



Canadian Human Rights Commission

**Submission to the Committee on the Rights of
Persons with Disabilities in advance of the
Committee's development of the List of Issues Prior to
Reporting for Canada's 2nd Periodic Review**

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1. THE CANADIAN HUMAN RIGHTS COMMISSION

The Canadian Human Rights Commission (CHRC) is Canada's national human rights institution. It has been accredited "A-status" by the Global Alliance of National Human Rights Institutions, first in 1999 and again in 2006, 2011 and 2016.

The CHRC was established by Parliament through the Canadian Human Rights Act (CHRA) in 1977.¹ It has a broad mandate to promote and protect human rights. The Constitution of Canada divides jurisdiction for human rights matters between the federal and provincial or territorial governments. The CHRC has jurisdiction pursuant to the CHRA over federal government departments and agencies, Crown corporations, First Nations governments and federally-regulated private sector organizations. Provincial and territorial governments have their own human rights codes and are responsible for provincially/territorially-regulated sectors.

The CHRC also conducts compliance audits under the Employment Equity Act (EEA).² The purpose of the EEA is to achieve equality in the workplace so that no person is denied employment opportunities or benefits for reasons unrelated to ability, and to correct the historic employment disadvantages experienced by four designated groups: women, Indigenous peoples, persons with disabilities and members of visible minorities.³

Recently, the CHRC has been mandated with several new responsibilities under the Accessible Canada Act, the Pay Equity Act, and the National Housing Strategy Act, which will be discussed in greater detail later in the submission. With the passage of the Accessible Canada Act, the CHRC was also designated as a body responsible for monitoring the Government of Canada's compliance with the Convention on the Rights of Persons with Disabilities (CRPD) in accordance with article 33.2 of the Convention.

The CHRC has taken action to promote and protect the human rights of individuals by investigating complaints, issuing public statements, tabling Special Reports in Parliament, conducting research, developing policy, consulting with stakeholders, and representing the public interest in the mediation and litigation of complaints. As the designated monitoring mechanism of the Government of Canada's implementation of the rights and obligations enshrined in the CRPD, the CHRC is committed to ensuring continued progress in the protection of human rights. It is in the spirit of constructive engagement that the CHRC submits this report to the Committee on the Rights of

¹ Available at: laws-lois.justice.gc.ca/PDF/H-6.pdf. Although Canada's human rights laws are not part of the Constitution, they are considered "quasi-constitutional" in nature, meaning that all other laws must be interpreted in a manner consistent with human rights law.

² Available at: laws-lois.justice.gc.ca/PDF/E-5.401.pdf.

³ The CHRC notes that the terms "visible minority" and "Aboriginal" are increasingly outdated, and as such, they are used here only to reflect their official usage in Canadian legislation, and in Statistics Canada survey data. Where other terms (such as Indigenous or racialized) can be used, the CHRC supports this.

Persons with Disabilities (the Committee) in advance of its development of the list of issues prior to reporting.

2. EQUALITY AND NON-DISCRIMINATION (ARTICLE 5)

The CHRC, in collaboration with the Canadian Association of Statutory Human Rights Agencies (CASHRA)⁴ and organizations representing persons with disabilities, developed a series of reports on Canada's implementation of the CRPD – specifically on the rights to equality and non-discrimination, education, and work and employment. These reports found that, across Canada, more complaints of discrimination cite the ground of disability than any other prohibited ground of discrimination. Additionally, of these disability complaints, a majority are related to employment.

In 2018, the number of complaints accepted by the CHRC citing disability were higher than in any other year in the past decade and represented 52% of all complaints accepted. Additionally, over half of all disability complaints accepted by the CHRC are related to mental health. This represents 27% of all complaints accepted by the CHRC in 2018. Based on these numbers, it is clear that people living with mental health disabilities face significant barriers in employment and in accessing services.⁵

3. ACCESSIBILITY (ARTICLE 9)

Accessibility remains a pre-eminent concern for persons with disabilities in Canada. The CHRC receives numerous complaints every year from persons with disabilities that deal with accessibility in a variety of facets of everyday life, including in employment and service provision, the built environment, in transportation, with technology, with access to information, during the electoral process, and in other ways.

The CHRC welcomes the passing of the Accessible Canada Act (ACA), which received Royal Assent on June 21, 2019. The CHRC has consistently supported the ACA and its broad, human rights based approach to accessibility, and welcomes the upcoming appointment of an Accessibility Commissioner, as well as the expanded roles and responsibilities the ACA brings to the CHRC. The CHRC does, however, wish to raise several concerns – many of which are shared by persons with disabilities and their representative organizations – relating to the successful implementation of the ACA.

⁴ CASHRA was established in 1972 as an umbrella organization for the federal, provincial and territorial human rights commissions. Its purpose is to establish an effective communications link between statutory agencies working in the field of combatting discrimination. Its current membership includes the CHRC as well as the human rights commissions of Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Ontario, Prince Edward Island, Québec, Saskatchewan, and the Yukon.

⁵ The CHRC highlights a story of an individual with an invisible disability and the challenges of living with a mental health disability such as post-traumatic stress disorder in its 2018 Annual Report, available at: http://chrcreport.ca/assets/pdf/CHRC_AR_2018-ENG.pdf.

During the legislative process, the CHRC and disability-related organizations recommended strengthening the language of the ACA including by proposing amendments to 1) require the government to make regulations under the ACA, and 2) establish initial timelines for both the enactment and the implementation of these regulations. The CHRC notes that, despite amendments which were made in response, the ACA still does not require more than one accessibility regulation to be put in place, nor does it include specific time requirements or accountability measures linked to the implementation of each regulation. While the CHRC anticipates that additional accountabilities may be articulated when regulations are further developed, the CHRC remains concerned that without more concrete obligations on government, the language of the ACA leaves it open that its laudable goals may be implemented in a lackluster manner in the future.

Recommended Question #1: Please provide details regarding the regulatory process under the ACA, including information about anticipated regulations and timelines for enactment and implementation.

The ACA currently does not clearly apply on First Nations reserves which are governed by the Indian Act. While the CHRC welcomes the government's commitment for more robust consultation with First Nations, the Inuit and Métis nations, it remains concerned that this lack of clarity combined with the passage of time may lead to a persistent gap in human rights protection for Indigenous peoples.

The CHRC is familiar with the consequences of excluding a group of people from human rights protections. Prior to 2008, section 67 of the CHRA excluded persons from filing complaints of discrimination related to matters falling within the purview of the Indian Act, which governs many important aspects of the lives of First Nations people on reserve. Although this exemption from human rights protection was intended as a temporary measure when the CHRA was enacted in 1977, it remained in effect for 30 years, severely affecting access to justice for some First Nations and other people in vulnerable circumstances. It is important to ensure that such a gap does not present itself in respect of accessibility.

The CHRC urges the government to work quickly towards the effective implementation of the ACA in First Nations communities or, alternatively, to introduce distinct First Nations accessibility legislation in a timely manner. This work must include the recognition of Indigenous rights, unique interests and circumstances, and must be consistent with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This has the potential to bring about positive change for those living with disabilities in First Nations communities by ensuring that First Nations persons on reserves are not left without the benefits and protections provided by accessibility legislation.

The CHRC also emphasizes the need to ensure adequate resources are provided to First Nations governments to meet both the urgent and the ongoing accessibility-related needs that exist in far too many communities.

Recommended Question #2: Please provide details regarding plans to ensure that accessibility legislation applicable to First Nations communities is enacted and/or implemented. Further, please provide details of steps being taken to ensure that such legislation is consistent with the principles of the UNDRIP.

The CHRC commends the government for taking an inclusive and collaborative approach to the development of the ACA, consistent with the principle of “nothing about us, without us”. This approach must continue during implementation of the legislation.

In this regard, the CHRC wishes to highlight concerns that have been expressed by disability communities over the lack of consistent, ongoing and appropriate funding to facilitate the participation of persons with disabilities and their representative organizations in consultations and other activities. The successful implementation of the ACA will be dependent on this fundamental principle of inclusion, as those who are affected and whose rights are implicated need to be a critical part of the creation, delivery, and assessment of the legislation and its regulations.

Recommended Question #3: Please provide details of the steps being taken to ensure that persons with disabilities and their representative organizations are able to fully engage with the process of implementation of the ACA, including resources that will be made available for this purpose.

4. EMPLOYMENT (ARTICLE 27)

In Canada, persons with disabilities form a profoundly untapped body of skills and labour, yet they continue to face barriers and stigma when looking for work, when seeking workplace inclusion and accommodation and when trying to thrive or advance in their careers. The CHRC acknowledges that many barriers related to accessibility may be addressed through the ACA, which will require all federal workplaces to develop and implement accessibility plans. It is critical, however, that national historical and persistent concerns about employment, such as those outlined below, be addressed.

A recent report released by the CHRC in collaboration with CASHRA, Roadblocks on the career path: Challenges faced by persons with disabilities in employment⁶, identified the following:

- at the national level, the employment rates of both women (45%) and men (49.8%) with disabilities are substantially lower compared to those of women (70.1%) and men (77.1%) without disabilities;
- more than 30% of persons with disabilities report that their disability makes it difficult for them to change jobs or advance in their careers;

⁶ Available at: <https://www.chrc-ccdp.gc.ca/eng/content/report-roadblocks-career-path-challenges-faced-persons-disabilities-employment>. Statistical analysis on various employment-related indicators are from the 2012 Canadian Survey on Disability.

- approximately 30% of persons with disabilities report having asked for workplace accommodation that was not made available; and
- more than 40% of persons with disabilities report feeling that their employer considers them disadvantaged because of their disability.

To better understand and create a more complete picture of the employment-related experiences of persons with disabilities, the CHRC also consulted with human rights commissions across Canada and various organizations and experts that represent persons with disabilities. The barriers to employment highlighted through these consultations included the following:

- lack of physical workplace accommodation;
- failure to facilitate a return to work process;
- failure to approve a medical absence; and
- inadequate accommodation measures to address medical limitations proposed and/or implemented by an employer.

In jurisdictions across Canada, a significant proportion of disability complaints are related to employment. For instance, in federal jurisdiction, from 2009 to 2016, 84.1% of all complaints filed on the ground of disability related to employment. In most other Canadian jurisdictions, the proportion of disability complaints in the area of employment is more than half, reaching as high as 88.1% of disability related complaints in Alberta.⁷

Recommended Question #4: Please provide details of efforts to address barriers to employment for persons with disabilities. What steps are being taken to foster inclusion and address workplace cultures that create barriers to employment for persons with disabilities? What efforts are being made to ensure coordination between the various jurisdictions in Canada in relation to this issue?

5. EDUCATION (ARTICLE 24)

Persons with disabilities continue to face systemic social and institutional barriers while trying to access education. These barriers have a negative impact on the educational attainment, training, employment, career path and overall well-being of persons with disabilities in Canada. These issues are the reality for Indigenous and non-Indigenous students with disabilities alike – whether they are living in remote areas of Canada, on First Nation reserves, in cities and urban centres across the country, or in the north.

A report released by the CHRC in collaboration with CASHRA, *Left Out: Challenges faced by persons with disabilities in Canada's schools*⁸, identified the following barriers that persons with disabilities face in education:

⁷ Ibid.

⁸ Available at: <https://www.chrc-ccdp.gc.ca/eng/content/left-out-challenges-faced-persons-disabilities-canadas-schools>. Statistical analysis on various educational-related indicators are from the 2012 Canadian Survey on Disability.

- lack of disability accommodation and support;
- lack of services and funding;
- ineffective dispute resolution; and
- lack of special education and disability supports on First Nations reserves.

Additionally, the report identified the following impacts of disability on education:

- more than 25% of adults with disabilities reported being bullied at school due to their disability;
- more than 25% of adults with disabilities reported being avoided or excluded at school due to their disability;
- approximately 10% of adults with disabilities stopped their education altogether, long before they had the chance to obtain their desired educational level, because of their disability;
- more than 40% of adults with disabilities reported that their disability had an influence on their choice of career;
- more than 30% of adults with disabilities reported taking fewer courses as a result of their disability;
- more than 25% of adults with disabilities reported that their education was interrupted for long periods as a result of their disability;
- approximately 35% of adults with disabilities reported studying part-time as a result of their disability;
- approximately 10% of adults with disabilities reported having to leave their home community to attend school because appropriate services were not available;
- approximately 15% of adults with disabilities reported having additional expenses for school because of their disability; and
- approximately 14% of adults with disabilities reported having to begin school at a later age because of their disability.

Overall, adults with disabilities are more likely to report “below high school” as their highest educational attainment compared to persons without disabilities across Canada.

The CHRC also consulted with provincial and territorial human rights commissions across Canada and with external stakeholders who work with persons with disabilities to better understand some of the barriers that persons with disabilities are facing in education. Some of the barriers that were identified include:

- inadequate and insufficient accommodation arrangements in schools across Canada, which results in students being unable to attend the classes of their choice, write exams under necessary conditions, receive necessary transportation services, and bring service animals into classrooms and lecture halls;
- increased class sizes and decreased funding for specialized supports for students with disabilities, including a decrease in the number of educational assistants in classrooms; and
- closure of specialized education centres for persons with disabilities, such as education in Sign language for students.

Recommended Question #5: Please provide details of efforts to address barriers to education for persons with disabilities. What steps are being taken to foster inclusive learning environments and to prevent and combat bullying? What efforts are being made to ensure coordination between the various jurisdictions in Canada in relation to this issue?

6. ADEQUATE STANDARD OF LIVING (ARTICLE 19)

Persons with disabilities continue to experience a combination of social and economic disadvantage, including disproportionate levels of homelessness and poverty. For instance, 23% of persons with disabilities are found to be in low-income status compared to 9% of persons without disabilities⁹, and 15% of persons with disabilities are living in households in core housing need¹⁰ compared to 9% of persons without disabilities.¹¹ Those who face discrimination on the basis of multiple and intersecting identities are often even more profoundly impacted – for example, 2SLGBTQI¹² youth with disabilities are overrepresented in homeless populations.

The CHRC is encouraged by the passage of federal housing and anti-poverty legislation, and the earlier release of National Housing and Poverty Reduction Strategies, which demonstrate a commitment to recognizing and addressing the social and economic disadvantage that certain groups, including persons with disabilities, continue to experience.

The CHRC welcomes in particular the anticipated appointment of a Federal Housing Advocate, who will be mandated to examine and report on systemic housing issues, including issues and barriers faced by persons with disabilities. The CHRC notes that persons with disabilities face unique challenges in accessing affordable and appropriate housing, which is why it was crucial that they be made a primary focus in the National Housing Strategy.

⁹ 2014 Longitudinal and International Study of Adults, available at:

<https://www150.statcan.gc.ca/n1/pub/75-006-x/2017001/article/54854-eng.htm>.

¹⁰ According to the Canada Mortgage and Housing Corporation, a household is in core housing need if its housing is below one or more of the adequacy (housing does not require any major repairs, according to residents), suitability (housing has enough bedrooms for the size and makeup of resident households, according to National Occupancy Standard requirements) and affordability (housing costs less than 30% of before-tax household income) standards, and it would have to spend 30% or more of its before-tax household income to access local housing that meets all three standards.

¹¹ 2018 Canada Mortgage and Housing Corporation, available at: <https://www.cmhc-schl.gc.ca/en/housing-observer-online/2018-housing-observer/persons-with-disabilities-15-percent-live-core-housing-need>. Data is from the 2012 Canadian Survey on Disability.

¹² The acronym 2SLGBTQI refers to a wide community of individuals who may experience stigma and discrimination based on sexual orientation, gender identity or expression, or sex characteristics. This acronym reflects a development in the CHRC's language to better recognize Indigenous and two-spirit (2S) communities in Canada.

The CHRC notes that, unlike the federal housing legislation, the federal anti-poverty legislation does not designate an appropriate independent oversight body with human rights expertise to examine systemic poverty issues, such as a Federal Poverty Advocate. The CHRC is of the view that, like the Federal Housing Advocate, a Federal Poverty Advocate could be provided with specific powers to:

- look into and gather public input on urgent and systemic poverty issues, including issues facing persons with disabilities;
- issue public statements or reports with recommendations regarding human rights progress, systemic issues, and redress or remedies; and
- require timely responses from the Government.

The problems of poverty and inadequate housing facing persons with disabilities are interrelated, interdependent and often indivisible, which is why it is imperative that these new initiatives work together. The CHRC is concerned that a lack of coordination reduces the likelihood of success of each separate initiative, and may hinder overall progress towards equality. Meaningful progress also demands broader coordination within and beyond the federal government, with provinces and territories, Indigenous governments, municipalities, private and community organizations and civil society. Thus, while federal housing and anti-poverty legislation are encouraging, in order for solutions to be effective in addressing inequality, they must be planned, resourced and coordinated across issues and equality initiatives, and across different sectors of society.

Recommended Question #6: Please provide details about implementation of the housing and poverty legislation and strategies, and the anticipated impact on persons with disabilities. What efforts are being made to ensure coordination between the various jurisdictions in Canada in relation to this issue?

All provincial and territorial jurisdictions in Canada have incorporated a ground of discrimination that relates to economic or social disadvantage (source of income, social condition, etc.)¹³ thus providing remedies for discrimination based on such disadvantage. However, no such ground exists in the federal CHRA.

The lack of recognition in the CHRA of a ground of discrimination related to social or economic status may result in systemic discrimination and in individuals or groups in vulnerable circumstances falling through the cracks of human rights protection where their lived experience – the totality of their characteristics – may not fit within the current enumerated grounds. The addition of an appropriate prohibited ground of discrimination could better reflect and address the realities of discrimination by recognizing the way

¹³ Three Canadian jurisdictions – Quebec, New Brunswick and the Northwest Territories – have adopted “social condition” as a prohibited ground of discrimination. Eight jurisdictions – Alberta, British Columbia, Manitoba, Nova Scotia, Prince Edward Island, Newfoundland, the Yukon and Nunavut – prohibit discrimination based on “source of income”. “Receipt of public assistance” is a prohibited ground of discrimination in Ontario and Saskatchewan. Manitoba also prohibits discrimination based on “social disadvantage”, and Newfoundland also prohibits discrimination based on “social origin”.

economic and social disadvantage intersects with other grounds of discrimination already recognized in the CHRA, such as disability. The CHRC therefore supports the addition of an appropriate ground.

Recommended Question #7: Given the prevalence of economic and social disadvantage among persons with disabilities and the resulting discrimination faced by these individuals, has Canada given consideration to adding an appropriate ground to the CHRA – such as social condition – to protect individuals from discrimination relating to their economic and social status, as recommended by the UN Committee on Economic, Social and Cultural Rights?

7. INDIGENOUS PERSONS WITH DISABILITIES (ARTICLES 5, 6, 7, 17 & 19)

The CHRC views the situation of Indigenous peoples¹⁴ in Canada as one of the most pressing human rights issues facing Canada today. Indigenous peoples in Canada continue to be significantly disadvantaged in terms of education, employment and access to basic needs such as water, food security and housing. This includes Indigenous persons with disabilities.

7.1. Equitable and Adequate Services on Reserve

Across the country, many First Nation communities continue to live without equitable and adequate housing, safe drinking water or access to quality education, child welfare, and other social services. First Nations often cite lack of funding as the main reason for inadequate programs and services on reserves, including special education services, disability-related services, and social and health supports.

The CHRC has received a number of complaints filed by or on behalf of Indigenous persons with disabilities, relating to the availability of and funding for a broad range of public services delivered on-reserve. For example, complaints have been filed regarding the adequacy of federal funding and supports for special education, health, assisted living, and home and community care services.¹⁵ The CHRC has also received

¹⁴ The term “Indigenous” or “Indigenous peoples” is used throughout this submission to refer to First Nations, Inuit and Métis peoples in Canada, also commonly referred to as Aboriginal peoples. In specific areas of this submission, the terms Aboriginal or First Nations may be used for greater specificity, for example where this is the official terminology used in a referenced law, or where a law or program is applicable only to this sub-category of the Indigenous population.

¹⁵ For just a few examples: (1) An Ontario First Nation filed a human rights complaint alleging that the federal government discriminates by failing to provide sufficient funding and supports to enable the delivery of appropriate special education services to First Nations children with disability-related education needs who live on reserve in Ontario. (2) An Alberta First Nations woman living on reserve filed a human rights complaint alleging that the federal government discriminated by failing to take adequate steps to ensure that her son, who uses a wheelchair, received safe transportation to and from school. (3) A Manitoba First Nations woman living on a fly-in reserve filed a complaint, alleging that the federal government discriminates by failing to provide sufficient funding and supports to enable the delivery of

complaints brought by First Nations persons against First Nations governments, relating to the allocation and/or renovation of accessible housing on reserve.¹⁶

In a series of ground-breaking rulings from January 2016 to the present, the Canadian Human Rights Tribunal (the Tribunal) found the federal program and funding for child welfare services on reserve to be discriminatory against First Nations children and families, and ordered the federal government to provide sufficient funding and supports to enable the delivery of services that meet the real needs of First Nations children and families.¹⁷ These rulings require the government to provide First Nations children with substantively equal access to services – something that can require going beyond the standards of care provided in comparable communities off reserve.¹⁸ The parties to the litigation continue to work together on implementation of these rulings, and the Tribunal is expected to provide further guidance in the coming months.

The CHRC recognizes that Bill C-92, An Act respecting First Nations, Inuit and Metis children, youth and families, provides an opportunity to make improvements to the child welfare system. Many features of this legislation are encouraging, including its emphasis on substantive equality, preventive care and the need for continuity of culture and language. However, the CHRC also shares the concerns of stakeholders that this legislation does not adequately address the need for reliable funding, which is critical for implementation. The Tribunal, as well as other respected bodies such as the Truth and Reconciliation Commission of Canada and the United Nations Committee on the Rights of the Child, have all stressed the need for Canada to provide adequate resources in this area.

According to the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls¹⁹, the crisis of child welfare, the chronic underfunding of essential services, and the many health disparities facing Indigenous communities, can all be attributed to the legacy of colonialism and the intergenerational effects of trauma and genocide.

adequate health and home and community care services in respect of her adult son, who has cognitive and other disabilities that give rise to substantial needs.

¹⁶ For example, in *Ledoux v. Gambler First Nation*, [2018 CHRT 26](#), the Tribunal found that a First Nation had erred by prematurely reallocating the home of a band member who used a wheelchair, and who had temporarily moved off the reserve to test out an assisted living facility. It granted certain financial remedies, and ordered that the Nation give the band member priority status on the wait list for the next available wheelchair-accessible home on the reserve.

¹⁷ First Nations Child and Family Caring Society of Canada and Assembly of First Nations et al. v. Attorney General of Canada: [2016 CHRT 2](#) (re liability); [2016 CHRT 10](#) (first ruling on remedy); [2016 CHRT 16](#) (second ruling on remedy); [2017 CHRT 7](#) (Choose Life); [2017 CHRT 14](#) (ruling on Jordan's Principle compliance); [2017 CHRT 35](#) (Jordan's Principle amendments); [2018 CHRT 4](#) (ruling on child and family services compliance); 2019 CHRT 1 (Obstruction and costs); [2019 CHRT 7](#) (interim ruling on eligibility under Jordan's Principle).

¹⁸ See, for example: [2016 CHRT 2](#) at paras. 402-427 and 464-465; [2017 CHRT 14](#) at paras. 69-73; and [2019 CHRT 7](#) at para. 74.

¹⁹ Available at: <https://www.mmiwg-ffada.ca/final-report/>. See Volume 1a, Chapter 6: Confronting Oppression – Right to Health, for the health related aspects of the report.

For instance, according to the report, researchers found that, compared with those who did not attend residential school, residential school survivors are more likely to suffer various physical and mental health problems, are more likely to report higher levels of psychological distress and poorer self-rated health, and are more likely to be diagnosed with various chronic health conditions. Although access to culturally appropriate and relevant services was identified as one of the most important factors in healing for residential school survivors, the report found that 1) there are not enough culturally relevant treatment and healing centres for Indigenous people across Canada, and 2) stable, sufficient and reliable funding is a barrier for the ones that do exist.

The report also found that Canada has failed to ensure that Indigenous women, girls, and 2SLGBTQQIA²⁰ people have access to services and resources that are equitable to those received by non-Indigenous people. It stated that the “[c]urrent health and wellness services are grossly lacking and often inappropriate and inaccessible, which contributes directly to the decreased safety and security of, and the violence experienced by, Indigenous women, girls, and 2SLGBTQQIA people.”²¹

Recommended Question #8: Please provide details of the steps being taken to ensure that services for those with disabilities in First Nations communities are equitable, adequate and appropriate. What steps are being taken by Canada to implement the recommendations made by the National Inquiry into Missing and Murdered Indigenous Women and Girls relating to the accessibility of health and wellness services?

7.2. Suicide Rates for Indigenous Youth

Indigenous youth in Canada experience disproportionately high rates of suicide and suicide ideation in comparison to their non-Indigenous counterparts. In 1995, a special report published by the Royal Commission on Aboriginal Peoples estimated that the rate of suicide among Indigenous youth was five (5) to six (6) times higher than non-Indigenous youth in Canada.²² Unfortunately, over the past three decades, these figures have remained largely unchanged, with Indigenous youth continuing to be at high risk of suicide.²³ In addition, the most high risk group for suicide are Inuit males aged 15-29, with rates almost forty (40) times the national rate.²⁴

²⁰ This refers to people who are Two-Spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual. This is used throughout the National Inquiry both to include non-binary people and people with diverse sexualities, and as an explicit reminder that gender-diverse people’s needs must equally be taken into account.

²¹ supra note 19, at p. 498.

²² Royal Commission on Aboriginal Peoples, *Choosing Life: Special Report on Suicide Among Aboriginal People*, 1995, available at: <http://data2.archives.ca/rcap/pdf/rcap-459.pdf>.

²³ Report of the Standing Committee on Indigenous and Northern Affairs, *Breaking Point: The Suicide Crisis in Indigenous Communities*, 2017, available at: <https://www.ourcommons.ca/Content/Committee/421/INAN/Reports/RP8977643/inanrp09/inanrp09-e.pdf>.

²⁴ Inuit Tapiriit Kanatami, *National Inuit Suicide Prevention Strategy*, 2016, available at: <https://www.itk.ca/wp-content/uploads/2016/07/ITK-National-Inuit-Suicide-Prevention-Strategy-2016.pdf>.

There are many, multi-faceted reasons why this is the case. For example, the lingering effects of the residential school system, the manner in which child welfare services are delivered, the social and economic marginalization of Indigenous peoples more broadly, and a variety of structural issues all contribute to this situation.

Recommended Question #9: Please provide details of the steps being taken to address the issue of Indigenous youth suicide, including information about efforts to ensure that culturally-appropriate mental health services are available in Indigenous communities.

7.3. Forced or Coerced Sterilization of Indigenous Women

Historically, policies of sterilization in Canada existed under the guise of public health, where sterilization was used as a condition of release from mental health institutions. However, these policies disproportionately affected Indigenous women, who were labeled as “feeble-minded” or “mentally defective”.²⁵

Access to sexual and reproductive health care is a critical issue for women. Yet, Indigenous women across the country continue to recount experiences of forced or coerced sterilization. The Canadian province of Saskatchewan is currently facing a class action lawsuit on behalf of more than sixty (60) Indigenous women who claim that they were sterilized without their free, full and informed consent.²⁶ Indigenous women who have undergone coerced sterilization have been found to engage in self-harm, suffer from various physical, emotional and psychological ailments, and have withdrawn from seeking preventive healthcare services due to profound mistrust of the healthcare system and its authorities.²⁷

The CHRC notes that in Canada’s most recent review by the United Nations Committee Against Torture, the Committee recognized the involuntary sterilization of Indigenous women in Canada as a form of torture, and asked Canada to provide an interim progress report on the issue by December 2019, signalling both its urgency and importance.²⁸

²⁵ supra note 19, at pp. 266-267.

²⁶ M.R.L.P. and S.A.T. v. The Attorney General of Canada, The Government of Saskatchewan, Saskatchewan Health Authority et. al. (16 Feb. 2018), Q.B. No. 1485 of 2017 (Statement of Claim), available at: <https://www.mauricelaw.com/upload/Class-Action-Docs/Notice-to-Defendants-Q.B.-No-1485-of-2017.pdf>.

²⁷ Saskatoon Regional Health Authority, External Review: Tubal Ligation in the Saskatoon Health Region: The Lived Experience of Aboriginal Women, 2017, available at: https://www.saskatoonhealthregion.ca/DocumentsInternal/Tubal_Ligation_intheSaskatoonHealthRegion_the_Lived_Experience_of_Aboriginal_Women_BoyerandBartlett_July_22_2017.pdf.

²⁸ UN Committee against Torture, Concluding observations on the seventh periodic report of Canada, CAT/C/CAN/CO/7, 21 December 2018, para. 54 available at: <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsglSZMQd1BoEakgym8DLljp%2ftVZwAcP32UhceoEv6s9EFDnHa%2ffiXxFR9KNVY4qkr3X7%2faP5eVqCmw6nDLJyD3dA5iGzIWJ0XfsLEbi0ylvz>.

Many civil society organizations, including Indigenous women’s organizations, have called on the government to take urgent action on this issue by:

- thoroughly investigating all allegations of forced or coerced sterilizations of Indigenous women in Canada;
- establishing policies and accountability mechanisms across Canada that provide clear guidance on how to ensure sterilizations are only performed with free, full, and informed consent; and
- providing access to justice for survivors and their families.²⁹

Recommended Question #10: Please provide details of the steps being taken to respond to ongoing allegations about the forced or coerced sterilization of Indigenous women in Canada. What efforts are being made to ensure coordination between the various jurisdictions in Canada in relation to this issue?

8. PERSONS DEPRIVED OF THEIR LIBERTY (ARTICLES 14 & 15)

8.1. The Situation of Inmates with Disabilities

The Office of the Correctional Investigator of Canada (OCI) has noted a marked increase in the number of persons with disabilities – and mental health disabilities in particular – in federal prisons, noting in its 2014-15 Annual Report that mental health issues are 2-3 times more prevalent in Canadian prisons than in the general population.³⁰ Further, it has noted that recent inmate population growth has been exclusively driven by increases in the composition of racially, ethnically and culturally diverse offenders. In the preceding ten (10) years, the Indigenous incarcerated population increased by 46.4% while visible minority groups – including Black, Asian and Hispanic – increased by almost 75%. During the same period, the population of Caucasian inmates actually declined by 3%.³¹

The CHRC is concerned with reports that certain segments of the population, in particular Indigenous, Black and other racialized individuals, are “over-policed”. Of further concern are an increasing number of reports of injurious and deadly interactions between police and Indigenous, Black and other racialized individuals with mental health disabilities. A web of complex and intersecting factors lie at the root of this: historical disadvantage and systemic discrimination, socio-economic disparity, and a lack of appropriate community services.

²⁹ See:

https://www.amnesty.ca/sites/amnesty/files/Amnesty%20Sterilization%20Briefing%20Senate%20HR%20Committee%20March%202019_0.pdf.

³⁰ See: <http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20142015-eng.pdf> at p.13.

³¹ See Annual Report of the Correctional Investigator 2012-2013, at p. 3, available at: www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20122013-eng.pdf.

Despite the prevalence of mental health disabilities among the inmate population, OCI has repeatedly noted that correctional institutions lack the appropriate capacity, resources and infrastructure to manage serious mental health conditions, and as a result, many offenders are incarcerated in settings that are ill-equipped to respond appropriately to their symptoms and behaviours. It has observed that:

In far too many cases, their mental health problems deteriorate to the point where they result in violations of institutional rules, altercations with staff and other offenders, and, often, self-harm. In too many instances, these offenders are placed in segregation or protective custody for their personal safety...In the correctional environment, offenders with mental disorders do not always comprehend, conform to or adjust properly to the rules of institutional life...Irrational, impulsive and compulsive behaviours associated with their disorders can result in verbal or physical confrontations with staff or other inmates, which often lead to institutional charges and long periods in administrative or disciplinary segregation.³²

OCI has further noted that the problem is particularly acute in women's institutions, as there is no dedicated, stand-alone treatment facility for women in federal corrections despite the fact that the vast majority of federally-sentenced women experience symptoms consistent with a psychiatric disorder.³³ These women are more likely to be placed in maximum security and a significant number engage in chronic, repetitive self-injurious or suicidal behaviour.³⁴

OCI has observed that, while there are provisions in the Correction and Conditional Release Act that allow for exploration of options in health care facilities as an alternative to incarceration – for example, external psychiatric hospital placements in cases of complex or significant mental health disabilities – they are under-utilized. It has called on CSC to create, conclude and fund alternative service agreements and arrangements with provincial and territorial mental health providers that would allow for the placement of offenders in community psychiatric facilities.³⁵

Recommended Question #11: Please provide disaggregated information about the situation of inmates with disabilities in federal prisons, including the number of such inmates and the health care services that are made available.

The CHRC also wishes to bring the Committee's attention to an emerging issue relating to the accommodation of substance dependence in federal corrections, and the provision of adequate and appropriate health care in such situations.

³² Annual Report of the Correctional Investigator 2008-2009, available at: <http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20082009-eng.aspx>.

³³ OCI Annual Report 2016-2017 at p. 14, available at: <http://www.oci-bec.gc.ca/cnt/rpt/index-eng.aspx>.

³⁴ Ibid. at p. 62.

³⁵ Ibid. at p. 14.

The CHRC has been made aware of concerns that federal prisoners with opioid use disorders are at greater risk of fatal overdose, and HIV or hepatitis C infection because of barriers to treatment with suboxone or methodone – including long wait lists – as well as a lack of adequate harm reduction initiatives and psychosocial therapy. Some inmates report having been cut-off from treatment on the basis of speculation that they were sharing medication with other inmates, some without having had the opportunity to first speak with their doctor.³⁶

Recommended Question #12: Please provide information about the steps being taken to ensure that inmates with substance use disorders are provided with adequate and appropriate health care in federal prisons.

8.2. Changes to the use of Solitary Confinement

Until recently, the Corrections and Conditional Release Act (CCRA), which regulates the federal prison system, provided for a regime known as “administrative segregation” to isolate inmates who were deemed to pose a risk to the safety and security of themselves, others, or the institution in which they were housed. The CHRC has long expressed concern that this regime is tantamount to solitary confinement as defined within the international human rights system. The CHRC has also expressed concern for many years that this regime was being used to manage inmates with mental health disabilities.

Since Canada’s first periodic review by this Committee, Courts in the Canadian jurisdictions of Ontario and British Columbia have ruled that the administrative segregation regime used in federal prisons is akin to solitary confinement and violates provisions of the Canadian Charter of Rights and Freedoms that protect life, liberty and security of the person.

In response to these decisions, the federal government has passed legislation that purports to end the practice of solitary confinement by ending the existing regime of administrative segregation and replacing it with an alternate regime in which inmates who are deemed to pose a risk would be housed in what will be known as “structured intervention units” or SIUs. Once in an SIU, inmates will be isolated for fewer hours a day than under the previous regime, have greater access to “meaningful human contact” and receive “appropriate interventions” including access to correctional programming.

Given that the change in regime has only recently taken effect, the CHRC is not in a position to comment on its effect on the health and well-being of vulnerable inmates, including those who have mental health disabilities. However, the CHRC does have some ongoing concerns with respect to the SIU regime.

³⁶ See: <https://prisonjustice.org/2018/06/04/news-release-human-rights-of-federal-prisoners-with-opioid-use-disorder-being-violated-says-prison-justice-group/>.

First, the SIU regime fails to recognize that some inmates should never be placed in isolation, including those that have a disability that is likely to be exacerbated by confinement in an SIU, and those who are suicidal or chronically self-harming.

Second, the proposed regime provides for additional internal reviews of whether an inmate should be placed in or remain in an SIU. For example, when a health practitioner recommends that an inmate be removed from a SIU, the Correctional Service of Canada (CSC) can decide not to accept that recommendation and can ask another health practitioner to consider the situation. The CHRC is of the view that adding more internal review takes more time, is complex and cumbersome, lacking in responsiveness to the special needs of inmates with disabilities and ill-suited to urgent or “moment in time” decisions.

Finally, the SIU regime continues to give wide discretion to CSC to decide whether, when and for how long an inmate should be confined in isolated and restrictive conditions. As before, the CHRC is of the view that independent external review is critical to ensuring that the human rights of inmates are protected. While the new approach does provide for some external review, it is as yet unclear that it will be sufficient to protect the rights at stake, particularly for vulnerable inmates.

The CHRC will continue to work with CSC as it implements this new regime and will provide an update to the Committee at the time of Canada’s review.

Recommended Question #13: Please provide information about the operation of SIUs in federal prisons, including the number of inmates held in SIUs, the proportion of those inmates who have identified mental health related needs, the length of stay in an SIU, and the number of times CSC refused to follow the recommendation of a health care provider to release someone from an SIU.

9. LEGAL CAPACITY (ARTICLE 12)

The CHRC acknowledges that Canada’s ratification to the CRPD included an interpretive declaration and conditional reservation with respect to article 12. This reservation broadly states that Canada reserves the right to continue to use substitute decision-making arrangements in appropriate circumstances and subject to appropriate and effective safeguards.³⁷

Various parties have called on Canada to withdraw its reservation to article 12, including persons with disabilities and their representative organizations, as well as the United Nations Special Rapporteur on the rights of persons with disabilities during her April 2019 visit to Canada. In her end of mission statement, the Special Rapporteur recognized Canada’s fundamental contribution to the notion of supported decision-making in the earlier drafting process of the CRPD, and reiterated both her

³⁷ See: <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-15.en.pdf>.

recommendation to withdraw Canada's reservation to this article and to speed up the process to eliminate all forms of substitute decision-making across the country.³⁸

Organizations in favour of withdrawing Canada's reservation to article 12 have noted that people with psychosocial and/or intellectual disabilities are often vulnerable to having their legal capacity questioned by others, restricted, or removed altogether, and view substitute decision-making as a denial of personhood which further marginalizes persons with disabilities. They note that it is imperative that people with significant support needs have a continued presence in the decision-making process, which can be achieved through accommodations and/or supported decision-making.

The CHRC acknowledges that capacity exists on a spectrum and assessments of an individual's capacity can be influenced by the social environment. Mental health issues and addictions are often episodic or cyclical, meaning a person with a mental health disability or addiction may be deemed capable at one time, but not another. This is why capacity should be measured on a case-by-case basis. Additionally, before determining that a person lacks capacity, an organization, assessment body, evaluator, among others, has a duty to explore accommodation options to the point of undue hardship. For instance, the Ontario Human Rights Commission notes that the following human rights principles should be kept in mind in matters related to consent and capacity:

- individualized assessment;
- respect for dignity, autonomy and confidentiality;
- opting for the least intrusive and restrictive options wherever possible; and
- integration and full participation wherever possible.³⁹

Across Canada, there is uneven access to and recognition of the use of accommodations and supported decision-making with respect to realizing a person's right to legal capacity. Additionally, the use of substitute decision-making regimes, such as guardianship, is still the norm. As a result, many individuals with psychosocial and/or intellectual disabilities are denied legal capacity as provided for in article 12. The CHRC notes that since Canada ratified the CRPD, little progress has been made in moving to decision-making systems that respect the dignity and autonomy of persons with disabilities. Fully implementing article 12 would require a real shift towards a human rights-based approach to legal capacity, by replacing substituted decision-making regimes with the appropriate support measures that persons with disabilities may need to exercise their legal capacity.

³⁸ See: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24481&LangID=E>.

³⁹ See: <http://www.ohrc.on.ca/en/policy-preventing-discrimination-based-mental-health-disabilities-and-addictions/16-consent-and-capacity>.

Recommended Question #14: Please provide information on the steps that Canada has taken to move towards full implementation of article 12. When does Canada anticipate that it will be in a position to remove its reservation to this article? What efforts are being made to ensure coordination between the various jurisdictions in Canada in relation to this issue?

10. OTHER ISSUES REQUIRING ATTENTION

10.1. American Sign Language, Quebec Sign Language and Indigenous Sign Languages (Article 21)

The CHRC commends the inclusion of American Sign Language (ASL), Quebec Sign Language (Langue des Signes Québécoise; LSQ) and Indigenous Sign Languages (ISL) in the ACA, and the recognition of these languages as the primary languages for communication by Deaf persons in Canada. The CHRC further welcomes the passage of the Indigenous Languages Act (ILA), which received Royal Assent on June 21, 2019.

Sign languages are the foundation of Deaf culture and key to both social and economic well-being. In addition, with the loss of many Indigenous languages due to the effects of colonialism, preserving Indigenous languages, including Indigenous Sign Languages, remains an essential piece to preserving Indigenous identity and culture.

However, Deaf persons in Canada continue to experience systemic discrimination and institutional barriers affecting their full and equal participation in Canadian society. Some of these persistent barriers include: lack of captioning and interpretation of information; lack of quality of interpretation services; lack of training opportunities for interpreters; lack of educational supports; lack of employment opportunities; lack of access to services and systems; and a lack of societal acceptance, respect and understanding. Although the ACA and the ILA inclusion and recognition of ASL, LSQ and ISL are positive steps towards valuing the linguistic identity of the Deaf community, more needs to be done to remove barriers and ensure equitable access to information, communication and services in various sectors across Canada.

The CHRC acknowledges that the ACA and the ILA may provide opportunities to establish better access to and improve the quality of interpretation services by enabling the development of national standards in the future.

Recommended Question #15: Please provide details of the steps being taken to address the ongoing barriers and prevent new barriers from affecting the full and equal participation of Deaf persons in Canadian society.

10.2. Access to Election Process (Article 29)

Aspects of the entire election process in Canada – from the distribution of pre-election material, to participation in debates, to the accessibility of voting centers and the ways

in which ballots are cast – have been criticized by persons with disabilities and their representative organizations as being inaccessible and exclusionary. Despite modifications being made to some buildings and polling stations, staff training being provided on accessibility for persons with disabilities, and a range of information, education and accessibility services being made available to assist persons with disabilities in the election process, barriers to full and equal participation in the democratic process remain.

The CHRC notes that alternative methods of casting one's vote – through telephone, online or through the use of technology – are currently being used in a growing number of jurisdictions, both in Canada and abroad, enabling electors with disabilities to vote privately and independently. However, at the federal level, these alternative methods to voting have not been implemented to any great extent, and when attempts to use new technology are considered, they are often not recognized or well understood by polling staff. For instance, concerns have been brought to the attention of the CHRC regarding the accessibility of polling stations for individuals with visual impairments, and the failure to provide the necessary tools and supports to allow such individuals to vote privately and independently.

The CHRC commends the recent passage of the Elections Modernization Act⁴⁰, which includes measures to both reduce barriers to participation and increase accessibility in the voting process for persons with disabilities. The CHRC notes that these measures will be in force for the upcoming federal election in the fall of 2019 and may have an impact on persons with disabilities' ability to participate fully in the electoral process.

Recommended Question #16: Please detail the steps being taken to ensure that persons with disabilities are able to participate in the 2019 federal election in an accessible manner. What steps is Canada taking to reduce barriers to participation in the democratic process for persons with disabilities more generally? What efforts are being made to ensure coordination between the various jurisdictions in Canada in relation to this issue?

10.3. Service Dogs (Articles 9, 19 & 20)

The number of people who use service dogs and the type of assistance these dogs provide is increasing across Canada. Service dogs are trained to perform specific tasks to support people with both visible and invisible disabilities. Persons with disabilities in Canada have a right to use a service dog to work, live and participate in their communities with dignity and independence, and governments, employers and service providers have a legal obligation to recognize and respect this right. However, service dog users in Canada continue to experience a number of challenges, including being denied or confronted when accessing public spaces and services. This creates barriers to inclusion for persons with disabilities who use service dogs to go about their day-to-day lives.

⁴⁰ Available at: https://laws-lois.justice.gc.ca/PDF/2018_31.pdf.

The CHRC notes that, nationally, there is currently no uniform definition or standard with respect to how service dogs are to be trained or whether proof of training or certification is required for their use. Legislation, policies and practices vary across all jurisdictions. Stakeholders have expressed concern that this lack of uniformity creates unique barriers for users of service dogs, especially when travelling across jurisdictions.

The CHRC acknowledges that the ACA may provide an opportunity to establish better guidance on how to be inclusive of service dog users, by enabling the development of national standards and best practices in the future.

Recommended Question #17: Please provide details of efforts being undertaken to ensure that users of service dogs are able to live, work and fully participate in their communities. Has consideration been given to developing national standards for the training and identification of service dogs? What efforts are being made to ensure coordination between the various jurisdictions in Canada in relation to this issue?

10.4. Medical Inadmissibility (Article 18)

Every year, approximately 1,000 applicants for permanent and temporary residence in Canada receive a medical inadmissibility finding.⁴¹ Under the Immigration and Refugee Protection Act (IRPA),⁴² a person is considered inadmissible to Canada on health grounds if their health condition: is likely to be a danger to public health; is likely to be a danger to public safety; or might reasonably be expected to cause excessive demand on health or social services.

Recent changes have been made to the medical inadmissibility rules in Canada. These changes include increasing the cost threshold for medical admissibility to three (3) times the previous level and amending the definition of social services by removing references to special education, social and vocational rehabilitation services and personal support services.⁴³

While acknowledging that these changes represent a positive development, several representative groups feel that these changes do not go far enough towards ending a policy that unfairly targets persons with disabilities and their immediate family members. These groups are concerned that Canada's immigration practices continue to perpetuate negative stereotypes that devalue persons with disabilities. For instance, some individuals and representative groups have found the "excessive demand" provision under the IRPA to be discriminatory and based on a medical model of disability, which both perpetuates the stigma that persons with disabilities are "a burden

⁴¹ See: <https://www.canada.ca/en/immigration-refugees-citizenship/news/2018/04/changes-to-medical-inadmissibility-policy.html>.

⁴² Available at: <https://laws-lois.justice.gc.ca/PDF/I-2.5.pdf>.

⁴³ See: <https://www.canada.ca/en/immigration-refugees-citizenship/news/2018/04/government-of-canada-brings-medical-inadmissibility-policy-in-line-with-inclusivity-for-persons-with-disabilities.html>.

on society” and contradicts the key principles of the CRPD. Additionally, the House of Commons Standing Committee on Citizenship and Immigration recently studied this issue and ultimately recommended that the government repeal the medical inadmissibility provision based on excessive demand. The Committee found that excluding certain people admission to Canada based on medical or disability grounds violates the human rights of would-be newcomers to Canada and is inconsistent with the values associated with human rights protections.⁴⁴

Recommended Question #18: What steps is Canada taking to review the medical inadmissibility requirements in the IRPA, in particular the provision related to “excessive demand”?

10.5. Intersex, Trans and Gender Diverse Individuals (Article 25)

The CHRC maintains that people who are intersex, trans and gender diverse should not be psychopathologized, and that being intersex, trans or gender diverse is not in and of itself a disability or a mental illness. Recent studies indicate that many trans and gender diverse youth report discrimination, bullying and violence as a result of their gender identity, and those who experience these are more likely to report mental health difficulties, including depression, anxiety, self-harm and suicide.⁴⁵

However, in order to gain access to critical health and social services, intersex, trans and gender diverse people are often still forced to adhere to a medical model which is based on cis-normative assumptions about medically “correct” or “normal” bodies. This model may also require them to declare a mental health disorder or disability in order to receive general and specialist health services and supports. Additionally, medical interventions themselves, such as coerced examinations, unnecessary surgeries and conversion therapies, can still be cruel and harmful to intersex, trans, and gender diverse persons.⁴⁶ The CHRC notes that this over-medicalized model must change in order to reduce stigma, to recognize and normalize variations of sex characteristics and gender diversity, and to provide intersex, trans and gender diverse people better access to appropriate care and supports that enable them to enjoy their right to health and to fully exercise their human rights.

The CHRC welcomes the publication of Yogyakarta Plus Ten⁴⁷, which has added specific health related calls for state actions to better protect intersex, trans, and gender diverse persons. The CHRC also notes recent advancements made by the World Health Organization (WHO) to depathologize trans identities, through its release of a

⁴⁴ See:

<https://www.ourcommons.ca/Content/Committee/421/CIMM/Reports/RP9322080/cimmrp15/cimmrp15-e.pdf>.

⁴⁵ See: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5630273/>;
<https://www.suicideinfo.ca/resource/transgender-people-suicide/>.

⁴⁶ See: <https://yogyakartaprinciples.org/relating-to-the-right-to-freedom-from-torture-and-cruel-inhuman-or-degrading-treatment-or-punishment-principle-10/>.

⁴⁷ See: <https://yogyakartaprinciples.org/introduction-yp10/>.

revised version of the International Classification of Diseases (ICD-11).⁴⁸ This update reclassifies “gender identity disorder” as “gender incongruence”, which is now featured under the sexual health chapter rather than the mental disorders chapter. The reclassification will help trans and gender diverse individuals to receive support and medical care without their identity being considered as a mental disorder. However, UN experts⁴⁹ noted that although the reclassification is a major improvement, there are a number of problematic issues that remain to be addressed to achieve full depathologization of trans and gender diverse people, while guaranteeing equal access to health care services.⁵⁰ Additionally, many intersex-led organizations expressed concern over the ICD-11 and its description of intersex variations as “disorders of sex development”, and found some materials in the ICD-11 to be associated with unnecessary medical procedures that both fail to meet human rights norms and are grounded in gender stereotypes.⁵¹

The CHRC recognizes that data on intersex, trans and gender diverse individuals both in Canada and abroad is incomplete, fragmented, and in some areas, non-existent.⁵² However, the CHRC wishes to acknowledge progress from both Statistics Canada and a national research project. Statistics Canada has included greater diversity in its classification and census questions related to both sex and gender⁵³, and Trans PULSE Canada – a national study of trans and non-binary people – is currently in the process of collecting health and human rights data through a national survey which has identified people living with disabilities as one of its priority populations. Priority populations were chosen to fill data gaps within the population, to investigate the implications of policies and practices among these populations, and to identify the potential causes of barriers and inequalities. The survey results have the potential to fundamentally influence and improve health outcomes and human rights progress both domestically and internationally.

Recommended Question #19: Please detail the steps being taken to ensure that intersex, trans and gender diverse individuals are not harmed by medical interventions, and that they are able to access services in a non-discriminatory manner, including by, where necessary, removing the requirement for individuals to seek or receive a diagnosis of having a disability of mental illness.

⁴⁸ See: <https://icd.who.int/en/>.

⁴⁹ Victor Madrigal-Borloz, Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, and Dainius Pūras, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

⁵⁰ See: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24663&LangID=E>.

⁵¹ See: <https://ihra.org.au/35299/joint-statement-icd-11/>.

⁵² See: UN Human Rights Council, Data collection and management as a means to create heightened awareness of violence and discrimination based on sexual orientation and gender identity (Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity), A/HRC/41/45, 14 May 2019, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/138/27/PDF/G1913827.pdf?OpenElement>.

⁵³ See: <https://www12.statcan.gc.ca/census-recensement/2021/road2021-chemin2021/fs-fi/sex-and-gender.cfm>.