



**Canadian Disability Policy Alliance**

**Alliance Canadienne concernant  
les politiques reliées au handicap**

# **A CANADIANS WITH DISABILITIES ACT?**

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## ABOUT THE CANADIAN DISABILITY POLICY ALLIANCE

The **Canadian Disability Policy Alliance** is a national collaboration of disability researchers, community organizations, and federal and provincial policy-makers, aimed at creating and mobilizing knowledge to enhance disability policy in Canada, to promote equity and opportunity for disabled Canadians. The Alliance is funded by the Social Science and Humanities Research Council for a period of 5 years, during which time the members will address four policy areas: **Employment, Education, Citizenship, Health services.**

Our vision for Canada is a place where people with disabilities enjoy full participation and citizenship, supported by a coherent framework of **legislation, regulation and program entitlements.** This vision is achieved through:

- **United voices** – of researchers, consumers, policy makers, providers, educators, employers; across jurisdictions, across boundaries, across barriers;
- **Learning collaboratively** – through focused, interactive research cycles;
- Effectively using **tools for change** – producing context-relevant evidence to promote equity-based policy.

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### **EXECUTIVE SUMMARY**

Despite the efforts by the Canadian government to identify disability issues as a priority, prominent disability policy scholars point out that there is still much work to be done in ensuring the full inclusion of people with disabilities in Canada (McColl & Jongbloed, 2006; Prince 2009). Six years ago, the current government promised a national Canadians with Disabilities Act as part of their election platform. Despite this, we still have no bill, no draft legislation, no committee, and no indication that this issue is anywhere on the political horizon.

The following report explores the question of whether a Canadians with Disabilities Act is a reasonable objective. This project set out to describe the current state of federal disability policy in Canada, its history, and to analyze advantages and disadvantages of pursuing overarching federal legislation on disability issues in Canada at this time. This paper marshals current, historical, domestic and international data to answer three questions:

1. Where are we now in Canada in terms of federal disability policy?
2. How did we get here?
3. How do we compare with other Western democracies regarding federal disability policies?

The report concludes with a discussion of policy options and directions for further research. In summary, there is no clear indication from the data that we have assembled of a widely-held need or desire for omnibus federal disability legislation. In particular, the human rights, anti-discrimination agenda seems to be well served by the current suite of federal and provincial statutes. Rather, it appears that what may be required is a harmonized approach to economic considerations for Canadians with disabilities, including training, employment, income replacement and taxation.

## INTRODUCTION

It has now been 30 years since the pivotal *Obstacles Report* (1981) first raised the possibility of an omnibus federal statute dealing with disability issues. It has been 25 years since the federal government spear-headed a National Strategy for the Integration of Persons with Disabilities, and 15 years since the federal, territorial and provincial First Ministers identified disability issues as a priority. Despite these efforts, prominent disability policy scholars point out that there is still much work to be done in ensuring the full inclusion of people with disabilities in Canada (McColl & Jongbloed, 2006; Prince 2009).

While many smaller pieces of legislation related to the wellbeing of people with disabilities exist at the federal level in Canada, the possibility of overarching federal disability legislation has been a matter of public debate to a greater or lesser degree for three decades. Six years ago, the current government promised a national Canadians with Disabilities Act as part of their election platform. Despite this, we still have no bill, no draft legislation, no committee, and no indication that this issue is anywhere on the political horizon. The following report explores the question of whether this type of federal disability legislation in Canada is a reasonable objective. This project set out to describe the current state of federal disability policy in Canada, its history, and to analyze advantages and disadvantages of pursuing overarching federal legislation on disability issues in Canada at this time.

According to the most recent data available, disability policy affects 4.3 million people, or 14.3% of Canadians. When one considers that many people with disabilities are embedded in families, one might reasonably estimate that disability affects approximately 35% of the population (Arsenault, 1998, personal communication).

Prince (2006) describes the federal government's response to people with disabilities as "delivering, dithering and declining". Despite a promise to introduce overarching disability legislation like that of other western democracies, the current federal government has chosen to enhance existing programs and introduce a number of smaller financial measures, such as the Registered Disability Savings Plan (2006) and the Accessibility Fund (2007). The goal of these smaller changes has been to promote equity and participation among people with disabilities, which is an admirable goal if these measures are successful.

The idea of federal disability legislation is by no means universally supported. According to Prince (2010), there are three camps of responses to the idea of a Canadians with Disabilities Act. There are those who support the proposal whole-heartedly, and who feel that it is long-overdue. This group tends to believe that for both real and symbolic

reasons, the enactment of federal disability legislation would provide the impetus needed for the disability community to gather steam and correct some of the slippage that has been perceived in recent years (Boyce et al., 2001; McColl & Jongbloed, 2006).

A second group expresses ambivalence toward the idea of federal disability legislation. They recognize the potential benefits, but also the possible pitfalls of an overarching legislative response to the multi-dimensional, multi-sectoral problems experienced by the heterogeneous community of disabled people in Canada. They advocate for a highly consultative process to ensure appropriate considerations and representation.

The third group opposes a federal disability act, believing that the effects would at best be negligible, and at worst detrimental. Some believe that the current legislative framework provides all the safeguards and provisions necessary. Others fear that such an initiative would be nothing but window-dressing, and would distract attention from the persistent and pressing problems of the most disadvantaged disabled people in Canadian society.

This paper marshals current, historical, domestic and international data to answer three questions:

- 1. Where are we now in Canada in terms of federal disability policy?**
- 2. How did we get here?**
- 3. How do we compare with other Western democracies regarding federal disability policies?**

### METHODOLOGY

This project took a mixed methods approach to offering insight on these questions:

- A thorough review of the literature was conducted on national disability policy in Canada and other jurisdictions.
- A policy analysis was conducted of the current federal policy framework, including legislation, programs, position statements, disability statistics and judicial case law.
- An historical analysis was conducted of the events leading to the current question regarding the need for federal disability policy in Canada.
- A critical policy analysis was conducted on five jurisdictions where over-arching disability legislation has been proclaimed:
  - the USA (Americans with Disabilities Act),
  - the United Kingdom (Disability Discrimination Act),
  - Australia (Disability Discrimination Act),
  - the United Nations (Convention on the Rights of Disabled Persons), and
  - Ontario (Accessibility for Ontarians with Disabilities Act).

The report concludes with a discussion of policy options, and directions for further research. The report is intended as a discussion paper, rather than as a solution to this issue.

### Language

Throughout this report, the terms “disabled people” and “people with a disability” will be used interchangeably. We acknowledge that disability groups often prefer one or the other of these terms because of the philosophical perspective or ideals they represent. However, in the interest of *speaking with united voices* – a core value of the Canadian Disability Policy Alliance – we have chosen to be inclusive of both perspectives in this report. Our policy towards disability language is one of inclusiveness, as long as it meets a basic standard of respect and dignity (McColl & Jongbloed, 2006).

## PART I

### THE CURRENT SITUATION IN FEDERAL DISABILITY POLICY

#### **Where are we now in Canada in terms of federal disability policy?**

One of the potential merits of a legislative instrument like a *Canadian's with Disabilities Act*, as articulated by Prince (2010), is that it would raise the profile of disability policy within the Federal Government and give focus to this policy area. Although disability issues have often been the focus of substantial policy discussion since 1981, the disability file remains a patchwork of multiple

tools employed in multiple policy areas. As the *Guide to Making Federal Acts and Regulations* (Privy Council, 2003) suggests, this may be an entirely appropriate response to very complex issues. The question is whether the right kind of legislative instrument would further complement this suite of policies to assure greater inclusion for people with disabilities in Canada today.

The following tables illustrate that Federal disability policy in Canada includes a number of priority areas: citizenship, education, employment, health services, housing, income assistance, recreation and culture, transportation and taxation. The policy area has progressed in an incremental fashion over the past four decades. Analysis reveals that legislative and bureaucratic attention has been concentrated in several priority areas; namely employment, transportation and income assistance.

In the tables that follow legislation is represented in **blue**, regulations are represented in **orange**, and programs and services are represented in **green**.



## General Disability

Policy Instrument	Description	Year
<i>Charter of Rights and Freedoms, Constitution Act</i>	Protected the right of disabled persons not to be discriminated against	1982
<i>Canadian Human Rights Act</i>	Protects against discrimination because of disability	1985
Office for Disability Issues, Human Resources and Skills Development Canada	Originally created in 1993 as a hub within HRSDC to coordinate elements of different departments. ODI was officially created as a directorate and received its current name as a result of the Scott Task Force report (1996?).  ODI's mandate is to promote the full inclusion and participation of persons with disabilities in all aspects of community and social life. It administers the <i>Social Development Partnership Program</i> and the <i>Enabling Accessibility Fund</i> .	2001

## Transportation

Legislation/Regulation/Agreement	Description	Year
Air Transportation Regulations (Enabled by the <i>Canada Transportation Act</i> );	Establishes conduct towards and services available for disabled persons on Canadian aircrafts	1987, 1996
<u>Federal Excise Gasoline Tax Refund Program</u>	Refund on gas tax for transportation connected to a disability for persons unable to use public transportation because of their disability	1990
Aircraft Accessibility for Persons with Disabilities (Regulatory Code of Practice)	Code of practice sets out that passenger aircrafts must accommodate persons with disabilities in a reasonable and safe manner	1997
Intercity Bus Code of Practice (Regulatory)	States that intercity and inter-provincial passenger busses and the bus terminals must accommodate persons with disabilities	1998
<i>Canada Marine Act: Ferry Accessibility for Persons with Disabilities (Code of Practice)</i>	Sets out that passenger ferries must accommodate persons with disabilities in a reasonable and safe manner	1998, 2002
<u>Public Transit Capital Trust</u>	\$900 million trust created and allocated to the provinces on a per capita basis over three years. The funding is to be used to enhance public transit systems throughout the provinces, including making these systems more accessible for persons with disabilities	2006

## Housing

Legislation/Regulation/Agreement	Description	Year
<i>National Housing Act</i>	The Housing Corporation through the NHA and CMHA attempts to facilitate access to financing for	1944

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	housing for persons with low incomes to make modifications to their homes to better accommodate a physical disability.	
Standards Council of Canada	CSA develops accessibility standards for people with disabilities, including requirements for barrier-free design, customer service, and accessible transit buses.	1970
<i>Canada Mortgage and Housing Corporation Act</i>	The Canada Mortgage and Housing Corporation through the <u>Residential Rehabilitation Assistance Program for Persons with Disabilities</u> (RRAP-D) provides funding for home owners and landlords to make dwellings more accessible	1978-79

### Education/Training/Skills

Legislation/Regulation/Agreement	Description	Year
<i>Indian Act</i>	<u>Special Education Programs</u> for Aboriginal Communities	1985
<i>Canada Student Loans Act</i> ; Canada Student Loans Regulations → Canada Access Grant for Persons with Disabilities	Provides students with permanent disabilities up to \$8,000 per school year for exceptional study costs related to their disability such as, attendant care or specialized transport.	1985
<i>Canada Student Financial Assistance Act</i> ; Canada Student Financial Assistance Regulations → Canada Study Grant for Accommodation of Students with Permanent Disabilities	Provides students with permanent disabilities up to \$8,000 per school year for exceptional study costs related to their disability such as, attendant care or specialized transport.	1994

### Employment

Legislation/Regulation/Agreement	Description	Year
Accessible Design for the Built Environment Standard	Assistive/accessible technologies to adapt the workplace for persons with disabilities and to comply with barrier free standards Originally called Barrier Free Design	1990
<i>Employment Equity Act</i>	Applies to Applies to all federally regulated industries and corporations. Ensures that there are no discriminatory practices on the basis of disability.	1995
<i>Department of Human Resources Development Act</i>	The <u>Social Development Partnership Program, Disability Component</u> provides funding for non-profit organizations assisting persons with disabilities to enter the labour market.	1996
<u>Opportunities Fund</u>	Three year initiative that encourages employers to hire persons with disabilities by increasing their job skills and encourages individuals to start their own businesses	1998

<u>Social Development Partnerships Program</u>	The Council through its <u>Job Accommodation Service</u> (JAS) develops individualized accommodation strategies for employees and provides job seekers with the resources to attain and retain employment through the <u>Workplace Inclusion Program</u>	1998
<u>Employability of Persons with Disabilities</u>	Federal government and provinces established bilateral, cost-shared Labour Market Agreements for Persons with Disabilities in order to provide provinces with funding for programs and services that improve the employment situation for Canadians with disabilities	1998
Multilateral Framework for Labour Market Agreements for Persons with Disabilities (Joint Fed/Prov; 50/50)	Goals are to enhance the employability of persons with disabilities, increase the employment opportunities available for persons with disabilities and build on existing skills	2003
Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service; <i>Public Service Employment Act</i> (part of the <i>Public Service Modernization Act</i> )	Goal of the policy is to ensure the full participation of persons with disabilities as employees or prospective employees in the public service sector.	2002, 2003
<u>Entrepreneurs with Disabilities Program</u>	Provides services for persons with disabilities in rural and urban Western Canada who wish to start their own business.	Can't find a contact for Western Economic Diversification
<i>The Canadian Forces Members &amp; Veterans Re-establishment and Compensation Act</i>	<u>Veterans Charter Rehabilitation Job Placement Program</u> assists veterans in re-entering the labour market.	2005

## Income Assistance

Legislation/Regulation/Agreement	Description	Year
<u>The Adjudication Framework for Canada Pension Plan disability benefits</u> ; <i>Pension Act</i> → Disability Benefit	Disability Benefit available to persons that have a severe and prolonged disability who are also eligible for CPP	1970
<i>Veterans Review and Appeal Board Act</i> ; Veteran Review and Appeal Board Regulations	Veteran Review and Appeal board Canada is the body that veterans appeal to when there is an issue with disability benefits	1995
<u>Income Assistance Program</u> ( <i>First Nations</i> ); (in compliance with <i>Social Assistance Acts</i> of the provinces)	<u>First Nations Income Assistance Program</u> provides funding to meet the basic and special needs of persons with disabilities	2003
<u>The Adjudication Framework for Canada Pension Plan disability benefits</u> ; <i>Pension Act</i> → Child Disability Benefit	Tax-free benefit for families who care for a child under age 18 with a severe and prolonged impairment in mental or physical functions. (Only allowed retroactive payments from July 2003 onward)	2004

<i>The Canadian Forces Members and Veterans Re-establishment and Compensation Act</i> (The New Veterans Charter)	Veterans Disability Pension and the Veterans Disability Award Program provide pensions to veterans to defray costs associated with the disability and daily living.	2005
<i>Canada Disability Savings Act</i> ; Canada Disability Savings Regulations	Encourage long term savings through registered disability savings plans to provide for the financial security of disabled persons	2007, 2008

### Recreation and Culture

Legislation/Regulation/Agreement	Description	Year
<i>Charter of Rights and Freedoms</i> → Equity Division of Canadian Council for the Arts	Supports artists and organizations of visible minorities - disabled persons are not listed as a "visible minority" but there is an argument for inclusion.	1982 1957, 1990
<i>Broadcasting Act</i> and <i>Telecommunications Act</i> → Canadian Association of Broadcasters' action plan dealing with television portrayals of PWDs	<u>Canadian Association of Broadcasters Report</u> on presence, portrayal and participation of persons with disabilities in television programming	1991, 1993 2004
<i>National Parks Act</i> ; Parks Canada Agency → wheelchair accessible sites	National Parks and National historic sites - many are wheelchair accessible	2000
The Canadian Sports Policy	Seeks to improve the sport experience of all Canadians by helping to ensure the harmonious and effective functioning, and transparency of their sport system	2002
<i>Physical Activity and Sport Act</i>	Objectives of promoting physical activity, encouraging Canadians to use sport to improve their health and removing barriers faced by all Canadians that prevent them from being active	2003
<u>Policy on Sport for Persons with Disabilities</u>	Intended to facilitate the access and inclusion of persons with disability into sport and physical activity and builds on the goals of the CSP and PASA.	2006

### Participation

Legislation/Regulation/Agreement	Description	Year
<i>Canada Elections Act</i>	Offers information, education and accessibility services to persons with disabilities (i.e. mobile polling stations and accessibility indicators on voter information cards;	2000
<i>Library and Archives of Canada Act</i> ; Collections Canada	Collections Canada is fully accessible to ensure that knowledge is available to all.	2004
<u>Enabling Accessibility Fund</u>	Supports community-based projects across Canada that improve accessibility, remove	2007

	barriers, and enable Canadians with disabilities to participate in and contribute to their communities	
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## Health (First Nations, Veterans and RCMP)

Legislation/Regulation/Agreement		Year
<i>Canada Health Act</i> → First Nations Assisted Living Program	Provides funding for in-home care or institutional care. Originated as Adult Care Program but changed name post-1998	1981
<i>Canada Health Act</i> → insured and extended hospital and health services	Insured hospital services that are medically necessary for the purpose of maintaining health, preventing disease or diagnosing or treating an injury, illness or disability includes physiotherapy services. Extended health services include: nursing home intermediate care, adult residential care, home care and ambulatory services.	1985
Veterans Health Care Regulations (enabled by <i>Department of Veteran Affairs Act</i> )	<u>Veterans Independence Program</u> provides needed personal health services for those who qualify; this program is attached to the <u>Health Care Program</u> administered by VAC which includes treatment benefits and residential care.	1990
First Nations Home and Community Care Program	Provide basic home care and community care services that are comprehensive, culturally sensitive, accessible, effective, equitable to that of other Canadians and responsive to the unique health and social needs of First Nations and Inuit	1999
Health Canada → First Nations and Inuit Health Branch	Needs based funding for non-insured health benefits for First Nations and Inuit, which would include non-insured health costs associated with a disability.	2001

## Tax

Legislation/Regulation/Agreement	Description	Year
<u>Community Volunteer Income Tax Program</u>	The CRA offers assistance for those unable to complete their income tax forms.	1971
<i>Canada Pension Plan Act</i>	The <u>Disability Amount</u> is a non-refundable tax credit that persons with a qualifying disability can claim to reduce the amount of income tax payable for that year.	1985

<i>Income Tax Act</i>	Persons with a qualifying disability do not have to pay the GST/HST on goods/services such as: health care services, personal care/supervision programs, meals on wheels, recreational programs, medical devices and specially equipped motor vehicles.	1985
<u>Refundable Medical Expenses Supplement (Income Tax Act)</u>	Available to low income individuals who have paid medical expenses or disability supports expenses	1985
<u>Disability Supports Deduction (Income Tax Act)</u>	Entitles persons with disabilities to deduct expense incurred in order to go to work or school	1985

After examining this tapestry of policy instruments, it becomes apparent that a few key pieces of legislation must be discussed further before we can appreciate the potential relevance of a Canadians with Disabilities Act. The four landmark pieces of legislation for disability rights are the Pension Act (1965), the Human Rights Act (1979), the Employment Equity Act (1986), and Charter of Rights and Freedoms (1982). The following section discusses these key pieces of legislation in more detail.

### The Pension Act (1965)

Although the **Pension Act** was introduced in 1965 for non-disabled workers, disability benefits were not introduced until 1970. As such, this was one of the earliest federal instruments designed to meet the needs of people with disabilities in Canada. The **Canada Pension Plan - Disability** is intended to provide financial assistance to contributors who paid into the CPP for four out of the last six years they worked, or alternatively for those who paid into the CPP for at least 25 years and made valid contributions in three of the last six years, but who are unable to work because of a severe and prolonged disability (Officer of the Commissioner of Review Tribunals [OCRT], 2007).

In order to qualify for benefits, the plan stipulates that the disability *must* be long-lasting or likely to result in death. CPP-D benefits are “all or nothing” monthly sums (no partial benefits paid) that are taxable, based on contribution, unrelated to financial need and are not intended for cases of short term disability (HRSDC, 2007). The CPP is a labour-based program. Evaluation is done not on the basis of the disability or disease one has, but on how a condition impacts one’s ability to work at any job on a regular basis. The benefit will stop if: one’s condition improves to the point where he or she is able to work consistently, he or she turns 65, or dies (Arthritis Society, 2007). At 65, the retirement pension amounts to less than the disability benefit, though individuals are also eligible for the Old Age Security and potentially the Guaranteed Income



Supplement (Arthritis Society, 2007). Benefits are also available for the survivors of contributors who have died or for the children of disabled beneficiaries.

Much discussion has arisen over the years about the adequacy of the CPP-D program and about unhelpful interactions with provincial disability support plans (OECD, 2010). Some policy analysts suggest that disabled citizens would be better served by a harmonized disability benefit system that transcends current federal-provincial-territorial barriers.

### The Canadian Human Rights Act (1985)

Though it did not come into effect until 1985, the **Canadian Human Rights Act** was passed by Trudeau's parliament in 1977. The Act is intended to protect citizens against discrimination by the following organizations or institutions: federal departments, agencies and Crown corporations, chartered banks, airlines, television and radio stations, interprovincial communications and telephone companies, interprovincial buses and railways, First Nations organizations and other federally regulated industries, such as certain mining operations (Canadian Human Rights Commission [CHRC], 2009). It does not apply to hospitals, schools, hospitality businesses or similar non-federally regulated organizations – each province and territory has comparable anti-discrimination legislation that governs these institutions (HRSDC, 2008).

The CHRA outlined the creation of the **Canadian Human Rights Commission**, which investigates submitted claims of discrimination, and a **Canadian Human Rights Tribunal**, to pronounce judgment on any subsequent cases (Canadian Human Rights Tribunal, 2007). Under the Act, disability can be defined as physical or mental, permanent or temporary, previous or existing and inclusive of alcohol or drug dependency (CHRC, 2007). It must be noted that the Act recognizes that mere rights protection is a necessary but not sufficient condition for full societal inclusion. Its 1998 amendments require employers and service providers to accommodate special needs short of undue hardship, including those of people with disabilities (CHRC, 2007).

### The Employment Equity Act (1986)

The **Employment Equity Act** came into law in 1986, and was amended in 1995. The EEA grew out of a report authored by Judge Rosalie Abella who created the term “employment equity” as the Canadian correlate to American **affirmative action** (Abella, 1984). The stated purpose of the Act was the achievement of equality in the workplace, envisioning a society where no person would be denied employment opportunities or benefits for reasons unrelated to qualifications (Department of Justice Canada [DOJC], 1995). Four groups were designated for protection under employment equity: women, visible minorities, Aboriginal people and people with disabilities (DOJC, 1995). However, the Act was limited in its jurisdiction to industries that were federally

regulated under the Canadian constitution (ex: railroads, airlines, banks) (HRSDC, 2008). Thus, most employers, including nearly all retailers, manufacturers and hospitality service providers are exempt, as no province has an analogous law (HRSDC, 2008). Despite this oversight, the EEA remains an invaluable symbolic and practical tool. While legislation like the Charter of Rights and Freedoms or the CHRA merely prohibit discrimination, the EEA requires employers to engage in proactive measures to improve the employment opportunities of the four protected groups. The Canadian Human Rights Commission is the designated enforcement agency for this legislation.

### The Charter of Rights and Freedoms (1982)

The **Canadian Charter of Rights and Freedoms** forms the first part of the Constitution Act of 1982, though the main provisions concerning equality rights did not come into effect until 1985. Following the framework established by the American Bill of Rights and the United Nations Universal Declaration of Human Rights, the Charter guarantees political, legal, mobility, equality, language and religious rights to Canadian citizens and civil rights to all physically present in Canada (Canada, 1982). Most significantly for persons with disabilities, section 15 ensures “equal protection and equal benefit of the law” without discrimination for women, visible minorities, persons with disabilities and gay/lesbian and transgendered groups (Canada, 1985). As a part of the Canadian constitution, the Charter extends to all levels of government, obliging officials to refrain from acting illegally (by contravening the Charter). In recent years, the task of interpreting and enforcing the Charter has often fallen to the courts and while governments can and have brought cases before the judiciary for declarations of constitutionality, responsibility has often fallen upon individuals to draw attention to discriminatory practices or policies.



## PART II

### THE HISTORY OF FEDERAL DISABILITY POLICY IN CANADA

#### **How did we get here?**

Since the Americans with Disabilities Act was passed in 1990, the question of whether a similar Act should be passed in Canada has been a recurring theme. The purpose of such an act would be eradicating the “persistent barriers, exclusion, poverty, and stigma” people with disabilities have historically faced in our nation (Prince, 2007).

As early as the mid-nineties a number of Parliamentary Committees and investigative groups including the Scott Task Force (1996) and the Canadian Human Rights Commission (1998) recommended that a Canadians with Disabilities Act should be implemented. Prime Minister Harper’s 2005 statement that he intended to pass such an Act attests to the fact that over twenty years later this policy option has continued to elicit serious discussion from elected officials.

Part II of this report contains two sections:

- A narrative that details the key moments in disability policy at the federal level, and situates these events in the national and international context.
- An overview of federal disability reports, past and present, shows the development of ideology about disability over time, and some of the origins of the government’s current position;

#### Timeline of federal disability policy (1968 – 2010)

This section offers a review of key events in federal disability policy in Canada from 1968-2011. This chronology illustrates the sustained attention that disability policy has received at the federal level in Canada; however, it also shows the variable progress in this policy area over the past thirty five years. The timeline is a visual portrayal of change and stagnation, intended to assist those wishing to track governmental promises and initiatives. It focuses on the initiatives of the federal government, and does not document in detail the efforts advocacy efforts of disability organizations as these are well documented elsewhere (Boyce et al., 2001; Driedger, 2006; McColl & Jongbloed, 2007). For more details an interactive Timeline of Canadian Disability Policy Events, including links to the documents, reports and transcripts, is available at: <http://www.disabilitypolicyalliance.ca>

The time line of Canadian federal disability policy demonstrates three broad periods in Canada's history. These three periods can be categorized according to where the impetus for policy development came from: International Pull (1980-95), Provincial Push (1996-2005), and Federal Monitoring (2006-present).

### International Pull (1980-1995)

Canada's impetus for developing disability policy came largely from an international consensus that the needs of people with disabilities required more attention. This began with the UN's declaration of the *International Year of Disabled Persons* in 1981 and continued with the *Decade of Disabled Persons* from 1983-1992. Canada's initial response to these initiatives was the production of the *Obstacles Report*, which set the agenda for policy development in this area for approximately 15 years. The international "pull" was sufficiently strong to preserve many of the initiatives begun under the Trudeau Liberals when the Government changed in 1984 under Brian Mulroney (PC). Reports begun by committees under the Liberals were given due consideration and acted upon in the Mulroney years, and culminated in the five-year *National Strategy for the Integration of Persons with Disabilities (1991-96)*.

This time period was characterized by intense consideration of rights in many areas of society, at home and internationally. Disability was one of a number of areas needing attention, and was explicitly included in rights-based legislation such as the *Canadian Human Rights Act* (1977), the *Charter of Rights and Freedoms* (1982), and the *Employment Equity Act* (1986). Rights-based omnibus federal disability legislation was also developed during this time period in the US, the UK and Australia: the American's with Disabilities Act in 1990, the Australian Disability Discrimination Act in 1992, and the UK's Disability Discrimination Act in 1995.

This period in disability policy comes at the end of what social policy analysts refer to as the expansion of the welfare state that occurred between the end of the Second World War and the mid-1990s in western liberal democracies. In Canada during this time, both Liberal and Conservative governments were more inclined to expand federal programs, with less concern about adding to the national debt than in recent years. During this time of generous social spending, it was natural that Canada would be drawn into the international movement toward a more robust disability policy framework. This was the period where disability issues became a policy area in its own right in Canada, although this was just the beginning of a journey toward full inclusion that has yet to be realized.

### Provincial Push (1996 to 2005)

The second time period is characterized by growing provincial leadership in disability policy. The period began with the *Scott Report*, issued by the *National Strategy for the Integration of Persons with Disabilities*, in 1996. The *Scott Report* recommended a much larger role for disability policy at the federal level. In response to the international groundswell of attention to disability policy, it was no surprise when the *Scott Report* recommended a national disability act for Canada.

At the same time that the *Scott Report (1996)* was calling for less talk and more action on disability issues, provinces were facing significant fiscal challenges because of unprecedented cuts to federal transfers. The federal government had been forced to restructure in order to reduce the growing national debt, and program development was severely stalled, if not cut back, in most policy areas.

Beginning in 1996, provinces banded together under the *Federal / Provincial / Territorial (FPT) Council on Social Policy Renewal*, and advocated for renewal of the Social Union under terms that would not disadvantage the provinces if the federal government decided to downsize again. The emphasis of the FPT Council was on recovering millions of dollars of lost transfers for Health and Social Services, but disability issues took very high place among the priorities of the First Ministers within this agenda. The provinces picked up the main recommendations of the *Scott Report* and pushed to make disability issues a collective priority in the pursuit of social policy renewal in 1996 and again in 1997. The result was another “landmark report” called *In Unison* in 1998, which included many statistics that indicated the need for the type of disability policy renewal the Premiers were asking for (OECD, 2010, p. 11). The federal government produced a follow up report called *Future Directions* in 1999 which outlined the federal government’s goals for the policy area on a go forward basis.

A number of lasting responses of the federal government to this initiative were implemented. The government created the *Opportunities Fund* and the *Social Development Partnerships Program*, both of which remain funded today. It augmented funding for the small hub of people within HRSDC that coordinated disability related issues, creating the Office of Disability issues in 2001, and made commitments to report annually on the progress of disability issues in the *Federal Disability Reports* (2002-present). The federal government also implemented the *Multilateral Framework for Labour Market Agreements for Persons with Disabilities* and a series of related bilateral agreements with Provinces in 2003, which were directly related to the main goals of the *In Unison* report.

While many of the initiatives launched during this period of provincial leadership have failed to produce all of the results that were intended, this time period saw important

building blocks put in place. The last real challenge from the provinces on disability was issued in December 2004, when they continued to apply pressure by releasing their report entitled, *Supports and Services for Adults and Children with Disabilities*.

### Federal Monitoring (2006-present)

After the implementation of the Labor Market agreements for people with disabilities there was a relatively quiet period in disability policy. During this time, the Office of Disability Issues continued to monitor the status quo and produce annual disability reports, but no significant new policies were created. The most recent period in disability policy began with an election promise made by Prime Minister Stephen Harper in late 2005 that his government would develop a Canadians with Disabilities Act. This promise was reiterated by his officials until 2008. We call this period “Federal Monitoring” because apart from a few changes to tax based instruments that benefit a relatively small percentage of the population, this work of “monitoring” disability concerns as opposed to acting decisively has characterized the general stance of the present government to disability issues.

During this phase, the federal government contributed to the final stages of development of the *UN Convention of the Rights of Persons with Disabilities* between 2006 and 2009, and ensured its signing and ratification in Canada (CCD, 2010; UN, 2010). However, as interest in the convention has grown, interest in developing a Canadians with Disabilities Act has dropped off of the legislative and bureaucratic agenda. With the ratification of the Convention and the subsequent development of monitoring instruments, the Government seems to have adopted a “wait and see” policy on any legislative agenda at this time.

Understandably, much of the government's recent attention has been focused on navigating the recession and managing the economic stimulus program. Disability has been included in Government initiatives along with other priority populations, but has not been the focus of much sustained policy attention. New instruments have included the tax free Disability Savings Account, and other adjustments to the income tax regime. Current initiatives include expanding tax breaks for caregivers of infirm dependents, and eliminating caps on the amount of medical expenses caregivers can claim.

Only time will tell whether this government's efforts to reconcile existing policy with the convention will result in real improvements to equity, access, and participation for disabled citizens. In the meantime the federal government continues to monitor developments in other jurisdictions, international and domestic, rather than implementing large scale change in disability policy. Will this period be remembered as a time of federal leadership in disability policy or another period where Canada is more

or less responding to international initiatives? Is another intergovernmental initiative like In Unison required in order to make progress in this policy area? According to the authors of a recent OECD publication on disability policy, the time for the “next iteration” of national agreement on disability policy “is now well overdue” (OECD 2010, p.11).

## Canadian Disability Reports (1981 – 2011)

We have seen from this chronology that concerted efforts toward disability policy at the federal level began as a response to the United Nations declaration of 1981 as the International Year of Disabled Persons. The late 1970’s-early 1980’s was a period of significant ideological change in the disability movement. Disabled people and disability advocates, particularly in the USA, were moving away from the rehabilitation model, where they were considered “patients”, and beginning to see themselves as “consumers”, with economic, social and political power. About the same time, the World Health Organization published the *International Classification of Impairments, Disabilities and Handicaps* (ICIDH) (1981), with significant participation from Canadian delegates. This document captured current sentiments that disability was not simply a product of biology, but a reflection of the social and political environment in which individuals operated.

Fuelled by these offshore developments, all of which placed unprecedented emphasis on the environment as a key factor in functioning and disability, the Government of Canada struck a Parliamentary committee which published the *Obstacles* Report. *Obstacles* was a landmark document that recommended that disabled persons be protected by rights-based omnibus legislation, as well as a full array of enhancements to government programs and services. This was the first official mention of the idea of a national disability act. The overarching goal was to ensure that people with disabilities were treated as full citizens, rather than passive recipients of government services.

Over the next 35 years, 29 reports have been published by federal working groups or committees. Some of these have been very influential in the history of disability policy in Canada, while others have played a lesser role, but have kept the disability agenda before the attention of federal policy makers. Table \_ documents this unfolding series of reports and the major themes that are addressed in each.

Three reports were produced in the 1980’s, 14 in the 1990’s, and 12 so far in the 2000’s. Looking at the historical periods outlined in the last section, 11 were produced in the period of International Pull (1981-1995; 14 years), 14 in the period of Provincial Push (1996-2005; 10 years), and 4 in the current period of Federal oversight (2006-2010; 4

years). On average, reports on disability-related issues have appeared slightly less frequently than once a year. However, there are a couple of notable years where considerably greater activity appears to have taken place. In 1993, 5 reports were released – three dealing with economic issues, one focussing on Aboriginal disabled people, and one offering a strategic framework for the integration of people with disabilities. In 1996, there were 3 reports – one economic and three ideological – and in 2002, there were also 3 – two economic, and one evaluating the overall infrastructure.

The dominant theme in these reports is clearly economic issues – from pensions to taxation to employment equity. The second-most common type of report evaluates the federal infrastructure for disability issues. Most significant among these are the *Advancing Inclusion* reports, which have been released annually since 2002. Third-most frequently reported-upon are ideological issues – reports proposing models, frameworks, pathways, designs.

The clear emphasis on employment is interesting, since this is not always explicit in the titles or objectives of these reports. The theme of full citizenship or participation in Canadian society has often been the focus for disability reports, especially in the documents from the mid-1990's. But when asked to define what full citizenship means, it seems that inclusion in the labour market has often been seen as bell-weather for measures of inclusion in society as a whole. This is not surprising given that much of the early analysis pointed out significant disparities in income levels for people with disabilities, and consequent needs for adequate income support programs.

The high place that supports for activities of daily living have played in many of the early reports is often linked to a concern to equalize labour market outcomes and therefore increase overall inclusion in society. This is also true for the growing place that education and training have taken in later disability reports. Key points for monitoring the effectiveness of federal oversight in disability policy will therefore be evaluating potential successes and weaknesses of the labour market supports that have been funded under transfer payment agreements with the Provinces since 2005. Since these are Federal spending instruments implemented through a series of bilateral agreements, the Federal Government is ultimately responsible for ensuring that Provinces are achieving better labour market outcomes for people with disabilities. Disability organizations will want to make sure there is accountability in this key area of supports.

The second interesting point is apparent in how the concerns for accessibility and independent living in the early *Obstacles* begin to be nuanced in later reports. It seems that as the movement to independent living matured the principle of independence becomes more of an assumption in the background by which policy can be measured,



and attention turning to the evaluating degree of community integration made possible by various supports, services, and modifications.

While physical accessibility is writ large in *Obstacles*, in subsequent reports “access” is primarily a term used for the ability of people with disabilities to qualify for government programs and services. Physical accessibility of facilities where government programs may be included in this, but there is much more concern about whether federal programs benefit disabled persons to the same extent as their non-disabled contemporaries, and whether people in different jurisdictions can access equal disability supports. Later *Federal Disability Reports* focus on areas by which increased accessibility can be measured, like the degree of government supports made available for things like home modifications, accessible transportation, and aids to daily living.

The third interesting area to note is the focus rights discourse within this cross section of reports. While the issue of rights is prominent in *Obstacles* (1981) and the *Scott Report*, rights falls to the bottom of our list by the time of *In Unison* (1998), and is less evident in the two *Federal Disability Reports* (2002 – present). We have noted previously that the *Scott Report* was produced following a period that saw rights-based legislation passed in many jurisdictions – including the Charter of Rights and Freedoms in Canada and the three pieces of omnibus disability legislation in the US, UK, and Australia. As a creature of its time, it focused on the adequacy of the current legislative framework to preserving the rights of people with disabilities, and the need for a new piece of Canadian legislation to fill this gap.

Our analysis seems to suggest that the *Charter of Rights and Freedoms in Canada (1982)* came to be seen as a reasonably effective mechanism for addressing disability related complaints, so that the issue of rights was moved down the priority list of disability advocates. What seems clear is that in the post-Charter context, the focus on human rights was superseded by a focus on defining the rights inherent in citizenship, and whether Governments were living up to their responsibilities to their citizens with disabilities.

## PART III

### INTERNATIONAL COMPARISONS

#### **How do we compare with other Western democracies?**

The purpose of this section is to provide a summary of the history, objectives, accomplishments and deficits of five omnibus disability policies from Canada and from around the world. Three represent other comparable western democracies, and were all enacted within a five year period: the Americans with Disabilities Act (1990), the Disability Discrimination Act of Australia (1992), the Disability Discrimination Act of the UK (1995). One represents the only province in Canada with overarching disability legislation: the Accessibility for Ontarians with Disabilities Act (2005). The final comparator is the UN Convention on the Rights of Persons with Disabilities (2008), representing an international consensus on disability law. Each piece of legislation is analyzed in accordance with five questions identified by McColl and Jongbloed (2006):

1. What is the **objective** of each piece of disability policy? Is it aimed at promoting equity, access, or support?
2. What is the **history** of the policy? At whose initiative was the issue brought to public attention? Who were the proponents and detractors of the policy?
3. Does the policy aim to correct an injustice perpetrated on an individual, or does it seek to make Canadian society collectively a more supportive place for people with disabilities? Does it seek to enforce **individual rights** or to outline **collective responsibilities**?
4. What is the definition of disability employed? Who is **included**, and who is **excluded** from consideration? What are the implications of the definition of disability?
5. Does the policy refer to disability as a **minority** group issue or as a mainstream, **universal** issue? Does it propose to provide specialized services to people with disabilities, or does it apply generally to the public or to society as a whole?

#### The Americans with Disabilities Act (USA; 1990)

First enacted in 1990, the Americans with Disabilities Act is a wide-ranging piece of civil rights legislation that represents the culmination of the efforts of the disability rights



movement, which grew out of the independent living and civil rights movements of the 1960s. Thus, it affords similar protections for disabled Americans as the Civil Rights Act of 1964, which illegalized civic or corporate discrimination on the basis of gender, race or religion. The act is comprised of five “titles”, which cover employment, public services, public accommodations, telecommunications and miscellaneous items. The ADA Amendments Act was signed into law in 2008 with the intention of giving broader protections to disabled workers and of “turning back the clock” on court rulings Congress had deemed too restrictive. As the first national disability law, the ADA was highly influential; its language of human rights and characterization of disabled persons as a discrete oppressed minority group has been imitated by other Western countries seeking to afford persons with disabilities similar protection under federal law.

### The Disability Discrimination Act (Australia; 1992)

Enacted in 1992 and with a legislative and ideological history nearly identical to the United States, the Australian Disability Discrimination Act has three central purposes: the elimination of disability discrimination, the promotion of equality before the law, and the education of the public as to the value of and equity owed to persons with disabilities. Discrimination is prohibited in the specific sectors of employment, education, public access, provision of goods and services, land purchase, clubs and athletic organizations, and federal programs. Though the language of the DDA is, according to Prince, traditional and somewhat obsolete, its definition of disability is as broad as that of the original ADA. Australia’s current biggest obstacles to full inclusion are the development of disability standards that promote universal access (a goal whose progression has been sluggish at best) and equal recognition and support of persons with sensory, psychiatric, intellectual and other non-visible and non-physical disabilities (a problem also faced by their Ontarian counterparts).

### The Disability Discrimination Act (UK; 1995)

The Disability Discrimination Act was enacted by the British Parliament in 1995 and, as a civil rights law, borrows extensively from the American model. The Act’s intention is the prohibition of discrimination against persons with disabilities in the sectors of employment, provision of goods and services, education, and transport. While older British civil rights legislation focuses on the concepts of direct and indirect discrimination, the DDA emphasizes unfavourable treatment for a reason related to a person’s disability (positive discrimination) or a failure to make a “reasonable adjustment” (negative discrimination). The Act was extended in 2005 to cover public transport, and charge public authorities to promote equality for the disabled. The UK’s most recent strides have been in the increased protection of those with mental health

problems, particularly those facing the loss of their homes, though the majority of these steps have come from judicial, rather than legislative, authorities.

### The Accessibility for Ontarians with Disabilities Act (Ontario; 2005)

The Ontario government introduced the AODA into provincial law in June 2005, to replace its weaker precursor, the Ontarians with Disabilities Act (2002), which relied on voluntary initiatives without enforcement, penalties or deadlines. The AODA tasks the Ontario government with developing mandatory accessibility standards to remove and prevent barriers for people with disabilities in targeted areas of daily living. These standards will apply to private and public sector organizations across the province, with the stated goal of universal accessibility by 2025. The Ontario government and broader public sector is also called upon to develop annual accessibility plans. The province has stated that accessibility is the key to tapping the employment potential and spending power represented by the disabled population. They have also emphasized a commitment to non-visible and non-physical disabilities, though the majority of mandated standards apply most directly to physical disabilities.

### The Convention on the Rights of Persons with Disabilities (UN; 2006)

The Convention on the Rights of Persons with Disabilities was adopted by the UN General Assembly in December 2006 and came into force in May 2008. Its goal of is to promote, protect and ensure equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity. As of September 2010, the document has 147 signatories and 94 parties, including Canada. The convention adopted a social model of disability, and outlines a number of rights, including rights to accessibility (including information technology), independent living and community inclusion, rehabilitation, personal mobility, political and social participation, personal mobility, and culture, recreation and sport. The implications for Canada's federal government to honour the protocols outlined in the Convention has become a major focus of federal disability officials, leading up to the publication of the first annual, summative report of the Committee on the Rights of Persons with Disabilities.

A brief policy analysis of these five statutes, guided by the framework recommended by McColl & Jongbloed (2006), shows that the objective of the three federal statutes from the US, UK and Australia is explicitly anti-discrimination. The Australian Act includes an element of public education in addition to processes and procedures to redress episodes of discrimination. The UN Convention also focuses explicitly on rights protections, but looks at them more structurally rather than functionally – that is, it attempts to ensure

that the structures are in place to prevent discrimination, rather than redressing actual incidents of alleged discrimination. The Ontario AODA is the only one that does not have equity as its goal, but rather access. Its objective is to promote civic inclusion and economic participation through improved access.

With regard to history, the American, British and Ontario laws underwent a period of unsuccessful attempts and revisions to arrive at the current status. The Australian Act represents the harmonization of three existing laws after 25 years in effect. The UN Convention too was built on existing rules and programs, but took some considerable effort to achieve a working format.

The philosophy of all five of the comparators is an individualist human rights approach. In each case, the law outlines expectations on governments, public and private sector enterprises, but enforcement is exercised at the individual level, using a complaints-based approach.

Eligibility for consideration as “disabled” becomes increasingly de-medicalized and more inclusive over the 15 years covered by these five statutes, to the point where the UN Convention elects not to explicitly define disability, but rather to ...

The view of disability espoused in these five comparable international pieces of policy changes between 1995 and 2005. The three national laws, proclaimed before 1995, frame the disabled population as an identifiable minority whose needs must be met and whose rights must be protected. The latter two examples (2005 and 2006) appear to be influenced by the World Health Organization's publication of the International Classification of Functioning Disability and Health (2001), in which disability is framed as a universal issue, experienced by all in the population to a greater or lesser degree.

Until recently, the majority of legislation put forward by federal lawmakers dealt exclusively or principally with the question of civil rights for the disabled, adopting a minoritarian, individualist approach to disability policy.

### DISCUSSION

This report has assembled four sources of data on the question of whether or not Canada should pursue a national disability Act:

- We looked at the current legislation at the federal level in Canada to see what provisions are currently in place;
- We explored a chronology of historical development from 1981 to the current date, to search for a trajectory in the flow of events over time;
- We analysed the content of reports and position papers produced by the federal government on disability issues, for a sense of the ideological development and inclination toward federal legislation as a solution;
- We compared five other jurisdictions with over-arching disability legislation, to learn from the experiences of three other developed democracies (US, UK, Australia), one Canadian province (Ontario) and the United Nations.

We have found that:

1. The current federal legislative framework in Canada is made up of 27 statutes and numerous committees and programs, scattered across nine of the policy areas.
2. The suite of federal disability legislation is dominated by four statutes: the Canadian Human Rights Act, the Charter of Rights and Freedoms, the Canada Pension Act and the Employment Equity Act. Two of these focus on rights explicitly, and two focus on economic issues – employment and income support. Three take an equity perspective and one (CPP) takes a disability support approach.
3. The timeline of events relating to federal disability policy demonstrates considerable ambivalence toward the idea of over-arching disability policy, such as a Canadians with Disabilities Act. There has been no solid groundswell of political pressure as there was in the USA, and no clear ideological trajectory toward such a measure.
4. Federal reports of disability issues are inconsistent in their recommendations for a harmonized disability policy in Canada. Although most reports are framed in ideological terms, focussing on inclusion and integration, the key issue consistently at the forefront of concern over the 25 years examined, is employment.
5. Concerns about access have transformed over the years from the obvious need for physical accessibility to a more ideological definition of access at participation, citizenship, inclusion.

In summary, there is no clear indication from the data that we have assembled of a widely-held need or desire for omnibus federal disability legislation. In particular, the human rights, anti-discrimination agenda seems to be well served by the current suite of federal and provincial statutes. Rather, it appears that what may be required is a harmonized approach to economic considerations for Canadians with disabilities, including training, employment, income replacement and taxation.

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