

Date: February 1, 2024

To: Francisco Cali Tzay, Special Rapporteur on the Rights of Indigenous Peoples

From: Lynn Gehl, PhD, Algonquin-Anishinaabe-Ikwe

Re: Gehl Written Submission for the 57th Session Human Rights Council Report

Title: Time for a Change: Introducing the Political Model of Disability

Much of the research and recommendations that would improve the lived realities of Indigenous people with disabilities began in 1981. A comprehensive analysis, with a focus on Indigenous women and girls, can be found in the Gehl Report 2021. The link is in the references below.

Introduction:

Research accountable to, and preferably done by, disabled people offers the best insights. (Shakespeare, 2006, p. 199)

The Gehl Report on Indigenous women and girls with disabilities provides/addresses: A Statistical Snap Shot that explains Indigenous people have a higher rate of disabilities; Key Literature on the topic; Key Research Projects that Informs this topic; and recommendations. Much of what is in the Gehl Report can be generalized to all Indigenous people with disabilities. Given this, and the need to remain within a 4,000-word count submission requirement, this submission focuses on the question: “What is the main barrier to serving the requirements of Indigenous peoples with disabilities?” I suggest a huge barrier is the need for a new way of conceptualizing the issue. With this as my focus I address the Special Rapporteur’s request to identify root causes of why Indigenous persons continue to face societal barriers related to disabilities; and I identify the greatest challenge to realizing the human rights of Indigenous persons with disabilities.

It is easily reasoned that humans foremost rely on language to communicate ideas between one another, across cultures, and through the power inherent in the social stratification that our society is now structured. In the English language humans use nouns, verbs, adjectives, and adverbs to communicate, but we also rely on concepts to convey a depth of meaning under an entity or lived reality. Like all aspects of cultures, language, inclusive of both oral and written, is fluid, meaning humans continually invent and create new words to represent our ever-changing world. Such examples of new words include “selfies” and “blog”. We also create new concepts. Two such examples being “hegemony” and more recently “intersectional oppression”. The point is, as human culture shifts, new words and concepts are created to help humans communicate ideas and what we know.

The Social Model and Medical Model of Disabilities:

In addition to creating new words and concepts, humans also create and rely on models to convey more complex concepts such as political realities for example. The first model relied on to understand and address disability related needs was the ‘medical model of disability’. The medical model of disability operated on the assumption that disability was an individual’s issue where the person had to be cured of all that ailed them. This model continues to remain useful in terms of ensuring persons with disabilities gain access to the medicines they require, yet eventually due to its limitations, it was questioned and challenged and the matter of understanding disability related issues was expanded. After all, there are many people in wheelchairs who are able to take on important community life activities such as teaching and theorizing human rights for example. The same can be said about people who are blind or people

who lack hearing as they too have important gifts to offer community life such as music and art. Clearly something was amiss with the medical model of disability.

In the review of the literature and the research conducted on/with Indigenous people with disabilities, the limitation of the medical model of disability is identified as a barrier. Hirji-Khalfan (2009) for example, criticized the practice of professional assessments of disabilities that Canada relies on, because it is situated within the medical model, yet in reality Indigenous people understand health and wellness more wholistically and in terms of the broader family and community needs. Similarly, Stienstra (2018) criticized Canada for its reliance on the medical model of disability because of its focus on difference versus inclusion and integration, which is more in line with an Indigenous understanding of disability. Further, in her work Dion (2017) talked about the paradigm shift of understanding persons with disabilities from being objects to being subjects with agency. In line with this thinking Dion explained that eventually Canada did move away from the medical model to that of embracing what is known as the 'social model of disability'.

It is said that the social model of disability was birthed because of the questions generated during and by the civil rights movement; and it is also said that it was Mike Oliver who first coined the concept in 1983 (Lisicki, 2013; Shakespeare, 2006, p. 198). The social model differs from the medical model in that it recognizes that people with disabilities are mostly limited by barriers in societies that refuse to make room for their inclusion. Essentially, through the creation of the social model we see an important conceptual shift from 'the problem is the individual' to 'the problem is structures in society', where subsequently at the level of practice the focus is on

resolving the barriers in society that prevent everyone's participation in community life. In short, it is society that has the disability, not the people.

Many people reading this discussion about the difference between the medical model and the social model of disability should now be able to shift conceptually, cognitively speaking, and consequently begin to think differently, and critically, about issues of disability and how best to address and resolve them. This new way of conceptual thinking, and making new cognitive connections about disability related issues, is exactly what communicating through concepts and models facilitates. This is why humans use concepts to communicate, and why we invent or create new concepts when culture and politics evolve. It is in this way that new conceptual models are like magic, as in 'poof!'; because they open new 'spaces' in our cognitions effectively creating a lovely 'basket in our minds' where we can place new ideas and thoughts as we learn, create, and gather. It is in this way that new conceptual models are important because they provide humans with what has been called 'directive cognitive function' (see Castillo, 1997, pp. 20-24). Certainly a new basket in our minds is required in addressing the history and ongoing politics regarding Indigenous people and disability. Indigenous people and their bodies have been landscaped with disease and disability due to Canada's history and genocide (National Inquiry into Missing and Murdered Indian Women and Girls, n.d.). Our minds and bodies are not inferior, rather Canada's laws, policies, courts, and parliamentary procedures are.

Unfortunately, when reading the literature on models of disability, sometimes the medical and social models are pitted against one another in a competing kind of way. For example, some people correctly argue that in fact there are people with impairments or medical issues that as such require medical intervention; yet they incorrectly argue the social model is

therefore wrong. For some reason when looking at complex phenomena such as how to remedy matters of disability humans tend to think essentially, meaning only one model will do to resolve matters. Sometimes, though, two or even three models are needed to better serve all people; after all there is a diversity of human situations in the world we live in. What I mean by this is, there is no reason why both models cannot exist side-by-side, where health care practitioners, policy, and program makers are then able to harness one when it is most suitable and the other when it is most suitable, or possibly harness both when both apply to any given person, situation, and context. There is wellness in diversity, and this also applies to conceptual models of understanding. Humans need to remember to celebrate and embrace diversity, versus always default to essentialism.

Introducing the Political Model of Disability:

That said, there is yet again the need for a new model of disability to better serve Indigenous people with disabilities: the 'political model of disability'. Most Canadians are aware of the 'special' (read oppressive) relationship that the government of Canada has with Indigenous people; after all it is Indigenous land that the creation of Canada rests on (Borrows, 2002). I offer here three stories that outline this relationship best understood as an oppressive relationship.

Story 1; Indigenous Child Welfare and Jordan's Principle

There is a telling example of the oppressive relationship Indigenous children with disabilities have with Canada. It has to do with Canada's history of discriminatory funding for Indigenous children and family services. Many people know by now that in 2007 The First Nations Child and Family Caring Society (Caring Society) and the Assembly of First Nations (AFN) were forced to take the issue of Canada's inequitable and discriminatory provisions of child welfare services and its

flawed implementation of Jordan's Principle, specifically its funding formula, to the Canadian Human Rights Tribunal. Essentially, these entities argued Canada's policy and practice was racist and discrimination. Nine years later in 2016 the Tribunal ruled in the children's favour and ordered Canada to cease its racist discrimination; yet subsequently, the Tribunal has had to issue more than 20 additional orders, inclusive of non-compliance orders, against Canada for its failure to comply (Ball, 2021; Palmater, 2021). This case illustrates well Canada's inability to conceptualize, understand, and political willingness to address matters of disability in Indigenous communities. This neglect and treatment of Indigenous children was and remains deplorable, as is the need for the Tribunal to issue numerous non-compliance orders.

Story 2; The Never-Ending Sex Discrimination in the Indian Act

Many people know that Indigenous women have struggled for a long time to re-gain the rights taken away from them through the sex discrimination in the Indian Act so that they can regain their places within their Nations. It is important to reflect on this lengthy process because it again points directly to where the most significant barriers and gaps in action are located when addressing colonial oppression: Canada.

Generations of Indigenous women have worked hard to eliminate the sex-discrimination in the Indian Act, while at the same time Canada has worked too hard to avoid addressing it. It was in the 1960s when Mary Two-Axe Earley began to speak out publicly on this matter, in 1973 Jeannette Corbiere Lavell and Yvonne Bédard took the matter to the Supreme Court of Canada, and in 1979 Sandra Lovelace Nicholas took the matter to the United Nations. They all failed, or better said Canada failed them. Although the Indian Act was eventually amended in 1985 to bring it in line with the Charter of Rights and Freedoms, it quickly became clear that in fact what Canada

did was create new forms of sex discrimination versus eliminate it. What Canada did was craft a better instrument of sexist and racist oppression. This resulted in Sharon Mclvor taking the issue to the British Columbia court of appeal in 2008, but when this Canadian court failed her, she was forced to go to the United Nations, which after 10 years, in 2019, ruled in her favour (Mclvor & Brodsky, 2010; Eberts, 2010).

Parallel to Mclvor's process, the matter of Canada's unknown and unstated paternity policy re the Indian Act was also challenged in Ontario's Court of Appeal in 2017 as it too was a new sex discrimination created in the 1985 Indian Act. This process took 30 years when in reality this could have been resolved at a policy level (Gehl, 2021). Worthy of stressing, the point I am making here is that it has become clear to many people that when addressing sex discrimination in the Indian Act, Canada used the 1985 amendment process as an opportunity to create new forms of sex-discrimination.

Finally, after the Mclvor UN decision, Canada amended the Indian Act in 2017 and proclaimed the "6(1)a All the Way" clauses, inclusive of clauses to address situations of unknown and unstated paternity as law in 2019. But this took Canada 60 years of court challenges to end the sex discrimination that harmed Indigenous women and their children even though the Charter made sex discrimination illegal in this country (Gehl, 2021). That is 60 years of collective court challenges! It is not over. As of January 2024, Bill C-38 is yet another attempt to remove additional sex discrimination in the Indian Act (Canada, 2022; Native Women's Association of Canada, 2023). Canada's sex discrimination is never-ending.

Canada's ongoing sex discrimination is, and has been, a huge barrier for Indigenous women and their descendants to be re-instated or instated within their Indigenous Nations.

Canada's ongoing structural and systemic racism and sexism is contributing to higher rates of disabilities while at the same time preventing Indigenous women and their descendants access to their treaty rights such as education and health benefits, the very benefits they require.

Story 3; The "Modern Treaty Process" Best Known as a "Land Claims Process"

It is no secret that prior to the arrival of the French and English to Turtle Island, Indigenous Nations, such as the Algonquin Nation, were here doing what they did. By now most Canadians are also aware of the historic treaty process that ended in 1923 thus leaving many Indigenous Nations without a treaty. Although this was the situation, Frank Calder took Canada's refusal to respect the rights of the Nisga'a Nation to court in 1973, where afterwards the federal government then proceeded to *unilaterally versus collaboratively* draft their Comprehensive Land Claims Policy (Manuel, 2017). Through this policy Indigenous Nations were required to extinguish *all of their land and land-related rights*. Due to Indigenous opposition, in 1987 that policy was replaced with yet *another unilaterally* drafted policy. This policy, though, continues to be problematic, as is the Liberal Party's more recent and current rhetoric of the nation-to-nation framework put forward by Prime Minister Justin Trudeau.

My point here is that the land claims processes (versus a treaty process), and for that matter self-government negotiation in Canada, are ongoing, and are never ending (Gehl, 2014). It is now well understood that Canada is not respecting Indigenous Peoples' land and resource rights. The most telling example of this truth comes from the very land that Canada's parliament buildings, Canada's Supreme Court, and the prime minister's and governor general's homes reside on: unceded Algonquin traditional territory. Through the historic treaty process that the country of Canada was built on, the Algonquin Nation was continually denied, first by the French

and then by the British. While it is said Canada continues with the so-called modern treaty process, this in fact is not correct. Rather, Canada continues to deny Indigenous land and resource rights, presently offering the Algonquin only 1.7% of our land and a one-time buy-out of \$800 million (Gehl, 2015). Clearly, a Nation without the jurisdiction of its own land and resources remains unable to pull itself out of colonially imposed poverty, and unable to provide proper housing and clean water to its citizens. This ongoing colonial and genocidal denial of land and resources is foremost responsible for the poverty of Indigenous Nations, the higher rate of disabilities, and the inability of Indigenous Nations to care for its very citizens.

While I could go on and critique the land claims process further, my focus must remain on the matter of seeking a better life for Indigenous people with disabilities. What is important here is that the ongoing treaty, land claims, and self-government process continues to categorically place Indigenous Nations in an oppressive relationship, where, and as already suggested, the bodies of Indigenous people have become landscaped with disabilities.

Wrapping Up

Through these stories – Canada’s refusal to comply with the Human Rights Tribunal decision regarding Indigenous children’s health and welfare, Canada’s refusal to resolve the sex discrimination in the Indian Act, and Canada’s land claims process that denies Indigenous people the right to their land and resources – we can discern an ongoing never-ending colonial pattern. It should be clear by now that Canada and its parliamentary members require a new conceptual model of disability to help them better see, perceive, understand, and subsequently address the needs of Indigenous people with disabilities. While the medical model of disability remains important in that it addresses medicines, supports, and services individuals require, and the

social model of disability remains important in that it addresses oppressive and barrier filled structures in society, in the situation of Indigenous people with disabilities there is the need to shift conceptually and think critically through the 'political model of disability' because clearly it is Canadian politics that is the main barrier to addressing the particular needs of Indigenous people with disabilities and their right to live free from ableism and oppression.

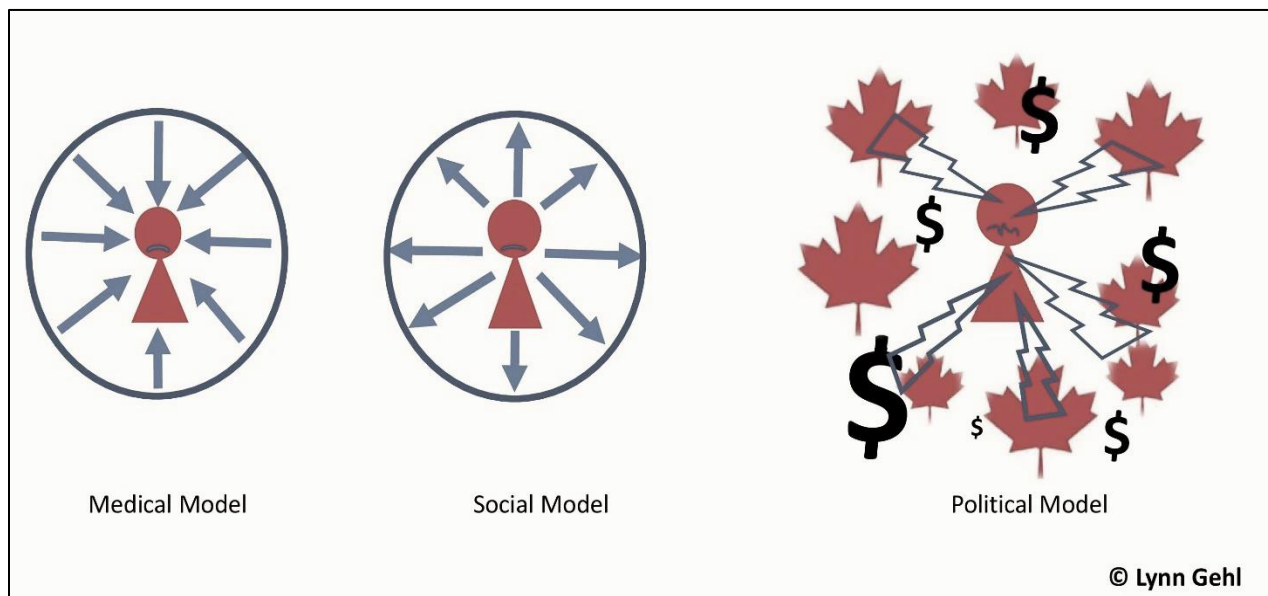
In Figure 1 below we see how the medical model of disability focusses internally on addressing the needs of the individual, while the social model of disability focusses externally on the need to address societal structures and the inherent barriers of inclusion and wellness. The arrows are telling of these two ways of understanding and addressing some of the matters related to disability. The conceptual and cognitive shift was important, but these two models of disability do not speak to the politically oppressive relationship Indigenous people have with Canada as the political model of disability does.

The main barrier to lowering the higher rate of disability in Indigenous communities, and addressing their everyday requirements, is not solely internal to the individual; and while certainly implicated, nor do the barriers solely reside in society's structures. The main barrier for Indigenous people with disabilities, and as the arrows in Figure 1 below indicate, is the politics of Canada, whose courts, judges, and parliamentarians; and whose law and policy makers refuse to, or are reluctant to address. As a result, the oppressive relationship continues to move into the future. Clearly Indigenous Nations require the jurisdiction of their land and resources, the very land and resources required to pull them out of the poverty colonial processes imposed. In addition, Canada's long time sex discrimination has also resulted in further oppression for Indigenous women and their descendants. And lastly, Canada's reluctance to meet the Human

Rights Tribunal ruling on Indigenous child welfare offers another telling example that the main barrier Indigenous people with disabilities face is Canada's need to continually deny Indigenous people the right to a good life. Clearly there is the need for a paradigm shift, hence, I offer the political model of disability to better serve in remedying the issues associated with Indigenous people and disabilities.

The goal in offering this discussion of the need to shift to a political model of disability, is not to blame Canada. Rather, the goal is to serve parliamentarians and policy and program makers with a new vision of understanding so that they are better able to perceive and understand how best to care for Indigenous people with disabilities.

Figure 1: The Medical, Social, and Political Models of Disability



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