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Edited by Teresa Healy



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Two Steps Forward and Two Steps Backward

The legacy of disability rights in Canada

John Rae

CANADIANS WITH DISABILITIES are striving to obtain what most Canadians take for granted: attending one's neighbourhood school, getting a job and paying taxes, voting in elections, travelling from city to city, or having children. Usually the discrimination against people with disabilities is not perpetrated maliciously. Rather, rules and practices that create barriers for persons with disabilities have been put in place, and these must be eliminated.

While Canadians with disabilities need leadership from all levels of government to remove existing barriers and to prevent the introduction of new ones, the Harper government has made it clear that it believes in a government that focuses only on "core federal responsibilities."¹ Since Stephen Harper was elected Prime Minister, Canadians with disabilities have been adversely affected by the Harper government's belief in a more limited role for the Government of Canada, and by a number of his government's decisions. Yet, despite these setbacks, some advances have taken place.

Equality-seeking groups need the Court Challenges Program

The Court Challenges Program of Canada (CCP) is a national non-profit organization established to administer funding to help equality-

seeking groups pursue important test cases and legal interventions advancing the language and equality rights guaranteed under Canada's Constitution.² The Court Challenges Program has supported challenges and interventions of national importance, which have helped define Canada's Charter of Rights and Freedoms, and developed a rich body of equality jurisprudence that is internationally respected.

Cases funded by the Court Challenges Program resulted in the following gains for equality:

- Deaf people can participate fully in Canadian society by requesting that a sign language interpreter be provided to enable them to communicate effectively with their government representatives.
- People found not criminally responsible because of a mental disability are guaranteed a hearing to determine if institutionalization is necessary or if some other form of treatment would be more effective.
- People with mental disabilities who reside in institutions have the opportunity to vote.
- People with various disabilities have gained increased access in the transportation sector through Via Rail and One Person One Fare cases, the latter having positively influenced the recent CTA decision guaranteeing adequate space for persons travelling with a service animal on airlines.

Despite its importance, the Harper Government cancelled this program effective September 25, 2006. This move resulted in the saving of a mere \$5.6 million. Assistance for cases already approved is still being honoured, and both the language and equality sectors continue to fight hard for full restoration of the Court Challenges Program.

Without the funding provided by this Program, many of the organizations and individuals that have invoked the guarantee of equality under the Charter would have been otherwise unable to do so. "With the government's decision to de-fund, Canadians who most need the Charter are now effectively denied access to that protection," said

Carmela Hutchison, President of Disabled Women's Network Canada.³ Without the Court Challenges Program, Canada's constitutional rights are real only for the wealthy. This is unfair, and it does not comply with the rule of law, which is a fundamental principle of our Constitution. As described by Marie White, Chair of the Council of Canadians with Disabilities (CCD), "Rights without remedies are no rights at all."⁴

First human rights treaty of the 21st century focuses on persons with disabilities

On December 13, 2006, the Convention on the Rights of Persons With Disabilities and its Optional Protocol were adopted.⁵ When it was opened for signature on March 30, 2007, there were 82 signatories to the Convention, 44 signatories to the Optional Protocol, and one ratification of the Convention. This is the highest number of signatories to a UN Convention on its opening day. To date, some 27 countries have ratified the Convention, and 16 have also ratified the Optional Protocol. Countries that have adopted both are: Bangladesh, Croatia, Ecuador, El Salvador, Guinea, Hungary, Mali, Mexico, Namibia, Panama, Peru, San Marino, Slovenia, South Africa, Spain, and Tunisia.

The Convention was negotiated during a fast-track process over eight sessions of an Ad Hoc Committee of the General Assembly, from 2002 to 2006. The purpose of the Convention is to promote, protect, and ensure the full and equal enjoyment of all human rights by persons with disabilities. It covers a number of key areas such as accessibility, personal mobility, health, education, employment, habilitation and rehabilitation, participation in political life, and equality and non-discrimination. After considerable pressure from Canadian disability organizations, Canada was among the initial signatories to the Convention, but it has not yet ratified either the Convention or its Optional Protocol.

The Convention marks a "paradigm shift" in attitudes and approaches to persons with a disability, from a social welfare to a human rights model, which acknowledges that societal barriers and prejudices are the real barriers facing persons with disabilities worldwide. Throughout the negotiations, the Canadian delegation, which included Steven Estey, chair of the Council of Canadians with Disabilities' (CCD) International

Committee, played a leading role. Other international disability organizations were also front and centre in moving the negotiations at the UN.

The Convention includes many principles that will be very familiar to Canadians. Now it is time for Canada to ratify the Convention. This is a slower process, as many of its provisions cover areas of provincial and territorial jurisdiction, so it is crucial to also bring pressure on our provincial and territorial governments.

A National Disability Act?

While Canada's disability community was solidifying its priorities in the area of disability-related supports, the Conservative party of Canada included the following in its 2005 policy declaration:

71. National Disability Act: A Conservative government would introduce a National Disability Act designed to promote reasonable access to medical care, medical equipment, education, employment, transportation and housing for Canadians with disabilities.⁶

The impetus for such a *National Disability Act* stems at least in part from the *Americans With Disabilities Act*.⁷ Canada's government and division of powers between its federal and provincial governments are different from the U.S. system, and this makes importing a "made in the U.S." approach dangerous. Any such act must be tailored to the Canadian reality.

The possible effect of a *National Disability Act* in Canada must be considered from three standpoints: what it can do, what it will not do, and what can be accomplished without an Act using existing legislative and regulatory authority.

A *Federal Act* could remove the discriminatory provisions in Canada's *Immigration Act*, make it possible for blind electors to vote independently and in secret in federal elections, ensure that federal office buildings have accessible washrooms, increase audio description on television, get post offices to install visible fire alarm systems, and ensure that Canada's transportation system is fully usable by all Canadians.

By contrast, a *Federal Act* cannot change a provincial benefit program that fails to provide information in alternate formats; towns or cities that do not have accessible municipal voting polls; courts that are not accessible; schools that do not provide accommodation for students with disabilities; municipal planning and zoning rules that do not permit group homes for persons with intellectual disabilities; or provincial health insurance offices that do not have a TTY. Such an Act will not deal with the lack of disability supports and chronic poverty that is the plight of far too many Canadians who live with a disability in our affluent country.

The Government of Canada could make some changes without introducing a new Act. The disability community believes current voluntary codes of practice in the transportation sector could be given the force of regulations, if only the will to do so existed. The *Federal Employment Equity Act* and Federal Contractors Programs could be given added teeth, and the complaint process under the *Canadian Human Rights Act* could be streamlined and made more user-friendly to complainants.

For a detailed discussion of a possible *National Disability Act*, see Phyllis Gordon's paper, *A Federal Disability Act: Opportunities and Challenges*, which advances a set of tools that might be implemented in a *Federal Disability Act* and outlines a model legislative framework to illustrate how proposed strategies and tools might interact.⁸

Disability community develops national strategy

Over the past five years, the Council of Canadians With Disabilities spearheaded a series of meetings that were designed to develop a national agenda for Canada's disability community, and Disability Related Supports emerged as the community's most important priority. The End Exclusion campaign sounded the alarm:

There is a shared vision for an inclusive and accessible Canada, and an unprecedented consensus exists among the Canadian public, governments, the disability community and experts about the need for national action on disability issues.¹⁰

Organized collaboratively by CCD, the Canadian Association for Community Living (CACL), and the Canadian Association of Independent Living Centres (CAILC), in November 2006 over 300 people gathered in Ottawa to celebrate the accomplishments of Canadians with disabilities over the past 25 years. Over 100 organizations stood together, signing the Declaration of Principle and joining in the discussions that focused on building an inclusive and accessible Canada.

On November 22, 2007, Canadians with disabilities again gathered in Ottawa. Using the 2006 Declaration as the foundation, partners endorsed a National Action Plan, "From Vision to Action: Building An Inclusive and Accessible Canada A National Action Plan on Disability."¹¹

For an inclusive and accessible Canada to be a reality, the National Strategy calls upon the government of Canada to show leadership by enhancing their role in four key areas by including:

- enhanced disability supports to enable Independent Living, active citizenship, and full participation;
- enhanced federal role in alleviating poverty of persons with disabilities and their families, thus freeing up dollars at provincial/territorial levels for new investments in disability supports;
- labour force inclusion measures; and
- a national social development role to promote accessibility and community inclusion.

Representatives of national organizations trekked through the snow to the Centennial Flame on Parliament Hill, and many took the opportunity to make brief statements in support of the National Strategy. John Rae, President of AEBC, stated that:

Our priority is achieving the elusive goal set out way back during the International year of the Disabled Person 1981, namely, full participation and equality. For our community this would include participating in a meaningful way in the development of all policies and programs that affect our lives; being able to vote independently and in secret like all other electors through an electronic option; having access to a publicly funded assistive devices program in every province and territory across Canada;

being able to travel throughout our communities safe from the dangers of the quiet hybrid automobile; and finally, we must see the implementation of a National Economic Strategy that would address the historic and chronic levels of marginalization, poverty and unemployment that remain the reality for so many Canadians who have a disability.¹²

The future imperative

Since the Harper government was elected, many other issues of concern to the disabled community have been on the national agenda, including the very controversial Latimer decision, improvements to the Canadian Pension Plan Disability (CPPD) provisions for persons with disabilities who work, creation of the Mental Health Commission of Canada, and province-wide anti-poverty mobilization across Ontario in response to the Ontario government's commitment to developing an anti-poverty strategy for Ontario. Any anti-poverty approach must be comprehensive and deal with both income and labour market inequities that continue to plague far too many Canadians with a disability.

Over the past 30 years, much of the work of Canada's disability rights movement has focused on removing existing barriers. Today, that work continues, but our movement now must also fight a rearguard battle to preserve and protect the gains we have made and to prevent the introduction of new barriers. In today's neoconservative climate, pressures are present that are attempting to push us back into an earlier time when voluntarism, paternalism, and decisions made by others were the norm for far too many Canadians with a disability. We succeeded in moving our issues more into a rights-based approach, where more and more Canadians came to support our beliefs that public attitudes, behaviours, and the built environment were our real obstacles and not the effects of our respective disability.

The motto of the disabled community has come to be "nothing about us without us," and this calls on all decision-makers to involve representatives of consumer-based, rights holder organizations in any and all policies, programs and legislation that affect our lives. Persons with disabilities are our own best spokespersons. We know disability best and

we know what is needed to help move us from the margins to the main-stream of Canadian society. We seek new allies on this voyage.