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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on the rights of persons with disabilities on her visit to Canada

Comments by the State*

* The present document is being issued without formal editing.

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Canada's Response to the Advance Unedited Report of the Special Rapporteur on the Rights of Persons with Disabilities on her April 2-12, 2019 visit to Canada

Page 3, Paragraph 2

Recommended language

1. The Special Rapporteur visited Ottawa, Toronto, Montreal, Fredericton and Halifax. In Ottawa, she met with senior officials representing different federal Government's departments, agencies, crown corporations and special operating agencies, including Global Affairs; Justice; Employment and Social Development; Treasury Board; Health; Women and Gender Equality; Indigenous Services; Statistics Canada; Canada Mortgage and Housing Corporation; Canadian Radio-Television and Telecommunications Commission; Transport Canada, and the Canadian Transportation Agency. She also met the Minister of Public Services and Procurement and Accessibility, the Chairperson of the Standing Senate Committee on Social Affairs, Science, and Technology and the Canadian Human Rights Commission.

Page 3, Paragraph 3

Recommended language

2. In Toronto, the Special Rapporteur met with the Lieutenant Governor and other officials of the Government of Ontario, including the Minister for Seniors and Accessibility and representatives of the Ministry of Education; Ministry of Children, Community and Social Services; Ministry of Health and Long-Term Care; and the Office of the Public Guardian and Trustee. The Special Rapporteur also visited the Centre for Addiction and Mental Health.

Page 5, Paragraph 18

Recommended language

3. At the federal level, persons with disabilities are considered under various laws, including the Criminal Code and Canada Evidence Act, the Corrections and Conditional Release Act, the Canada Elections Act, the Employment Equity Act, the Canada Health Act, the Canada Pension Plan Act, the Income Tax Act, the Canada Disability Savings Act, the Student Loans and Student Financial Assistance Acts, the Canada Transportation Act, the Personnel Training for the Assistance of Persons with Disabilities Regulations, and the Broadcasting Act. The federal legislation that amended the Criminal Code to permit medical assistance in dying which came into force in June 2016 is also of relevance.

Page 5, Paragraph 19

Recommended language

4. On July 11, 2019 the Accessible Canada Act came into force. The Act aims to enhance the full and equal participation of all persons in society, especially those with disabilities, by helping to create a barrier-free Canada through the identification, removal and prevention of barriers. The Act gives the Federal Government the authority to create new accessibility standards and regulations for itself and for sectors under the federal jurisdiction, such as banking, telecommunications, and federally regulated transportation services¹. ~~interprovincial~~

¹ Source: <https://laws-lois.justice.gc.ca/eng/acts/A-0.6/page-1.html>.

~~transportation (air and rail).~~ The State has committed CAD 290 million over six years to implement the new legislation.

Page 5, Paragraph 20

Recommended language

5. At Provincial and Territorial levels, only Ontario, Manitoba, Nova Scotia and Quebec have enacted disability-specific or accessibility legislation, none of which is comprehensive nor fully in line with the Convention on the Rights of Persons with Disabilities. Various provincial and territorial laws explicitly refer to persons with disabilities or their families, but with great variations from one jurisdiction to another, which results in different levels of enjoyment of rights through the country. Policy areas that fall within these jurisdictions include health and social services, administration of justice, and education.

Page 5, Paragraph 22

Recommended language

6. The Accessible Canada Act amends the Canadian Human Rights Act by designating the Canadian Human Rights Commission as the independent body responsible for monitoring the Government's implementation of the Convention as required by Article 33(2). The Special Rapporteur welcomes this positive development and underlines the importance of providing the Commission an unequivocal national monitoring mandate and appropriate financial and human resources to implement this function. In addition, she encourages each province/territory to designate their own independent monitoring mechanisms, which could coordinate with the national mechanism and support the national monitoring efforts.

Comment/Rationale

7. Bill C-81 created this provision in section 28.1 of the Canadian Human Rights Act.

Page 6, Paragraph 23

Recommended language

8. Although, there are several examples in which the federal and provincial/territorial governments have come together to coordinate actions in diverse areas, there is no Pan-Canadian Strategy on the rights of persons with disabilities. Prior to the adoption of the Convention, in 1998, the federal and provincial/territorial governments, with the exception of Quebec who passed the *Loi assurant l'exercice des droits des personnes handicapées* in 1978, adopted a common vision and long-term policy directions aimed to address gaps in the provision of support services, employment and income security for persons with disabilities. A new comprehensive national policy is needed to secure the implementation of the Convention on the Rights of Persons with Disabilities.

Page 6, Paragraph 24:

Recommended language

9. The Special Rapporteur highly welcomed the availability of data disaggregated by disability status, and the use of the Canadian Disability Screening Questions and the short set of questions of the Washington Group on Disability Statistics. These positive efforts are key to monitor the implementation of the Convention and the Sustainable Development Goals in

an internationally comparable manner. However, it is concerning that the statistical and administrative information available is not being adequately used at provincial and territorial levels to inform the design, implementation and monitoring of policies and programmes. Moreover, there are information gaps in relation to persons with disabilities in institutions.

Comment/Rationale

10. This statement would need to be clarified. It would benefit from identifying the specific information gaps and could include persons with disabilities in Canadian Armed Forces bases and those living on First Nations reserves. The 2017 Aboriginal Peoples Survey provides information on PWD for the off-reserve First Nations, Métis, and Inuit populations (separately). There are data/information gaps for First Nations peoples living on-reserve, and Métis and Inuit peoples with disabilities. There may be some overlap with the section specifically focused on Indigenous peoples with disabilities.

Page 7, Paragraph 30

Recommended language

11. The indigenous peoples of Canada include First Nations, the Métis Nation, and Inuit. Indigenous persons with disabilities live both on and off-reserves in communities, including First Nations, Métis and Inuit peoples. According to the 2017 Aboriginal Peoples Survey², 31% of off-reserve First Nations indigenous adults, aged 15 years and older have a disability, compared to 22% of the general adult population in Canada. Indigenous women are more likely to have a disability than men (35% versus 25%). First Nations people with disabilities living off reserve were less likely to be employed. For off-reserve First Nations people fifteen years and older, 39.3% of those with disabilities were employed, compared to 62% for off-reserve First Nations people 15 years and older without a disability who were employed. There is no official information on the number of persons with disabilities on reserves or from Métis and Inuit origin.

Comment/Rationale

12. The suggested language is intended to clarify that Indigenous persons with disabilities live both on and off-reserve communities, and Métis and Inuit peoples as well as more than half of First Nations people live in off-reserve settings.

13. The statistics used in this paragraph may not be limited to First Nations, and could include Indigenous PWD living off-reserve, Inuit in households, Métis in households, and about half of the First Nations who are living off-reserve, also in households. The age group (25-54 years) is not the basis for statistics in the survey. The cohorts are persons aged 15 and over, and 25-64 years of age (working age). We have adjusted the language to reflect the latest statistics sourced from the Aboriginal People Survey 2017 Report, which was published in November 2018³.

14. On December 12, 2019, Statistics Canada will publish rates of disability and basic demographic information about Indigenous persons with disabilities, and this will examine First Nations off-reserve, Métis, and Inuit separately.

² Statistics Canada. Aboriginal Peoples Survey 2017: <https://www.aadnc-aandc.gc.ca/eng/1321384019753/1322059098232>.

³ Anderson, Thomas. Government of Canada. Statistics Canada (June 13, 2019). Aboriginal Peoples Survey. Employment of First Nations men and women living off Reserve Available at: <https://www150.statcan.gc.ca/n1/pub/89-653-x/89-653-x2019004-eng.htm>.

Page 7, Paragraph 32

Recommended language

15. In 2007, the Parliament adopted a unanimous House of Commons resolution on Jordan's Principle which has led to the development of a Child-First Initiative to ensure that all First Nations children living on and off reserve have equal access to the products, services and supports they need when they need them. In September 2018, the federal government announced that Inuit children are eligible as well. Jordan's Principle can cover requests for health, social and education products, services and supports, including respite care, assisted living services, speech therapy, physiotherapy, occupational therapy, teacher's aides, educational assistants, communication devices, ceiling lifts, adaptive seats, and wheelchair ramps.

Page 8, Paragraph 35

Recommended language

16. No recommended change to paragraph. Added context on the Act provided in comments section.

Comment/Rationale

17. The Act applies to First Nation Bands and Band Councils, not Indigenous persons.

Page 8, Paragraph 36

Recommended language

18. The Government has taken various steps towards creating a more accessible Canada, including through the recent adoption of the Accessible Canada Act. The act helps identify, remove and prevent barriers in different areas of federal competence, including employment; the built environment; information and communication technologies; communication, other than information and communication technologies; the procurement of goods, services and facilities; the design and delivery of programs and services; and transportation. In addition, in 2019, the Canadian Transportation Agency published the "Accessible Transportation for Persons with Disabilities Regulations", applicable to air, rail, ferry, and bus carriers and terminals falling within federal jurisdiction.-These regulations will become effective in June 2020.

Comment/Rationale

19. Missing priority area: "communication, other than information and communication technologies".

Page 8, Paragraph 38

Recommended language

20. Other provinces have or are expected to follow the federal leadership and adopt their own accessibility initiatives. However, progress in removing barriers remains slow. In all the places visited, the Special Rapporteur faced problems with accessibility. Public and private infrastructures, as well as public transport systems, were still not fully accessible to persons

with disabilities, with variations between provinces. For example, only 15⁴ of the 68 metro stations in Montreal have elevators and 45 of the 75⁵ metro stations in Toronto have elevators⁶. According to information provided by the Human Rights Commission of Quebec, the rate of complaints on inaccessibility of public transportation and places (22.8 per cent) was second highest after discrimination in employment. There are no clear baselines on the current status of accessibility at federal and provincial/territory level, which is crucial for tracking progress and fostering accountability.

Page 9, Paragraph 45

Recommended language

21. The Government of Canada uses GBA+ (Gender-based Analysis Plus) as an analytical process for examining how various intersecting identity factors impact the effectiveness of government initiatives⁷. The “plus” acknowledges that GBA goes beyond sex and gender differences, and also considers many other identity factors, like race, ethnicity, religion, age, and disability. The Special Rapporteur welcomes the explicit recognition of intersectionality for policy analysis and programming, and encourages the government to reinforce efforts to raise awareness and help analysts to adequately address disability-related issues.

Comment/Rationale

22. It is not accurate to state that the Government of Canada uses GBA+ to analyse how different people experience federal policies and programs based on gender diversity. GBA+ is not limited to analysing impact based on gender identity. The proposed changes are based on the new definition of GBA+ in the online GBA+ training (Department for Women and Gender Equality). It states: *GBA+ is an intersectional analytical process for examining how various intersecting identity factors impact the effectiveness of government initiatives. It involves examining disaggregated data and research, and considering social, economic, and cultural conditions and norms.*

Page 10, Paragraph 47

Recommended language

23. No recommended change to paragraph. Additional context provided in comment section.

Comment/Rationale

24. With reference to the 15% of students receiving special education programs and/or services in “segregated” settings, while this is not factually incorrect there is some contextual information around this reference and terminology that is important to keep in mind:

- Typically, the Education system in Ontario would not use the term “segregated”; the *Education Act* refers to the students captured in the 15% (i.e., students not in regular classrooms) as students receiving special education programs and/or services in “special education classes” or “self-contained classes”;

⁴ Source: <http://www.stm.info/fr/acces/acces-au-metro-par-ascenseur>.

⁵ Source: Toronto Transit Commission website. Number of stations in total: <https://www.ttc.ca/Subway/index.jsp>.

⁶ Source: Toronto Transit Commission website. Number of stations with elevators: https://www.ttc.ca/TTC_Accessibility/Easier_access_on_the_TTC/Elevators_and_escalators.jsp.

⁷ Source: Canada’s online intro course page: https://cfc-swc.gc.ca/gba-acs/course-cours/eng/mod00/mod00_02_01.html should a reader be interested in learning more and to identify where the definition comes from.

- The students captured in the other part of this statistic, the 85%, are students who do receive special education programs and/or services in regular classrooms for more than half of the instructional day;
- At times school boards in Ontario may also use other names to refer to special education classes such as “Congregated classes” and/or “System designated classes”.

Page 10, Paragraph 48

Recommended language

25. In Quebec, section 235 of the Education Act grants school boards the power to adopt, after consultation with the advisory committee on services for handicapped students and students with social maladjustments or learning disabilities, a policy concerning the organization of educational services for such students. The policy shall ensure the harmonious integration of each student into a regular class or group and into school activities if it has been established on the basis of the evaluation of the student’s abilities and needs that such integration would facilitate the student’s learning and social integration and would not impose an excessive constraint or significantly undermine the rights of the other students. In 2017, the Government of Quebec adopted the first Policy on Educational Success that prioritises the needs of all children and students without distinction. This has fostered an increase in the number of students with disabilities receiving education in mainstream schools (i.e., 77 per cent of the total number of students with disabilities). However, simultaneously, the government is investing CAD\$20 million to create at least 150 new segregated classes within regular schools in 2019-2020.

Comment/Rationale

26. The proposed changes reflect the goals of the policy that prioritizes taking into account the needs of children. Quebec cannot confirm the “77 per cent” with regards to total number of children with disabilities in mainstream school.

Page 10, Paragraph 50

Recommended language

27. With regard to post-secondary education, persons with disabilities are less likely than those without disabilities to graduate from university. Statistics Canada data indicates that almost 80 per cent of persons with disabilities completed high school, but only 19.6 per cent had a university degree at the bachelor’s level or higher, compared to 31.4 per cent of Canadians without disabilities. To address this, in 2019 the federal government revised the Canada Student Loan Services programme and introduced new measures specifically targeting students with disabilities, including by expanding of the eligibility criteria for loans and increasing the cap for services and equipment from CAD 8,000 to CAD 20,000 per year. While this is a good example of federal leadership, unless the systemic barriers preventing students with disabilities from accessing inclusive education from kindergarten to university are addressed in law and policy at all levels of government, this measure will fail to produce all the intended results.

Comment/Rationale

28. The citation in the draft for this statement links to a correction notice that the original statistics were underestimated due to a sample size error that occurred in coding. While the 14% is taken from the updated figure, the update is for the 2012 CSD data⁸.

⁸ Source: <https://www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2015001-eng.htm>.

29. It is recommended that this be corrected using the 2017 CSD data which was available at the time of the SR's visit in April 2019. This would make it consistent with the other 2017 CSD data that are contained within the report by the SR. It does not make sense to use old data when new data were readily available and in the public domain at the time. These data were published by Statistics Canada on their website in tables. This should be rewritten using the 2017 CSD data⁹.

Page 10, Paragraph 51

Recommended language

30. At federal level, the 1986 Employment Equity Act aims to promote employment equity, as well as the removal of workplace-related equity barriers: women, visible minorities, indigenous peoples and persons with disabilities. The Act is limited in its jurisdiction to industries that are federally regulated under the Constitution (e.g. railroads, airlines, banks). Some provinces/territories have legislation requiring employers to proactively change their hiring and employment practices to remove barriers faced by persons with disabilities. For example, Quebec's Act "Respecting Equal Access to Employment in Public Bodies" prevents public sector employers from discriminating against employees and potential employees with disabilities. The Accessibility for Ontarians with Disabilities Act requires employers to have individual accommodation plans for employees with disabilities.

Comment/Rationale

31. Employment Equity Act of 1986 was later amended as the Employment Equity Act of 1995.

Page 10, Paragraph 52

Recommended language

32. At the time of the Special Rapporteur's visit, persons with disabilities represented 5.6 per cent of all public servants. In 2018, the Government of Canada introduced the Strategy for an Accessible Government of Canada, which amongst other priorities will focus on hiring at least 5,000 persons with disabilities over the next five years into the federal public service and establishing a centralized accommodation fund for public service employees with disabilities. The Government of Canada has also established new Workforce Development Agreements with provincial and territorial governments, which include specific funding targeted for persons with disabilities so they can benefit from skills training and employment support. The Opportunities Fund for Persons with Disabilities provides financial support to projects aimed at enabling persons with disabilities prepare for, obtain and maintain employment or self-employment.

Page 11, paragraph 53

Recommended language

33. No recommended change to paragraph. Additional context on sheltered workshops provided in comments.

Comment/Rationale

In Ontario, as of January 2019, all Ministry of Children, Community and Social Services-funded Developmental Services agencies participating in a sheltered workshop program have

⁹ Source: Tables: <https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1310037801>.

successfully transitioned individuals with developmental disabilities to competitive employment, community participation support activities, or both. The Ministry is continuing to work across the province with our service agencies and our partner ministries to support greater community inclusion and better employment outcomes for individuals with developmental disabilities.

Page 12, paragraph 56

Recommended language

34. No recommended change to paragraph. See comment section.

Comment/Rationale

35. We are not sure of the 25% number in this paragraph, and are unable to verify its source. Is there a source or reference that could be cited for this statement, i.e.,

“... average benefit levels made roughly 25% of the median after-tax monthly income wage of a full-time employee”?

Page 12, Paragraph 57

Recommended language

36. Canada Pension Plan Disability Benefit, and the Quebec Pension Plan, provides disability benefits to persons who have made enough contributions to the Canada Pension Plan and who cannot resume their employment on a regular basis. Persons with disabilities are encouraged to make financial savings under the Canada Disability Savings Program to which the Government of Canada provides grants of up to three times the private contributions made. Targeted tax measures like the Disability Tax Credit are also available, however, the application and review process is costly and complicated. Many persons with disabilities receive little or no value from the credit itself because their taxable income is too low.

Page 13, Paragraph 61

Recommended language

37. No recommended change to paragraph. Additional context on persons in long-term care provided in comment section.

Comment/Rationale

38. The actual number – 509,000 – is more clearly communicated as “half a million”.

39. The reference to “hospitals” in the Census is to a form of complex continuing care provided in specialized facilities in some provinces. The generic use of “hospitals” may be misleading and, further, does not fit with the characterization of “long-term facilities” in this section.

40. Of 509,000, only 66,000 are living in residential care facilities such as group homes for persons with disabilities and addictions. The vast majority are seniors in residential care facilities that provide care to seniors who need it as they age. This is an important clarification.

41. Most of the 15% waiting in hospital are waiting for a residential care facility placement, and only a minority are waiting for home care.

Page 13, Paragraph 62

Recommended language

42. The government of Nova Scotia is investing three times the amount of financial resources in delivering community services for independent living compared to institutional care. Programme funding is provided directly to participants or through non-profit organizations that are contracted to provide support services for persons with disabilities. The Disability Support Program determines eligibility and maintains waiting lists. While some of these programmes have shown their potential to transform service provision, the overall impact is limited. Consequently, institutionalisation of persons with disabilities in Nova Scotia remains a challenge, with more than 900 persons with disabilities placed in institutions.

Page 13, Paragraph 64

Recommended language

43. The Government of Ontario is supporting a Direct Funding program for self-managed attendant care services, administered by the Centre for Independent Living in Toronto, which enables adults with physical disabilities to become employers of their own personal assistants (attendants), determining how and when services are provided. Demand for the programme is strong, but, due to the limited resources, many people have been waiting for years to access it. Currently, applicants can expect to wait approximately one year before they are invited for an interview. Meanwhile, although institutions for persons with disabilities were closed in Ontario, many persons with disabilities are only being offered residential support in nursing homes due to the lack of community support.

Comment/Rationale

44. Please note the Ontario Ministry of Children and Community and Social Services (MCCSS) also funds a range of person-centred residential supports through a province-wide network of developmental and community partners. Residential supports for people with developmental disabilities are provided in a variety of residential settings, including group living, supported independent living and host family residences.

45. The “self-managed attendant care services” reference is added to clarify that this is the Ministry of Health attendant care program and not MCCSS’s Passport program which is also a direct funding program.

46. The last sentence is factually inaccurate. Currently, people with a developmental disability confirmed eligible receive Passport funding for community participation supports and respite. Subsequent to being assessed for services, people could request residential services but they may be placed on a waitlist.

Page 13, Paragraph 65

Recommended language

47. In British Columbia, Choice in Supports for Independent Living (CSIL) is a self-directed option of Home Support for eligible persons with physical disabilities. This is a self-managed model of care whereby persons with disabilities receive funds and assume full responsibility in managing their own services. However, the amount of money provided is insufficient to cover all support needs. Often these services have to be supplemented with privately accessed services, paid out-of-pocket. Both Ontario and British Columbia self-directed programmes are not portable, meaning that persons with disabilities risk losing their payments and access to services if they move to other parts of the country.

Comment/Rationale

48. As per the Home and Community Care Policy Manual, Chapter 4, health authorities (HA) are responsible for determining eligibility for CSIL and the appropriate funding to meet the client's needs. Once deemed eligible, CSIL clients sign a contract with the HA, and assume full responsibility for training, hiring and scheduling care providers. Clients who cannot direct their own care or who cannot always direct their own care may still be able to participate in CSIL through a client support group, a legal representative, or a committee of estate.

49. As with all HCC services, there is an expectation that HAs provide CSIL clients with services to supplement, rather than replace, the efforts of individuals and their caregivers to meet their health needs and make decisions about lifestyle and care. Home support services are direct care services provided by unregulated care providers to clients who require personal assistance with activities of daily living, such as mobilization, nutrition, lifts and transfers, bathing, cueing, grooming and toileting, and may include safety maintenance activities as a supplement to personal assistance when appropriate, as well as specific nursing and rehabilitation tasks delegated under Policy 1.C, Delegation of Tasks. A client who requires support with instrumental activities of daily living, such as transportation, housekeeping or shopping will be directed to appropriate community resources.

Page 14, Paragraph 68**Recommended language**

50. In June 2016, the Parliament of Canada passed federal legislation allowing adults to request medical assistance in dying. The Criminal Code was amended to allow physicians and nurse practitioners, to provide medical assistance in dying, and pharmacists, family members or other people to assist in the process without being charged under criminal law. As a general rule, the Criminal Code provides that persons who have a grievous and irremediable medical condition that causes them enduring and intolerable suffering are allowed to seek medical assistance in dying. The definition of a grievous and irremediable medical condition includes disability. Recently, the Quebec Superior Court has invalidated sections of both the federal and Quebec laws on medically assisted dying, ruling invalid the Criminal Code requirement that a natural death be "reasonably foreseeable" before someone can be eligible for assisted death.

Comment/Rationale

51. The original text risks being misunderstood as stating that all the listed individuals can provide medical assistance in dying; the Criminal Code only permits medical practitioners and nurse practitioners to provide medical assistance in dying, and others benefit from an exemption if they aid medical and nurse practitioners in providing that assistance.

Page 14, Paragraph 70**Recommended language**

52. The organization of Canada's health care system is largely determined by the Canadian Constitution, in which roles and responsibilities are divided between the federal, and provincial and territorial governments, while some areas are shared¹⁰. The federal government sets out the legislative framework for universal, publicly funded hospital and physician services through the *Canada Health Act*, and provides provinces and territories with the necessary funding for the delivery of health-care services. The federal government is also responsible for some health care services for First Nations and Inuit peoples, as well as serving military and veterans, refugees, and inmates in the federal corrections system.

¹⁰ Source : <https://www.canada.ca/en/health-canada/services/health-care-system/reports-publications/health-care-system/canada.html#a4>.

Comment/Rationale

53. Universality of the health care system is not set out in the Constitution; rather, it is the division of responsibilities between the federal and provincial governments in health that is set out by the Constitution.

The edit also clarifies the responsibilities of the federal government for some health care services for First Nations and Inuit.

Page 14, Paragraph 71

Recommended language

54. Provincial/territorial governments are responsible for funding the provision of health services in their own jurisdictions. Each province/territory has health insurance plans, which cover hospital and physician services, and provides additional coverage to eligible persons for health services that are not covered under the universal, publicly funded health care system; including prescription drugs outside hospitals, dental care, vision care, medical equipment and appliances such as prostheses, wheelchairs, and the services of other health professionals. Because of that, the level of coverage and the availability of services vary across the country.

Comment/Rationale

55. Eligibility criteria for supplementary health coverage provided by provinces and territories are determined by each jurisdiction, and are based on a variety of factors including disability status, age, and income level.

Page 15, Paragraph 76

Recommended language

56. No recommended change to paragraph. Added context provided comments section.

Comment/Rationale

57. Work undertaken by the Government of Canada in relation to Article 12, were mentioned by the Acting Assistant Deputy Minister, Accessibility Task Team, in her address to the Employment and Social Inclusion Roundtable on April 2, 2019 for the Special Rapporteur's visit.

58. As mentioned, Canada is committed to ensuring that persons with disabilities can participate fully in our society and our economy. The Government of Canada provided funding to civil society organizations to conduct research projects on a number of projects including legal capacity (as per Article 12 of the Convention). These projects were completed in 2018 and, as a follow-up, the Government has provided additional funding over the next two years for projects that will:

- advance work related to Article 12 on legal capacity;
- increase civil society's knowledge of the Optional Protocol and build its capacity to use it; and
- facilitate the disability community's engagement in the domestic and international monitoring and implementation of the Convention.

Page 15, Paragraph 77

Recommended language

59. Provincial/territorial legislation across Canada allows for the involuntary hospitalization and treatment of persons with psychosocial disabilities, in contradiction to article 14, 17 and 25 of the Convention. For example, the Mental Health Act of British Columbia contains very broad criteria for involuntary admissions¹¹, however, specific criteria have to be met in order to provide electroconvulsive therapy, when other first line psychiatric treatments have not been successful.

Comment/Rationale

60. The BC Mental Health Act allows for the involuntary hospitalization and treatment of persons with severe mental illness (not psychosocial disabilities) and the person has to meet very specific criteria (not broad criteria) to be involuntarily admitted and treated¹². The person can be involuntarily treated under the BC Mental Health Act without consent, however, the person has access to the Mental Health Review Board and the Courts to challenge this.

Page 15, Paragraph 80

Recommended language

61. The Supreme Court of Canada and Canada's provincial and territorial courts have developed a significant body of jurisprudence concerning the rights of persons with disabilities. Most of the cases heard in courts are complaints against discrimination on grounds of disability. Canadian Judicial Council has developed training courses and guidelines on access to justice of persons with disabilities.

Page 16, Paragraph 81

Recommended language

62. The Canadian Human Rights Act and the Criminal Code establish a duty to accommodate persons with disabilities' needs in all proceedings before federal and provincial courts and federal tribunals. Different provinces/territories also recognize this obligation in their respective legislations. However, there is a lack of judiciary protocols and guidelines for procedural and age-appropriate accommodation for persons with disabilities. Ensuring access to reasonable accommodation should not be confused with procedural accommodations in the context of access to justice. Article 13 of the Convention requires procedural accommodations, which are not limited by the concept of "disproportionate or undue burden". This differentiation is fundamental, because the right of access to justice acts as the guarantor for the effective enjoyment and exercise of all rights.

Page 16, Paragraph 82

Recommended language

63. In Canada, legal aid is provided by provincial/territorial governments through their own programs. The expert learned that there are significant regional disparities in who can access

¹¹ See: *BC Guide of the Mental Health Act* (Guide)

<http://www.health.gov.bc.ca/library/publications/year/2005/MentalHealthGuide.pdf>

¹² See: https://www.health.gov.bc.ca/library/publications/year/2002/MHA_ect_guidelines.pdf

legal aid, the types of issues covered, and the amount and type of legal assistance provided. For example, legal aid is often only available for certain types of legal problems and based on income testing. Therefore, a person with disabilities who is employed may not be eligible for legal aid despite not being able to afford private legal counselling.
