



Women with Disabilities in Canada

Report to the Committee on the Rights of Persons with Disabilities
on the Occasion of the Committee's Initial Review of Canada

Canadian Feminist Alliance for International Action (FAFIA) and
DisAbled Women's Action Network - Réseau D'Action des Femmes Handicapées du
Canada (DAWN Canada)
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Introduction

The Canadian Feminist Alliance for International Action (FAFIA) and the DisAbled Women's Network Canada (DAWN Canada) are pleased to submit this report to the Committee on the Rights of Persons with Disabilities on the occasion of Canada's first report on its compliance with the *Convention on the Rights of Persons with Disabilities*.

FAFIA is a coalition of over sixty women's organizations in Canada and Québec. The alliance was founded after the 4th World Conference on Women in Beijing in 1995. It is led by a Steering Committee of Canadian professional, academic, and activist women.

FAFIA's mandate is to monitor and report on the status of Canada's compliance with its international obligations regarding women's human rights. The two central goals of FAFIA are to ensure that (1) Canadian governments respect, protect and fulfill the commitments to women that they have made under international human rights treaties and agreements; and that (2) women in Canada understand the rights guaranteed to them in international human rights treaties and how to use treaty law effectively to advance their equality. FAFIA is the sole Canadian women's organization that focuses specifically on the domestic implementation of Canada's international human rights commitments; reports on treaty compliance; and provides a feminist analysis of the status of rights compliance for diverse groups of women, including Indigenous women, women with disabilities, women living in poverty, elderly women, and rural and northern women.

DAWN Canada is a national, feminist, cross-disability organization, established in 1985, to provide opportunities for self-determination and leadership development for women with disabilities. DAWN's mission is to end the poverty, isolation, discrimination and violence experienced by Canadian women with disabilities and Deaf women.

DAWN Canada works towards the advancement and inclusion of women and girls with disabilities and Deaf women by creating change at a systemic level. This includes building strategic partnerships, developing curriculum and educational tools, and addressing policy change. Staying true to our grassroots, DAWN keeps women with disabilities at the centre of our work. We amplify their voice by ensuring that they are represented at decision-making tables.

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Domestic Implementation of the Rights of Women with Disabilities

Introduction

Women with disabilities in Canada are a severely disadvantaged group that faces intersecting and compounding obstacles to the enjoyment of their rights. In this first review of Canada under the *Convention on the Rights of Persons with Disabilities*,¹ FAFIA urges the Committee on the Rights of Persons with Disabilities to take particular note of the conditions and needs of women with disabilities. Women with disabilities may be affected by the same barriers as men with disabilities. But they may be affected differently and disproportionately in light of the barriers they also encounter because of their gender. Their lives are constrained by gender discrimination and by the intersection of gender and disability. That intersecting discrimination can be further complicated by race, age, and other forms of discrimination.

As a result, women with disabilities in Canada experience disproportionate rates of poverty, violence, incarceration, and discrimination. They are poorer than men with disabilities, more likely to be victims of violence, less likely to be employed, and they earn less. They are also poorer, have lower incomes and are at a higher risk of violence than women and men without disabilities. Because women with disabilities are differently situated from men with disabilities - in family life, public life, and work - effective implementation of the *Convention on the Rights of Persons with Disabilities* requires taking the realities of the lives of women with disabilities into account.

Implementation Mechanism (Article 33(2))

Canada has no independent domestic mechanism to monitor and oversee the implementation by federal, provincial, and territorial governments of Canada's international human rights obligations, or the implementation of recommendations which are issued by treaty bodies after reviews of Canada. Although Article 33 of the CRPD urges State parties to establish focal points and domestic co-ordination mechanisms, governments in Canada appear to have done no more than assign responsibility for the CRPD to existing units in government that already have some responsibility for people with disabilities. This does not, FAFIA submits, achieve the co-ordinated, independent oversight of implementation of the *Convention* that Article 33(2) mandates.

An independent oversight mechanism for treaty implementation in Canada has been called for repeatedly by treaty bodies² and by Canadian NGOs for many years. In a 2013 joint submission to the United Nations Human Rights Council, at the time of Canada's Universal Periodic Review, entitled "Empty Words and Double Standards: Canada's Failure to Respect and Uphold

¹ *Convention on the Rights of Persons with Disabilities*, 24 January 2007, A/RES/61/06 (Canada acceded to on 11 March 2010) [CRPD or "the Convention"].

² See e.g. Human Rights Committee, Concluding observations of the Human Rights Committee, Canada, 20 April 2006, UN Doc CCPR/C/CAN/CO/5 at para 6 [2006 Human Rights Committee Concluding Observations]; Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations on the sixth periodic report of Canada, 23 March 2016, UN Doc E/C.12/CAN/CO/6 at para 62 [2016 CESCR Concluding Observations].

International Human Rights”, over 50 civil society organizations called for the establishment of a monitoring and oversight mechanism and the end to the treaty implementation gap in Canada.³

In its Concluding Observations issued in November 2016 after its most recent review of Canada, the Committee on the Elimination of Discrimination against Women reiterated its 2008 and 2003 recommendation that Canada

establish an effective mechanism aimed at ensuring accountability and the transparent, coherent and consistent implementation of the Convention through its territory in which all levels of government can participate.⁴

In a January, 2017, letter addressed to federal ministers, over a hundred organizations and individuals called on Canada to implement without delay the 2016 Committee on the Elimination of Discrimination against Women’s Concluding Observations.⁵ The letter notes Canada’s serious treaty implementation gap and highlights the Committee’s 2016, 2008, and 2003 recommendation to Canada to establish a mechanism that will allow for the transparent, coherent, consistent, and accountable implementation of Canada’s international human rights commitments to women.

The need for independent oversight of the implementation of treaty rights and treaty body recommendations has been identified for many years by treaty bodies themselves and by civil society. FAFIA submits that this is an urgent issue for the Committee on the Rights of Disabled Persons to address, particularly in light of the special language of Article 33.

RECOMMENDATION

That the Committee urge Canada to establish immediately an independent mechanism to monitor and oversee implementation of the CRPD that will meet the requirements of Article 33(2) and take the conditions and rights of women with disabilities fully into account; and that this mechanism function in co-ordination with an overall mechanism for oversight of Canada’s implementation of its treaty obligations.

Federal Government Leadership and Use of Spending Power

In recent reviews by the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on the Elimination of Discrimination against Women (CEDAW), these treaty bodies urged the Government of Canada to play a leadership role and to ensure and co-ordinate consistent implementation of human rights treaties in Canada. The CESCR urged the Government of Canada to use funding and other agreements with the provinces and territories

³ Joint Submission to the United Nations Human Rights Council in relation to the May 2013 Universal Periodic Review of Canada, October 2012, online:

<<http://socialrightscura.ca/documents/international/UPR%202013%20NGO%20Coalition%20submission.pdf>>.

⁴ Committee on the Elimination of Discrimination against Women (CEDAW), Concluding observations of the combined eighth and ninth periodic reports of Canada, 18 November 2016, UN Doc CEDAW/C/CAN/CO/8-9 at para 11 [2016 CEDAW Concluding Observations] (see also CEDAW, Concluding Observations of the Committee on the Elimination of Discrimination against Women, Canada, 7 November 2008, UN Doc CEDAW/C/CAN/CO/7 at paras 11-12 [2008 CEDAW Concluding Observations]; CEDAW, Report of the Committee on the Elimination of Discrimination against Women, 2003, UN Doc A/58/38, 58th Sess, Supp No 38 [2003 CEDAW Concluding Observations]).

⁵ FAFIA, Letter to Federal Ministers (25 January 2017), online: <<http://fafia-afai.org/wp-content/uploads/2017/01/CEDAWletterENGFINAL.pdf>>.

to “establish responsibilities for the implementation of [treaty] rights at the different [government] levels”.⁶ The CEDAW called on Canada to consistently use

Conditional and targeted federal funding in order to make sure that transfer of payments to provinces and territories take into due account compliance with the provisions of the Convention.⁷

FAFIA requests the Committee to also urge the Government of Canada to play a leadership role in the implementation of the *Convention on the Rights of Persons with Disabilities* and to use its funding and other capacities to ensure that rights are implemented in all jurisdictions.

RECOMMENDATION

That the Committee urge Canada to use its funding power and other arrangements with the provinces and territories to set standards for social programs and services that will foster compliance with the provisions of the *Convention on the Rights of Persons with Disabilities*.

Optional Protocol

Canada has not ratified the Optional Protocol to the *Convention on the Rights of Persons with Disabilities*.⁸

Canada committed itself in December, 2016, to consulting on Canada’s accession to the Optional Protocol.⁹ This is a welcome announcement. Women with disabilities need the Optional Protocol’s individual complaint and inquiry mechanisms, which provide a necessary legal avenue for women with disabilities to assert their rights under the *Convention on the Rights of Disabled Persons* in the case of domestic inaction and rights implementation failures. Protocol complaint and inquiry mechanisms, as provided in the Optional Protocols to the *International Covenant on Civil and Political Rights* and CEDAW, have proven crucial for the realization of women’s rights in Canada, particularly Indigenous women’s rights, who alongside women with disabilities, are among the most marginalized women in Canada.¹⁰

RECOMMENDATION

That the Committee commend Canada for commencing the consultation process on accession to the Optional Protocol, but also urge Canada to accede to the Optional Protocol to the *Convention on the Rights of Disabled Persons* without delay.

⁶ 2016 CESCR Concluding Observations, supra note 2 at para 7.

⁷ 2016 CEDAW Concluding Observations supra note 4 at para 11.

⁸ *Optional Protocol to the Convention on the Rights of Persons with Disabilities*, UN Doc A/RES/61/106 (13 December 2006), Annex II.

⁹ Government of Canada, “Canada makes further commitment to support rights of persons with disabilities” (1 December 2016), online: <<http://news.gc.ca/web/article-en.do?nid=1163849>>.

¹⁰ *Mclvor v Canada*, Communication No. 2020/2010 (November 2010), online: <<http://povertyandhumanrights.org/2011/08/mcivor-v-canada/>>; *Lovelace v Canada*, Communication No. R.6/24, UN Doc. Supp. No. 40 (A/36/40) (1981); Committee on the Elimination of Discrimination against Women, Report of the inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the *Convention on the Elimination of All Forms of Discrimination against Women*, UN Doc CEDAW/C/OP.8/CAN/1 (6 March 2015), online: <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15656&LangID=E>>.

National Gender Equality Plan

In 2016, the Committee on the Elimination of Discrimination against Women recommended that Canada:

Develop a comprehensive national gender strategy, policy and action plan that addresses the structural factors causing persistent inequalities, including intersecting forms of discrimination, against women and girls, with a special focus on disadvantaged groups of women and girls, including First Nations, Inuit, Métis, Afro-Canadian, disabled, migrant, refugee, asylum-seeking, single parent, lesbian, bisexual, transsexual and intersex women and girls.¹¹

This is a key recommendation for women with disabilities that must be acted upon. It builds on a 2016 recommendation by CESCR¹² and recognizes that women in Canada need a national strategy to dismantle entrenched structural inequalities in a holistic way. Rather than dealing with the manifestations of deeply rooted systemic discrimination as disconnected factors that can be corrected in isolation from each other, CESCR and CEDAW recognize that poverty and income inequality, inadequate social programs (social assistance, housing, childcare, and legal aid), employment discrimination, male violence against women, failures to address women's health, and barriers to education interact with each other to create a structure of inequality for women that is embedded in society and the economy. Women with disabilities, Indigenous and racialized women, single mothers, and refugee and immigrant women experience the most harmful effects of this structural inequality.

To ensure the rights of women with disabilities under the Convention, Canada is obliged to take positive action; the Committee on the Rights of Disabled Persons considers the obligation “an ongoing and dynamic duty” that necessitates a “twin-track approach” by:

(a) systematically mainstreaming the interests and rights of women and girls with disabilities in all national action plans, strategies and policies concerning women, childhood and disability, as well as in sectoral plans concerning, for example, gender equality, health, violence, education, political participation, employment, access to justice and social protection; and (b) taking targeted and monitored action aimed specifically at women with disabilities.¹³

This “twin-track” approach should be integrated into a comprehensive National Gender Equality Plan so that it will be fully inclusive of and effective for women and girls with disabilities. Women and girls with disabilities must also be assigned a public participatory role in the development of the Plan pursuant to the Committee's guidance in its General comment No. 3 (2016).¹⁴

¹¹ 2016 CEDAW Concluding observations, supra note 4 at para 21(b).

¹² 2016 CESCR Concluding observations, supra note 2 at para 22.

¹³ Committee on the Rights of Persons with Disabilities, General comment No. 3 (2016) on women and girls with disabilities, 25 November 2016, UN Doc CRPD/C/GC/3 at para 27.

¹⁴ Ibid.

RECOMMENDATION

That the Committee urge Canada to develop a comprehensive national gender strategy, policy and action plan that addresses structural factors causing persistent inequalities, as recommended by the CEDAW Committee, and ensure that it takes the intersecting forms of discrimination experienced by women with disabilities fully into account, and permits women with disabilities to participate in the development and monitoring of the national gender equality plan.

Non-Discrimination and Equality (Articles 3, 5, 6, 12)

Introduction

In Canada in 2012, approximately 3.8 million people, or 13.7% of the population reported having a disability, with more women reporting a disability than men in every age group but one.¹⁵ Canada made an international commitment to recognize and protect the rights of persons with disabilities upon ratification of the Convention. The federal government pledged to lead an engagement process to develop a federal *Canadians with Disabilities Act* that will aim to provide clear, strong, and enforceable standards to address accessibility issues for persons with disabilities.¹⁶ The public consultation process concluded in February 2017.¹⁷ Today, only Ontario¹⁸ and Manitoba¹⁹ have disability-specific statutes that protect the rights of persons with disabilities to live free from barriers to equal participation. The *Canadians with Disabilities Act* is a needed federal statute that must address and protect persons with disabilities' rights to non-discrimination and equality by ensuring that women and men with disabilities enjoy equality of access to, *inter alia*, built environments, communications, technologies and transportation.

¹⁵ Employment and Social Development Canada, Disability in Canada Initial findings from the Canadian Survey on Disabilities (December 2013), online: <<http://www.statcan.gc.ca/pub/89-654-x/89-654-x2013002-eng.pdf>> (There is no universal definition of disability across studies; this particular study considers pain, flexibility, mobility, mental/psychological, dexterity, hearing, seeing, learning, memory, developmental and unknown; “persons with activity limitations” is also a Statistics Canada indicator that encompasses people with disabilities; see also Vecova, Violence Against Women with Disabilities – Violence Prevention Review, February 2011 at 4, online: <http://www.canadianwomen.org/sites/canadianwomen.org/files/PDF%20-%20VP%20Resources%20-%20Vecova_CWF_%20Women%20with%20Disabilities_%202011.pdf> [Vecova].

¹⁶ Office of the Prime Minister of Canada, “Minister of Sport and Persons with Disabilities, Mandate Letter” (November 2015), online: <<http://pm.gc.ca/eng/minister-sport-and-persons-disabilities-mandate-letter>>; see also Government of Canada, “Consulting with Canadians on accessibility legislation” (2016), online: <https://www.canada.ca/en/employment-social-development/programs/disability/consultations/accessibility-legislation.html?utm_campaign=shortform&utm_medium=vanity-url&utm_source=canada-ca_canada-accessible>; Canadian Disability Policy Alliance, A Canadians with Disabilities Act? (Kingston, ON: Queen’s University, Centre for Health Services & Policy Research, 2010) (loose-leaf 2010 supplement).

¹⁷ Government of Canada, “Backgrounder – Government of Canada wraps up consultations on how to make a more accessible Canada for people with disabilities” (15 February 2017), online: <https://www.canada.ca/en/employment-social-development/news/2017/02/backgrounder.html?utm_source=undefined&wbdisable=true>.

¹⁸ Ontarians with Disabilities Act, RSO 2001, c 32.

¹⁹ The Accessibility for Manitobans Act, CCSM, c A1.7.

RECOMMENDATION

That the Committee urge the Government of Canada to move forward on the *Canadians with Disabilities Act* immediately.

Women with Disabilities in the Workplace (Article 27)

People with disabilities aged 25 to 54 have a lower labour market participation rate (66%) than people without disabilities in the same age group (88.2%).²⁰

Women with disabilities are more likely to not be in the workforce, face unemployment, suffer chronic unemployment, want to work full-time, and have lower incomes than men with disabilities and than men and women without disabilities:

Unemployment and Underemployment

- Working age women with mild and moderate disabilities are more likely to be unemployed than working age men with the same level of disability,²¹ and to face higher levels of chronic unemployment when compared to men with disabilities and women and men without disabilities.²²
- Women with disabilities who work part time are more likely to want to work full time when compared to women and men without disabilities, as well as men with disabilities.²³

Gender and (Dis)ability Wage Gap

- In 2014, women with disabilities were more likely to be in the low salary range (\$50,000 and below)²⁴ while men with disabilities were more likely to be in a high salary range (\$60,000 or more a year).
- Women with disabilities earn less than men with disabilities and less than women and men without disabilities.²⁵ Working age adults with disabilities have an average income that is 73.4% of the average income for a working age adult without a disability in Canada.²⁶ Working age women with disabilities earn on average less than half the income of working age men with disabilities.²⁷
- Women with disabilities generally are less likely to be in traditionally male-dominated and higher paid sectors, such as utilities and construction; however, women with severe

²⁰ Human Resources and Skills Development Canada, "Disability in Canada: A 2006 Profile", ISSD-042-02-11 (Gatineau, QC: HRSDC, 2 November 2011) at 26, online: <<https://www.canada.ca/en/employment-social-development/programs/disability/arc.html>> [Disability in Canada].

²¹ Disability in Canada, supra note 20 at 28.

²² Canadian Human Rights Commission, *Report on Equality Rights of People with Disabilities*, Cat. No. HR4-20/2012E-PDF (Minister of Public Works and Government Services, 2012) at 48, online: <http://www.chrc-ccdp.ca/sites/default/files/rerpd_rdepad-eng.pdf> [CHRC, Report on Equality Rights].

²³ Ibid at 45-47.

²⁴ Employment Equity Act Annual Report 2015, supra note 21 (see also Disability in Canada, supra note 20 at 11).

²⁵ Statistics Canada, A Profile of persons with disabilities among Canadians aged 15 years or older, 2012, by Rubab Arim, Cat. No. 89-654-X (13 March 2015) at 21, online: <<http://www.statcan.gc.ca/pub/89-654-x/89-654-x2015001-eng.htm>> [2012 Profile of persons with disabilities].

²⁶ Human Resources and Skills Development Canada, Disability in Canada: A 2006 Profile, ISSD-042-02-11, 2011 at 26, online: <http://publications.gc.ca/collections/collection_2011/rhdcc-hrsc/HS64-11-2010-eng.pdf>.

²⁷ Ibid.

disabilities are concentrated in similar sectors to men with severe disabilities, including retail trade, accommodation and food services.²⁸

While there are more women with disabilities in the workforce today than previously, they continue to be underrepresented, underpaid, and in lower paying sectors when compared to men with disabilities and men and women without disabilities.

RECOMMENDATION

That the Committee urge Canada, as a part of the development of the National Gender Equality Plan, to co-ordinate with the provinces and territories to design specific measures that will proactively address the discrimination and inequality experienced by women with disabilities in the workforce, including inadequate access to employment, underemployment and unequal pay.

Poverty and Housing (Articles 19 and 28)

The Committee on Economic, Social and Cultural Rights in its 2006 and 2016 Concluding Observations to Canada noted with concern the high poverty rates of people with disabilities.²⁹ The Committee recommended to Canada that it address poverty and homelessness and inadequate housing in Canada by implementing a human rights-based national anti-poverty strategy and a human rights-based national housing strategy.³⁰ In 2016, the Committee on the Elimination of Discrimination against Women commended Canada on its development of the National Poverty Reduction Strategy and National Housing Strategy, yet stated its concern that women, especially marginalized groups of women, including women with disabilities, continue to live in significant levels of poverty, homelessness, and hunger.³¹ This Committee called on Canada to ensure that these national strategies protect the rights of all women and “focus on the most disadvantaged and vulnerable groups, by integrating a human rights and gender-based approach”.³²

Unaffordable and Inaccessible Housing

Women with disabilities are more likely to spend over 50% of their before-tax income on housing than men with disabilities.³³ They are also more likely to need accessibility features in their homes.³⁴ There is little indication that Canadian governments are providing housing support services to women with disabilities in a way that is allowing women to exit homelessness and access affordable housing.

²⁸ Statistics Canada, Persons with disabilities and employment by Martin Turcotte, 3 December 2014 at 7, online: <<http://www.statcan.gc.ca/pub/75-006-x/2014001/article/14115-eng.pdf>>.

²⁹ CESCR, Concluding observations of the Committee on Economic, Social and Cultural Rights, Canada, 22 May 2006, UN Doc E/C.12/CAN/CO/4-5 at para 15; 2016 CESCR Concluding Observations, supra note 2 at para 37.

³⁰ 2016 CESCR Concluding Observations, ibid at para 38.

³¹ 2016 CEDAW Concluding Observations, supra note 4 at para 46.

³² 2016 CEDAW Concluding Observations, ibid at para 47(a).

³³ CHRC, Report on Equality Rights, supra note 23 at 78.

³⁴ Ibid at 79 (see also 2012 Profile of persons with disabilities, supra note 26 at 4).

Low Median Incomes

The median income for women with disabilities is less than women and men without disabilities,³⁵ as well as less than men with disabilities. The median income for women with disabilities is lower than men with disabilities in every income bracket quintile except the lowest 20% income bracket,³⁶ it is substantially lower in the 65 years and more age bracket—making elderly women with disabilities in Canada the most impoverished group of people with disabilities in the country.³⁷

Women with disabilities are more likely to live with persistent low incomes than women without disabilities.³⁸ They are also more likely to rely on government transfers as a major source of income when compared to men with disabilities and men and women without disabilities.³⁹

Canada's National Poverty Reduction Strategy and National Housing Strategy must result in liveable incomes and affordable, accessible housing for women with disabilities. Women with disabilities should play a participatory role in strategy design and implementation.

RECOMMENDATION

That the Committee urge the Government of Canada to ensure that the National Poverty Reduction Strategy and the National Housing Strategy reflect and take into account the particular conditions of women with disabilities, the specific impacts on them of poverty, homelessness, and inadequate housing, and ensure that new strategies, services, and funding allocations will address their needs and circumstances.

Violence against Women with Disabilities (Article 16)

Women with disabilities are subject to many forms of violence—physical, emotional, verbal, sexual, racist, psychological—and are in many cases unable to escape the violence.⁴⁰

- Women with disabilities report experiencing emotional or financial abuse at a proportion that is 11.8% higher than women without disabilities and at a rate higher than men with disabilities (6.7%).⁴¹
- Women with disabilities report physical and/or sexual assault at a rate that is 4.4% higher than women without disabilities⁴² and assault at a rate that is 6.1% higher than women without disabilities.⁴³

³⁵ Vecova, supra note 15 at 22 (see also 2012 Profile of persons with disabilities, ibid at 21).

³⁶ CHRC Report on Equality Rights, supra note 23 at 25 (see also 2015 Employment Equity Act, supra note 21).

³⁷ Ibid.

³⁸ Ibid at 31.

³⁹ Ibid at 33 (see also Statistics Canada, Women in Canada: A Gender-based Statistical Report, Cat. No. 89-503-X (Ottawa: Statistics Canada, July 2011) at 374, online: <<http://www.statcan.gc.ca/pub/89-503-x/89-503-x2010001-eng.pdf>>).

⁴⁰ DAWN-RAFH Canada, Women with Disabilities and Abuse: Access to Supports Report on the Pan-Canadian Focus Group (Montréal: Canadian Womens' Foundation, March 2011), online: <http://www.canadianwomen.org/sites/canadianwomen.org/files/PDF%20-%20VP%20Resource%20-%20DAWN-RAFH%20Canada%20-%20Focus%20Groups%20WWD_201.pdf> [Women with Disabilities and Abuse].

⁴¹ CHRC, Report on Equality Rights, supra note 23 at 100.

⁴² Ibid at 101.

⁴³ Ibid at 103.

- Compared to men with disabilities, 13.2% more women with disabilities report feeling vulnerable to crime⁴⁴ and 20.8% more women with disabilities report feeling unsafe walking alone after dark.⁴⁵
- Women with disabilities are subject to violence from intimate partners and spouses, as well as from other family members and caregivers, including social workers, health care providers, doctors, nurses, and staff of the residences where women with disabilities may reside.⁴⁶
- In 2014, mental health was the second most influential factor related to the risk of violent victimization; approximately 1 in 10 Canadians reported a mental health-related disability and a rate of violent victimization more than four times that of people with no self-assessed mental health issues.⁴⁷

Women with disabilities are more vulnerable to violence because of their economic insecurity and social marginalization. This is compounded by the lack of accessible services that support women with disabilities to identify, report, and exit situations of violence.

Vecova, a disabilities services and research organization, has outlined key barriers that perpetuate the cycle of violence inflicted upon women with disabilities.⁴⁸ These barriers include:

- **Lack of disclosure of the abuse**: women with disabilities are less likely to report abuse than men with disabilities. Possible explanations for this include women's perceived losses and fears upon disclosing abuse, including loss of financial security, loss of housing or welfare benefits, fear of not being believed or considered credible by the police, belief that there are no intervention services, inability to contact intervention services, barriers to accessing transportation, and fear of being institutionalized.
- **Lack of access to justice**: women with disabilities report greater dissatisfaction with police response to violence. Their claims of abuse also may be filtered out by the criminal justice system because of the difficulty of prosecuting cases where a victim may be unable to articulate her abuse in a way that is perceived as credible by the trier of fact.
- **Lack of community supports and networks of women with disabilities affected by violence**: there are a dearth of resources to support community services that focus on establishing and maintaining networks of women with disabilities who are affected by violence. Strong civil society networks for women with disabilities who are affected by violence serve as a way to break down the social isolation of women with disabilities and provide meaningful ways for them to access community services with the support of a network of women with shared lived experiences.
- **Lack of shelters with supports for women with disabilities**: 10% of women staying in shelters report having a disability; however, only 75% of shelters report having a wheelchair accessible entrance, 66% of shelters provided wheelchair accessible rooms and bathrooms, 17% of shelters provide sign language, and 5% offer braille, reading materials.⁴⁹ The general lack of accessibility features in shelters across Canada prevents many women with disabilities from being able to use shelter services.
- **Lack of health care intervention**: health care professionals can play an important role

⁴⁴ Ibid at 105.

⁴⁵ Ibid at 106.

⁴⁶ Women with Disabilities and Abuse, supra note 41 at 4. 3

⁴⁷ Statistics Canada, Criminal Victimization in Canada, 2014 by Samuel Perreault (23 November 2015) at 3, online: <http://www.statcan.gc.ca/pub/85-002-x/2015001/article/14241-eng.pdf>.

⁴⁸ Vecova, supra note 15 at 10-13 (see also Women with Disabilities and Abuse, supra note 15).

⁴⁹ Ibid at 8.

in conducting routine medical screenings of women with disabilities, identifying abuse and providing patients with the resources to report it; however, at present health care professionals do not receive comprehensive training in screening women with disabilities for signs of victimization.

- **Lack of sensitivity training:** there is a general lack of sensitivity training for professionals who work with women with disabilities affected by violence.
- **Lack of violence prevention training:** many women with disabilities lack basic information about healthy relationships and how to identify abusive relationships.
- **Lack of rights education and self-advocacy:** women with disabilities do not have access to services that educate them about their rights and provide them with the skills to identify and communicate when they are subject to rights violations.
- **Lack of funding to enhance the accessibility of intervention services:** organizations that provide social support services to women with disabilities affected by violence have been subject to public funding cuts and in most cases do not have access to stable, long-term funding.

Canada does not currently have a National Action Plan, as recommended by the United Nations Secretary-General, and by the CEDAW Committee, to respond to violence against women, including violence against women with disabilities.⁵⁰ The federal government is working on the design of a Federal Strategy on Gender-based Violence, which is welcome.⁵¹ Though the Federal Strategy proposes to prevent gender-based violence through a “coordinated, collaborative and evidence-based approach”⁵² involving a range of experts, it falls short of a National Action Plan because it only applies to federal jurisdiction. A failure to coordinate with services and programs that fall within the provincial and territorial jurisdictions, such as health and social services and policing, diminishes the usefulness of the Strategy and will not address the present state of piecemeal and uncoordinated delivery of services to women across the country.

RECOMMENDATION

That the Committee urge Canada to develop a National Action Plan on Violence against Women that will include strategies and services to address effectively the violence experienced by women with disabilities. The Plan should meet international human rights standards, incorporate recommendations by treaty bodies and women’s non-governmental organizations and include a review of mechanisms standards, oversight and key social programs that women need to avoid and escape violence. The Plan should also:

- **Increase funding to women’s shelters and earmark accessibility funds for shelters.**
- **Ensure that organizations working on ending violence against women have resources to raise awareness about the pervasive violence against women with disabilities.**

⁵⁰ Status of Women, Status of Women Canada ministerial transition book: Federal gender violence strategy and action plan (2015), online: <http://www.swc-cfc.gc.ca/transition/tab_5-en.html>.

⁵¹ Status of Women, “About the Federal Strategy on Gender-based Violence” (13 February 2017), online: <<http://www.swc-cfc.gc.ca/violence/strategy-strategie/index-en.html>>.

⁵² Status of Women, “Newly formed advisory council to help shape federal strategy against gender-based violence” (2016), online: <<http://news.gc.ca/web/article-en.do?nid=1091279&tp=1>>.

Women Prisoners with Mental Health Disabilities (Articles 14 and 15)

The Human Rights Committee and the Committee on the Elimination of Discrimination against Women have expressed their concerns about the lack of medical support for prisoners with mental health issues and the use of segregation for prisoners with mental health issues (or mental health disabilities).⁵³

Imprisoned Women Likely to have Mental Health Disabilities

In what has been dubbed a “revolving door”⁵⁴ syndrome, there is ample evidence that homeless women with mental health issues are more likely to be criminalized and imprisoned. Upon release, there are barriers to accessing housing, so too often they find themselves re-incarcerated.⁵⁵ The conditions of women who have been sentenced to federal prisons (for terms of two years or more) have been a subject of particular concern in Canada for many years.

- Federally sentenced women are twice as likely as men to have a mental health disorder upon being admitted to prison;⁵⁶ and in 2012/2013 approximately 75% of women prisoners received a CSC-based mental health service.⁵⁷ More federally sentenced women have a mental health, or psychotropic, medication prescription than men.⁵⁸
- Women with complex mental health needs who request to be transferred to the Regional Psychiatric Centre (RPC), Correctional Service Canada’s only treatment facility for women, can, and are, being denied access to RPC. For those who remain in federal prisons, there are physical infrastructure constraints, which prevent women prisoners with mental health needs from accessing therapeutic environments.⁵⁹
- There are significantly fewer transition options for women released from prisons, particularly those with mental health issues.⁶⁰

In its 2006 Concluding Observations, the Human Rights Committee recommended that:

⁵³ Human Rights Committee, Concluding Observations on the sixth periodic report of Canada, 13 August 2015, UN Doc CCPR/C/CAN/CO/6 at paras 14 [2015 Human Rights Committee Concluding Observations]; and 2016 CEDAW Concluding Observations, supra note 4 at paras 48-49 (the term mental health issues refers to mental health disabilities within the meaning of Canadian law: see e.g. *Canadian Human Rights Act*, RSC 1985, c H-6; and *Mental Health Act*, RSO 199, c M.7.

⁵⁴ Stephen Gaetz & Bill O’Grady, “Homelessness, Incarceration, and the Challenge of Effective Discharge Planning: A Canadian Case” in J. David Hulchani et al, eds., *Finding Home Policy Option for Addressing Homelessness in Canada* (e-book, Toronto: Cities Centre University of Toronto 2009) at 2, online:

<<https://www.samhsa.gov/homelessness-programs-resources>> [Gaetz et al, Homelessness, Incarceration].

⁵⁵ Elizabeth Fry Toronto, *Housing Needs Assessment Facilitating Access to Housing for Criminalized Women in Toronto*, prepared by Snmanagement (April 2014), online:

<http://www.efrytoronto.org/userfiles/files/efry_Housing%20Needs%20Assessment_WEB.pdf>.

⁵⁶ Correctional Services Canada, File #394-2-88 Evaluation Report: Intensive Intervention Strategy for Women Offenders (March 2011) at 21-2, online: <<http://www.csc-scc.gc.ca/publications/092/005007-2006-eng.pdf>>.

⁵⁷ Office of the Correctional Investigator, Annual Report of the Office of the Correctional Investigator 2013-2014, prepared by Howard Sapers (27 June 2014), online: <<http://www.oci-bec.gc.ca/cnt/rpt/annrpt/annrpt20132014-eng.aspx#sV>>.

⁵⁸ Office of the Correctional Investigator, Annual Report of the Office of the Correctional Investigator 2015-2016, prepared by Howard Sapers (30 June 2016) at 10, online: <<http://www.oci-bec.gc.ca/cnt/rpt/pdf/annrpt/annrpt20152016-eng.pdf>>.

⁵⁹ Ibid at 20-21.

⁶⁰ Gaetz et al, “Homelessness, Incarceration”, supra note 56.

The State party, including all governments at the provincial and territorial level, should increase its efforts to ensure that sufficient and adequate community based housing is provided to people with mental disabilities, and ensure that the latter are not under continued detention when there is no longer a legally based medical reason for such detention.⁶¹

In its July, 2015, Concluding Observations, the Human Rights Committee noted its concern about the “insufficient medical support to detainees with serious mental illness” and recommended Canada take appropriate measures to “effectively improve access to, and capacity of, treatment centres for prisoners with mental health issues at all levels.”⁶²

In the November, 2015, federal mandate letter to the Minister of Public Safety, Prime Minister Trudeau recognized the need to improve services for incarcerated people with mental health issues and called for addressing gaps in services to those with mental illness through the criminal justice system.⁶³ This is a crucial mandate that must be acted on in a gender-sensitive way that is responsive to the needs and perspectives of women with mental health disabilities.

End the Use of Segregation or Solitary Confinement

In 2015, the Human Rights Committee recommended that Canada “effectively limit the use of administrative or disciplinary segregation as a measure of last resort and for as short a time as possible and avoid such confinement for inmates with serious mental illness”.⁶⁴ In November 2016, the Committee on the Elimination of Discrimination against Women called on Canada to:

Abolish the practice of solitary confinement, and effectively limit the use of administrative or disciplinary segregation as a measure of last resort for as short a time as possible and avoid such measure for women with serious mental illness.⁶⁵

However, while welcoming these recommendations, FAFIA and DAWN submit that *any* use of segregation or solitary confinement in prisons must end.

The 1996 Arbour Commission documented how women are affected by the isolation of segregation.⁶⁶ Segregation aggravates and/or creates mental health issues,⁶⁷ reduces motivation and opportunities to participate in reintegration activities,⁶⁸ and has been defined as a practice that can amount to an act of torture by the United Nations.⁶⁹ In a 2014 Supreme Court

⁶¹ 2006 Human Rights Committee Concluding Observations, supra note 56 at para 17.

⁶² Human Rights Committee, Concluding Observations on the sixth periodic report of Canada, UN Doc CCPR/C/CAN/CO/6 (13 August 2015) at para 14 [2015 Human Rights Committee Concluding Observations].

⁶³ Prime Minister of Canada, “Minister of Public Safety and Emergency Preparedness Mandate Letter” (13 November 2015), online: <<http://pm.gc.ca/eng/minister-public-safety-and-emergency-preparedness-mandate-letter>>.

⁶⁴ 2015 Human Rights Committee Concluding Observations, supra note 54 at para 14.

⁶⁵ 2016 CEDAW Concluding Observations, supra note 4 at para 49(d).

⁶⁶ Jena McGill, “An Institutional Suicide Machine Discrimination Against Federally Sentenced Aboriginal Women by the Correctional Service of Canada in Violation of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (2008) 2:1 *Race/Ethnicity: Multidisciplinary Global Contexts* 89.

⁶⁷ Public Safety Canada, *Marginalized: The Aboriginal Women’s experience in Federal Corrections*, Public Safety Canada Aboriginal Corrections Policy Unit (2012) at 33-4, online:

<<https://www.publicsafety.gc.ca/cnt/rsracs/pblctns/mrgnlzd/mrgnlzd-eng.pdf>>.

⁶⁸ Ibid.

⁶⁹ “Solitary confinement should be banned in most cases, UN expert says”, UN News Centre (18 October 2011), online: <<http://www.un.org/apps/news/story.asp?NewsID=40097#.VwdnYuchxpk>>.

of Canada decision, *Centre for Addiction and Mental Health v R*, the highest court in Canada noted in its decision that:

Mentally disordered patients do not typically fare well as inmates. They are frequently victims of intimidation and violence and are more likely than the general prison population to attempt suicide, self-harm, or self-destructive behaviour. An experienced correctional officer testified in this case that the mental health care needs of mentally ill accused persons in provincial jail are frequently neglected due to lack of special units and trained personnel. Fewer than one-third of Ontario provincial jails have special units for inmates with mental illness or developmental disability. Where there is no special unit, or where the unit is full, mentally ill accused persons are typically held in segregation cells.⁷⁰

The Canadian Medical Association and the UN Special Rapporteur on torture have labeled solitary confinement “cruel and unusual punishment”, and the Special Rapporteur has called for an absolute ban on solitary confinement for youth and those with mental health issues.⁷¹ The jury at the inquest into the death of Ashley Smith has also recommended an absolute ban on solitary confinement for those with mental health issues.⁷² The Canadian Human Rights Commission,⁷³ Ontario Human Rights Commission, and the Canadian Association for Elizabeth Fry Societies similarly recommend the end to the use of solitary confinement for women prisoners with mental health disabilities.⁷⁴

- Women who are segregated from the general prison population are subjected to overly restrictive conditions of confinement, including being placed in segregation and being isolated for 23 hours; they may have no human interaction other than when they are physically restrained, or when food or medication are passed through a slot in the door.⁷⁵
- In 2014-2015, 442 women were in involuntary segregation, an increase from prior years, which averaged 375 women in involuntary segregation a year.⁷⁶ 34.1% of the women stayed in segregation for longer than 30 days.⁷⁷
- Between 2011 and 2014, nearly half of suicides in federal prisons occurred in segregation cells. Most prisoners who have died in segregation had a documented history of mental health problems; few, if any, had access to therapeutic interventions.⁷⁸

⁷⁰ 2014 SCC 60 at para 77.

⁷¹ Kim Pate, “Why are women and girls Canada’s fastest growing prison population; and, why should you care?” (Grant Lowery Lecture delivered at the Annual Defence for Children International – Canada Grant Lowery Lecture, 26 April 2011) at 5, online: <[http://www.caefs.ca/wp-content/uploads/2013/05/Women are the fastest growing prison population and why should you care.pdf](http://www.caefs.ca/wp-content/uploads/2013/05/Women%20are%20the%20fastest%20growing%20prison%20population%20and%20why%20should%20you%20care.pdf)> [Kim Pate Grant Lowery Lecture].

⁷² Correctional Services Canada, “Response to the Coroner’s Inquest Touching the Death of Ashley Smith”, December 2014 at 3.2-3, online: <<http://www.csc-scc.gc.ca/publications/005007-9011-eng.shtml#5.1>>.

⁷³ Canadian Human Rights Commission, Submission to the Committee on the Elimination of Discrimination against Women in advance of its consideration of Canada’s 8th and 9th periodic reports (September 2016) at 15-18, online: <http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CAN/INT_CEDAW_IFN_CAN_25373_E.pdf>.

⁷⁴ Louise Arbour took this position at the 2016 CAEFS Conference – The A Word: Reclaiming Advocacy.

⁷⁵ Kim Pate Grant Lowery Lecture, supra note 73; and British Columbia Civil Liberties Association, “Solitary Confinement Backgrounder” (January 2015), online: <<https://bccla.org/wp-content/uploads/2015/01/Solitary-Confinement-Backgrounder-FINAL1.pdf>> [BCCLA Backgrounder].

⁷⁶ Public Safety Canada, Corrections and Conditional Release, Statistical Review, 2015 Annual Report (February 2016) at 65, online: <<https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/ccrso-2015/ccrso-2015-en.pdf>>.

⁷⁷ Ibid at 67.

⁷⁸ Kim Pate Grant Lowery Lecture, supra note 73; BCCLA Backgrounder, supra note 77.

The use of segregation has a disproportionate and profoundly negative impact on women with mental health disabilities. Its use in all Canadian prisons must end. Placing limits on the duration of time that a woman may be placed in segregation is insufficient because these limits are arbitrary and used in a discretionary way that cannot guarantee the protection of the most vulnerable.

RECOMMENDATIONS

That the Committee urge Canada to:

- **Develop new protocols to decarcerate women, particularly women with disabling mental health issues;**
- **Increase income security, health and educational measures such as income assistance, adequate housing, and community supports for women with mental health issues to address the reality that women are being criminalized and incarcerated because of poverty, previous abuse, social disadvantage, racialization, and disabling mental health and intellectual capacity issues; and**
- **Put an end to the practice of placing women prisoners in segregation or solitary confinement.**