilities are systematically denied the right to make important life decisions.<sup>51</sup> Over 50,000 people in Canada are currently under guardianship and formal substitute decision-making arrangements.<sup>52</sup> Legal capacity is denied through involuntary admission and treatment in mental health facilities, adult protection interventions, and imposed substitute decision-making for healthcare consent.<sup>53</sup> 880,000 to 1 million people with disabilities in Canada need decision-making assistance, but no rights-based approach to supports exists.<sup>54</sup>

**Diagnoses of “mental disorder” used to strip people of legal capacity:** Diagnosis of “mental disorders” frequently trigger findings of legal incapacity, and involuntary commitment/treatment. “Community treatment orders” are used to force people to take medications against their will, in order to live in the community.

**Limited/no legal recognition of decision-making supports and accommodation:** Where supports are recognized in law, they are exclusively for people who meet the cognitive test for capacity.<sup>55</sup>

**Article 12 reservation not withdrawn:** With legal capacity restricted for growing numbers, Canada’s failure to do so is a shameful abdication of responsibility.

**Some provinces actively resist reform:** Nova Scotia rejected proposals for supported decision-making and adopted a new guardianship law instead.<sup>56</sup> British Columbia argued against legal standing for the Council of Canadians with Disabilities in a case challenging the constitutionality of provisions restricting legal capacity in the *Mental Health Act*, and prevented it from going to trial.<sup>57</sup>

**National survey excluded questions on control in decision-making:** Without this data, progress on this issue cannot be tracked.

**Accessible Canada Act passed, but without standards on legal capacity,** and may not address barriers to legal capacity.

**National Dementia Strategy:** Adopts principle of respecting choice, but how much it will ensure provision of needed supports and protections for legal capacity is unclear.<sup>58</sup>

<sup>50</sup> For a detailed analysis of the discriminatory nature of the cognitive test in the context of Canadian human rights and constitutional law read Lana Kerzner, “Canada’s Legal Capacity Laws: A Roadmap and an Equality Analysis in Light of the Canadian Charter of Rights and Freedoms and the CRPD” (Toronto: IRIS – Institute for Research and Development on Inclusion and Society, 2019, forthcoming).

<sup>51</sup> An extensive analysis of these barriers is provided in a recent report by Michael Bach, Lana Kerzner, Faisal Bhabha, Ruby Dhand, Kerri Joffe and Brendon Pooran, “Implementing Equal Access to Legal Capacity in Canada: Experience, Evidence and Legal Imperative” (Toronto: IRIS – Institute for Research and Development on Inclusion and Society, 2019, forthcoming).

<sup>52</sup> This data is drawn from UN Committee on the Rights of Persons with Disabilities, “List of issues in relation to the initial report of Canada, Addendum: Replies of Canada to the list of issues” (Geneva: 20 March 2017), CRPD/C/CAN/Q/1/Add.1 at 8-9, online (pdf): <<https://digitallibrary.un.org/record/1310473>>. Note, the figures provided by Canada are disaggregated by province/territory, and total 51,861 (as of 2016).

<sup>53</sup> For example, in Ontario, 74.1% of the over 115,000 persons admitted to hospital for psychiatric care between 2009 and 2013 (more recent data not available) were involuntarily admitted. The prevalence of involuntary admissions increased from 70.1% in 2009 to over 77% in 2013, with recent immigrants to Canada, and those in contact with police in the week prior to admission, significantly over-represented. There is also dramatic increase in the numbers of persons involuntarily committed in British Columbia, where between 2005/06 and 2016/17 involuntary admissions rose by over 70% in a period when the provincial population increased by just 15%. In reporting these figures, the British Columbia Ombudsperson also pointed to systemic rights violations against those who are involuntarily committed, and the failure of health authorities across the province to meet their existing rights obligations. The Canadian Institute for Health Information reports that in 2011, close to one in four (24%) of those admitted to a “designated mental health bed” in Ontario were subjected to “control interventions,” including physical and mechanical restraints. See Michael Lebenbaum et al, “Prevalence and predictors of involuntary psychiatric hospital admissions in Ontario, Canada: a population-based linked administrative database study” (2018) *British Journal of Psychiatry Open* 4(2):31-38; British Columbia, Office of the Ombudsperson, *Committed to Change: Protecting the Rights of Involuntary Patients under the Mental Health Act Special Report No. 42* (Vancouver: March 2019) at 15, 91, online (pdf): <<https://bcombudsperson.ca/sites/default/files/OMB-Committed-to-Change-FINAL-web.pdf>>; and Canadian Institute for Health Information, *Restraint Use and Other Control Interventions for Mental Health Inpatients in Ontario* (Ottawa: 2011) at 1, online (pdf): <[https://secure.cihi.ca/free\\_products/Restraint\\_Use\\_and\\_Other\\_Control\\_Interventions\\_AIB\\_EN.pdf](https://secure.cihi.ca/free_products/Restraint_Use_and_Other_Control_Interventions_AIB_EN.pdf)>.

<sup>54</sup> These results are from the Canadian Survey on Disability in an analysis conducted for the Canadian Association for Community Living and The Wellesley Institute, by Adele Furrie, February 2017. The Special Rapporteur on the Rights of Persons with Disabilities addressed this issue on her recent visit to Canada. Read United Nations, Office of the High Commissioner for Human Rights, “End of Mission Statement by the United Nations Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas-Aguilar, on her visit to Canada” (12 April 2019), online: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24481&LangID=E>>.

<sup>55</sup> British Columbia is an exception, as access to supported decision-making does not rely on a cognitive test. However, supported decision-making is restricted to “routine” financial decisions, and does not apply in the mental healthcare context.

<sup>56</sup> “Adult Capacity and Decision-making Act SNS 2017, c 4” (28 December 2017), online: <<https://www.canlii.org/en/ns/laws/stat/sns-2017-c-4/latest/sns-2017-c-4.html>>.

<sup>57</sup> *MacLaren v British Columbia (Attorney General)*, 2018 BCSC 1753. A description of CCD’s involvement in this matter is summarized at Community Legal Assistance Society, “Mental Health Law Reform”, online: <<https://clasbc.net/our-work/law-reform/mental-health-law-reform/>>.

<sup>58</sup> Public Health Agency of Canada, “A Dementia Strategy for Canada: Together We Aspire” (17 June 2019), online: <<https://www.canada.ca/en/public-health/services/publications/diseases-conditions/dementia-strategy.html#s3.4.2>>.

**Still no federal-provincial/territorial action plan:** Despite the Committee's call for Canada to "create a consistent framework for recognizing legal capacity and to enable access to the support needed to exercise legal capacity."<sup>59</sup>

### **Suggested Questions**

1. Will Canada withdraw its reservation on Article 12?
2. How will Canada lead the Provinces/Territories to: create a consistent, non-discriminatory framework for legal capacity; ensure access to needed supports; and, invest in needed information resources, training and demonstration initiatives?
3. How will Canada fulfil data obligations under Articles 12 and 31, including:
  - re-introducing into the national survey on disability questions related to control over decision-making? and
  - working with Provinces/Territories to collect information on substitute decision-making imposed under healthcare consent, adult protection and mental health laws?

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<sup>59</sup> Committee on the Rights of Persons with Disabilities, "Concluding observations on the initial report to Canada" (8 May 2017) CRPD/C/CAN/CO/1 para. 28, online: [https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCAN%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fCAN%2fCO%2f1&Lang=en).



## ARTICLE 13: Access to justice

**Inadequate access to legal aid:** Canada does not have a national publicly-funded legal aid program. Instead, Provinces/Territories administer their own programs. There are stark regional disparities in who can access legal aid, the types of issues covered, and the amount and type of legal assistance provided.<sup>60</sup> Access to legal aid is based on income-testing, rather than a right of access to justice.<sup>61</sup> People with disabilities who work are generally not eligible for legal aid, but often cannot afford private legal services—leaving them without any legal assistance.

Civil legal aid spending has declined, with detrimental impacts on marginalized people, including people with disabilities.<sup>62</sup> In some provinces, significant budget cuts are being made to legal aid.<sup>63</sup> Reduction in legal aid services may have a disproportionately negative impact on people with disabilities because they are more likely to need legal help, but less likely to afford private lawyers.<sup>64</sup> Reduction in legal aid negatively impacts a wide-range of CRPD rights, including legal capacity (Art 12)<sup>65</sup>, adequate standard of living and social protection (Art 28), living independently in the community (Art 19), and equality (Art 5).

**Procedural and communication barriers prevent full and effective access to justice:** Courts and tribunals are required by law to provide procedural accommodations, but only up to the point of undue hardship.<sup>66</sup> In practice, some tribunals have developed accommodation policies, and have well-developed processes in place to receive accommodation requests, and provide disability-related accommodations.<sup>67</sup> Others do not have accommodation policies, decline to provide appropriate procedural accommodations, or are not sensitive to privacy interests.<sup>68</sup>

People with disabilities face multiple barriers that prevent, or limit, their access to, and participation in, tribunal and court processes.<sup>69</sup> The process for requesting accommodations is not always clear. Medical documentation is often required to justify accommodation requests, and individuals may be reluctant to request accommodations because of stigma and stereotypes, or fear of having their medical records become public.<sup>70</sup> People with disabilities who have been found incapable of making their own financial or healthcare decisions may also face participation barriers.<sup>71</sup>

Communication intermediary services are significantly under-funded and under-developed in Canada.<sup>72</sup> Sign language interpretation is provided as a procedural accommodation in courts, however it is not always provided in police interactions. Victims, witnesses and accused persons with SLCDs do not have consistent access to communication support services.

<sup>60</sup> For example, in some provinces legal clinics assist persons with disabilities to apply for and appeal denials of income support benefits, while in other provinces no such legal assistance is available. Canadian Bar Association, “Study on Access to the Justice System – Legal Aid” (December 2016) at 7, online (pdf): CBA <[www.cba.org/CMSPages/GetFile.aspx?guid=8b0c4d64-cb3f-460f-9733-1aaff164ef6a](http://www.cba.org/CMSPages/GetFile.aspx?guid=8b0c4d64-cb3f-460f-9733-1aaff164ef6a)>.

<sup>61</sup> In practice, people who live on very low or no incomes qualify for legal aid. The Canadian Bar Association, “Reaching equal justice report: an invitation to envision and act” (November 2013) at 39, online (pdf): CBA <[www.cba.org/CBAMediaLibrary/cba\\_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf](http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf)>.

<sup>62</sup> The Canadian Bar Association, “Reaching equal justice report: an invitation to envision and act” (November 2013) at 40-42, online (pdf): CBA <[www.cba.org/CBAMediaLibrary/cba\\_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf](http://www.cba.org/CBAMediaLibrary/cba_na/images/Equal%20Justice%20-%20Microsite/PDFs/EqualJusticeFinalReport-eng.pdf)>; A 2017 House of Commons report recommended that the federal government increase its funding to Provinces/Territories for the delivery of legal aid services. House of Commons, “Access to Justice Part 2: Legal Aid, Report of the Standing Committee on Justice and Human Rights” (October 2017), 9-11, online: *House of Commons* <<https://www.ourcommons.ca/DocumentViewer/en/42-1/JUST/report-16/>>.

<sup>63</sup> In 2019 the Government of Ontario cut Legal Aid Ontario’s budget by 33%, resulting in the virtual elimination of legal aid funding for immigration and refugee law services, and significant reductions in funding for poverty law services. Ontario has announced that further budget cuts will be made to legal aid in 2020/21. For more information about these budget cuts and their impact to persons with disabilities read: Robert Lattanzio, “Severe Cuts to Legal Aid Impact Persons with Disabilities” (12 July 2019) *ARCH Alert* 20:2, online: *ARCH Disability Law Centre* <[https://archdisabilitylaw.ca/arch\\_alert/arch-alert-volume-20-issue-2/](https://archdisabilitylaw.ca/arch_alert/arch-alert-volume-20-issue-2/)>.

<sup>64</sup> Studies have found that persons with disabilities are significantly more vulnerable to discrimination and other legal problems, and therefore are significantly more likely to become involved in the civil justice system. In addition, in Canada, persons with disabilities have a higher rate of poverty than persons without disabilities. In short, persons with disabilities are more likely to need legal services, but also more likely to be unable to pay for those services.

<sup>65</sup> Due to budget cuts, Legal Aid no longer funds lawyers to represent persons in Ontario who are under statutory guardianship of property and want to apply to terminate that guardianship under Ontario law: *Substitute Decisions Act*, 1992, S.O. 1992, c. 30, section 20.3. Legal Aid Ontario, “Reminder: Changes to LAO policies and certificate coverage in criminal, family and mental health law, effective June 12, June 26 and July 7, 2019” (4 July 2019), online: *Legal Aid Ontario* <[http://legalaid.on.ca/en/news/newsarchive/2019-07-04\\_changes-to-policies-and-coverage.asp](http://legalaid.on.ca/en/news/newsarchive/2019-07-04_changes-to-policies-and-coverage.asp)>.

<sup>66</sup> As service providers, these tribunals have a legal obligation under federal, provincial and territorial human rights laws to provide procedural accommodations for persons with disabilities, unless providing those accommodations causes undue hardship. In addition, some provinces have accessibility laws, which apply to administrative tribunals and require them to have policies about providing accessible services to persons with disabilities – for example: “Accessibility Standards for Customer Service, O Reg 429/07” (1 July 2016), online: *CanLii* <<https://www.canlii.org/en/on/laws/regu/o-reg-429-07/latest/o-reg-429-07.html>>.

<sup>67</sup> Read for example: Social Justice Tribunals of Ontario, “Accessibility and Accommodation Policy”, online (pdf): *Tribunals Ontario* <<http://www.sjto.gov.on.ca/documents/sjto/Accessibility%20and%20Accommodation%20Policy.html>>.

<sup>68</sup> For example, in Ontario, new legislation was recently passed that provides greater public access to documents that are part of legal cases adjudicated by administrative boards and tribunals. Often persons with disabilities must disclose private medical documents to get accommodations during these cases. The new legislation makes it more likely these medical records will become public. For a more detailed analysis, read ARCH Disability Law Centre, “Provincial Government Introduces Legislation about Access to Records at Administrative Boards and Tribunals” (June 6, 2019), online: *ARCH Disability Law Centre* <<https://archdisabilitylaw.ca/provincial-government-introduces-legislation-about-access-to-records-at-administrative-boards-and-tribunals/>>.

<sup>69</sup> For example, people with intellectual, neurological or psychosocial disabilities may have difficulty understanding tribunal and court forms, and may not be able to meet deadlines for submitting documents.

## **Suggested Questions**

1. What specific steps are the federal, provincial and territorial governments taking to review the provision of legal aid services to ensure access to criminal and civil legal aid for persons with disabilities? Will the Government of Canada provide increased legal aid funding to Provinces/Territories?
2. What specific steps are Canada and the Provinces/Territories taking to ensure full accessibility of courts and tribunals, including the provision of procedural accommodations for people with psychosocial disabilities, intellectual disabilities, speech, language and communication disabilities, and D/deaf people?

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Victims, witnesses and accused who have disabilities that affect their communication may be unaware of their right to request communication supports, and unable to communicate about their specific needs. Correspondence from the tribunal or court may be legalistic and difficult to understand. Some human rights complaint processes are cumbersome, slow and inaccessible.

<sup>70</sup> *Toronto Star v AG*, [2018] ONSC 2586 (CanLII), (Factum of the Interveners ARCH Disability Law Centre, HIV & AIDS Legal Clinic Ontario and the Income Security Advocacy Centre at 12-15).

<sup>71</sup> Tess Sheldon & Ivana Petricone, ARCH Disability Law Centre, *Addressing the Capacity of Parties Before Ontario's Administrative Tribunals: Respecting Autonomy, Protecting Fairness* (1 November 2009) online <<https://15285public.rmwebopac.com/Item/GetItemMultimedia/389666>>.

<sup>72</sup> Joanna Birenbaum & Barbara Collier, "Communication Intermediary Services in Justice Services" (2018), online (pdf): <[https://www.cdacanada.com/wp-content/uploads/2018/01/Community\\_Consultation\\_for\\_Federal\\_Accessibility\\_Legislation\\_.pdf](https://www.cdacanada.com/wp-content/uploads/2018/01/Community_Consultation_for_Federal_Accessibility_Legislation_.pdf)>.

## ARTICLE 14: Liberty and security of the person

Canada previously told the Committee that “provincial and territorial mental health legislation protects against arbitrary and indefinite detention of persons with disabilities, particularly intellectual and or psychosocial disabilities.”<sup>73</sup>

Federal, provincial and territorial governments have laws allowing involuntary detention of people with psychosocial disabilities in psychiatric institutions, jails, and other institutional locations, such as long term care facilities and supportive housing. These laws now extend into communities and into people’s homes through treatment orders. The situation has not changed since Canada’s last appearance before this Committee in 2016.<sup>74</sup>

Clinical community treatment orders (CTOs) are often used as a condition of a person’s release from an institution, as a way of ensuring treatment plan compliance while living in the community. CTOs are ordered and involuntary. To the community they are just another form of restraint, and another way of stripping a person’s liberty and independence.

In the Special Rapporteur’s “End of Mission Statement”, she stated that “the British Columbia *Mental Health Act* contains very broad criteria for involuntary admissions and, once detained, a person can be forcibly treated without their free and informed consent, including forced medication and electroconvulsive therapy.”<sup>75</sup> The involuntary hospitalization and treatment of persons with disabilities contradicts Articles 14 and 25 of the CRPD. British Columbia’s *Mental Health Act* violates the integrity of people with psychosocial disabilities by depriving them of their right to make treatment decisions through “deemed” consent to treatment.<sup>76</sup> The law doesn't require an assessment of decision-making capacity before imposing treatment, and deprives involuntary patients of access to substitute or supported decision-makers. The law also deprives involuntary patients of access to substitute or supported decision-makers.

### **Suggested Questions**

1. When will Canada ensure that Provinces/Territories review laws, policies, and practices allowing for involuntary detention of persons with psychosocial disabilities, and the coercive administration of psychiatric drugs?
2. When will Canada review the use of solitary confinement, and put policies and training in place to reduce its use and ensure non-discriminatory use?

3. When will Canada ensure policies, practices and training supporting the provision of appropriate accommodation, services and supports to prisoners with disabilities, in both provincial and federal institutions?<sup>77</sup>

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<sup>73</sup> UNCRPD, “List of issues in relation to the initial report of Canada (Addendum), Replies of Canada to the list of issues” (20 March 2017) UN Doc No CRPD/C/CAN/Q/1/Add.1 at para 44.

<sup>74</sup> The authors of the Mad Canada Shadow Report 2016 provided contextual statistics, testimonies, and presented stories and information on personal experiences from the main stream mental health industry. The report also provided an overview and quoted the provisions for detention and treatment decisions within the mental health acts of each province and territory. See Mad Canada Shadow Reporting Group, “Mad Canada Shadow Report, Reporting on Human Rights by the MCSR Group to the Committee on the Rights of Persons with Disabilities in Reference to the UN CRPD” online: <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fCSS%2fCAN%2f26794&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fCSS%2fCAN%2f26794&Lang=en)>.

<sup>75</sup> United Nations, Office of the High Commissioner for Human Rights, “End of Mission Statement by the United Nations Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas-Aguilar, on her visit to Canada” (12 April 2019), online: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24481&LangID=E>>.

<sup>76</sup> B.C.’s *Mental Health Act* was the subject of a constitutional challenge, involving the Council of Canadians with Disabilities. Read *MacLaren v British Columbia (Attorney General)*, 2018 BCSC 1753. A description of CCD’s involvement in this matter is summarized at Community Legal Assistance Society, “Mental Health Law Reform”, online: <<https://clasbc.net/our-work/law-reform/mental-health-law-reform/>>.

<sup>77</sup> During the Committee’s first review of Canada, civil society made this same recommendation. Read Canadian Civil Society Parallel Report Group, “Parallel Report for Canada” at 21, online: <[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fCSS%2fCAN%2f26744&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fCSS%2fCAN%2f26744&Lang=en)>.

## ARTICLE 15: Freedom from torture and cruel, inhuman or degrading treatment or punishment

Federal and provincial human rights commissions have repeatedly expressed deep concern over the practice of placing people with psychosocial disabilities in segregation<sup>78, 79</sup> Some 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>80</sup>

In two recent high profile cases, courts in Ontario and British Columbia found that Correctional Services of Canada (CSC)'s practice of placing prisoners in administrative segregation for prolonged periods of time violates the human rights of prisoners and is unconstitutional.<sup>81</sup> The Government of Canada has appealed one of these decisions to the Supreme Court.

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<sup>78</sup> Segregation refers to forms of solitary confinement, including administrative segregation and disciplinary segregation.

<sup>79</sup> Ontario Human Rights Commission, *Annual Report 2015-16: Reconnect. Renew. Results.* (June 30, 2016) at 17-18, online: [http://www.ohrc.on.ca/sites/default/files/2015-2016\\_Annual%20Report\\_Accessible.pdf](http://www.ohrc.on.ca/sites/default/files/2015-2016_Annual%20Report_Accessible.pdf). Canadian Human Rights Commission, "Treat people with serious mental disabilities in hospitals, not jails: CHRC" (December 19, 2013) online: <https://www.chrc-ccdp.gc.ca/eng/content/19122013-treat-people-serious-mental-disabilities-hospitals-not-jails-chrc>

<sup>80</sup> There are several 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>81</sup> *Canadian Civil Liberties Association v Canada*, 2019 ONCA 243, online: <https://www.canlii.org/en/on/onca/doc/2019/2019onca243/2019onca243.html?resultIndex=1>; *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62, online: <https://www.canlii.org/en/bc/bcsc/doc/2018/2018bcsc62/2018bcsc62.html?resultIndex=1>. For a detailed analysis of these court decisions read Lila Refaie, *Updates on Solitary Confinement in Federal Prisons*, ARCH Alert Volume 20 Issue 2, online: [https://archdisabilitylaw.ca/arch\\_alert/arch-alert-volume-20-issue-2/#\\_ftn5](https://archdisabilitylaw.ca/arch_alert/arch-alert-volume-20-issue-2/#_ftn5)

Recently, the Government of Canada changed the law governing federal prisons<sup>82</sup> and takes the position that these changes end the practice of administrative segregation<sup>83</sup>. Prisoner's rights advocates, lawyers and Senators disagree and have stated that the changes merely allow administrative segregation to continue under a new name: structured intervention units.<sup>84</sup> In particular, the new law mandates an independent review when a prisoner has been in administrative segregation for more than 90 days<sup>85</sup>, however Canadian courts have recognized that negative psychological and physical effects can occur after a few days in segregation<sup>86</sup>.

The UN Standard Minimum Rules for the Treatment of Prisoners states that segregation longer than 15 days is a measure of last resort to be used only in exceptional circumstances.<sup>87</sup> In addition, the new law does not include independent, judicial oversight of segregation placements longer than 48 hours, a mechanism that was recommended by Canada's Senate.<sup>88</sup>

### **Suggested Questions:**

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<sup>82</sup> Federal prisons are governed by the *Corrections and Conditional Release Act*, S.C. 1992, c. 20. Bill C-83 – *An Act to amend the Corrections and Conditional Release Act and another Act* received Royal Assent on June 21, 2019, thereby making changes to the *Corrections and Conditional Release Act*.

<sup>83</sup> Government of Canada, "Parliamentary Passage of Bill C-83: Transforming corrections to focus on rehabilitation and mental healthcare" (June 21, 2019) online: <https://www.canada.ca/en/public-safety-canada/news/2019/06/parliamentary-passage-of-bill-c-83-transforming-corrections-to-focus-on-rehabilitation-and-mental-healthcare.html>

<sup>84</sup> Read, for example, Kim Pate, "Bill C-83 could worsen the rights situation for people in prison: Senator Pate" (June 6, 2019), online: <https://sencanada.ca/en/sencaplus/opinion/bill-c-83-could-worsen-the-rights-situation-for-people-in-prison-senator-pate/>

<sup>85</sup> An independent review is also triggered when a prisoner in segregation does not get their minimum hours out of a cell, or minimum hours of meaningful human contact for five straight days, or for 15 out of 30 days; or when a committee of senior staff members does not agree with the recommendation of a registered health care professional that the inmate should not remain in an SIU or that the conditions of the inmate's confinement be altered. Government of Canada, "Parliamentary Passage of Bill C-83: Transforming corrections to focus on rehabilitation and mental healthcare" (June 21, 2019) online: <https://www.canada.ca/en/public-safety-canada/news/2019/06/parliamentary-passage-of-bill-c-83-transforming-corrections-to-focus-on-rehabilitation-and-mental-healthcare.html>

<sup>86</sup> *British Columbia Civil Liberties Association v. Canada (Attorney General)*, 2018 BCSC 62, paras 247-250, online: <https://www.canlii.org/en/bc/bcsc/doc/2018/2018bcsc62/2018bcsc62.html?resultIndex=1>.

<sup>87</sup> United Nations, Standard Minimum Rules for the Treatment of Prisoners, As adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, updated 2011.

<sup>88</sup> Read, for example, Kim Pate, "Bill C-83 could worsen the rights situation for people in prison: Senator Pate" (June 6, 2019), online: <https://sencanada.ca/en/sencaplus/opinion/bill-c-83-could-worsen-the-rights-situation-for-people-in-prison-senator-pate/>

What will Canada do to ensure that all prisoners with disabilities, in particular prisoners with psychosocial disabilities, receive appropriate disability related accommodations, services and supports in federal prisons?

How will Canada ensure there is sufficient, timely, independent oversight of prisoners placed in segregation, so that prisoners are not subject to permanent psychological and physical damage or torture?



## ARTICLE 16: Freedom from exploitation, violence and abuse

Evidence shows women are becoming disabled—or further disabled—due to intimate partner violence. In 45% of all self-reported violent crime incidents involving a female victim, the victim had a disability.<sup>89</sup> In addition to high overall rates of abuse for women with disabilities, 36% of victimized women with a disability reported multiple and separate incidents of violence in the preceding 12 months.<sup>90</sup> 24% of women with cognitive disabilities, and 26% of women with mental health-related disabilities, report being sexually abused before age 15.<sup>91</sup> The risk of violence for women with disabilities increases when they are racialized, younger, Indigenous, LGBTQI2S+, migrant workers, immigrants, non-status migrants, or living in rural areas.<sup>92</sup> Indigenous women—many of whom live with disabilities—are three times more likely to be victims of violence than non-Indigenous women.<sup>93</sup>

Women with a disability are at greater risk for intimate partner violence, both in incidence and frequency.<sup>94</sup> As many as 276,000 women in Canada will acquire a traumatic brain injury resulting from intimate partner violence.<sup>95</sup> However, services for survivors of intimate partner violence are often not able to respond to the needs of women with disabilities. Shelters are not equipped to conduct screening for traumatic

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<sup>89</sup> Statistics Canada, “Violent victimization of women with disabilities, 2014” by Adam Cotter (15 March 2018) Catalogue No 85-002-X at 4, online (pdf): <<http://www.statcan.gc.ca/pub/85-002-x/2018001/article/54910-eng.pdf>> “Violent victimization”, in this context, describes physical assault, sexual assault, or robbery.

<sup>90</sup> Statistics Canada, “Violent victimization of women with disabilities, 2014” by Adam Cotter (15 March 2018) Catalogue No 85-002-X at 8, online (pdf): <<http://www.statcan.gc.ca/pub/85-002-x/2018001/article/54910-eng.pdf>>

<sup>91</sup> Statistics Canada, “Violent victimization of women with disabilities, 2014” by Adam Cotter (15 March 2018) Catalogue No 85-002-X at 3, online (pdf): <<http://www.statcan.gc.ca/pub/85-002-x/2018001/article/54910-eng.pdf>>

<sup>92</sup> DisAbleD Women’s Network of Canada, “More Than A Footnote: A Research Report on Women and Girls with Disabilities in Canada” (2019) at 93, online (pdf): *DAWN Canada* <[https://dawnCanada.net/media/uploads/news\\_data/news-279/more\\_than\\_a\\_footnote\\_research\\_report.pdf](https://dawnCanada.net/media/uploads/news_data/news-279/more_than_a_footnote_research_report.pdf)>

<sup>93</sup> Department of Justice, “Indigenous overrepresentation in the criminal justice system” (January 2017), online (pdf): <<https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2017/jan02.html>>.

<sup>94</sup> 23% of women with disabilities have been the victims of emotional, financial, physical, sexual violence, or abuse by former or current partners in the past 5 years. With respect to spousal abuse, 39% of women with disabilities have experienced spousal violence, 46% have been physically injured because of this violence, and 38% have feared for their lives. Women with a disability most often reported the perpetrator was a friend, acquaintance, or neighbor (44%), and 26% of incidents of victimization occurred in their home. Statistics Canada, “Violent victimization of women with disabilities, 2014” by Adam Cotter (15 March 2018) Catalogue No 85-002-X at 3, 13, 16-17, online (pdf): <<http://www.statcan.gc.ca/pub/85-002-x/2018001/article/54910-eng.pdf>>

<sup>95</sup> DisAbleD Women’s Network of Canada, “More Than A Footnote: A Research Report on Women and Girls with Disabilities in Canada” (2019) at 94, online (pdf): *DAWN Canada* <[https://dawnCanada.net/media/uploads/news\\_data/news-279/more\\_than\\_a\\_footnote\\_research\\_report.pdf](https://dawnCanada.net/media/uploads/news_data/news-279/more_than_a_footnote_research_report.pdf)>

brain injury.<sup>96</sup> The lack of accessibility in shelters across Canada prevent many women with disabilities from using shelter services.<sup>97</sup> Shelters report a lack of stable, long-term funding is a significant challenge in making their facilities accessible.

Women with disabilities are almost twice as likely as women without disabilities to have been sexually assaulted.<sup>98</sup> The self-reported rate of sexual assault endured by Indigenous women—many of whom live with disabilities—is three times greater than non-Indigenous women.<sup>99</sup>

Data on the impact of trafficking on women and girls with disabilities is sorely lacking. Research indicates addiction, and mental health and intellectual disabilities are risk factors for trafficking.<sup>100</sup> Women who may not have a pre-existing disability can become disabled due to the physical and emotional trauma of trafficking and exploitation.

### **Suggested Questions**

1. Does Canada's federal strategy against gender-based violence include provisions for medical, legal and social work interventions to address violence against women with disabilities?
2. What steps have been taken to strengthen support and services for parents of children with disabilities in order to prevent abuse and violence?
3. Has Canada established a mechanism to monitor facilities and programs designed to serve persons with disabilities for the prevention of exploitation and violence?

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<sup>96</sup> DisAbleD Women's Network of Canada, "Women with Disabilities and Access to Shelters and Transition Houses" (2018) at 7-8, online (pdf): *DAWN Canada* <<https://www.ourcommons.ca/Content/Committee/421/FEWO/Brief/BR10225442/br-external/DisAbleDWomensNetwork-e.pdf>>.

<sup>97</sup> For example, 75% of shelters report having a wheelchair accessible entrance, 66% provide wheelchair accessible rooms and bathrooms, 17% provide sign language, and 5% offer braille reading materials. Read DisAbleD Women's Network of Canada, "Women with Disabilities and Access to Shelters and Transition Houses" (2018) at 6, online (pdf): *DAWN Canada* <<https://www.ourcommons.ca/Content/Committee/421/FEWO/Brief/BR10225442/br-external/DisAbleDWomensNetwork-e.pdf>>.

<sup>98</sup> Statistics Canada, "Violent victimization of women with disabilities, 2014" by Adam Cotter (15 March 2018) Catalogue No 85-002-X at 6, online (pdf): <<http://www.statcan.gc.ca/pub/85-002-x/2018001/article/54910-eng.pdf>>.

<sup>99</sup> Department of Justice, "Victimization of Indigenous Women and Girls" (July 2017), online (pdf): <<https://www.justice.gc.ca/eng/rp-pr/jr/jf-pf/2017/docs/july05.pdf>>.

<sup>100</sup> DisAbleD Women's Network of Canada, "More Than A Footnote: A Research Report on Women and Girls with Disabilities in Canada" (2019) at 57, online (pdf): *DAWN Canada* <[https://dawnCanada.net/media/uploads/news\\_data/news-279/more\\_than\\_a\\_footnote\\_research\\_report.pdf](https://dawnCanada.net/media/uploads/news_data/news-279/more_than_a_footnote_research_report.pdf)>

## **ARTICLE 17: Protecting the integrity of the person**

Practices of incapacitation—both physiological, quasi-judicial and judicial—continue to be used to impose long-term treatment and/or arrangements (e.g., detentions, forced move to a new address), and deny capacity to protect one's body. Treatments may include destructive electrical or chemical therapies that are not proven safe or effective, and cause changes in the brain, nervous system, and body. Capacity can be limited or eliminated by imposed injuries or debilitations.<sup>101</sup>

For example, the Special Rapporteur on violence against women's latest report on Canada echoes other UN and news reports, stating Canadian health authorities are sterilizing Indigenous women without their consent.<sup>102</sup> Victims of this practice have been deemed "incapable" due to psychosocial disability (quasi-judicial incapacitation) or coerced into signing forms while in labour and/or medicated with powerful drugs (physiological incapacitation).

The practices of drugging and declaring "incapable" are commonly used to control people with psychosocial disabilities. In Ontario, Community Treatment Orders may indicate "treatment plan" options imposing birth-control for women, or telling a patient to live far from sexual partners—even if a patient is considered legally capable.<sup>103</sup>

In effect, eugenics is being practiced in Canada. Mad Canada Shadow Report Group is presently hearing from psychiatric survivors who have been clinically advised not to proceed with having children. There is also some evidence psychiatric drugs can cause teratogenic defects and fetal harm.<sup>104</sup>

### **Suggested Questions**

1. What will Canada do to examine the scope and extent of eugenic practices in Canada, and eliminate them?

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<sup>101</sup> This is not qualitatively or legally the same as having a pre-existing injury or disability, nor is it the same as the legal disqualification of "incapacity" for pre-existing disabilities, which is a denial of the right to choose, without undue coercions such as rushing or demanding a decision at an inopportune time.

2. What will Canada do to examine the methods and extent of physiological incapacitation used to impose interventions that contradict the CRPD, and eliminate them?
3. Will Canada make eugenics and physiological incapacitation illegal under the *Criminal Code*?

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<sup>102</sup> Read UNHRC, “Visit to Canada: Report of the Special Rapporteur on violence against women, its causes and consequences” (3 June 2019) UN Doc No A/HRC/41/42/Add/1, advance unedited version available online:

<[https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A\\_HRC\\_41\\_42\\_Add\\_1\\_EN.docx](https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session41/Documents/A_HRC_41_42_Add_1_EN.docx)>. Read also Jaipreet Viridi, “Canada’s shame: the coerced sterilization of Indigenous women”, *New Internationalist* (30 November 2018), online:

<<https://newint.org/features/2018/11/29/canadas-shame-coerced-sterilization-indigenous-women>> and Avery Zingel, “Indigenous women come forward with accounts of forced sterilization, says lawyer”, *CBC News* (2019 April 2018), <online: <https://www.cbc.ca/news/canada/north/forced-sterilization-lawsuit-could-expand-1.5102981>>.

<sup>103</sup> Erick Fabris, *Tranquil Prisons: Chemical Incarceration under Community Treatment Orders*, (Toronto: University of Toronto Press, 2011) at 65.

<sup>104</sup> Robert Bodén et al, “Antipsychotics During Pregnancy” (2012) 69:7 *Archives of General Psychiatry* 715-721, online:

<[https://jamanetwork.com/journals/jamapsychiatry/fullarticle/1211979?utm\\_campaign=twitter\\_070912&utm\\_medium=twitter&utm\\_source=@archgenpsych](https://jamanetwork.com/journals/jamapsychiatry/fullarticle/1211979?utm_campaign=twitter_070912&utm_medium=twitter&utm_source=@archgenpsych)>; Heli Malm et al, “Selective Serotonin Reuptake Inhibitors and Risk for Major Congenital Anomalies” (2011) 118:1 *Obstetrics & Gynecology* 111–120, online:

<[https://journals.lww.com/greenjournal/Fulltext/2011/07000/Selective\\_Serotonin\\_Reuptake\\_Inhibitors\\_and\\_Risk.16.aspx](https://journals.lww.com/greenjournal/Fulltext/2011/07000/Selective_Serotonin_Reuptake_Inhibitors_and_Risk.16.aspx)>.

## ARTICLE 18: Liberty of movement and nationality

Canada's *Immigration and Refugee Protection Act* excludes immigrants expected to cause excessive demand on health and social services.<sup>105</sup> This exclusion perceives disability as deficit, and affects immigrants with disabilities, D/deaf, Deaf-Blind and Hard of Hearing persons.

Disability communities have learned of families experiencing difficulties trying to immigrate to Canada, usually due to their children's disability. Canada's immigration process recognizes the value of keeping family together, and this must also extend to immigrant families including a person with a disability. In April 2018, Canada announced changes to immigration laws, removing costs for special education, social and vocational rehabilitation services, and personal support services from "excessive demand" calculations. However, applicants may still be refused if they require health services exceeding a five-year cost threshold of \$99,060.<sup>106</sup> Disability advocacy organizations continue to push for complete repeal of the "excessive demand" exclusion.

Information on government websites about immigration and refugee claims/resettlement is not available in accessible formats for D/deaf, Deaf-Blind, and Hard of Hearing migrants. Accessible communication/interpretation is also not provided for D/deaf, Deaf-Blind, and Hard of Hearing persons at Canadian customs or border security.

Skilled and experienced D/deaf, Deaf-Blind and Hard of Hearing individuals have reported high rates of rejection on applications for Canadian work visas and permanent residency.

### **Suggested Questions:**

1. Does Canada intend to remove the "excessive demand" clause from the *Immigration and Refugee Protection Act*?
2. Does Canada plan to develop accessible videos in ASL/LSQ for D/deaf, Deaf-Blind and Hard of Hearing people, and ensure access to information, communications and services for immigrants and refugees?

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<sup>105</sup> *Immigration and Refugee Protection Act*, SC 2001, c 27 at s. 38(1)(c).

<sup>106</sup> Immigration, Refugees, and Citizenship Canada, "Excessive Demand: Calculating of the Cost Threshold, 2018" (2018), online (pdf): <<https://www.canada.ca/content/dam/ircc/migration/ircc/english/pdf/pub/excessive-demand-report-eng.pdf>>.

## **ARTICLE 19: Living independently and being included in the community**

Across Canada, there continues to be a lack of a rights-based approach to supports for persons with disabilities who live in the community. There continue to be barriers to inclusion for persons with disabilities in the three core mechanisms of Article 19: choice; individualized supports; and availability and accessibility of community services and facilities. People with disabilities do not have equal access to choose supports and/or housing. Accessible and custom transportation is unevenly implemented, and adequate retrofitted housing for persons with significant or progressive disabilities is largely unaffordable.

Persons with disabilities—particularly those with intellectual, psychosocial, and cognitive disabilities—continue to be placed in congregated residential settings. Nearly 600 people live in large provincial institutions for people with disabilities in Alberta, Manitoba, Nova Scotia, and Québec.<sup>107</sup> In all provinces and territories where large residential institutions have been shut-down, segregation continues in other facilities including nursing homes, seniors' homes, personal care homes, and long-term care facilities.

While General Comment 5 calls for a concrete action plan for independent living and support, there remains no comprehensive government-funded plan to realize community inclusion and intentionally shift from institutional and congregated care, to independent living.<sup>108</sup> Adequate services and supports are lacking for Indigenous persons with disabilities within First Nations communities.

### **Suggested Questions**

1. Will Canada develop an intersectional national action plan with benchmarks, timelines, and indicators on the implementation of Article 19, in compliance with General Comment 5?
2. Does Canada have a strategy and timeline for working with Provinces/Territories to close all remaining institutions for persons with disabilities in Canada, and replace them with a comprehensive system of support for independent living, including home support and personal assistance for persons with disabilities?

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<sup>107</sup> Alzheimer Society of Canada et al. "Meeting Canada's Obligations to Affordable Housing and Supports for People with Disabilities to Live Independently in the Community, Submission to Committee on the Rights of Persons with Disabilities for the 17th Session" (March 2017), online:

3. Is Canada prepared to adopt a rights-based approach to disability supports?
4. How will Canada ensure children, youth, and adults with disabilities--particularly intellectual, psychosocial, and cognitive disabilities--living in First Nations communities have access to supports and services without having to leave their community and natural support systems?
5. How will Canada ensure persons with disabilities have equitable access to supports and housing, regardless of which province or territory they reside in?

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[https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fCSS%2fCAN%2f27004&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fCSS%2fCAN%2f27004&Lang=en).

<sup>108</sup> While there is no comprehensive plan, there are a small number of initiatives that recognize community living. One example is the National Dementia Strategy. The Strategy includes a commitment to inclusive and supportive communities, but how much it will ensure provision of needed supports and services is not yet clear. Read Public Health Agency of Canada, "A Dementia Strategy for Canada: Together We Aspire" (17 June 2019), online: <https://www.canada.ca/en/public-health/services/publications/diseases-conditions/dementia-strategy.html#s3.4.2>.

## ARTICLE 20: Personal mobility

**Need for Increased Training:** Guide Dog users have access to excellent, free North American-wide and worldwide guide dog training, but Service Dog users do not. There is a need for greater specialized training of Service Dogs. In banking, air travel and federally regulated customer service, there is a lack of training regarding appropriate customer service to persons with disabilities and assistance with mobility aids.<sup>109</sup>

**Discriminatory Laws/Regulations:** Some laws require Guide and Service Dog users to be registered, and users are sometimes profiled, stopped and refused access to public spaces.

**Need for Enforcement:** There is a need for enforcement of access rights of Guide and Service Dog users.<sup>110</sup>

**Need for Financial Support to Access Mobility Aids:** Persons with disabilities disproportionately experience poverty, and consequently need access to mobility aids at low or no cost. The Government of Canada should develop a national insurance program to ensure essential disability supports are available to all persons living with chronic, long-term disabilities.<sup>111</sup>

**Need for Continuity of Supports Across Provinces/Territories:** Social benefits, access to mobility aids, attendant services, and all other disability supports essentially stop at the provincial border. This makes it challenging for users to travel for fear of losing their disability supports and mobility aids.<sup>112</sup> People with access to private insurance often have greater financial resources than those who are dependent on government-funded mobility aid programs.

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<sup>109</sup> For example, airlines will frequently damage wheelchairs and other mobility aids in the baggage compartments. Furthermore, there is no training about the level of debilitation that an individual will subsequently experience without their mobility aids.

<sup>110</sup> Enforcement could be achieved using fines and tickets.

<sup>111</sup> Such a program must ensure continuity of support across Canadian jurisdictions. The Government of Canada should work with Provinces/Territories to ensure nation-wide awareness of this program. The Government of Canada should undertake and fund preliminary research to determine the feasibility of such a program.

<sup>112</sup> The European Disability Forum flagged this issue in its European Union alternative report for submission to the UN Committee on the Rights of Persons with Disabilities in 2014, calling for “The removal of technical, regulatory and other barriers to cross-border acquisition of products and services that enhance personal mobility.” European Disability Forum, “Alternative Report to the UN Committee on the Rights of Persons with Disabilities” (2014) at 39, online (pdf): <[http://www.edf-feph.org/sites/default/files/2015\\_03\\_04\\_edf\\_alternative\\_report\\_final\\_accessible.pdf](http://www.edf-feph.org/sites/default/files/2015_03_04_edf_alternative_report_final_accessible.pdf)>.



**Lack of Accessible Transportation in Some Rural Communities:** In some places, reduction in inter-city public transport means no access to transportation and resulting isolation in small communities.

### **Suggested Questions**

1. What specific and measurable steps (e.g. fines) will Canada take to combat discriminatory actions against Guide and Service Dog users (such as being refused access to public spaces)?
2. What programs will Canada put in place to financially support access to mobility aids across the country?
3. How will Canada work with Provinces/Territories to encourage increased harmonization for access to mobility aids across jurisdictions and across the private-public healthcare spectrum?

## **ARTICLE 21: Freedom of expression and opinion, and access to information<sup>113</sup>**

Gaining access to information and having communication supports and aids to express and provide opinions continue to be areas of concern for people with disabilities that affect communication.

Canada has not adequately addressed access to critical information delivered through television/radio announcements, social media platforms and alert messages. This information must be provided in sign languages, easy to read plain language, descriptive video and other accessible formats, modes and means of communication.

Canada has not adequately addressed the needs of people with little or no speech and who require communication devices and supports to effectively communicate their opinions, questions, and decisions.

### **Suggested Questions**

1. What is the Government of Canada doing to address inclusive communication requirements of all people with disabilities that affect their access to written and spoken information and/or their expression of opinions, questions and decisions, through the provision of affordable digital technology, software, assistive devices and communication supports?
2. What steps are the Government of Canada and Provinces/Territories taking to ensure ASL and LSQ are officially recognized at all levels of government and quality standards are met for sign language interpretation and accessible information and communications in sign languages, in consultation with organizations of D/deaf persons?
3. What steps are the Government of Canada and Provinces/Territories taking to ensure government websites are accessible, and private entities providing internet-based services do so in formats accessible to all persons with disabilities, including screen readers?

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<sup>113</sup> The comments on Article 21 reflect issues relating to D/deaf, Blind, Deaf-Blind, and persons with speech, language and communication disabilities in terms of access to information, and freedom of expression and opinion related to telecommunications, broadcasting, digital and Internet access, sign languages, face-to-face communications, and reading and writing. Further consultation with additional organizations will provide the Committee with a more fully inclusive perspective.

4. What steps are the Government of Canada and Provinces/Territories taking to ensure Deaf-Blind<sup>114</sup> persons have access to sustainable Intervenor and Emergency Intervenor services?
  
5. How will the Government of Canada review legislation and plans at the federal, provincial and territorial levels to address accessibility of physical environments, public transportation (including civil aviation), information and communications, technologies and comprised mechanisms to monitor and regularly evaluate compliance with accessibility standards (e.g. signage)?

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<sup>114</sup> Refers to persons with combined vision and hearing loss.

## **ARTICLE 23: Respect for home and the family**

Parents with disabilities do not receive adequate and appropriate services and support from provincial/territorial child welfare agencies. Parents with intellectual, psychosocial, episodic and cognitive disabilities are vastly overrepresented in having their children removed by the state.<sup>115</sup> Hospital workers are typically unaware of disability related supports for parent(s) and how to engage them. Child welfare's approach to parent training rarely accommodates the learning needs of parents with intellectual, psychosocial, or cognitive disabilities. Parents with intellectual disabilities are often assumed to be incapable of parenting, even with supports.

There are approximately 50,000 children who are wards of the Crown; a disproportionate number are children with disabilities or children removed from parents with disabilities. Indigenous children are significantly over represented in the child welfare system. A lack of culturally relevant resources, supports, and system navigators remain significant barriers.

High rates of children with disabilities in the child welfare system stems from lack of access to adequate support for families from an early age.<sup>116</sup> When transitioning out of the child welfare system, most young persons with developmental and psychosocial disabilities end up in congregated care or the criminal justice system.

Health and social supports are routinely conflated in Provincial and Territorial public policy, placing excessive hardship on families and often leading to institutionalization of children with serious medical needs and/or complex disabilities. Mothers with disabilities report excessive scrutiny from social service and education providers, and may not ask for parenting assistance out of fear their children will be removed.

More transparent reporting and investigation into the deaths of children with disabilities in child welfare, including reports of serious injuries, is necessary.<sup>117</sup> More transparent reporting on family court and custody outcomes for parents with disabilities is also needed.

### **Suggested Questions**

1. How will the Government of Canada work with Provinces/Territories to ensure all parents with disabilities have access to support and services to fulfil effectively their role as parents, and disability is not used as a reason to remove their children from the home?

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<sup>115</sup> This often happens prior to or at the moment of birth.

<sup>116</sup> Extensive waitlists for child and family support services exist in Ontario, Nova Scotia, Quebec and British Columbia, while other jurisdictions do not maintain waitlists. Many Provinces/Territories have made substantial cuts to social service budgets, resulting in decreases in services and supports.

<sup>117</sup> Often the child's disability is not noted, as well as information regarding how the lack of disability related supports may have contributed to a death or significant injury.

2. How will the Government of Canada work with Provinces/Territories to provide timely supports to maintain the family environment for all children with disabilities, including children with complex needs, from ethno-racial and immigrant families, and those with intersecting identities<sup>118</sup>?
3. Where the immediate family is unable to care for a child with disabilities, how will the Government of Canada work with Provinces/Territories to ensure every effort to provide alternative care within the wider family, and failing that, within the community in a family setting?
4. What is being done by the Government of Canada to ensure First Nations families on reserves have access to disability-related family supports to enable their children with disabilities to be raised at home?
5. Will the Government of Canada ensure rigorous investigation and reporting of deaths and serious injuries to children with disabilities in child welfare that takes into account a child's disability, the provision of supports, and the implementation of recommendations?
6. Will the Government of Canada ensure disaggregated data on family court outcomes and custody outcomes for families with disabilities is tracked and addressed?

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<sup>118</sup> In this submission "intersecting identities" refers to a person's experience of discrimination and marginalization based on more than one aspect of their identity. Intersectionality is a research and policy paradigm which seeks to reveal the complex interactions among multiple social categories (e.g., gender, race, class, culture, age, ability, sexuality) AND the systems and processes of domination and oppression (e.g., sexism, racism, classism, colonialism, ageism, ableism, homophobia) that simultaneously produce experiences of discrimination and privilege. Olena Hankivsky, Renee Cormier & Diego de Merich, *Intersectionality: Moving Women's Health Research and Policy Forward* (Vancouver: Women's Health Research Network, 2009).

## ARTICLE 24: Education

Generally, primary and secondary education in Canada falls within provincial and territorial jurisdiction; however, students educated in First Nations communities fall within federal jurisdiction. Several Provinces/Territories encourage inclusion but only New Brunswick has legislated inclusive education for primary and secondary schools. There continue to be significant inequities across Canada in access to quality inclusive education for students with disabilities.

Students with complex disabilities who have medical needs, students with multiple disabilities, and the majority of students with intellectual disabilities are commonly excluded from regular schools and classrooms at primary, secondary and post-secondary levels. Ultimately, many of these students only have the option of attending segregated or self-contained classes. Students in segregated school environments are typically isolated and do not have access to the same social and academic opportunities. Research demonstrates students with intellectual disabilities educated in segregated classes have poorer employment prospects, less social integration, and higher rates of poverty in their adult lives.<sup>119</sup>

D/deaf, Deaf-Blind and Blind students face significant barriers to accessing education. D/deaf students do not have sufficient access to signing environments in education<sup>120</sup>. Access and funding for ASL and LSQ interpreters varies greatly across the country. There is a shortage of interpreters and interpretation services remain expensive.

### Suggested Questions

1. What is the Government of Canada doing to encourage the Council of Ministers of Education to take pan-Canadian leadership on inclusive education, with the involvement of persons with disabilities? Or, will the Government of Canada develop a new national inclusive education forum that invites participation by ministries and DPOs?
2. What are the Government of Canada and Provinces/Territories doing to improve data collection and metrics regarding educational engagement of students with disabilities, the barriers they face, and best practices to promote inclusive education?
3. What are the Government of Canada and Provinces/Territories doing to build evidence-based capacity within the teaching profession to deliver inclusive education, and how are people with disabilities being included in these efforts?

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<sup>119</sup> Thomas Hehir et al, "A Summary of the Evidence on Inclusive Education" (15 August 2016), online (pdf): ABT Associates < [https://www.abtassociates.com/sites/default/files/2019-03/A\\_Summary\\_of\\_the\\_evidence\\_on\\_inclusive\\_education.pdf](https://www.abtassociates.com/sites/default/files/2019-03/A_Summary_of_the_evidence_on_inclusive_education.pdf)>.

<sup>120</sup> Signing environments are a critical component of meaningful access to education for D/deaf students. Signing environments, whether in separate schools for the D/deaf or within regular schools, are critical for providing access to social and academic opportunities, preventing bullying and preventing psychosocial disabilities among D/deaf students.

4. Does the Government of Canada have a strategy to encourage implementation of inclusive education in Provincial/Territorial jurisdictions at the primary, secondary and postsecondary level using financial incentives or other policy means? Has this been done with the involvement of persons with disabilities? Does it address the needs of all persons with disabilities, including those with intersecting identities, D/deaf students who require signing environments, and Indigenous students with disabilities?
  
5. How will the Government of Canada work with Provinces/Territories to ensure health-based curricula taught in schools includes information about CRPD, in particular the right to be free from discrimination, and the right to legal capacity to make medical, financial and other decisions with supports?

## ARTICLE 25: Health

**People with disabilities experience barriers to accessing health:** Barriers are physical, attitudinal, communication-related and systemic.<sup>121</sup> Doctors are often reluctant to take on patients with disabilities.<sup>122</sup> Doctors' offices, examining rooms and medical equipment are often inaccessible.<sup>123</sup> People with disabilities report having more than three times as many unmet health needs as people without disabilities.<sup>124</sup> People with disabilities are less likely to have access to preventive care such as cancer screening<sup>125</sup>. People with developmental disabilities have poorer health outcomes.<sup>126</sup> Healthcare professionals receive inadequate training regarding providing healthcare to people with disabilities, including those with dementia.<sup>127</sup> People with disabilities who experience intersectional forms of discrimination face additional barriers in accessing healthcare.<sup>128</sup> People with SLCDs can experience significant barriers to healthcare due to lack of communication aids and supports.

### **People with disabilities often lack access to sexual and reproductive healthcare.**<sup>129</sup>

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<sup>121</sup> Mary Ann McColl, *Appreciative disability studies*, (Captus Press, 2019), 124-125, online: <<http://www.captus.com/Information/catalogue/book.asp?Book+Number=1232>>. ; Barbara E. Gibson & Roxanne Mykitiuk, "Healthcare access and support for disabled women in Canada: falling short of the UN CRPD on the Rights of Persons with Disabilities: a qualitative study" (22 January 2012) *Women's Health Issues* 22(1): e111-8.

<sup>122</sup> Mary Ann McColl, Alice Aiken & Michael Schaub, "Do people with disabilities have trouble finding a family physician?" (28 April 2015) *Intl J Enviro Research and Public Health* 12(5), 4638-4651, online: <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4454931/>>.

<sup>123</sup> Mary Ann McColl et al, "Access and quality of primary care for people with disabilities: A comparison of practice factors" (21 December 2010) *Journal of Disability Policy Studies* 21(3), 131-140.

<sup>124</sup> Mary Ann McColl, Anna Jarzynowska & S. E. D. Shortt, "Unmet healthcare needs of people with disabilities: Population- level evidence" (25 March 2010) *Disability & Society* 25(2), 205-218.

<sup>125</sup> Maria Barile, "Access to breast cancer screening programs for women with disabilities", Montreal: Action des femmes handicapées de Montréal and l'Équipe Cancer de la Direction de santé publique, Montréal-Centre, online: <<http://www.acsqc.ca/content/breast-cancer-detection-and-women-disabilities>>. ; Julie Devaney et al, "Navigating healthcare: Gateways to cancer screening" (22 September 2019) *Disability & Society* 24(6), 739-751, online:

<<https://www.tandfonline.com/doi/abs/10.1080/09687590903160233>> and Aisha Lofters et al, "Screening for cervical cancer in women with disability and multimorbidity: a retrospective cohort study in Ontario, Canada" (1 October 2014) *CMAJ OPEN* 2(4), E240, online:

<<https://www.ncbi.nlm.nih.gov/pubmed/25485249>>.

<sup>126</sup> E. Lin et al, "Addressing Gaps in the Healthcare Services Used by Adults with Developmental Disabilities in Ontario" (February 2019), online: ICES < <https://www.ices.on.ca/Publications/Atlases-and-Reports/2019/Addressing-Gaps-in-the-Healthcare-Services-Used-by-Adults-with-Developmental-Disabilities.aspx>>.

<sup>127</sup> For example, only 41% of Canadian primary care doctors feel they are well prepared to manage medical care for people living with dementia: Canadian Institute for Health Information. *How Canada Compares: Results From The Commonwealth Fund 2015 International Health Policy Survey of Primary Care Physicians — Data Tables*. 2016.

<sup>128</sup> Olena Hankivsky with de Leeuw, S. et al, eds. "Health Inequities in Canada: Intersectional Frameworks and Practices" (30 October 2015), online: UBC Press <<https://www.ubcpres.ca/health-inequities-in-canada>>.

<sup>129</sup> Leslie Young, "Women with disabilities not getting the sexual healthcare they need, experts say" (12 February 2019), online: Global News <<https://globalnews.ca/news/4953814/sexual-health-disability->



## People with disabilities continue to be underrepresented in healthcare

**professions:** Students with disabilities face barriers in accessing accommodations in medical<sup>130</sup> and nursing<sup>131</sup> schools. Healthcare professionals with disabilities need better access to resources and supports.<sup>132</sup>

**People with disabilities are often kept in hospital because services and supports are not available:**<sup>133</sup> Adults with developmental disabilities are more likely than adults without developmental disabilities to remain in hospital despite being ready for discharge (4.6% vs. 0.7%).<sup>134</sup>

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women/;> Barbara E. Gibson & Roxanne Mykitiuk, "Healthcare access and support for disabled women in Canada: falling short of the UN CRPD on the Rights of Persons with Disabilities: a qualitative study" (22 January 2012) *Women's Health Issues*, 22(1): e111-8.; Dawna Dingwall, "I didn't think I could have a baby': Toronto pregnancy clinic supports women with disabilities." (5 April 2019), online: CBC Radio <[www.cbc.ca/radio/whitecoat/i-didn-t-think-i-could-have-a-baby-toronto-pregnancy-clinic-supports-women-with-disabilities-1.5085340](http://www.cbc.ca/radio/whitecoat/i-didn-t-think-i-could-have-a-baby-toronto-pregnancy-clinic-supports-women-with-disabilities-1.5085340)>; A. Gurza, "I'm a Queer Man with Disabilities & STD Testing Isn't Accessible - Something Needs to Change" (20 May 2016), online: Out Magazine <[www.out.com/lifestyle/2016/5/20/im-queer-man-disabilities-std-testing-isnt-accessible-something-needs-change](http://www.out.com/lifestyle/2016/5/20/im-queer-man-disabilities-std-testing-isnt-accessible-something-needs-change)>.

<sup>130</sup> Donalee Moulton, "Physicians with disabilities often undervalued" (20 April 2017), online: CMAJNews <<https://cmajnews.com/2017/04/20/physicians-with-disabilities-often-undervalued-cmaj-109-5402/>>. For example, a D/deaf doctor filed a human rights complaint when her request for an ASL interpreter was denied by the University of British Columbia: *Providence Healthcare v. Dunkley*, 2016 BCSC 1383 (CanLII). See also: E. Stergiopoulos, O. Fernando & MA. Martimianakis "Being on Both Sides: Canadian Medical Students' Experiences with Disability, the Hidden Curriculum, and Professional Identity Construction" (October 2018) *Academic Medicine* 93:10, 1550-1559, online: <<https://www.ncbi.nlm.nih.gov/pubmed/29794527>>.

<sup>131</sup> T.J. Ashcroft et al, "Nursing students with disabilities: one faculty's journey" (2008), online: *Int J Nurs Educ Scholarsh* <<https://www.ncbi.nlm.nih.gov/pubmed/18454732>> 5(18); Vicki A. Aaberg, "A Path to Greater Inclusivity Through Understanding Implicit Attitudes Toward Disability" (September 2012) *Journal of Nursing Education* 51(9), 505-510, online: < <https://www.healio.com/nursing/journals/jne/2012-9-51-9/%7Bdc2f3e15-ed8d-440f-82c6-07155468e9ff%7D/a-path-to-greater-inclusivity-through-understanding-implicit-attitudes-toward-disability#>>.

<sup>132</sup> Lauren Vogel, "Major gaps in supports for medical trainees with disabilities" (3 May 2018), online: CMAJ News <<https://cmajnews.com/2018/05/03/major-gaps-in-supports-for-medical-trainees-with-disabilities-cmaj-109-5592/>> and Donalee Moulton, "Physicians with disabilities often undervalued" (20 April 2017), online: CMAJ News <<https://cmajnews.com/2017/04/20/physicians-with-disabilities-often-undervalued-cmaj-109-5402/>>.

<sup>133</sup> Michael Tutton "People with disabilities stuck in hospital for years as reports called for exit, inquiry told." (20 Feb 2018), online: CBC News < [www.cbc.ca/news/canada/nova-scotia/human-rights-case-disabilities-beth-maclean-halifax-1.4543529](http://www.cbc.ca/news/canada/nova-scotia/human-rights-case-disabilities-beth-maclean-halifax-1.4543529)>; Trevor Pritchard, "MS patient stuck in hospital considering human rights complaint" (27 December 2018), online: CBC News <[www.cbc.ca/news/canada/ottawa/christine-benoit-update-1.4959200](http://www.cbc.ca/news/canada/ottawa/christine-benoit-update-1.4959200)>; Johanna Weidner, "Kitchener man stuck in St. Mary's hospital for two years" (16 April 2019), online: Waterloo Region Record <[www.therecord.com/news-story/9285281-kitchener-man-stuck-in-st-mary-s-hospital-for-two-years/](http://www.therecord.com/news-story/9285281-kitchener-man-stuck-in-st-mary-s-hospital-for-two-years/)>. In 2017–2018, 1 in 12 patients had their hospital stay extended for this reason. A typical extended stay was 7 days or less, but 1 in 10 extended stays was 39 days or more. Patients with extended hospital stays tend to be older women. Canadian Institute for Health Information "New data available on home care and mental health and addictions" online: <[www.cihi.ca/en/new-data-available-on-home-care-and-mental-health-and-addictions](http://www.cihi.ca/en/new-data-available-on-home-care-and-mental-health-and-addictions)>.

<sup>134</sup> E. Lin et al, "Addressing Gaps in the Healthcare Services Used by Adults with Developmental Disabilities in Ontario" (2019) *ICES*, 3, online: < <https://www.ices.on.ca/>>.

**Many people with disabilities continue to lack access to adequate home care.**<sup>135</sup>

**Young people with disabilities are often placed in nursing homes with seniors due to a lack of adequate disability-based community supports and housing.**<sup>136</sup>

**People with disabilities often face economic barriers to accessing prescription medication,<sup>137</sup> dental care,<sup>138</sup> mental healthcare<sup>139</sup> and vision care<sup>140</sup> since these are not usually covered by public health insurance.**

<sup>135</sup> For example, in Quebec 45% of people with disabilities have unmet home care needs: Office des personnes handicapées du Québec. « Évaluation de l'efficacité de la politique gouvernementale À part entière : Les activités permettant de vivre à domicile pour un véritable exercice du droit à l'égalité » (28 May 2019), 11, online (pdf) : <[www.ophq.gouv.qc.ca/fileadmin/centre\\_documentaire/Etudes\\_\\_analyses\\_et\\_rapports/OPHQ\\_Rapport\\_AVQ\\_EPF\\_WEB.pdf](http://www.ophq.gouv.qc.ca/fileadmin/centre_documentaire/Etudes__analyses_et_rapports/OPHQ_Rapport_AVQ_EPF_WEB.pdf)>.

<sup>136</sup> CBC Radio, "Placing young disabled people in nursing homes, not right, say families" (9 July 2015), online: CBC News <[www.cbc.ca/radio/thecurrent/the-current-for-july-9-2015-1.3144401/placing-young-disabled-people-in-nursing-homes-not-right-say-families-1.3144446](http://www.cbc.ca/radio/thecurrent/the-current-for-july-9-2015-1.3144401/placing-young-disabled-people-in-nursing-homes-not-right-say-families-1.3144446)>; Susan Burgess, "Nursing home life a struggle for young developmentally disabled people" (9 April 2014), online: CBC News <[www.cbc.ca/news/canada/ottawa/nursing-home-life-a-struggle-for-young-developmentally-disabled-people-1.2602552](http://www.cbc.ca/news/canada/ottawa/nursing-home-life-a-struggle-for-young-developmentally-disabled-people-1.2602552)>; Judy Haiven, "Opinion: Nursing homes no place for severely disabled" (26 Feb 2019), online: Chronicle Herald <[www.thechronicleherald.ca/opinion/opinion-nursing-homes-no-place-for-severely-disabled-287769/](http://www.thechronicleherald.ca/opinion/opinion-nursing-homes-no-place-for-severely-disabled-287769/)>.

<sup>137</sup> S. Guilcher et al, "The financial burden of prescription drugs for neurological conditions in Canada: Results from the National Population Health Study of Neurological Conditions" (April 2014), Health Policy 121(4): 389-396, online: <<https://www.ncbi.nlm.nih.gov/pubmed/28215356>>; T.J. Campbell et al. "Self-reported financial barriers to care among patients with cardiovascular-related chronic conditions" Health Rep. 25(5): 3-12.; D. Hennessy et al, "Out-of-pocket spending on drugs and pharmaceutical products and cost-related prescription non-adherence among Canadians with chronic disease" (15 June 2016) Health Reports, 27(6): 3-8.; Shikha Gupta, "Exploring the extent, determinants, and consequences of cost-related non-adherence to prescription medications among people with spinal cord injuries" online (pdf): <<http://www.disabilitypolicyalliance.ca/wp-content/uploads/2017/12/Exploring-the-extent-determinants-and-consequences-of-cost-related-non-adherence-to-prescription-medications-among-people-with-spinal-cord-injuries.pdf>>. Forthcoming.

<sup>138</sup> Keith Da Silva, Julie W. Farmer & Carlos Quiñonez, "Access to Oral Healthcare for Individuals with Developmental Disabilities: An Umbrella Review" (October 2017), online (pdf): <<https://static1.squarespace.com/static/56673c092399a3eb464c7b50/t/5ae10a5e562fa74bb6ca022d/1524697695427/FPTDDWG+review++addendum++access+for+people+with+developmental+disabilities+2017.pdf>>; Canadian Dental Association "The State of Oral Health in Canada" (2017), <[www.cda-adc.ca/stateoforalhealth/\\_files/TheStateofOralHealthinCanada.pdf](http://www.cda-adc.ca/stateoforalhealth/_files/TheStateofOralHealthinCanada.pdf)>; Farnaz Rashid-Kandvani, Belinda Nicolau & Christophe Bedos, "Access to Dental Services for People Using a Wheelchair" (November 2015) Am J Public Health 105(11): 2312-2317.; Joan L. Rush, "Dental profession fails to meet needs of disabled Canadians" (18 November 2014) CMAJ 186(17): 1321-1322.

<sup>139</sup> "Canadian Association for Mental Health. Mental Health in the Balance - Ending the Healthcare Disparity in Canada" (September 2018), online (pdf): <<https://cmha.ca/wp-content/uploads/2018/09/CMHA-Parity-Paper-Full-Report-EN.pdf>>; Globe and Mail, "Canada's healthcare system is failing people who need mental-healthcare" (15 May 2019), online: Globe and Mail <[www.theglobeandmail.com/opinion/editorials/article-canadas-healthcare-system-is-failing-people-with-mental-illness/?fbclid=IwAR0V03DQ1FqgrHRPjysYoemMdLNp8tUrmSs7H1UostOiPI6m6Rygg9Zs06w](http://www.theglobeandmail.com/opinion/editorials/article-canadas-healthcare-system-is-failing-people-with-mental-illness/?fbclid=IwAR0V03DQ1FqgrHRPjysYoemMdLNp8tUrmSs7H1UostOiPI6m6Rygg9Zs06w)>.

<sup>140</sup> R. Aljied, "Eye care utilization and its determinants in Canada." (June 2018) Can J of Ophthal 53(3): 298-304.

**Canada does not collect sufficient health data on people with disabilities to inform effective policy and programs.**

**People with disabilities, and Indigenous women and people with intellectual disabilities in particular,<sup>141</sup> are still vulnerable to coerced sterilization.<sup>142</sup>**

**People with disabilities, particularly those with intellectual, cognitive and psychosocial disabilities, can be forced to undergo treatment without their free and informed consent.<sup>143</sup>**

### **Suggested Questions**

1. What specific measures will the Government of Canada adopt to ensure universal coverage of accessible, affordable and culturally sensitive health services for all persons with disabilities, including Indigenous persons with disabilities and persons with intellectual, cognitive, and psychosocial disabilities?
2. What specific measures will the Government of Canada take to provide persons with disabilities, particularly intellectual, cognitive and psychosocial disabilities, with information in accessible formats about their sexual and reproductive health and right to informed consent for medical interventions?
3. How will the Government of Canada support the implementation of training to ensure healthcare practitioners are aware of the rights of persons with disabilities and have the tools to provide appropriate services to persons with disabilities, including women with disabilities?

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<sup>141</sup> Avery Zingel, “Indigenous women come forward with accounts of forced sterilization, says lawyer” (18 Apr, 2019), online: CBC News <[www.cbc.ca/news/canada/north/forced-sterilization-lawsuit-could-expand-1.5102981](http://www.cbc.ca/news/canada/north/forced-sterilization-lawsuit-could-expand-1.5102981)>; Standing Senate Committee on Human Rights, “Human rights committee to study the forced and coerced sterilization of persons in Canada” (27 March 2019), online: POC <<https://sencanada.ca/en/newsroom/ridr-human-rights-committee-study-forced-coerced-sterilization-persons-in-canada/>>.

<sup>142</sup> People First of Canada & Canadian Association for Community Living “Letter to Senate Standing Committee on Human Rights re: Study of the forced and coerced sterilization of persons in Canada” (17 May 2019), online: Sencanada <[www.sencanada.ca/content/sen/committee/421/RIDR/Briefs/RIDR\\_CACLPFC\\_e.pdf](http://www.sencanada.ca/content/sen/committee/421/RIDR/Briefs/RIDR_CACLPFC_e.pdf)>; Jane Armstrong, “Woman embroiled in legal battle for having disabled son castrated” (28 May 2002), online: Globe and Mail <[www.theglobeandmail.com/news/national/woman-embroiled-in-legal-battle-for-having-disabled-son-castrated/article4135738/](http://www.theglobeandmail.com/news/national/woman-embroiled-in-legal-battle-for-having-disabled-son-castrated/article4135738/)>.

<sup>143</sup> For example, see: Council of Canadians with Disabilities, “Update on the Charter Challenge to BC’s Mental Health Act” (November 2018), online: The Globe and Mail <[www.ccdonline.ca/en/humanrights/litigation/Update-on-Charter-Challenge-BC-Mental-Health-Act-29Nov2018](http://www.ccdonline.ca/en/humanrights/litigation/Update-on-Charter-Challenge-BC-Mental-Health-Act-29Nov2018)>; Kevin Griffin, “Dementia law report recommends better oversight on healthcare consent” (27 February 2019), online: Vancouver Sun, <<https://vancouversun.com/news/local-news/dementia-law-report-recommends-better-oversight-on-healthcare-consent>>.

## **ARTICLE 26: Habilitation and rehabilitation**

Many agencies deliver valuable, therapeutic services to persons with disabilities across the country, but there is a wide discrepancy in the quality and quantity of services. The current tiered system does not provide equal access for everyone: those with private insurance have greater access to services than those who rely solely on public healthcare. Geographic location also impacts access to essential services.

Canada's healthcare system is very complex, often leaving patients to navigate foreign terminology, structure and destination. Persons with disabilities need to be empowered to understand and navigate healthcare systems.

Access to mental health supports is essential for optimum health outcomes. A comprehensive care plan should include discharge planning upon diagnosis and/or hospitalization to ensure appropriate rehabilitation, home care and community services are engaged.

There is a tremendous gap in understanding how essential it is to prescribe habilitation and rehabilitation. This causes delays in referrals for services. Physicians must include these essential services within their treatment plans, as they are a valuable contributor to a multidisciplinary assessment of patient needs and strengths. Targeted knowledge exchange across the healthcare system will help to ensure referrals to services are timely and appropriate for optimal patient outcomes.

### **Suggested Questions**

1. What steps are the Government of Canada and Provinces/Territories taking to ensure a rehabilitation pathway for persons with dementia exists to maximize their opportunity to live independently and participate socially and economically?
2. What steps are the Government of Canada and Provinces/Territories taking to ensure the accessibility of communities and built environments, including housing, is a component of a rehabilitation plan so more individuals can re-engage with community and reside outside of hospital rehabilitation centres or long-term care facilities?
3. Does the Government of Canada have a strategy to promote and facilitate greater access to required equipment and resources that will support success for rehabilitation and integration to community including employment, education and independent living?

4. What will the Government of Canada do to ensure delivery of sustainable habilitation and rehabilitation services for persons who are Blind, Deaf-Blind or partially sighted within the healthcare and education continuum?

## ARTICLE 27: Work and employment

Canada continues to lack an inclusive employment-first strategy for all persons with disabilities. The employment rate for people with disabilities remains significantly lower (59%), compared to those without disabilities (80%).<sup>144</sup> Median income of persons with severe disabilities (\$19,160) is less than half that of those with no disabilities (\$38,980).<sup>145</sup> The employment rate for persons with developmental disabilities is 22.3%.<sup>146</sup> A significant percentage of D/deaf persons are unemployed, or under-employed.<sup>147</sup> Many persons with disabilities continue to rely on income support due to lack of real workplace engagement, as well as fear of losing income and medical supports if they enter or re-enter the workplace.

People with developmental disabilities continue to be placed in segregated and congregate facilities under the pretence of “employment training”. Research and experience show no link between workshop placements and community employment. Most persons who attend employment workshops are paid stipends well below minimum wage. Even where inclusive employment is successful, the primary focus remains on entry level jobs with no opportunity for career advancement.

Employment-related supports, including eligibility for disability income and medical supports differ widely across Canada.

### Suggested Questions

1. Measurement and Accountability: How will the Government of Canada measure progress in support to private and public employers on becoming disability confident? What are the parameters for a disability-confident workplace?
2. Intersecting factors: How will Canada ensure employment policies and programs respond to the needs of people with multiple and intersecting identities? How will

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<sup>144</sup> Among those aged 25 to 64 years old. Read Stuart Morris et al, “A demographic, employment and income profile of Canadians with disabilities aged 15 years and over, 2017” (28 November 2018) at 11, online (pdf): <<https://www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2018002-eng.htm>>.

<sup>145</sup> Among adults aged 25 to 64 years old, personal income is strongly related to the severity of disability. Persons with milder disabilities reported a median income of \$34,330. Read Stuart Morris et al, “A demographic, employment and income profile of Canadians with disabilities aged 15 years and over, 2017” (28 November 2018) at 17, online (pdf): <<https://www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2018002-eng.htm>>.

<sup>146</sup> Most recent data available is for 2012. Statistics Canada, “Developmental disabilities among Canadians aged 15 years and older, 2012” by Christine Bizier, et al (3 December 2015) Catalogue No. 89-654-X2015003 at 8, online (pdf): <<https://www150.statcan.gc.ca/n1/en/pub/89-654-x/89-654-x2015003-eng.pdf?st=Z4466E5g>>.

<sup>147</sup> A 2014-2015 formal survey, completed by the Canadian Association of the Deaf, found that the number of unemployed D/deaf respondents was 40%. The remaining 60% of respondents were either self-employed or short-term contract workers, 24% of them part-time. Canadian Association of the Deaf, “Employment and Employability” (2015) online: <<http://cad.ca/issues-positions/employment-and-employability/>>.

the Government of Canada ensure this lens is in place for all initiatives, keeping in mind the need to overcome intrinsic unconscious bias?

3. **Timeliness:** How will the Government of Canada ensure timely responses to early childhood interventions to prepare Canada's future workforce, and secure funding to allow successful projects from federally funded priorities (Opportunities Fund, Skills Link) to continue under other Ministries (eg: Employment, Workforce Development and Labour)? How will the Government of Canada hold Provinces/Territories accountable for setting and meeting outcomes of the Workforce Development Agreements (WDA) and other federal funding? Will the Government of Canada establish specific targets for outcomes of employment for persons with disabilities in the WDA?
4. **Access to benefits:** How will the Government of Canada ensure benefits, including financial and income benefits, access to medications and extended healthcare, retirement and leaves, are provided in a fair and consistent way and are portable across the country? How will the Government of Canada ensure persons with disabilities have equal access to employment supports, no matter where they reside in Canada?
5. **Youth transitions:** How will the Government of Canada ensure out of school and into employment appropriate supports for youth, school staff and employers? How will the Government of Canada ensure youth with disabilities, including youth with intellectual disabilities, are supported to transition into meaningful and dignified employment in the community post-graduation?
6. **Closing Sheltered Workshops:** Do the Government of Canada and Provinces/Territories have a strategy with a timeline to close all sheltered workshops, including a fair and just transition for their employees and clients, and redirect funds to support inclusive community employment in the labour market?

## ARTICLE 28: Adequate standard of living and social protection

7.7% of persons with disabilities in Canada live in deep income poverty.<sup>148</sup> 20.4% of persons with disabilities receive less than half of Canada's median after-tax income.<sup>149</sup> 25% of people living in low-income households are people with disabilities.<sup>150</sup> These statistics are significantly higher when accounting solely for those with disabilities who are working-age adults (15-64). Working-age people with disabilities are approximately twice as likely to live in poverty than working-age people without disabilities.<sup>151</sup>

The prevalence of poverty among those with specific disabilities is particularly visible among some groups. For example, half of adults with vision loss report a gross annual income of less than \$20,000.<sup>152</sup>

Persons with disabilities who are members of other marginalized groups experience even higher levels of poverty. Women with disabilities disproportionately experience poverty.<sup>153</sup> A woman with a disability has an average income of \$8,360 while a man with a disability has an average income of \$19,250. Women with disabilities are more affected by social spending cuts than both women without disabilities or men with disabilities. Women with disabilities are three times more likely to rely on government programs than men.<sup>154</sup>

Persons with disabilities are disproportionately represented among those experiencing homelessness or inadequate housing. Estimates suggest that as many as 45% of the overall homeless population in Canada have physical or psychosocial disabilities.<sup>155</sup>

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<sup>148</sup> Compared to the national average (5.4%). Read Employment and Social Development Canada, "Opportunity for All: Canada's First Poverty Reduction Strategy" (2018) Catalogue No Em12-48/2018E-PDF at 34, online: <<https://www.canada.ca/en/employment-social-development/programs/poverty-reduction/reports/strategy.html>>.

<sup>149</sup> Compared to the national average (13%). Employment and Social Development Canada, "Opportunity for All: Canada's First Poverty Reduction Strategy" (2018) Catalogue No Em12-48/2018E-PDF at 38, online: <<https://www.canada.ca/en/employment-social-development/programs/poverty-reduction/reports/strategy.html>>.

<sup>150</sup> DAWN, "Women with Disabilities and Poverty" online (pdf): <[https://dawncanada.net/media/uploads/page\\_data/page-267/english\\_-\\_poverty\\_-\\_january\\_2014.pdf](https://dawncanada.net/media/uploads/page_data/page-267/english_-_poverty_-_january_2014.pdf)>.

<sup>151</sup> Cameron Crawford, "Looking into poverty: Income sources of poor people with disabilities in Canada", (2013) at i, online (pdf):

<<http://www.homelesshub.ca/sites/default/files/Income%20Sources%20Report%20IRIS%20CCD.pdf>>.

<sup>152</sup> CNIB, "Paying the Price: What Vision Loss Costs Canadians and What We Should Do About It" (2009).

<sup>153</sup> Council of Canadians with Disabilities, "As a Matter of Fact: Poverty and Disability in Canada" (2013), online: Council of Canadians with Disabilities <<http://www.ccdonline.ca/en/socialpolicy/poverty-citizenship/demographic-profile/poverty-disability-canada>>.

<sup>154</sup> DAWN, "Women with Disabilities and Poverty" online (pdf): <[https://dawncanada.net/media/uploads/page\\_data/page-267/english\\_-\\_poverty\\_-\\_january\\_2014.pdf](https://dawncanada.net/media/uploads/page_data/page-267/english_-_poverty_-_january_2014.pdf)>.

<sup>155</sup> Homeless Hub, "Poverty" online: <<http://homelesshub.ca/about-homelessness/education-training-employment/poverty>>.



Canada has a poverty reduction strategy which is entrenched in legislation, however it does not aim to eliminate poverty.<sup>156</sup>

Some provincial governments have cut spending on social assistance and plan to reform social programs that benefit persons with disabilities.<sup>157</sup>

### **Suggested Questions**

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<sup>156</sup> In 2018, Canada released its first ever poverty reduction strategy. The Strategy includes an official poverty line, the establishment of a National Advisory Council on Poverty, and goals to reduce poverty in Canada by 20% before 2020 and by 50% before 2030. The Strategy's poverty reduction targets, official poverty line, and National Advisory Council have been entrenched in legislation. The Strategy recognizes the distinct challenges faced by indigenous peoples with disabilities and women with disabilities in accordance with the CRPD Committee's 2017 Concluding Observations, although specific measures to address barriers are not identified. The Strategy promises to track its progress with indicators including indicators specific to persons with disabilities. The Strategy includes a goal of ending all long-term drinking water advisories on public systems on reserve by March 2021. This goal is consistent with Canada's obligations under Article 28(2)(a). Canada's objective of reducing poverty by 50% before 2030 reflects the lowest target of Sustainable Development Goal 1. This objective is not reflective of Canada's obligation to commit maximum available resources, considering Canada maintains the 10<sup>th</sup> highest Gross Domestic Product of any state. Instead, Canada should commit to a goal of eradicating poverty, not merely reducing it. The legislation entrenching Canada's poverty reduction strategy into law does not guarantee the National Advisory Council on Poverty's existence once poverty in Canada has been reduced by 50% of its 2015 Market Basket Measure levels. Concretely, this means Canada's external accountability mechanism may dissolve before those most deeply in poverty—disproportionately those with disabilities—may remain in poverty when the Council dissolves. Read generally Employment and Social Development Canada, "Opportunity for All: Canada's First Poverty Reduction Strategy" (2018) Catalogue No Em12-48/2018E-PDF, online: <<https://www.canada.ca/en/employment-social-development/programs/poverty-reduction/reports/strategy.html>>.

<sup>157</sup> Some provincial governments are making disability benefits more difficult to access. For example, Ontario recently announced its intention to adopt the federal government's criteria for qualifying for disability benefits, which are more restrictive than the criteria previously used by the province. Lisa Xing & Nick Boisvert, "Ontario PCs to update disability requirements, allow welfare recipients to earn more money", CBC News (22 November 2018), online: <<https://www.cbc.ca/news/canada/toronto/doug-ford-social-assistance-plan-1.4915315>>

Some provincial governments are cutting government spending to social assistance programs for people with disabilities. For example, Ontario is projected to cut over \$1 billion over the next three years from social assistance programs including Ontario Works (OW) and the Ontario Disability Support Program (ODSP). Andrew Russell, "Ford government cutting \$1B from social services over 3 years", Global News (12 April 2019), online: <<https://globalnews.ca/news/5161588/ford-government-cutting-1-billion-social-services/>>

These changes will undoubtedly lower the standard of living for persons with disabilities and are retrogressive to Article 28.

Some provincial governments are reforming programs designed for persons with specific disabilities without adequate consultation with the individuals affected. For example, Ontario recently announced changes to its autism program that will prevent children with autism to access necessary therapy and equal access to education. Caryn Lieberman, "Mother calls Ontario autism program rollout 'unspeakably cruel,' families react to consultations", Global News (2 April 2019), online: <<https://globalnews.ca/news/5123675/ontario-autism-program-consultations/>>

Such measures are retrogressive to Article 28(2) (a) and (c).

1. Will Canada commit to maintaining the National Advisory Council on Poverty after it has achieved a 50% reduction in poverty from the 2015 Market Basket Measure?
2. Will Canada commit to tracking through disaggregated data and regularly updating the number of persons with disabilities, women with disabilities, Indigenous persons with disabilities, and children with disabilities living below Canada's official poverty line?
3. Will Canada commit to national standards for the Canada Social Transfer to ensure provincial/territorial governments comply with the CRPD?
4. Will provincial/territorial governments, in particular Ontario, remedy the retrogressive actions taken with regard to access to legal aid, social assistance, and other programs for persons with disabilities?

## ARTICLE 29: Participation in political and public life

Data show over 6.2 million electors in Canada have a disability,<sup>158</sup> and electors with disabilities are less likely to vote than those without disabilities<sup>159</sup>. Less than half of electors with a disability were aware of the tools and assistance offered by Elections Canada.<sup>160</sup>

D/deaf, Deaf-Blind and Hard of Hearing people who use ASL and LSQ face barriers in political and electoral processes at all levels of government, including lack of accessible information, communications and sign language interpretation services at political events, and lack of accessible information on political parties' websites and social media.

There are some federal educational and outreach awareness activities, but no such activities for provincial, territorial and municipal elections. Therefore, D/deaf, Deaf-Blind and Hard of Hearing electors face barriers to understanding electoral processes, and are discouraged from voting.

A relative, spouse or partner may assist more than one elector but a friend or helper may assist only one elector.<sup>161</sup> This presents a barrier for people who share services of a support worker and all want the same worker to assist them to cast their ballot.

Printed paper ballots continue to be the medium for voting in federal elections. For some persons with disabilities, print is a significant barrier, preventing them from independently marking their ballot or independently verifying their ballot was marked correctly. Printed ballots miss the opportunity to present information via images, which may be preferred by some voters.

### **Suggested Questions**

1. Does Canada intend to ensure federal, provincial and municipal election debates are broadcast with ASL and LSQ interpretation using picture in picture on screen along with English and French captioning?

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<sup>158</sup> Elections Canada reports that "... almost 22% of Canadians identify as having a disability. Therefore, there could be over 6.2 million electors who identify as having a disability". Read Office of the Chief Electoral Officer of Canada, "Accessibility Policy and Service Offering" (1 May 2019), online: <https://www.elections.ca/content.aspx?section=vot&dir=spe/policy&document=index&lang=e> .

<sup>159</sup> "Evaluation of the Electoral Reminder Program (ERP) for the 42nd Canadian Federal Election" (27 August 2018), online: *Elections Canada* <<https://www.elections.ca/content.aspx?section=res&dir=rec/eval/pes2015/eerp&document=p3&lang=e>>

<sup>160</sup> Elections Canada, Inspire Democracy Power Point Presentation.

<sup>161</sup> *Canada Elections Act*, SC 2000, c 9, ss. 155(1), 155(3).

2. Does Canada plan to implement laws, regulations and policies at all levels of government to identify and remove barriers that prevent D/deaf, Deaf-Blind and Hard of Hearing people who use ASL and LSQ from accessing information, communications and services in sign languages for all candidates' meetings; constituency, riding associations, central policy and campaign offices; and campaign information and communications?
3. When will Canada ensure video interpreting services are available at the polls, to facilitate communication between D/deaf electors and polling station staff, so that D/deaf electors experience independence and clear communication when casting their ballot?
4. When will Canada ensure electors can vote online, by telephone or by voting machine so everyone can vote independently and independently verify their vote?
5. Will Canada extend a plain language approach to the ballot itself and include photos of candidates on the ballot?
6. Will Canada remove restrictions that prevent friends/helpers from assisting more than one elector to cast their ballot?

## **ARTICLE 30: Participation in cultural life, recreation, leisure and sport**

Participation in cultural life, recreation, leisure and sport is desired by persons with disabilities, however there are barriers to full and effective participation.

There is a lack of valid and reliable data related to persons with disabilities' participation, and what little exists shows inequity. There is limited capacity and knowledge in many sectors and communities to act on policies and laws, resulting in variability of access and inclusion among persons with disabilities across the lifespan, disability type, and geography. There is a lack of regulation of the public portrayal of persons with disabilities in media and popular culture, leading to stereotypical, discriminatory, and/or tokenistic representation. There are very limited leadership, decision-making, and consultative roles for persons with disabilities in the design and delivery of meaningful programs and services

### **Suggested Questions**

1. What steps are the Government of Canada taking to improve valid and reliable measurement and data collection about quantity and quality of participation in cultural life, recreation, leisure and sport?
2. How is the Government of Canada encouraging recruitment and retention of more persons with disabilities in leadership and decision-making roles and ensuring they are fairly compensated for their expertise and time?
3. How is the Government of Canada increasing inclusion and accessibility in cultural life, recreation, leisure and sport by regulating accessibility beyond the built environment, such as national parks, museums, live and broadcast media, including availability of ASL/LSQ, live captioning, described audio, etc.?
4. How is the Government of Canada enabling a pan-Canadian strategy for organizations to lead quality improvement in inclusion and accessibility and build capacity and knowledge in their communities, to ensure equitable and supported access to community-based programming and opportunities, including rural communities?

## ARTICLE 31: Statistics and data collection

There continue to be significant knowledge gaps concerning diverse disability communities who are particularly susceptible to human rights infringements.<sup>162</sup> People with disabilities and their families, DPOs and Indigenous communities have identified data gaps and silos between levels of government that make it difficult for them to gain access to the data they need to make informed-decisions about disability management and for tracking how various stakeholders are faring under the CRPD, human rights legislation and related initiatives.

There are financial and capacity issues preventing DPOs from gaining access to and mining data and scholarly materials on disability and human rights that are presently available, especially for researchers who work for DPOs without academic affiliations. Major sources of data on disability have been infrequent and subject to methodological changes that hamper comparability and rights monitoring over time. Some major surveys with useful information about disability have been cancelled, while some screens for disability are not consistently applied across surveys. It is unclear who leads the federal data and research program on people with disabilities, and what meaningful roles people with disabilities play in all aspects of data, research, and reporting.

In the past, the Government of Canada has enabled disability communities to provide input into the design of statistical surveys.<sup>163</sup> These are now being used across several other major surveys conducted by Statistics Canada.

### Suggested Questions

1. How does Canada plan to address the following known gaps in up-to-date, robust, disaggregated data:
  - Data on people under-represented in research on disability and human rights, or who do not fall mainly within federal jurisdiction, including people with psychosocial disabilities, children and youth, Indigenous people on- and off-reserve, people living in small/remote areas, immigrants and refugees, racialized communities, LGBTQI2S+ communities, institutionalized people, persons with low income, people who are not working and do not qualify for federal income support programs<sup>164</sup>, seniors, people who are Blind, D/deaf and Deaf-Blind, people who use sign languages<sup>165</sup>, and people with intellectual disabilities and Autism?

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<sup>162</sup> These knowledge gaps are addressed in the suggested LOIPR questions for Article 31.

<sup>163</sup> These statistical surveys include the Canadian Survey on Disability (CSD) and its forerunner surveys, include the new disability screening questions (DSQs). These efforts by the Government of Canada have increasingly gained the support of diverse disability communities and move us to the ideals articulated in the CRPD and its associated processes.

<sup>164</sup> These programs include federal Employment Equity and Employment Insurance Programs

<sup>165</sup> Sign languages refers to American Sign Language (ASL) and Langue des Signes Québécoise (LSQ)

- Longitudinal data for understanding the episodic nature of disabilities; the transitions of people with disabilities in employment, education and income; and the impact of accommodations (and their absence) on participation in work and society? and
  - Comparable data across post-censal and other surveys?<sup>166</sup>
2. What measures are Canada implementing to ensure:
- Ongoing, meaningful involvement of persons with disabilities in the development and implementation of all aspects related to data, research, and reporting?
  - Capacity building for DPOs to develop and use their own qualitative and quantitative data in their human rights monitoring and policy work, as well as use large-scale survey data and widely-used research methods<sup>167</sup>? and
  - Removal of financial and other barriers preventing DPOs from having access to existing data and scholarly resources equal to that of government officials, academics and corporate-sector researchers?
3. How will Canada ensure an intersectional and human rights approach to disability is reflected in all federal and Provincial/Territorial funding and research mandates?

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<sup>166</sup> Comparable data is needed, instead of the incomparability that has resulted from changes in survey methodologies over the past three decades, e.g., in the operational definitions of disability and in survey content modules.

<sup>167</sup> Methods may include microsimulation, regression and others.

## **ARTICLE 32: International cooperation**

Canada joined the GLAD network and hosted the 2019 GLAD meeting which brought together over 100 international experts to discuss improving the inclusion of persons with disabilities in international cooperation programming. A key feature of this conference was an intersectional approach to disability.

The inclusion of a disability analysis is not yet required in international cooperation projects. There is less focus on clear policies for disability-inclusive international development practices in Canada than in other Commonwealth countries. A higher level of intergovernmental cooperation on these issues is needed.

### **Suggested Questions**

1. What is Canada's plan for supporting a rigorous human rights model of disability and shared monitoring processes on quality of social participation and realization of disability rights?
2. Will the Government of Canada implement a requirement for all international cooperation projects to include a disability lens and provide disaggregated data?
3. Will Canada facilitate and support DPO capacity-building, including through the exchange and sharing of information, experiences, training programs and best practices?
4. Will Canada facilitate cooperation in research and access to scientific and technical knowledge, domestically and abroad, and render it easily accessible to interested communities?
5. What is Canada's plan to provide appropriate technical and economic assistance, by facilitating access to and sharing of accessible and assistive technologies, and through the transfer of technologies?
6. What is Canada's plan to increase participation of DPOs in future international cooperation projects?



## **ARTICLE 33: National implementation and monitoring**

In 2017, the Committee noted Canada “has not designated an independent mechanism to monitor the implementation of the CRPD as required under article 33(2). It is further concerned about the absence of mechanisms to ensure the participation of persons with disabilities, through their representative organizations, in monitoring processes.”<sup>168</sup>

Articles 4(3), 7(3) and 33(3) outline Canada’s obligation to ensure the involvement of persons with disabilities, including children, in all aspects of development, implementation and monitoring of the CRPD. Article 33(1) requires States Parties to, “give due consideration to the establishment or designation of a coordination mechanism to facilitate related action in different sectors and at different levels”.

Despite these requirements, there is a lack of coordinated implementation and monitoring within government at the national, provincial and territorial levels. Additionally, there is limited involvement of persons with disabilities and their representative organizations in the development and implementation of policies, data collection and monitoring, particularly from those in the Indigenous, D/deaf, Blind, immigrant and women’s communities.

### **Suggested Questions**

1. How will Canada ensure the involvement of persons with disabilities and their representative organizations in the development, implementation and review of current and future legislation, data collection and policy, necessary for effective monitoring and implementation of the CRPD?
2. How will Canada ensure adequate and sustained financial resources for national implementation and monitoring of the CRPD, within federal, provincial and territorial government departments and to Civil Society? Will this funding include adequate resources for accommodations (ASL/LSQ, plain language translation, captioning, other communication costs), French language translation, and transportation costs?

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<sup>168</sup> UNCRPD, “Concluding observations on the initial report of Canada” (8 May 2017) UN Doc CRPD/C/CAN/CO/1 at para 57.