

Issue: Is Canada meeting its human rights obligations for persons with disabilities?

Conclusion: Since Canada cancelled its federal and provincial cost-shared programs in 1996, the gap between the stated goals of anti-discrimination legislation, policies and programs relating to disability and the realized rights of persons with disabilities has widened.

Executive Summary:

1. Canada frequently describes itself as a leader in disability rights. There are laws at the international, national and provincial level that either reference or are directly related to disability. However, there is still a startling gap between the stated goals of this legislation and the realized rights of persons with disabilities. There is abundant evidence to suggest that persons with disabilities are over-represented in categories like poverty and homelessness. Federally and provincially, the underdevelopment of accessibility and disability supports are also indicative of the gap between the promise of equal rights for persons with disabilities and the reality of their day-to-day lives.

2. This submission highlights these disparities relative to international, national and provincial legislation; national and provincial disability policies; as well as at the local level, with a focus on Independent Living Canada's (formerly the Canadian Association of Independent Living Centres) capacity to empower citizens with disabilities.

3. At Independent Living Canada we believe that a paradigm shift must happen if the Government of Canada seeks to reduce these disparities. Legislation, under the best of circumstances, can redress discrimination after it has occurred. We are committed to living in a country where *prevention of discrimination* is a priority, and where the disability community is directly consulted and empowered to shape the policies, initiatives and funding that affects the lives of persons with disabilities every day.

Access to International Legislation:

4. In terms of Conventions that are legally binding, the rights of persons with disabilities are only focused upon specifically within the UN Convention of the Rights of the Child and the UN Convention on the Right of Persons with Disabilities (CRPD). Yet, Canada has not ratified the CRPD or its accompanying Optional Protocol, which would work toward placing a specific and committed focus on human rights violations for persons with disabilities, making Canada legally bound to respect these standards, and placing Canada under a broader audience of scrutiny. The Government of Canada has not explained why it has not ratified the CRPD or the Optional Protocol and it is of utmost importance to the disability community that the CRPD and the Optional Protocol be ratified.

Access to National Legislation:

5. Independent Living Canada is concerned about persons with disabilities' access to national legislation. In Section 15 of the Canadian Charter of Rights and Freedoms, disability is specifically referenced, and though this provides for the means to seek legal remedy for discrimination through courts, it has not functioned to *prevent* human rights violations. The onus is instead on individuals to prove that they have been discriminated against in a costly judicial

system that is not known for setting precedent.¹ The cancellation of the Court Challenges Program (CCP) in 2006 is an example of a barrier to access of equal rights. Since funds from the CCP were directed to citizens seeking equality under the law who would otherwise not have the means to exercise their rights, the cancellation of this program means that many persons with disabilities are now denied the means to access the courts. Thus, people with the funds to pursue their rights in court independently exercise more rights than individuals with low incomes, or those who live in poverty. Though the Government of Canada used the CCP to gesture toward their aims to ensure equal access, and though United Nations treaty bodies recognized CCP as an effective means of doing so, there is no current program that resembles CCP.²

6. Even where persons with disabilities can afford to pursue their rights, national laws can support disability discrimination. For example, the Immigration Act discriminates against persons with disabilities under the “excessive demand” clause, requiring those seeking permanent resident status to undergo medical examinations with the possibility of being denied based on the perception that disability places a burden on health and social services. Though specific reference to disability was removed from the Act in 1991, the remaining excessive demand clause continues to support the misperception that persons with disabilities are strictly a burden to health and social services, and ignores the contributions of citizens with disabilities. In 2000, reform occurred for Convention refugees, but the excessive demand clause persists for immigration applicants.³

National Action Plan on Disability:

7. The End Exclusion document “From Vision to Action: Building an Inclusive and Accessible Canada” (2007)⁴ was signed by 99 disability organizations endorsing its vision for policy action, and contains a specific framework to address the rights of Canadians with disabilities. This framework outlines the need for:

- a) New investments in disability-related supports, with specific reference to accessible and affordable housing, bolstered disability income supports, alternatives to institutionalization, and equal access for First Nations persons with disabilities;
- b) New initiatives to alleviate poverty, with specific reference to making the Disability Tax Credit refundable, making those eligible for Canada Pension Plan Disability Benefits automatically eligible for the Disability Tax Credit, making Canada Pension Plan Benefits non-taxable, expanding Employment Insurance Sick Benefits to 52 weeks and ensuring that the Registered Disability Savings Plan is not altered for those on social assistance;

¹ In June 2008, the Supreme Court of Canada, in *Keays vs. Honda Canada*, accepted the testimony of two doctors that never examined Keays to overturn punitive damages determined by lower courts. Instead of receiving accommodation based on a documented disability, Keays was fired and the duty to accommodate was not upheld.

² For more information on the cancellation of the Court Challenges Program, visit www.savecourtchallenges.ca

³ For more information on the Immigration Act, please visit the Council of Canadians with Disabilities’ publication “Immigration and Disability” at:

www.dawncanada.net/announcements/Immigration_and_Disability_August2008.doc

⁴ For the complete End Exclusion action plan, visit www.EndExclusion.ca

- c) New supports to increase access to labor force participation, with specific reference to increasing access to training, education, accommodation and labour market attachment, establishing specific targets for Canadians with disabilities in Labour Market Development Agreements (LMDA), with an expansion of the Multilateral Framework Agreement on Labour Force Participation of People with Disabilities and the Opportunities Fund;
- d) New initiatives to promote access, inclusion and full citizenship, with specific reference to increasing accessible transportation, ratifying the CRPD and the Optional Protocol, mandating accessible technology for the Government of Canada, as well as accessible elections.

8. Independent Living Canada continues to endorse this policy action plan and interprets the recommendations as synonymous with the human rights of persons with disabilities. If developed and implemented with the support and long-term commitment of the Government of Canada, this action plan will work toward ensuring equality for persons with disabilities.

Access to Provincial Legislation and Policy

9. At the provincial level, there are barriers to accessing legal recourse and policy disparities that limit the rights of some Canadians, while bolstering the rights of others. For example, on June 30th 2008, Bill 107 came into force and the Human Rights Tribunal of Ontario now handles discrimination complaints through a proposed “direct access” model. This change means that individuals are not guaranteed an investigation, are not guaranteed legal support, lose their right to appeal, and the Tribunal has the right to charge you for costs related to your case.⁵ This change impedes persons with lower incomes from seeking recourse against discrimination and we know that Canadians with disabilities are continuously over-represented in poverty measurements.

10. In addition to legislation, national and provincial policies shape the everyday lives of person with disabilities. The allocation of government funding is delivered with a top-down method of decision making and rarely takes into account the voices of citizens with disabilities. Where consultation has occurred, often it is after public outcry, instead of consulting persons with disabilities before a policy is implemented. For instance, in Ontario, Homecare Hearings recently took place across the province to discuss the implementation of Competitive Bidding. The hearings were scheduled in response to overwhelming public dissatisfaction with a system of Competitive Bidding that disempowered citizens with disabilities by reducing homecare to a purely economic standard, rather than upholding a high standard of care for consumers; disrupting a continuum of care, which has a substantial affect on the health and well-being of the elderly and persons with disabilities; and placing care in the hands of untrained and under-paid staff. Testimonies at the hearings demonstrated that this policy actually introduced danger into the lives of those whose health was already vulnerable.⁶

⁵ For more information on how Bill 107 adversely affects human rights in Ontario, visit the Disabled Women’s Network Ontario (DAWN) action kit: <http://dawn.thot.net/bill-107-action-kit.html>

⁶ For more information on Competitive Bidding and Homecare Hearings, visit the Ontario Health Coalition reports at <http://www.web.net/ohc/Homecare.htm#HReports>

11. Additionally, in December of 2008, the Registered Disabilities Savings Plan (RDSP) will be made available. However, only Newfoundland, BC and Yukon have exempted RDSP contributions from being considered taxable income. This issue is emblematic of the disparities that exist between the provinces and the lack of initiative to ensure that all Canadians have access to policies that improve their life circumstances.⁷ Indeed, persons with disabilities do not have the same mobility rights as many of their non-disabled peers, since they may not be able to access the same services in another province, or are relegated to long waiting lists to renew services in a different province.

Independent Living Centres and Local Communities⁸

12. Independent Living (IL) Canada and its network of 28 IL Centres represent a grassroots approach to program and service delivery, wherein consumers are empowered to shape services based on their individual needs. The term ‘Independent Living’ means having choice and control over the assistance, equipment and assistive devices needed for daily life and having access to housing, transport, health services, employment, as well as entertainment, education and training opportunities.

13. This focus on choice and control is exemplified at local IL Centres and the ripple effect of the principles and practice of the IL philosophy is transferable to mainstream service providers, businesses, the public sector, educational facilities and government programs and policies. If disability organizations increase the choice and control of citizens with disabilities, they are directly addressing human rights issues through increasing an individual’s capacity for full participation.

14. The United Kingdom (UK) and the United States (US) Governments recognize that Independent Living Centres offer social equity, the dignity of choice and net social and economic benefits to all of their citizens.⁹ These Governments offer widespread support to Independent Living Centres. However, this is not the case in Canada. In 1988, the Government of Canada, based on the recommendations of a Parliamentary Committee, agreed to invest in the development of Independent Living Centres throughout Canada. Over five years, the annual investments were geared towards supporting IL Centres to develop in various provinces in order to demonstrate the positive impact of the IL model in the lives of people with disabilities and on their communities at large. This demonstration project was initiated to market IL Centres to provinces in order to seek their support to help fund Centres under cost-shared programs. The federal government would fund half and the provinces would fund the other half. In 1996, the

⁷ For a list of reasons why RDSP income exemption is important for all provinces, visit <http://rdsp.wordpress.com/>

⁸ For more information on Independent Living Canada, visit www.ilcanada.ca

⁹ For more information on Independent Living in the UK, visit the 2008 Office for Disability Issues’ *Independent Living Executive Summary: A Cross-Government Strategy about Independent Living for Disabled People* (UK: Crown, 2008) at www.officefordisability.gov.uk; for more information on Independent Living in the US, visit *USA: Comprehensive Rehabilitation Services Amendments Act Of 1978*.

(Cornell: Gladnet, 1979) at <http://digitalcommons.ilr.cornell.edu/gladnetcollect/152>

cost-shared programs were eliminated in the federal budget and the original intent of the special initiative was no longer viable.

15. Thus, funding for IL Centres has remained virtually unchanged over 20 years, with individual IL Centres receiving less money than they once did as we stretched the original funding to accommodate new IL Centres. Today, the federal funding of IL Centres is in limbo. It is never known if funding will be renewed the following year. This makes it very difficult for any long term planning and growth. The majority of the funding for IL Canada and the IL network is time-limited and project-based, rather than core-funded, which restricts Independent Living Canada's ability to empower Canadians with disabilities.

The Need for a Paradigm Shift

16. As the End Exclusion national action plan on disability suggests, it is time for the Government of Canada to examine the barriers that perpetuate the exclusion of persons with disabilities. This is not simply a matter of having anti-discrimination legislation, but of providing access to this legislation through financial support. Additionally, we are requesting that the prevention of discrimination be made a top priority, which can be facilitated by appropriately designed federal and provincial policies and funding initiatives developed by and for persons with disabilities.

17. The realized human rights of Canadians with disabilities are still a marginal issue. The socio-economic disparities between disabled and non-disabled Canadians are dramatic, and disability organizations are struggling to address possibilities for prevention of inequality on a citizen-by-citizen basis. Often, they depend on the Government of Canada for empowerment and sustainability, but, as with Independent Living Canada, our funding is never a certainty. A paradigm shift would involve recognizing that organizations that are run by and for persons with disabilities can provide a wealth of expert advice on preventing human rights violations and then committing to work with us to implement solutions.

Recommendations for the Government of Canada:

- Ratify the CRPD and the Optional Protocol
- Reestablish the Court Challenges Program
- Reform the Immigration Act
- Provide new investments in disability-related supports
- Develop new initiatives to alleviate poverty
- Implement new supports to increase access to labor force participation
- Commit to new initiatives that promote access, inclusion and full citizenship
- Eliminate provincial disparities relating to disability supports and rights legislation
- Invest in sustained core-funding for community organizations run by and for persons with disabilities
- Recognize that Independent Living is an international, national and community level movement that empowers persons with disabilities toward full citizenship

These recommendations must be further developed and applied in consultation with Canadians with disabilities and organizations that are run by and for persons with disabilities.