



Disability Rights Promotion International - Canada
Monitoring Disability Rights in Canada
SSHRC funded project

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STAKEHOLDER SUBMISSION

UNIVERSAL PERIODIC REVIEW of

CANADA

EXECUTIVE SUMMARY

1. Disability Rights Promotional International - Canada (DRPI-Canada), a collaborative research project, is working to create a holistic and sustainable system for monitoring the human rights of people with disabilities in Canada. The project is developing and field testing a broad range of tools, methodologies, and training resources that can be used by persons with disabilities and their organizations to monitor disability rights in 4 focus areas (individual experiences, law and policy, media, and survey datasets). This report is based on the work done in the individual experiences and law and policy areas. Current Canadian legislation fares relatively well, both federally and provincially, in limiting discrimination by, for example, establishing blanket prohibitions against discrimination on the grounds of disability and setting removal of barriers, enhanced integration and guaranteed access to education and media as its goals.¹ However, there are various problems that require further attention such as, inconsistent definitions of disability, lack of strong and effective compliance and enforcement mechanisms and limited inclusion of persons with disabilities in decision-making processes. Several recommendations are included in this report to address these problems.

METHODOLOGY

2. In order to provide a comprehensive picture of the human rights situation faced by people with disabilities, DRPI-Canada has adopted a holistic approach to monitoring which coordinates activities in four inter-related themes: *Monitoring Individual Experiences* (gathering information about the actual human rights situation of people with disabilities on the ground); *Monitoring Law and Policy* (assessing the effectiveness of laws, policies, and case law in protecting and promoting the disability rights); *Monitoring Media* (examining the coverage and depiction of people with disabilities in the media); *Monitoring Survey Datasets* (examining the information collected by Canadian government national surveys on the situation of people with disabilities). In the *Monitoring Law and Policy theme*, a template grounded in various international human rights conventions, including the *Convention on the Rights of Persons with Disabilities*, has been developed to gather information addressing all categories of rights and serves as an assessment tool, identifying gaps in legislation and policy. Law and policy information has been collected at the federal level and also in five provinces (British Columbia, Manitoba, Newfoundland, Ontario and Quebec). Built into the holistic approach used by the DRPI-Canada project is the understanding that disability rights monitoring should also include a way to assess the actual situation of people with disabilities. *Monitoring individual experiences* involves the collection of qualitative data through face-to-face interviews with people with disabilities conducted by people with disabilities (monitors). People with disabilities are asked to tell their own stories and identify the rights issues that are most important in their lives. Specific tools have been developed and used to collect information in two monitoring sites (Toronto and Quebec City). The tools include an interview guide, a training course that prepares monitors to engage in monitoring the individual experiences as well as a training manual providing

¹ Improvements in accessibility to education and media are evidenced in the provincial case law.

information about monitoring techniques, confidentiality in monitoring and how to work in the field.

3. Based on the work done by DRPI-Canada in *Monitoring Individual Experiences* and *Monitoring Law and Policy* themes, several problems have been identified, along with best practices and achievements, all of which are addressed in this report. In addition recommendations are included to build upon the achievements and address the problems.

CHALLENGES AND CONSTRAINTS

4. Despite having a statutory human rights infrastructure in place in jurisdictions across Canada, problems exist with respect to implementation.

Inconsistent Definitions of “Disability”

5. Canada does not have a consistent definition of what constitutes “disability”. For example, the *Newfoundland Human Rights Code*² provides extensive definitions of both mental and physical disability with the definition of a mental disability including, “a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language”. In contrast, federal statutes, along with legislation in British Columbia, Manitoba, Ontario and Quebec, do not define disability in such a comprehensive manner. Inconsistency in the statutory definition of disability has resulted in both narrow and expansive interpretations by adjudicators. While this is an issue that is faced in many countries with a constitution like that of Canada, it raises the possibility that rights are not transferable and equally protected and promoted across Canadian jurisdictions.

Compliance and Enforcement

6. The lack of compliance and enforcement mechanisms is another critical problem. For example, the *Ontarians with Disabilities Act*³ contains strong provisions promoting and protecting the rights of people with disabilities in that province. However, as recognized in a report by the ODA committee⁴, these provisions have little meaning and effect in the absence of a mandatory compliance mechanism.

Inclusion

7. It is clear that equal participation in society by people with disabilities requires equal participation in decision making processes as well. The federal report *Equal Citizenship for Canadians with Disabilities*⁵ highlights the need to include persons with disabilities in

² R.S.N. 1990, c. H-14, s.2(h).

³ S.O. 2001, c. 32.

⁴ Ontarians with Disabilities Act (ODA) Committee, Putting Teeth Into The Ontarians With Disabilities Act: A Discussion Paper On Options For Creating An Effective Compliance / Enforcement Process For The ODA (June 2004), online: ODA Committee http://www.odacommittee.net/ODA_Discussion_Paper.html.

⁵ Federal Task Force on Disability Issues, Equal Citizenship For Canadians With Disabilities: The Will to Act (October 21, 2006), online: HRDC http://www.hrsdc.gc.ca/en/hip/odi/documents/scottTaskForce/00_toc.shtml

discussions regarding how the Government of Canada can assist people with disabilities to overcome barriers so that they can work and live as other Canadians do. At this time however, there is no legislative provision in the jurisdictions studied by the DRPI-Canada project requiring inclusion of people with disabilities in the development of policy or legislation. Without such a requirement, there is no assurance that governments and other actors will take the necessary action to eliminate discrimination on the grounds of disability.

Women and Girls facing Multiple Discrimination

8. The December 2001 *Employment Equity Act Review* found that that women and children encounter multiple discrimination in trying to exercise their rights. It was found that progress, particularly for Aboriginal women with disabilities, has been slow. At this time, Canada is lacking legislative provisions and policies to address the multiple forms of discrimination faced by women and girls with disabilities.

IMPLEMENTATION AND EFFICIENCY OF CANADIAN LEGISLATION

9. The following analysis outlines the progress that has been made to date by existing disability rights legislation and best practices that have emerged due to such legislation.

Access

10. Some provincial legislation clearly addresses accessibility. For example, Ontario's *Accessibility for Ontarians with Disabilities Act* mandates that "every provider of goods or services shall ensure that the following persons receive training about the provision of its goods or services to persons with disabilities..."⁶ This is a broad provision covering various aspects of accessibility, such as different modes of communication, updating training programs, and timelines. Similarly, Quebec's laws mandate that within universities, colleges, and secondary level educational institutions, accessibility training is mandatory with an emphasis on integration.⁷ However, while these provisions are laudable on paper, they have not been uniformly or comprehensively implemented.

Accessible Media & Education

11. In *Sparkes v. Newfoundland & Labrador (Ministry of Health & Community Services)*,⁸ the Tribunal ruled that the Canadian Broadcasting Corporation should provide closed captioning for all of its programming. In *Wynberg v. Ontario*⁹ the Court ruled that any delay in access to a behavioural intervention program for individuals with autism was a violation of s.15 & s.7 of the *Charter* and of the *Ontario Education Act*. However in the *Eaton* case, a young woman with an intellectual disability was denied the right to be included in her neighborhood school.¹⁰

⁶ S.O. 2005, CHAPTER 11, s.6(1)

⁷ *An Act to secure Handicapped persons in the exercise of their rights with a view to achieving social, school and workplace integration*, R.S.Q. c. E-20.1, s.1(e.1).

⁸ 2002 CarswellNfld 404 45 C.H.R.R. D/225

⁹ (2005) 252 D.L.R. (4th) 10, 128 C.R.R. (2d) 1.

¹⁰ *Eaton v. Brant (County) Board of Education* (1996), [1997] 1 S.C.R. 241.

Adverse Effects Discrimination

12. In *Meiorin*¹¹, the Supreme Court of Canada favoured a broad interpretation of discrimination stating that: “The distinction between direct and indirect discrimination has been erased. Employers and others governed by human rights legislation are now required in all cases to accommodate the characteristics of affected groups within their standards, rather than maintaining discriminatory standards supplemented by accommodation for those who cannot meet them”. However, following this landmark decision, Canadian courts still do not consistently approach the issue in such a manner.

Systemic Discrimination

13. The issue of systemic discrimination was important in *British Columbia (Ministry of Education) v. Moore*¹² in which an action was filed against the Ministry of Education alleging that the Ministry had failed to provide the necessary special education required by the plaintiff’s son who was person with dyslexia. The Ministry argued that it could not be held accountable for a systemic province-wide lack of funding resulting in a lack of comprehensive programs. The British Columbia Supreme Court found in favour of the plaintiff stating: “The Code aims at the elimination of not only individual cases of discrimination, but also of systemic discrimination”.

RECOMMENDATIONS

14. Despite the positive aspects of some disability rights legislation, legislative policy initiatives and judicial decisions, strong policy initiatives must be put in place and enforced to ensure that current legislative frameworks address the on-going barriers to the full exercise of rights by people with disabilities in Canada.

Women and Girls facing Multiple Discrimination

15. Specific legislation recognizing that women and girls with disabilities are subject to multiple discrimination should be enacted in addition to specific measures and policy considerations to overcome the multiple discrimination they face.

Inclusion in decision-making processes

16. Increased participation by people with disabilities in individual and collective decisions that affect them needs to be built into every policy, program and legal initiative. People with disabilities must be engaged in implementing and managing the services they use. This is an issue that was raised in many of the interviews with people with disabilities in Toronto and Quebec City. One individual stated: “*well...I’d like that people consider me as a person. Because when they take decision in my place, I’m not a person anymore. Who I am? (Or what I am?)*”. Inclusion of people with disabilities in decision-making is also a key component of the UN *Convention on the Rights of Persons with Disabilities*, Article 3c.

¹¹ *Ibid.*

¹² 2001 BCSC 336, 88 B.C.L.R. (3d) 343.

Compliance and Enforcement

17. Having a strong enforcement mechanism in place is critical to ensuring the protection and promotion of disability rights. Without effective implementation and monitoring measures, legislative provisions are “toothless tigers” without impact and legal cases establishing important principles fail to serve and protect the rights of persons with disabilities.

Uniform Definition of Disability

18. A **human rights perspective** that focuses on respect for human dignity and on protection against discrimination and exclusionary practices in the private and public spheres should form the basis for a uniform definition of disability. At a minimum, it is necessary to ensure that there is consistency in guaranteeing rights across Canadian jurisdictions, a situation which does not currently exist.

CONCLUSION

19. The recommendations above provide insight into what is required nationally to improve disability rights protection in Canada, focusing on enforcement, participation, and autonomy. Inclusion of persons with disabilities in decision-making processes, implementation of strong and effective compliance and enforcement mechanisms, and creation of a uniform definition of disability are at the top of the priority list. Making these changes will significantly enhance the enjoyment of rights by people with disabilities in Canada.