



SSHRC Partnership Development Grant

Expanding the Circle: Aboriginal People with Disabilities Know their Rights

Snap Shot

Disability Rights Promotion International

Spring 2014

York University

Acknowledgements:

Contributions to the Snap Shot were made possible by the *Expanding the Circle* Project and funded by the Social Sciences and Research Council (SSHRC) through a Partnership Development Grant. This Project prioritizes dialogue and Indigenous knowledge in research regarding disability rights and monitoring by Aboriginal Adults with disabilities. Those who contributed to the Snap Shot include Celia Haig Brown and Marcia Rioux with consultation and feedback from the Steering Committee. Initial contributions were made by Basharat Tayyab and Laura J. Vukson and additional content was supplied by Dana Corfield, Paul-Emile McNab and Emily Hostland.

Principal Investigator

Marcia Rioux, *York University*

Partners

David McNab, *York University*

Don Shakel, *Manitoba First Nations Education Resource Centre*

Steve Teekens, *Nameres--Native Men's Residence*

Rebecca Gowan, *Canadian Human Rights Commission*

Skip Gryschuk, *Grand Council Treaty #3*

Archie Indoe, *Historic Saugeen Metis*

Larry Frost, *Native Canadian Centre of Toronto*

David Phipps, *York University*

Yvonne Bohr, *LaMarsh Centre for Child and Youth Research*

Patricia Lamotte, *OPHQ*

Sandi Bell, *Human Rights Commissioner*

Sandra Carpenter, *Centre for Independent Living Toronto*

Steering Committee

Doreen Demass, *First Nations Disability Association of Manitoba (co-applicant)*

Cyndy Baskin, *Ryerson University, School of Social Work*

Celia Haig-Brown, *York University*

Nancy Davis Halifax, *York University*

Douglas Durst, *University of Regina*

Jon Johnson, *York University*

Debbie Lipscome, *Grand Council Treaty #3*

Support

Emily Hostland, *York University*

Melanie Moore, *Centre for Independent Living Toronto*

Paul-Emile McNab, *York University*

Dana Corfield, *York University*

Basharat Tayyab, *York University*

Laura Vukson, *York University*

Contact Information

Marcia Rioux, Principal Investigator (e-mail: mrioux@yorku.ca)

Paula Hearn, Project Coordinator (e-mail: drpi@yorku.ca)

York University, 5021 TEL Building

4700 Keele Street

Toronto, Ontario M3J 1P3

Canada

Telephone: 1-416-736-2100 ext. 20701 or 20718

Fax: 1-416-736-5986

E-Mail: mrioux@yorku.ca or drpi@yorku.ca

Please visit our Project webpage and facebook account:

<http://drpi.research.yorku.ca/NorthAmerica/ExpandingTheCircle>

<https://www.facebook.com/ExpandingTheCircleAboriginalPeopleWithDisabilities>

Table of Contents:

1. Introduction.....	5
2. Context:.....	7
3. Rights Guarantee: the International Context.....	10
a. <i>UN Declaration on the Rights of Indigenous Peoples (2007)</i>	
b. <i>UN Convention on the Rights of Persons with Disabilities (2008)</i>	
c. Other United Nations Human Rights Treaties	
d. General Human Rights Principles:	
4. Rights Guarantees: The National Context.....	17
a. The Canadian Charter of Rights and Freedoms	
b. Federal and Provincial Human Rights Legislation	
5. National and Provincial Policies and Programmes.....	21
a. National Programmes and Policies	
b. Provincial and Municipal Programmes and Policies	
6. Key Issues.....	24
7. International Indigenous Issues	26
8. Conclusions.....	29
9. Next Steps.....	30
10. Appendix.....	31
11. Bibliography.....	32

1. Introduction

This snapshot reviews the literature related to aboriginal people with disabilities using a human rights lens and it suggests further avenues for research, community development and for developing partnerships among aboriginal people and people with disabilities. It was carried out in an effort to assess the existing systemic and social infrastructure available to aboriginal people with disabilities, to highlight the current gaps and major issues within the system, and to foster responsive and inclusive practices that may support the meaningful realization of rights by Aboriginal people with disabilities.

There are, in fact, many similarities and parallels between the experiences of Aboriginal Canadians and Canadians with disabilities (and of course there is overlap between the groups), and there is therefore a lot of common ground. Both groups have experienced institutionalization (and the high levels of violence and abuse that often occur within institutions), eugenics, limited access to appropriate education and support services, barriers to accessing health care services, high degrees of poverty, and the resulting lack of an adequate standard of living. Both groups have also been type-cast and subject to stereotypes (both in daily life, and in film and mass media), and both have been actively working to challenge these stereotypes and to resist the feeling of shame that have been imposed on them by society at large. Though two distinct and yet overlapping groups, Aboriginal Canadians and Canadians with disabilities also both resist and challenge the notion that they need to be “fixed”, and both groups have put forward sustained efforts to fight for their rights, to obtain the resources they require and are entitled to, and to truly exercise the right to self-determination. In short, both groups want to “live well” and both groups are fighting for justice and equality. In fact, the oft heard motto of the disability movement, “Nothing about us, without us” has been adopted by many aboriginal groups and leaders due to its obvious relevance and importance for this group.

Hope’s Story – one example and one story among many

In the report “A First Nations Woman with a Disability ‘Listen to what I am saying!’” (Durst, Morin, Wall, and Bluechart, 2007), we hear Hope’s story and, through her, we are provided with an understanding of the challenges that aboriginal people with disabilities face. Hope’s resilience and courage are evident throughout her story and they are demonstrated through her efforts to bring awareness to the issues faced by aboriginal persons with disabilities.

Hope grew up in northern Saskatchewan. At the age of 13 she had a serious accident that left her with quadriplegia. She was playing with some children in her home community and a child shot her, resulting in spinal cord damage. Hope had to travel 400 kilometers to the nearest hospital and, during her long recovery, her family and friends never came to visit her. As a result, Hope still feels the pain of abandonment. She was eventually moved back to her community, but shortly after she was asked to move to an urban community for medical reasons and for support.

Hope was placed in several foster homes as a child and teenager. While “in care”, she suffered verbal abuse from the other children, as well as sexual abuse. She later went to university where she again became a victim of sexual abuse. She obtained her Bachelor of Education Degree, but

when the time came to find employment, she was unable to get hired because of her disability. Hope therefore lived on financial assistance for her entire adult life and she aptly describes the poverty that she has experienced due to her disability. Hope also recounts that, for the first 10 years following her accident, she contemplated suicide and she slept with a knife in her bed. She says that people with disabilities experience chronic loneliness and she bravely shares the emotional distress that she experienced as a result of being ignored when people would approach her and her friends and would only speak to her friends, asking questions about Hope as though she weren't there.

Later, Hope gave birth to a daughter. She describes how the hospital workers tried to take her baby away from her, telling her that she couldn't care for her own child. The hospital workers also parked her wheelchair outside of her hospital room making it difficult for her to respond to her baby when she cried. Yet, through all of Hope's challenges, pain and grief, she has demonstrated amazing resiliency and awareness. She talks about human contact and the great importance it has on one's wellbeing. She has reached out to other people with disabilities and she has included her daughter in her relation-building efforts. She and her daughter bring groceries for other people with disabilities who can't get out, for example, and they spend time with them watching TV, having coffee, helping with dishes and cleaning. Hope also explicitly advocates for First Nations people with disabilities. She challenges the First Nations governments and Band Councils, and she speaks out against the frustrating jurisdictional battles that occur between the federal and provincial governments when taking responsibility for First Nations people with a disability.

Hope's story demonstrates the concrete impact of policies, prejudices, and programs (or the lack thereof) on the lives of aboriginal people with disabilities in Canada.

“Travels of a Metis through Spirit Memory around Turtle Island, and Beyond”

Story of Tecumseh by David T. McNab (Walpole Island Heritage Plaque, October, 2013)

From an early age, Tecumseh, long celebrated as a great Chief and a powerful warrior, was an Indigenous human being who had a disability. His right leg was shorter than the other. Tecumseh built a wooden box (with a hole and a rope which he tied to the box) which he used regularly to be able to mount his horse when both travelling and riding into battle, or otherwise. As a human being, Tecumseh was able to accommodate his disability and become an outstanding Indigenous person whose vision and memory would live on after his travels in the natural world were over (I am very grateful to Eric Isaac for giving me permission to tell this story given my own disability since after my stroke my right leg is shorter than my left).

The words on Tecumseh's plaque:

Tecumseh was the Great Leader of the Confederacy of Nations, a war chief, a statesman and an orator, who struggled to protect the Confederacy's sovereignty over its lands and waters. Tecumseh fought valiantly in the War of 1812 and in the Battle of the Thames. It is believed that Chief Oshawanoë retrieved Tecumseh's remains hidden near the battlefield and placed them on St. Anne Island. Chief Joseph White, his

stepson Silas Shobway, and the Walpole Island Soldiers Club cared for Tecumseh's bones through the generations. Overlooking the lands and the waters of Bkejwanong Territory, Tecumseh's remains were placed in this cairn on August 25th, 1941. This final resting place was rededicated on October 2, 2013 in honour of the bicentennial of the War of 1812. Tecumseh's spirit, his memory, and his legacy live on today. (Tecumseh Plaque, unveiled on October 2nd, 2013, Walpole Island First Nation)

Tecumseh, a disabled human being, had become Indigenous in both body and in spirit and in our memory. His spirit, his memory, and his legacy lives on today.

2. Context: The Numbers and the Issues

While a substantial body of literature exists that analyzes statistical data concerning aboriginal Canadians more generally, there is relatively little work addressing the situation of aboriginal Canadians *with disabilities*.

From the broader literature, we know that approximately 1.4 million people within Canada (approximately 4% of the total population) identify themselves as aboriginal (Statistics Canada, 2013). This number includes individuals from more than 600 First Nations/Indian bands, many of whom speak one or more of the reported 60 aboriginal languages. The data also shows that the aboriginal population is younger than the non-aboriginal population and is growing. It increased by 20.1% between 2006 and 2011, compared to a 5.2% increase for the non-Aboriginal population during the same time period (Statistics Canada, 2013).

Important data also exists regarding the significant disparities in living conditions and well-being that exist between Canada's aboriginal population and the non-aboriginal population. For example, several studies (see, for example, Beavon & Cooke, 2010; or Borrows, 2003) have applied First Nations data to the Human Development Index created by the United Nations (which evaluates living conditions based on measures such as life expectancy, per-capita income, educational attainment, and health indicator), and all have found that, while Canada consistently ranks in the top 10 in the world in "human development", First Nations communities would rank in the 70s on the scale, suggesting living conditions and quality of life similar to "developing countries" such as Peru. Such living conditions are characterized by poor quality housing and overcrowding (Bryant, 2004; First Nations Centre, 2005; Office of the Auditor General, 2003), lack of access to clean water (Neegan Burnside, 2011), and an unemployment rate 2 to 3 times higher than the national average (HRSDC, 2013). The chronic poverty experienced by a disproportionate number of indigenous Canadians has been described as "pervasive" (National Council on Welfare, 2007) and "extreme" (Palmater, 2011), and indeed half of First Nations children in Canada currently live below the poverty line (Wilson & Macdonald, 2013). Indeed, even INAC's own Community-Wellbeing Index (CWI) analysis indicates that there has been no real improvement in community development and well-being since 2001 (INAC, 2010). What's more, the percentage of young Aboriginal Canadians who do *not* complete high school is still twice that of the general population (Wilson & Macdonald, 2010), and the percentage of aboriginal people who *do* complete a university degree is about four times lower than of the

national average (Loppie Reading & Wien, 2009), two factors which further compound and reinforce the existing cycle of poverty and unemployment.

Under these conditions it is perhaps not surprising that health indicators for aboriginal Canadians are equally bleak. First Nations people live 5-7 years less than the Canadian average, and they experience a high rate of diabetes (3 times the national average), tuberculosis (8 to 10 times higher than the Canadian norm), increasing rates of HIV/AIDS infection, and difficulty accessing health care (Health Canada, 2013). Mental health concerns are also a very serious issue for our aboriginal population, as studies indicate that depression is twice as common among the indigenous population (First Nations Centre, 2005) and the suicide rate is also extremely high (reaching five to seven times the national average for young people living on reserve) (Canadian Institute of Child Health, 2000).

This data clearly demonstrates the significant barriers and challenges faced by Canada's aboriginal population – a situation that has been called “dire” and “a crisis” (Amaya, 2011, 2013). Despite these barriers and their already significantly disadvantaged position, the limited data available clearly indicate that aboriginal Canadians *with disabilities* face even greater challenges and compounding barriers, as a result of their intersecting experience as indigenous persons and persons with disabilities. And, though statistics relating to this specific population are much scarcer (both nationally and internationally¹), the limited data that is available certainly sheds light on the compounding impact of disability and aboriginal status. Furthermore, many aboriginal people with disabilities experience further disadvantages and barriers due to gender imbalances and/or as a result from living in remote communities, (Demas, 1993).

Global trends indicate that indigenous peoples around the world are more likely to experience disability than are non-indigenous populations. For example, in Latin America, available statistics for seven countries (Brazil, Columbia, Costa Rica, Ecuador, Mexico, Panama and Uruguay) indicate that there is a higher rate of disability among indigenous persons than the rest of the population (World Health Organization, 2011), while in Australia about half of indigenous adults reported a disability in 2008 (AIHW, 2011). This trend is also reflected in the Canadian context.

A Human Resources and Skills Development of Canada Report (HRSDC, 2007) suggests that 30 percent of aboriginal adults in Canada report a disability - almost twice the national rate. For aboriginal children and young adults (aged 15-34) the disability rate is, in fact, three times the national average (Hanvey, 2002). And, while the reasons for these increases have not been well-researched, some likely causes include some of the very issues already discussed, such as; higher levels of poverty; poor living conditions; increased exposure to environmental degradation (including the impact of large projects such as dams or mining activities); the higher risk of being victims of violence; and difficulty accessing appropriate healthcare and social services. The 2009 edition of the State of the World's Indigenous People's Report, on the other hand,

¹ The World Report on Disability, produced by the World Health Organization (WHO) and the World Bank in 2011, includes very little information on indigenous persons with disabilities, while the State of the World's Indigenous Peoples Report (ref) notes only that indigenous persons are more likely than non-indigenous persons to have a disability, for example.

highlights mental health issues and the prevalence of diabetes among indigenous persons as leading causes of disability (United Nations, 2009).

Due to the intersectional impact of aboriginal status and disability status, this disproportionately large population of aboriginal Canadians with disabilities faces massive barriers and challenges in accessing appropriate educational opportunities, accessible transportation, housing, support services, employment, recreation, and cultural opportunities (Demas, 1993). As a result, only 3.9 percent of aboriginal people with disabilities complete university, as compared to 5.8 percent of aboriginal Canadians without disabilities (Statistics Canada, 2006). Levels of employment are similarly lower among aboriginal adults with disabilities (41 percent of such adults are employed versus 61 percent of aboriginal adults without disabilities). Perhaps unsurprisingly then, the average household income among aboriginal adults with disabilities was only 85 percent of that of aboriginal adults without disabilities (\$16,755 compared to \$19,800), and the level of poverty that they experienced was thus greater. In comparison, while 14.4% of all Canadians who have a disability lived in poverty in 2006, that number rises to 33% for the population of aboriginal peoples living with a disability (Statistics Canada, 2006).

Indigenous people with disabilities in Canada also experience disproportionately high rates of homelessness (Durst, Bluehardt, Morin, & Rezansoff, 2001) and face many barriers when attempting to access local and/or culturally appropriate support services. In remote communities, mobility and accessibility are often issues, and resources and services are often not available for someone with a disability (Demas, 1993). As a result, many aboriginal people with disabilities have to move away from their family, community and culture in order to access services and supports. What's more, even when individuals do relocate in an effort to access these, and/or if they live in an urban centre, many are still marginalized and excluded from such services due to jurisdictional issues, discrimination and/or due to the lack of culturally relevant services available to them.

One consequence of the lack of adequate support for children "in need" within First Nations' communities is that there is now a disturbingly high percentage of aboriginal children in state care, and this includes a high percentage of aboriginal children with disabilities. Indeed, more than 40% of all children "in care" are of aboriginal descent (Blackstock & Tocme, 2005), despite the fact that Aboriginal Canadians make up less than 5% of the total population. Across Canada, there are now three times as many aboriginal children "in care" (most of whom are not placed within their home communities) than there were children in the residential schools at the height of their use (Blackstock & Tocme, 2005).

Qualitative studies looking at the experiences of families of aboriginal children with disabilities have shown that many such families live in fear of having their child taken away from them. For example, in *Urban Aboriginal Families of Children with Disabilities: Social Inclusion or Exclusion?* (Durst, 2006), one grandmother clearly states, "Every time they ask for things the kid's gone – he's put into permanent care and you never see him again, or put into foster care" (p. 33).

3. Rights Guarantee: The International Context

There are two international instruments that are designed to protect and promote the rights of indigenous persons with disabilities globally; the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007) and the UN Convention on the Rights of Persons with Disabilities (CRPD) (2007). And, although there is no direct relationship between the two, there is certainly considerable overlap. To date, few efforts have been made to examine the two universal legal frameworks together and how they interact with each other in order to protect human rights of indigenous people with disabilities, but a meeting was held for this purpose in Madrid in November 2012 (called the “Permanent Forum on Indigenous Issues”), organized by the United Nations Economic and Social Council. The consensus in that meeting was that the United Nations and international law have an important role to play in protecting the rights of indigenous peoples with disabilities around the world (Cunningham and Kanyinke Sena, 2013). Yet, there seems to be little awareness among indigenous persons with disabilities of the CRPD and of the UNDRIP.

(a) *UN Declaration on the Rights of Indigenous Peoples (2007)*

In September 2007, after years of negotiations between governments and indigenous peoples from around the world, the United Nations General Assembly adopted the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), (*Affirming* that Indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such *Affirming also* that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind, *Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust)

(http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf).

Indigenous peoples were key actors in drafting the UNDRIP. At the time the United Nations adopted the declaration, however, Australia, Canada, New Zealand and the United States all voted against it. On 3 April 2009, the Australian Government gave formal support to the declaration and in November 2010 Canada lent its support as well.

The Aboriginal Affairs and Northern Development Canada (AANDC) website states, “In 2007, at the time of the vote during the United Nations General Assembly, and since, Canada placed on record its concerns with various provisions of the Declaration, including provisions dealing with lands, territories and resources; free, prior and informed consent when used as a veto; self-government without recognition of the importance of negotiations; intellectual property; military issues; and the need to achieve an appropriate balance between the rights and obligations of Indigenous peoples, States and third parties. These concerns are well known and remain. However, we have since listened to Aboriginal leaders who have urged Canada to endorse the Declaration and we have also learned from the experience of other countries. We are now

confident that Canada can interpret the principles expressed in the Declaration in a manner that is consistent with our Constitution and legal framework” (AANDC, 2011).

The Declaration lays the groundwork for Indigenous peoples to be free from discrimination and to safely assert their identities and life choices. It is based on the principles of self-determination and participation, and it advocates for the rights and roles of Indigenous peoples within society. It contains the minimum standards for the survival, dignity and well-being of Indigenous peoples all over the world.

The Declaration can be used:

- to inform the development and implementation of government policies and programs
- to guide and strengthen the development of relationships with government and other communities
- to adopt standards (based on the Declaration) in policy statements or guidelines within Aboriginal organizations
- as an information source in submissions to the government
- as a reference when lobbying those who represent Aboriginal people at all levels of government
- as a reference in court matters including native title, cultural heritage and issues around access to justice

Self-determination (Article 3) is a core right within the Declaration. Exercising the right to self-determination means having the freedom to live well and to live according to one’s own values and beliefs. In effect, all of the other rights in the Declaration help to achieve self-determination. Self-determination means that a collective:

1. Has a choice in determining how they live.
2. is able to participate in decisions that affect them.
3. Has control over their own lives and development.

Additional rights that are protected within the Declaration include:

Language, cultural and spiritual identity rights (Articles 11–13).

Culture is important to Aboriginal peoples. Cultural rights addressed within the Declaration include:

1. The right to practice one's own culture and to have one's cultural property protected
2. The right to practice religious and spiritual traditions
3. The right to one's own languages, histories and ways of thinking about the world

Education, information and employment rights (Articles 14–17)

Education, information and employment rights in the Declaration include:

1. The right to access the same standards of education as all others
2. The right to culturally appropriate education in their own language
3. The right to ensure that media and public information reflects Aboriginal cultures and their diversity in a dignified way
4. The right to the same employment rights as others.

Participation, development and economic and social rights (articles 18–24)

Participation, development and economic and social rights ensure that we can control our future, and include:

1. The right to participate in decisions that affect indigenous individuals and indigenous communities. This should be guided by and include the principle of free, prior and informed consent.²
2. The right to decide how aboriginal people develop politically, economically and socially.
3. The rights to improved economic and social conditions, with extra assistance for people who are additionally vulnerable, like elders, women and children.
4. The right to the same standard of health as others. Aboriginal people also have the right to use their traditional health practices.

Rights to country, resources and Aboriginal knowledge (Articles 25–32)

Rights to country, resources and Aboriginal knowledge form a major part of Aboriginal identities and cultures and are central to their systems of governance. As such, the following rights are protected within the Declaration:

1. The right to maintain and strengthen spiritual connection to country
2. The right to control and develop one's country.

² Free, prior and informed consent means that Aboriginal people should be consulted and should be able to participate in an honest and open process (without force or bullying) in order to achieve an outcome that all parties are happy with. This means that Aboriginal people should be engaged in all levels of programs, policy and legislation that affect them, from design and implementation through to monitoring and evaluation.

3. The right to ensure that governments develop systems for the legal recognition and protection of one's country
4. Where Aboriginal people no longer have a country, they have the right to have some form of compensation.
5. Rights to the protection of the environment on Aboriginal lands
6. The right of protection of cultural heritage and traditional knowledge
7. The right to determine how and if Aboriginal country is developed

(b) *UN Convention on the Rights of Persons with Disabilities (2007)*

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) was adopted by the U.N. General Assembly in 2006 and came into force in May, 2008. Canada ratified the CRPD in March, 2010, meaning that countries that have ratified now have a legal duty to work progressively towards its implementation at a national level.

The CRPD does not explicitly create new rights for persons with disabilities, but it highlights and explains what existing civil, cultural, economic, political and social rights mean in situations faced by persons with disabilities. Persons with disabilities, disability organizations and their allies played an active role in shaping the content of the CRPD.

Articles 10 to 30 of the CRPD cover the rights guaranteed to persons with disabilities as follows:

Article 10 – Right to life

Article 11 – Situations of risk and humanitarian emergencies

Article 12 – Equal recognition before the law

Article 13 – Access to justice

Article 14 – Liberty and security of the person

Article 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment

Article 16 – Freedom from exploitation, violence and abuse

Article 17 – Protecting the integrity of the person

Article 18 – Liberty of movement and nationality

Article 19 – Living independently and being included in the community

Article 20 – Personal mobility

Article 21 – Freedom of expression and opinion and access to information

Article 22 – Respect for privacy

Article 23 – Respect for home and the family

Article 24 – Education

Article 25 – Health

Article 26 – Habilitation and rehabilitation

Article 27 – Work and employment

Article 28 – Adequate standard of living and social protection

Article 29 – Participation in political and public life

Article 30 – Participation in cultural life, recreation, leisure and sport

The rights covered by the CRPD are outlined in the text box on this page. A quick comparison with those listed in the UNDRIP shows that there is indeed considerable overlap. Both treaties address the rights to education, health, employment, and participation in political and cultural life, for example. Differences between the two treaties also become evident, though these are based on the specific priorities and concerns of the populations they address. (See <http://www.un.org/disabilities/convention/conventionfull.shtml>).

(c) Other United Nations Human Rights Treaties:

Although the two most important treaties for Aboriginal Canadians with disabilities are the CRPD and UNDRIP, there are also other treaties that Canada has signed that similarly act to protect the rights of this group and others.

These other treaties apply to all persons, including all Aboriginal people with disabilities, and include:

- The Universal Declaration of Human Rights (1948) (UDHR)
- the International Covenant on Economic, Social and Cultural Rights (1976) (ICESCR)
- the International Covenant on Civil and Political Rights (1976) (ICCPR)
- the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (1984)(CAT)
- the Convention on the Elimination of All Forms of Discrimination Against Women (1981) (CEDAW)
- the Convention of the Rights of the Child (1990)(CRC)
- the International Convention on the Elimination of All Forms of Racial Discrimination (1969) (CERD)
- The International Convention on the Protection of the Rights of All Migrant Workers and their Families (2003)(CRMW)

(d) General Human Rights Principles

In addition to guaranteeing specific rights such as “the right to health”, the CRPD, the UNDRIP and other human rights treaties also include general principles that should be understood and used when implementing rights-based claims. The general principles provide guidance about how each right in the treaty can be understood and put into practice.

Below are human rights principles found in the CRPD and other United Nations human rights treaties that are important to persons with disabilities. Each of these general human rights principles apply equally to men, women, boys and girls, and aboriginal and non-aboriginal peoples.

DIGNITY

Dignity refers to the inherent worth of every person. Human rights are about protecting and promoting the self-respect of all persons. Everyone should feel respected in their community, in their society and in their everyday activities.

Example: Mirela was in a fire and has scars that cover her head and upper body. She has had difficulty finding a job and she is very poor. Because of the respect her friends and colleagues have for her, she is not forced to live in an institution or beg for money. Instead, she is invited to join a group of women who have a business raising chickens and selling their eggs. In this way, she is able to make the money she requires to meet her basic needs, and she has a sense of dignity.

AUTONOMY

Autonomy is the right of a person to make his or her own choices independently or with support. Autonomy means that the person is placed at the centre of all decisions affecting him or her.

Example: Robert has speech that is difficult to understand. When he goes to the community clinic, the doctor or his family or friends makes sure that Robert has someone with him who he trusts and who can assist Robert to communicate. With that support, Robert can ask the doctor questions and he can make decisions about his treatment.

PARTICIPATION, INCLUSION & ACCESSIBILITY

Inclusion is the right of all persons to participate fully and effectively. It involves making sure that society is organized in an accessible fashion such that it is without physical or social barriers. This includes access to transportation; elections; clean water; sanitation; technology; appropriate sources of communication and media to ensure information. It also means that there have to be non-discriminatory attitudes and facilitation or accommodation to limit the impact of disability. Participation is important for any person to be included in decision making – this could be at micro level (that is, in one's community or in one's church, or in one's social club) and it could at the meso or macro level (this is, political participation). Democratization is an important consideration for people to feel included. Article 29 in the CRPD guarantees the right to participation in political and public life and the elements that make up that right.

Example: Priyanga, who is blind, is welcome to attend the same school and classes as her brothers and sisters who are not blind. The school and the teacher think it is

important for all children to have a chance to learn and so they try to accommodate her not being able to see by having Braille books and tactile learning tools.

NON-DISCRIMINATION & EQUALITY

Rights are guaranteed to everyone. It is discrimination for people to be denied their rights based on disability, race, sex, language, religion, political or other opinion, national or social origin, property, birth or age.

Discrimination happens when favouritism is shown to one group of people over another. It may be based on prejudice and it is unfair. Laws, policies, programs, actions or failures to act that result in denying persons with disabilities the ability to exercise their human rights, is discrimination.

Everyone has the right to enjoy human rights equally. Rights, responsibilities and opportunities do not depend on whether someone is born with or without a disability. This does not mean that persons with disabilities will be treated exactly the same as persons without disabilities. Instead, society must ensure that persons with disabilities have what they need to exercise their rights fully. Sometimes what a person with a disability needs to exercise his or her rights equally will be the same as what is needed by a person without a disability and sometimes it will be different.

Examples:

Non-discrimination: Anna, a woman with an intellectual disability, is able to marry and have children. The laws of her country allow her to exercise these rights even though she has impairment. Also, Anna knows that if her husband beats her, the police must act to protect her. They cannot ignore the abuse because she has a disability.

Equality: Nak, a man who is deaf, and his friend Dusit, who does not have a disability, are both able to get enough information about the candidates who are running for election to be able to exercise their right to vote. Both Nak and Dusit travel to a gathering where the candidates are speaking by using the same public bus. Since both sign language interpretation and a loudspeaker have been arranged by the event organizers, both Nak and Dusit can understand what the candidates are saying.

RESPECT FOR DIFFERENCE:

Respect for difference involves recognizing and accepting persons with disabilities as part of human diversity. Difference is not a reason to deny someone his or her rights and dignity. The responsibility to change does not fall on the individual but on the community and the government and society who must recognize diversity and find ways to be inclusive of the difference that disability represents.

Example: Eghosa has a disability that requires him to walk with a cane. In order to remain mobile and self-sufficient, the buses in his community have to be accessible. The bus driver on Eghosa's regular route recognizes his needs and allows him time to walk from where he waits to the bus. The driver also allows Eghosa the extra few seconds it takes to reach his seat before starting to move the bus. Instead of worrying about losing time on his route, the driver thinks about the individual needs of his passengers.

4. Rights Guarantees: the National Context

Within Canada, legal instruments including the Canadian Charter of Rights and Freedoms, federal statutes, provincial anti-discrimination legislation and duty to accommodate jurisprudence all provide a legal framework for ensuring that the human rights of people with disabilities in Canada are respected.

a. The Charter of Rights and Freedoms

During the past fifty years Canada has encoded civil rights and liberties into law. Civil rights were initially given recognition in the *Canadian Bill of Rights*³ and they were later embedded in the *Canadian Charter of Rights and Freedoms (the Charter)*. The Charter was signed into law on April 17, 1982, and it has subsequently become the most important human rights legislation in Canada. It is part of the Constitution of Canada and it is the supreme law of the land - any Canadian law that contradicts the Charter is therefore unacceptable. Furthermore, the charter guarantees certain political and civil rights to Canadian citizens and must be respected by all levels of government. The Charter states: "Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination"⁴ Of particular interest herein, Section 15 of the charter, which came into force in 1985, guarantees the right to equality before and under the law, and to equal protection and benefit of the law, without discrimination based on physical or mental disability.

The Charter ensures the following human rights and fundamental freedoms to all Canadians:

- the right to life, liberty and security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law
- the right to equality before the law and its protection
- freedom of religion, speech, assembly and association, and the press

³ The *Canadian Bill of Rights* was introduced by Prime Minister John Diefenbaker. It became law on August 10, 1960. It was not entrenched in the Constitution, however, which meant that a simple Act of Parliament could revoke it.

⁴ Quote taken from

http://www.ohrc.on.ca/en/resources/discussion_consultation/CoalitionAgainstRacismENG?page=CoalitionAgainstRacismENG-INTERNAT.html

- the right not to be arbitrarily detained, imprisoned or exiled
- the right not to receive cruel and unusual punishment
- the right to be informed promptly of the reason for arrest
- the right to retain and instruct counsel without delay
- the right to obtain a writ of *habeas corpus* to determine the validity of detention
- the right not to give evidence if denied counsel,
- protection against self-incrimination
- the right to a fair hearing
- the right to be presumed innocent until proven guilty
- the right to reasonable bail
- the right to an interpreter in any legal proceedings

The Charter applies to actions of the government at all levels. Section 32 states that the Charter applies to parliament, to the federal and provincial legislatures, and to the federal and provincial governments. Furthermore, the Charter applies to people working for either the federal government or for a private company regulated by the federal government. It also applies to anyone who receives goods and services from any of those sectors. As such, all of the federal government departments and Crown corporations (such as the CBC or Canada Post) must adhere to the Charter, and they are thus prohibited from discriminating against persons with disabilities in their laws and programs. Private companies such as railroads, airlines, banks, telephone companies, and radio or TV stations are also held to these standards (See the Andrews case: <http://www.un.org/disabilities/convention/conventionfull.shtml>).

a. Federal and Provincial Human Rights Legislation

Canada's Constitution splits legal responsibility and jurisdiction between the federal and provincial/territorial governments. As such, the federal government regulates some employers and service providers who operate on a national level, such as banks and airlines and federal government branches and offices, while the provincial/territorial governments regulate other employers and service providers working within their borders. The Canadian Human Rights Act therefore protects individuals seeking employment or services from organizations with federal oversight, while the provincial/territorial human rights acts are applicable to all other services and organizations, which fall under provincial or territorial jurisdiction.

The Canadian Human Rights Act

The Canadian Human Rights Act (CHRA) was passed by parliament in 1977 in order to protect Canadians from discriminatory practices⁵ based on race, religion, disability or other such group affiliations. The CHRA also established the Canadian Human Rights Commission to investigate claims of discrimination and created the Canadian Human Rights Tribunal in order to hear and judge complaints that are filed.

- Under the Act, organizations are bound by a “duty to accommodate” individuals with disabilities, and race and physical and mental disabilities are all prohibited grounds of discrimination. As such, all federally-regulated employers are therefore required by law to prevent discrimination and to provide access and support to individuals with disabilities. This duty to accommodate persons with disabilities, however, is only compulsory to the point of the employers' "undue hardship." Health, safety and cost concerns may make accommodation too difficult or too hazardous for the employer, but the employer has to show that that is the case. Typical accommodations that are required by organizations that provide services for the public include making the environment accessible to wheelchair users. For example, “an employer requires all employees to have a valid driver’s licence. People who cannot drive due to a disability are not given an opportunity to show how they could still perform the job by, for example, using public transit. This may be a case of discrimination based on the ground of disability” (See www.chrc.ccdp.ca/eng/content/what-discrimination).

In addition, the Act forbids the following discriminatory practices, if they are based on one of the grounds of discrimination:

- Denying someone goods, services, facilities, or accommodation (Section 5).
- Refusing to employ or continue to employ someone or treating them unfairly in the workplace (Section 7).
- Following policies or practices that deprive people of employment opportunities (Section 10).
- Paying men and women differently when they are doing work of the same value (Section 11).
- Communicating hate messages on the telephone or through the internet (Section 13).

⁵ “Discrimination is an action or a decision that results in the unfair or negative treatment of a person or group because of their race, age, religion, sex, etc.”

- Harassing someone (Section 14).
- Retaliating against a person who has filed a complaint with the Commission or someone who has filed a complaint for them (Section 14.1).

The Canadian Human Rights Act is particularly relevant to First Nations' people in Canada, since the Indian Act (which directly impacts the lives of Aboriginal Canadians in many concrete ways) is a federal mandate and its implementation therefore falls under federal jurisdiction. Until 2008, however, Section 67 of the CHRA prevented someone from filing a complaint about anything related to the Indian Act with the Canadian Human Rights Commission. This stipulation was challenged and in 2008 Section 67 was repealed (cancelled). Now that Section 67 is gone, Aboriginal people can file human rights complaints against the federal government if the Indian Act or policies made under the Indian Act result in discrimination. In addition, since 2011, Aboriginal people have also been able to file human rights complaints against First Nations governments and federally-regulated Aboriginal organizations if their acts or decisions under the Indian Act are a discriminatory practice. These new developments could be important for Aboriginal Canadians with disabilities seeking to challenge discriminatory practices that may stem from the Indian Act.

Also it has been recognized that human rights decisions involving First Nations should consider and reflect Aboriginal and Treaty rights. Thus, for complaints about First Nation governments or service organizations, the Commission and the Tribunal can consider the customary law of the First Nation. There is a need to balance collective and individual rights from a First Nation perspective, while respecting gender equality.

Provincial and Territorial Human Right Legislation

Each of the provincial and territorial governments have also established **provincial human rights codes** that parallel the Canadian Human Rights Act and that similarly prohibit discrimination based on the grounds of race and physical and mental disability (in addition to other categories) and that also promote a duty to accommodate. These acts are relevant to those organizations that operate under provincial jurisdiction, and to individuals that seek services and/or employment from such organizations. The Ontario Human Rights Code, for example, is thus similarly designed to prevent discrimination and unequal treatment based on race, disability, age, sex, sexual orientation, religion, family status, and marital status, receipt of social assistance or record of offences.

Furthermore, additional provincial legislation has, in many cases been drafted and implemented in order to specifically address some of the accessibility rights that are so important to Canadians with disabilities. Using Ontario once again as an example, two relevant statutes include the Ontarians with Disabilities Act 2001 (ODA) and the more recent Accessibility for Ontarians with Disabilities Act, 2005 (AODA). The ODA applies to the broader public sector, including transportation providers, education institutions and municipalities, and requires the development

of accessibility plans. The more recent AODA, on the other hand, addresses accessibility issues in both the public and the private sectors. This Act lays out specific procedures and obligates businesses and organizations (above a certain size) to provide access for people with disabilities in these areas of; transportation; customer service; information and communication; employment; and buildings and outdoor spaces.

Other disability-related legislation

In addition to the human rights codes and accessibility statutes, several other federal and provincial acts are also in place that are aimed at protecting and promoting the human rights of individuals with disabilities. For example:

The federally- mandated *Employment Equity Act 2012* specifically prohibits the denial of employment opportunities to persons with disabilities, women, Aboriginal peoples and visible minorities.

Some provincial *Assessment Acts* provide for exemptions from property taxation where improvements, alterations or additions to existing homes or designated portions of new homes are made or built to accommodate persons with disabilities who would otherwise require care in an institution.

The *Blind Persons' Rights Act* prohibits discrimination in services, accommodation, facilities or occupancy against blind persons using guide dogs and prohibits persons who are not blind from using white canes.

The *Building Code Act (1992)* and the regulations made under it establish standards for the construction, renovation and change of use of buildings and structures, including standards related to the accessibility of buildings and structures for persons with disabilities.

As an incentive to encourage employers to hire persons with disabilities, the *Corporations Tax Act* allows employers an additional deduction for the costs of modifying buildings, structures and premises, acquiring certain equipment and providing special training in order to accommodate persons with disabilities in the workplace. The Income Tax Act provides a similar credit to unincorporated employers.

The *Education Act* includes provisions to address the needs of students with disabilities who have been identified as “exceptional pupils”. School boards must provide special education programs and services to these students.

5. National and Provincial Policies and Programmes

In order to be able to adequately understand which programmes and policies aboriginal Canadians with disabilities may be able to access, it is important to understand Aboriginal Canadians unique position within Canada. While most Canadians benefit from policies and

programs provided by all three levels of government (federal, provincial and municipal), there is a separate system in place in order to govern First Nations populations.

The Indian Act (first enacted in 1876, under the provisions of Section 91(24) of the Constitution Act, 1867) grants Canada's federal government exclusive authority over "Indians and Lands Reserved for Indians". As such, it sets out certain federal government obligations to "registered Indians", but it also sets limits and regulates the lives of Canada's First People. This puts First Nations people in an unparalleled position, in that they are the only racial group in Canada subject to separate administration.

The Act is administered by Aboriginal Affairs and Northern Development Canada (AANDC) (formerly called Indian and Northern Affairs Canada [INAC]), a branch of the federal government that, through the Act, has fiduciary responsibility for First Nations people. Thus, it is through this system that an Aboriginal person who is registered as a First Nations person (a "registered Indian" under the Act) can receive certain entitlements from the federal government, such as income tax exclusions, health care, housing, and education, but only if they live on-reserve. Should a First Nations person or family move off-reserve, some of these rights will be restricted or terminated, while others may become the responsibility of the provincial government. Such details (and the lack of clarity that surround them) have created many significant jurisdictional disputes. The primary significance of the Indian Act is in its stipulation that the federal government has fiduciary duty to provide First Nations people (including individuals with disabilities) with housing, health care, education and other adequate social services. This means that policy, programing and funding of services and supports for First Nations people happens almost exclusively through AANDC.

The AANDC is also responsible for making funding transfers to band councils through Transfer Payment Programs (TPPs). In some cases, through specific agreements/treaties established with AANDC in an effort to promote self-government, it is ultimately the band council's responsibility to use the funds as they see best suited. However, there are often restrictions and stipulations associated with such funding transfers to First Nations governments, and many nations have little say in how funds are spent. The result is that many First Nations people with disabilities have access to the very limited number of federally-run programs (such as those listed below), while they are, at the same time, systematically excluded from programs and supports that are available to other Canadians.

a. National Policies and Programmes

There are several federal programs that apply to Aboriginal Canadians with disabilities, but there is no separate or central office or department that deals specifically with Aboriginal people with disabilities as a group. These federally-run programs specifically for aboriginal persons with disabilities include: The Assisted Living Program (ALP) which, with Health Canada's First Nations and Inuit Home and Community Care (FNIHCC) program, provides limited funding for in-home care support for individuals with disabilities the Income Assistance Program (IAP) The Special Education Program, Aboriginal Human Resources Development Strategy, Fetal Alcohol Spectrum Disorder Program and the Aboriginal Diabetes Initiative services Health Supplement.

(These programs can be accessed at: <http://www.hc-sc.gc.ca/ahc-asc/branch-dirigen/fnihb-dgspni/index-eng.php>).

Factors affecting the accessibility of these programs may include an individual's location, diagnosis, family situation, local knowledge of the programs and the administrative and funding mechanisms involved, and even the individual decisions made by professionals and government employees within the system. The process for qualifying may be difficult and obscure leading to a maze of paperwork and jurisdictional issues.

Provincial/territorial and municipal programmes impacting individuals with disabilities

Most Canadians with disabilities receive services and supports through the provincial and municipal levels of government, in addition to potentially receiving some support through the federal government programs (the National Childcare Supplement, for example). The majority of programs and services stem from provincial/territorial programs. For example, both healthcare and education are provided by the provinces/territories, as are assistive technology programs and social services (such as in-home support and respite care). In addition, many provinces also have income-support programs in place for individuals with disabilities, such as the Ontario Disability Support Program (ODSP) (which provides a separate social assistance program for persons with disabilities who fall within the specified eligibility requirements), and the Workplace Safety Insurance program (which provides income and re-employment supports for persons who experience temporary or permanent disabilities due to workplace accidents). At the municipal level, individuals may also have access to programs such as adapted recreational and cultural programming, childcare provision (with additional supports provided for children with disabilities) and employment support services.

Thus, it appears that there are a greater number and variety of programs and supports available to non-Aboriginal Canadian with disabilities than there are programs that are provided directly to First Nations people with disabilities through the federally-run programs. This is not to say, however, that non-Aboriginal Canadians have access to all the services and support that they need. Indeed, there is considerable evidence to the contrary. Despite the higher number of services and supports available to them, it is widely recognized that non-Aboriginal Canadians with disabilities remain highly marginalized within Canadian society, experiencing high levels of poverty. The existing web of programs and supports is clearly insufficient and this is an area in which many disability advocacy groups have been actively working and campaigning for decades.

It should be noted here, however, that (in theory) many of the provincial and municipal programs should also be open to and available for Aboriginal people, especially those living off-reserve, those who are non-registered First Nations individuals, and for the Metis population. However, as the following section will highlight, this is not always the case.

6. Key Issues

There are several significant concerns with regards to ensuring that the human rights of Aboriginal Canadians with disabilities are met and respected.

- One particular problem that became apparent through this literature review is the **lack of available data** and information regarding Aboriginal people with disabilities, their experiences, and the existing policies and programs that are meant to serve them.
- Secondly, **Aboriginal involvement in all stages of planning and implementation has been largely lacking**, and this presents a significant barrier to both self-determination and the creation of culturally-relevant programmes.
- A third concern is with the **limited availability and accessibility of appropriate programmes and supports** that would enable Aboriginal Canadians with disabilities to achieve the degree of self-determination and autonomy and community participation that is guaranteed under the UN human rights system.

Currently, the programmes and supports available to Aboriginal Canadians with disabilities include **a patch-work of policies that are not “on par” with those available to the rest of Canadians**, and do not adequately address the significant needs that exist. Underfunding within the programs and major gaps in service provision are obvious. For example, families living on reserve generally have no access to:

- rehabilitation services (including physiotherapy, occupational therapy, and speech therapy),
- respite care and home support programs except on a limited basis if at all,
- funding for home modifications (for accessibility), and
- funding for many required assistive devices (Corfield, 2010).

Also, there are very limited resources available for inclusive or special education, and the vast majority of schools and communities are inaccessible for people with mobility impairments (Durst, 2006). In some cases, support programs may be available to families, but there is a serious problem in accessing services, due to lack of knowledge about these services. Many existing services and programs are not utilized because **individuals or families are simply unaware that they are available or of how to access them** (Durst, 2006). Couple these issues with the generally poor living conditions already found on-reserve, and the picture is bleak.

The over-arching **funding inequities** that currently exist between many federally-funded services provided to First Nations populations and those provided by the provinces to the rest of the population is a significant underlying issue. For example, there is considerable evidence that both education services (Assembly of First Nations, 2012; First Nations Education Council, 2009; Richard and Scott, 2009) and social welfare services (Auditor General of Canada, 2008; Blackstock, 2011) for First Nations populations are funded at a per -person rate that is significantly lower than what is allotted for the rest of the population through provincial programs. This is particularly startling given the already disadvantaged position of Aboriginal people within Canadian society and given the stark needs of the population. And, this creates a very problematic situation for Aboriginal people with disabilities, who may be struggling to

access funding and services within the overarching context of inadequate resources and service provision.

As a result, many individuals and families must seek support and services far from their homes and communities. Indeed, many children with disabilities are separated from their families for extensive periods of time (even permanently) in an attempt to access the needed services. And, while the **fractured nature of program delivery** and the **cultural-relevance** of the government-mandated programs available within First Nations communities are already in question, these issues are even more significant when Aboriginal Canadians attempt to access services off-reserve.

Jurisdictional problems are also a major concern. While the federal government is responsible for funding programs for First Nations people on-reserve, we've already seen that these programs are not equal in scope or funding to those provided by the provinces to individuals not living on reserves. The federal government often claims that such programs (including rehabilitation, complex medical care, and respite,) are provincial responsibility, while the provinces claim that it is the federal government that is responsible for paying for the services provided to "status Indians". These jurisdictional disputes over who should pay for services for First Nations people with disabilities, further delays or prevents the provision of needed services.

Jordan's Principle

A tragic example of this policy is the story of what happened to Jordan River Anderson. Jordan was a little boy with a disability from the Norway House First Nation who had complex medical needs. He spent the first 2 years of his life in a hospital in Regina gaining strength and improved health. At the age of 2, doctors told his family that Jordan was healthy and strong and that he should be taken home to live with his family. However, what ensued was several years of jurisdictional disputes, during which the province and the federal government fought over who should pay for Jordan's additional care and support needs at home. All the while, Jordan remained in the hospital waiting for the dispute to be resolved. Unfortunately, however, a resolution did not come fast enough and, after waiting for 3 years in the hospital, Jordan passed away at the age of 5, having never lived in a family home.

This story generated outrage from First Nations groups and communities, as well as child welfare organizations, who stated that no child should ever be forced to live in an institution or hospital (or otherwise go without services) because different branches of the government cannot agree on who should pay for such services – especially when these are services readily available to other non-Aboriginal Canadians. In order to address these issues, **Jordan's Principle** (a child-first policy stating that services must be provided first, and funding mechanisms determined second) was introduced to the Canadian parliament on December 12th, 2007 and was unanimously and immediately passed, making it one of the most rapidly passed bills in Canadian history. Yet despite this victory, 6 years have passed and little has changed.

In Manitoba alone, there are currently over 50 cases of First Nations children still trying to access funding and services through Jordan's Principle (Peters, 2013). What's more, just months ago, a federal court found that the federal government was wrong to only pay a small fraction of the care costs for Jeremy Meawasige, a First Nations teen with a disability who was living with

his mother on a reserve. Jeremy was at risk of being institutionalized if the government did not cover the costs of his at-home care, which they had refused to, do despite their stated commitment to Jordan's Principle (Cheatle, 2013). Perhaps more disturbing still, when the court obliged the federal government to uphold Jordan's Principle and to pay for Jeremy's care, their reaction was to immediately appeal the decision to the Supreme Court of Canada.

This discussion, referring to Aboriginal people living on-reserve, should not lead one to assume that these issues only impact individuals and families living in First Nations communities, however. Indeed, research shows that Aboriginal individuals and families living off-reserve (whether they have "registered" status or not) also experience enormous barriers in accessing appropriate programs (Demas, 1993; Durst, 2006; Grahams and Peters, 2002). For both urban and rural Aboriginal populations, the fact remains that many individuals who require services cannot access them due to; the lack of knowledge of and coordination within the system; the lack of culturally-relevant programs; and the jurisdictional conflicts. In addition, despite existing provincial, national and international human rights frameworks, discrimination is still a common experience for many Aboriginal Canadians, and directly impacts all areas of their lives, including access to services, and educational and employment opportunities.

There are clearly many concrete barriers that need to be addressed if Aboriginal Canadians with disabilities are going to be able to realize their human rights. In order to put the Canadian perspective into a broader international context, we'll now take a quick look at the situation in other nations around the world.

7. International Indigenous Issues – Australia, New Zealand, the United States and beyond

As in Canada, indigenous populations in the United States, Australia and New Zealand are growing faster than the population at large. Papillon and Cosentino (2004) found that despite important differences in institutional underpinnings, Aboriginal Peoples in all three countries share common socio-economic challenges including; a growing and increasingly young population that live in environments not conducive to healthy development; high poverty rates and low levels of educational attainment, all of which lead to social exclusion; problems with access to services in remote communities; and, a high degree of dependence on state programs for income. They also concluded that all three countries share a history of paternalistic and disempowering policies towards Aboriginal peoples that have created a high level of dependency.

Australia

According to the 2011 census, there were 669,736 indigenous people living in Australia, representing approximately 3% of the population. Additional research suggests that the prevalence of disability among the indigenous population is approximately two times that of non-indigenous people and that this population also experiences significantly poorer health outcomes and many forms of social marginalization to a greater extent than other Australians (Productivity Commission, 2011).

Australia is a signatory of both the UNDRIP and the CRPD and the Australian government has human rights legislation in place that protects individuals from discrimination on the basis of both race and disability. And yet, there does not appear to be legislation and there are few programs in place to address the specific rights and needs of indigenous Australians with disabilities. The Productivity Commission's (2011) *Disability Care and Support* report discusses the new National Disability Insurance Scheme (NDIS) (The NDIS is an insurance scheme that assists people with disability access mainstream and community supports, helps support informal care and funds reasonable and necessary supports, including early intervention supports, for its participants. Participants are people in the Scheme with permanent disability which has a substantial impact on a person's daily life. This includes people with mental health conditions (See http://www.ndis.gov.au/sites/default/files/documents/what_is_ndis%20%282%29.pdf). This chapter highlights both the reasons behind the high incidence of disability among this population (including the impact of social and economic marginalization) and the barriers that lead to lower levels of services and supports accessed by this group (such as the lack of culturally-appropriate services), and it makes concrete recommendations for improving access to services. Such recommendations include; embedding services within local communities and within existing social and organizational structures; employing Aboriginal staff; and increasing the cultural-awareness and sensitivity of non-Aboriginal staff. As the Act recently came into force, it is not yet known what the final results have been and its overall impact.

The United States

According to the United States census data, people who identify as Native American represent approximately 1.7 per cent of the overall population, with 5.2 million persons identifying as American Indian or Alaska Native, either alone or in combination with one or more other races. And, as in Canada and Australia, the indigenous population in the US has a high rate of disability, with almost 30% of American Indian and Alaskan Native adults experiencing disability as compared to the national average of approximately 20% of the adult population (CDC, 2008).

The United States is a signatory, but has not ratified, the CRPD and had endorsed the UNDRIP, in 2010. The United States has a number of policies which directly impact and provide services or people with disabilities. The *Americans with Disabilities Act* (ADA) prohibits discrimination on the basis of disability in employment, state and local government, public accommodations, commercial facilities, transportation, and telecommunications. The ADA also applies to the United States Congress.

The *Rehabilitation Act* prohibits discrimination on the basis of disability in programs conducted by federal agencies, in programs receiving federal financial assistance, in federal employment, and in the employment practices of federal contractors. The Rehabilitation Act was the first federal civil-rights law protecting the rights of people with disabilities in the United States, but it applies only to programs and activities conducted by the federal government or by agencies who receive federal financial assistance. This does include agencies such as the Bureau of Indian Affairs (BIA), schools, colleges, libraries, Indian Health Services, and vocational schools or vocational- rehabilitation agencies. These agencies therefore operate their programs to be accessible to people with disabilities. In addition, the Rehabilitation Act requires the federal

government and government contractors to use "affirmative action" to employ and advance workers with disabilities.

Overall, there seems to be some progress in terms of resources, government support and awareness concerning Aboriginal people with disabilities in the USA. The National Council on Disability (NCD) published *Understanding Disabilities in American Indian and Alaska Native Communities: Toolkit Guide* (NCD, 2003), a document that highlights existing programs and barriers and that provides concrete guidelines for those working with American Indians with disabilities. Also of interest, Nielson's (2012) book *A Disability History of the United States* opens with a chapter on disability in pre-Columbian USA that provides an important look at aboriginal conceptions of disability – conceptions that can act to challenge the dominant medical interpretation of disability that exists today.

New Zealand

The Māori (indigenous) population within New Zealand represents approximately 15% of the nation's total population, and approximately 20% of the Māori population experiences some form of disability (Ministry of Health, 2012). With the highest proportion of indigenous persons of the United States and Australia and Canada, New Zealand is also the country with the greatest level of engagement with issues concerning disability within the indigenous community. This is demonstrated by; the significant amount of literature that already exists addressing issues pertinent to Māori with disabilities; the increasing number of Māori organizations providing disability support services; the existence of several organizations of Māori persons with disabilities; the inclusion of Māori-centred disability information and resources within government information sources; and the fact that promoting the participation of disabled Māori has been an explicit objective of the New Zealand Disability Strategy since its inception in the year 2000.

The recently developed Māori Disability Action Plan for Disability Support Services (Ministry of Health, 2012) is a state-sponsored, five year initiative that is specifically aimed at improving the well-being of New Zealand's Māori citizens with disabilities. The plan was developed through extensive consultation with disabled Māori persons, their whānau (extended family), those that work within the disability support services and the Māori Disability Leadership Group. The result is a strategic plan that is based on the Māori worldview and that is centered on disabled Māori citizen's expressed desire to live a good life and to be able to participate in their communities (as other New Zealanders do). The plan consists of four priority areas for action, as well as a schedule for monitoring implementation and progress. The priority areas that are laid out include:

1. Improving outcomes for Māori disabled
2. Better support for whānau (extended family)
3. Good partnerships with Māori
4. Responsive disability services for Māori

Concrete actions proposed to meet these goals include; increasing personalized support and training for Māori disabled persons of all ages; developing culturally-appropriate caregiver training for families; improving the quality of community engagement processes with Māori

communities and individuals; strengthening the cultural competencies of the disability workforce through Māori cultural training and through the increased participation of Māori individuals (with and without disabilities) within that workforce (See for example: <http://www.health.govt.nz/system/files/documents/publications/maori-disability-action-plan-insert-english.pdf>).

International Networks

There are organizations that provide links among Indigenous people with disabilities from around the world in order to promote information sharing and network building, among other things. The International Indigenous Network of Persons with Disabilities (IINPWD), for example, is “an email based network in which participants advocate and mediate for the voice of indigenous people with disabilities to be heard at the development and implementation of all levels of law and policy in relations to the UNDRIP and the CRPD” (IINPWD, 2012). It is made up of international and local organizations and groups, as well as individuals with disabilities and their allies.

The UN Voluntary Fund provides Indigenous people from around the world with a platform for participation in the Permanent Forum on Indigenous Issues held each year at the UN headquarters. The Voluntary Fund supports Indigenous people’s participation in UN processes and mechanisms in order to promote an awareness of the issues concerning indigenous peoples worldwide and in order to promote the voices and concerns of indigenous peoples at the UN. It also holds human rights workshops at the UN headquarters. The CRPD specifically includes protections of the Rights of Aboriginal peoples with disabilities (<http://www.un.org/disabilities/convention/facts.shtml>).

8. Conclusion

It is evident and well recognized that there are multiple gaps in public policies, programs and services available for Aboriginal people with disabilities in Canada. Aboriginal people with disabilities clearly fall through the cracks of international, national and provincial and territorial policy. They are silenced not once but multiple times. This is compounded by the lack of research and reliable and valid statistical data available regarding the experiences of this population.

The programs and services that are currently available are not on par with those available to non-Aboriginal Canadians with disabilities, and access and eligibility to each program or policy can change depending upon the sources of funding for services, whether or not the Aboriginal person has status, whether they live on or off reserve, and other factors. Accessibility to and eligibility for programmes is confusing and problematic at best (Durst, Bluehardt, Morin & Rezansoff, 2001).

Jurisdictional disputes also caused major barriers to access and these may be seen as the principal cause of the current public policy vacuum, wherein no national or provincial strategy or

action plan exists to address these challenges. And last but certainly not least, public services provided to Aboriginal people with disabilities are often not provided in a way that is culturally appropriate or culturally relevant to the very people they serve.

9. Next Steps

This brief review of the literature reveals several important recommendations that have been made by the authors of the work cited.

For instance, in order to improve the living conditions and to protect and promote the human rights of Aboriginal Canadians with disabilities, the following concrete practical recommendations are made by Doreen Demass (1993):

- provide communities with more information about how to access funding and services
- ensure that the existing programs and infrastructure on reserve (including schools and recreation centres, for example) are accessible to all community members - including those with disabilities)
- decentralize disability services and ensure that disability-specific supports are available on reserve, and that they are designed and implemented in a culturally-appropriate manner
- educate First Nations communities about the needs of their members with disabilities
- encourage non-Aboriginal organizations and service providers to include Aboriginal people with disabilities and to provide culturally-appropriate programming

Joyce Green (2003) focuses on the systemic barriers impacted by the strained relationship between Canada's Aboriginal population and the Canadian government, and she recommends:

- establishing an intergovernmental review team to complete a comprehensive review of the existing jurisdictional issues and to propose a realistic system to adequately resolve these, and
- Creating an intergovernmental office and include the major stakeholders; First Nations, provincial and federal governments and Aboriginal persons with disabilities. This intergovernmental effort would establish Advocacy Offices for each province, with a director whose primary responsibility is to ensure that Aboriginal and First Nation persons with disabilities and their families receive the basic services and programs they are entitled to receive

In addition to these strategies, the funding inequities within the system and the marginalization of Aboriginal people with disabilities within all levels of decision making and planning are two major barriers that will certainly need to be addressed. A central theme that binds the next steps

is that partnerships with Aboriginal peoples living in Canada will depend on embracing Aboriginal values, respecting Aboriginal spirituality and promoting self-determination in service design and delivery. Aboriginal people with disabilities are part of Aboriginal communities and to access their human rights they have to be part of the planning and implementation process.

Furthermore, Professor McNab argues that “we need to carry on our ‘Expanding the Circle’ project despite (and because) of the federal government approach. To date, except for Indigenous people in their communities, no one else is doing it.”

This snapshot will conclude with the recognition that healing must include spiritual connections, participation in ceremonies and connection to nature, culture, family and community. The Western practice of documenting and evaluating therapeutic approaches and publishing the results of studies can also complement traditional healing practices by providing an alternative means of knowledge transmission. This is especially effective when the researchers and authors are Indigenous people.

1. Given the current track record of the Canada’s federal government, things will definitely not improve for Indigenous people with disabilities now or in the future. For Indigenous people with disabilities, Canada is like a third world country.
2. Disabled First Nations people in Canada are at the bottom as Canadian citizens in terms of health and education despite their rights as proclaimed by the United Nations Declaration as Indigenous people.
3. There is no real linkage between the UN Declaration and rights of Indigenous people with disabilities.
4. In Canada, there is no national or even a provincial plan to address issues of concern to Indigenous Peoples with disabilities. Should such a national plan be developed at the Indigenous community levels who know the situation best? In the interim, should a community partnership model of such a plan be developed? There is a gap in Canada in this process (Dr. David T. McNab, June 14th, 2013).

10. Appendix

The research for this snapshot was conducted using an internet search and on-line materials from various sources. Statistical and research institutions including Statistics Canada, Aboriginal Affairs and Northern Development Canada, Ontario Ministry of Aboriginal Affairs, and various international, national and provincial websites were thus accessed. In addition, archival data including organizational documents, annual reports, and strategic plans retrieved from organizational websites within Canada, the United States of America, Australia and New Zealand provided much of the content herein. The existing literature addressing the human rights of aboriginal people with disabilities was further considered through a review of journal databases, texts, and relevant on-line searches. Additionally, an important component to the

research was the consultation with the SSHRC Partnership Development Grant's partner David McNab, whose story as an Aboriginal person with a disability has enriched the research with personal sensitivity. His personal insights and interpretations were critical to the review. An aboriginal voice has also been provided by Laura J. Vukson's reading of the available literature and knowledge from traditional Indigenous elders.

The methodology used in compiling this report thus included a preliminary review of the status of human rights for aboriginal people with disabilities in Canada, using the existing human rights framework and the limited statistical data available as the starting point. Placing the human rights of Canadian aboriginal people with disabilities within the global context was next. The existing statistics and the voice and opinions of Aboriginal people affected by these issues were considered central to this process. The literature review concludes with a brief discussion of the current gaps in legislation, information and services that are crucial to the exercising of human rights by aboriginal people with disabilities in Canada.

11. Bibliography

Aboriginal Affairs and Northern Development Canada (AANDC) (2011). *Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples*. Fact sheet available online at: <http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142>.

Adelson, N. (2005). *The Embodiment of Inequity: Health Disparities in Aboriginal Canada*. *Canadian Journal of Public Health*, 96(2), S45- S61.

Anaya, J. (2011). *Canada / Attawapiskat First Nation: statement by the UN Special Rapporteur on indigenous peoples*. United Nations

Anaya, J. (2013). *Statement upon conclusion of the visit to Canada*. Available online at: <http://unsr.jamesanaya.org/statements/statement-upon-conclusion-of-the-visit-to-canada>

Assembly of First Nations (20??).

Assembly of First Nations (2012). *Fact sheet: First Nations Education Funding*. Available online at: http://www.afn.ca/uploads/files/education/fact_sheet_-_fn_education_funding_final.pdf

Auditor General of Canada (2008). *First Nations child and family services program - Indian and Northern Affairs Canada. 2008 May: Report of the Auditor General of Canada*. Available online at: http://www.oag-bvg.gc.ca/internet/english/parl_oag_200805_04_e_30700.html

- Australian Institute of Health and Welfare (AIHW) (2011). *The health and welfare of Australia's Aboriginal and Torres Strait Islander people, an overview 2011. Cat. no. IHW 42*. Canberra: AIHW.
- Beavon, D., & Cooke, M. (2010). An application of the United Nations Human Development Index to registered Indians in Canada, 1996
- Blackstock, C. (2011). The Canadian Human Rights Tribunal on First Nations Child Welfare: Why if Canada wins, equality and justice lose. *Child and Youth Services Review*, 33(1), 187–194.
- Blackstock, C., & Trocmé, N. (2005). Community based child welfare for Aboriginal children. In Michael Ungar (Ed.), *Handbook for working with children and youth: Pathways to resilience across cultures and contexts* (pp. 105–120). Thousand Oaks: Sage Publications
- Borrows, J. (2003). Measuring a Work in Progress: Canada, Constitutionalism, Citizenship and Aboriginal Peoples. In Ardith Walkem & Halie Bruce (Eds.), *Box of Treasures or Empty box? Twenty Years of Section 35*. Vancouver: Theytus Books.
- Bryant, T. (2004). Housing and Health. In 65. Raphael, D. (Ed.), *Social Determinants of Health: Canadian Perspectives*. Toronto, ON: Canadian Scholars' Press Inc., 217–232.
- Centers for Disease Control and Prevention (CDC) (2008). Racial/ethnic disparities in self-rated health status among adults with and without disabilities – United States, 2004–2006. *MMWR Weekly*, 57(39), 1069–1073.
- Cheatle, B (2013). *Ottawa appeals order to pay costs of disabled teen*. Available online at: <http://www.cbc.ca/news/canada/nova-scotia/ottawa-appeals-order-to-pay-costs-of-disabled-teen-1.1347649>
- Cunningham, M., & Kanyinke Sena, P. (2013). *Study on the situation of indigenous persons with disabilities, with a particular focus on challenges faced with regard to the full enjoyment of human rights and inclusion in development*. New York: United Nations. Available online at: <http://www.un.org/disabilities/documents/ecosoc/e.c.19.2013.6.pdf>
- Demas, D. (1993). Triple Jeopardy: Native women with disabilities. *Canadian Woman Studies*, 13(4), pp.
- Durst, D. (2006). *Urban Aboriginal Families of Children with Disabilities: Social Inclusion or Exclusion?* National Association of Friendship Centres.
- Durst, D., Bluehardt, M. H. S., Morin, G., & Rezansoff, M. (2001). *Urban aboriginal persons with disabilities: Triple Jeopardy!*. Social Policy Research Unit, University of Regina.

- Durst, D., Morin, G., Wall, S., & Bluechart, M. (2007). A First Nations Woman with Disabilities: "Listen to what I am saying!". *Native Social Work Journal*, 6, 57-77.
- First Nations Centre (2005). *First Nations Regional Longitudinal Health Survey. Results for Adults, Youth and Children Living in First Nations Communities*. Ottawa: National Aboriginal Health Organization.
- First Nations Education Council (2009). *Paper on First Nations Education Funding*. Available online at: <http://www.fncaringsociety.com/sites/default/files/FNEC-funding-paper-Feb2009.pdf>
- Fowler, L., Seekins, T., Dwyer, K., Duffy, S. W., Brod, R. L., & Locust, C. (2000). American Indian Disability Legislation and Programs Findings of the First National Survey of Tribal Governments. *Journal of Disability Policy Studies*, 10(2), 166-185.
- Grahams, K.A.H., & Peters, E. (2002). *Aboriginal Communities and Urban Sustainability*. Ottawa; Canadian Policy Research Networks.
- Green, J. (2003). Self-determination, Citizenship, and Federalism: Indigenous and Canadian Palimpsest. Public Policy Paper 13. In M. Murphy (Ed.), *Canada: The State of the Federation 2003: Reconfiguring Aboriginal-State Relations*. Kingston; McGill-Queen's University Press.
- Hanvey, L. (2002). *Children with Disabilities and their Families in Canada: A Discussion Paper*. National Children's Alliance for the First National Roundtable on Children with Disabilities.
- Harwood, M. (2010). Rehabilitation and indigenous peoples: the Maori experience. *Disability & Rehabilitation*, 32(12), 972-977.
- Health Canada (2013). Data available online at: <http://www.hc-sc.gc.ca/fniah-spnia/diseases-maladies/index-eng.php>
- Human Resources and Skills Development Canada (HRDC) (2013). Indicators of Well-being in Canada: Work - Unemployment Rate. Data available online at: http://www4.hrsdc.gc.ca/.3ndic.1t.4r@-eng.jsp?iid=16#M_4
- International Indigenous Network of Persons with Disabilities (IINPWD) (2012). Invitation to join. Published online at: <http://wecando.wordpress.com/tag/iinpwd/>
- Loppie Reading, C., & Wien, F. (2009). *Health Inequalities and Social Determinants of Aboriginal Peoples' Health*. National Collaborating Centre for Aboriginal Health.

- Macdonald, D., & Wilson, D. (2013). *Poverty or prosperity: Indigenous children in Canada*. Ottawa: Canadian Centre for Policy Alternatives.
- McNab, David T. “*Travels of a Metis through Spirit Memory around Turtle Island, and Beyond*”, 2013
- Ministry of Health (2012). *Whāia Te Ao Mārama: The Māori Disability Action Plan for Disability Support Services 2012 to 2017*. Wellington, New Zealand: Ministry of Health.
- National Council on Disability (NCD) (2003). *Understanding Disabilities in American Indian and Alaska Native Communities: Toolkit Guide*. Washington: National Council on Disability.
- National Council of Welfare. (2007). First Nations, Métis and Inuit Children and Youth: Time to Act. Available online at www.ncwcnbes.net/.../FirstNationsMetisInuitChildrenAndYouth/...TimeToAct/ReportENG.pdf
- Neegan Burnside. (2011). *National Assessment of First Nations Water and Wastewater Systems: National Roll-up Report – Final*. Ottawa: Aboriginal Affairs and Northern Development Canada.
- Nielsen, K. E. (2012). *A Disability History of the United States*. Boston: Beacon Press.
- Office of the Auditor General of Canada (OAG). (2000-2011) Ottawa: Office of the Auditor General of Canada.
- Palmater, P. (2011) Stretched Beyond Human Limits: Death By Poverty in First Nations. *Canadian Review of Social Policy*, 65/66, 112-127.
- Peters, M. (2013). *Jordan's Principle Funding in Limbo*. Available online at: <http://dominion.mediacoop.ca/story/jordans-principle-funding-limbo/17336>
- Prince, M. J. (2009). *Absent citizens: Disability politics and policy in Canada*. Toronto: University of Toronto Press.
- Productivity Commission (2011). *Disability care and support: draft report [vol 1 & 2]*. Canberra: Productivity Commission (section 9)
- Richards, J., & Scott, M (2009). *Aboriginal education: Strengthening the foundations*. Ottawa: Canadian Policy Research Networks.
- Statistics Canada (2006). Participation and Activity Limitation Survey (PALS). Ottawa: Government of Canada.

United Nations (2009). *State of the World's Indigenous Peoples*. New York: United Nations

World Health Organization. (2011). *World report on disability*. Geneva: World Health Organization.

Wiley, A. (2009). At a cultural crossroads: Lessons on culture and policy from the New Zealand DISABILITY STRATEGY. *Disability & Rehabilitation*, 31(14), 1205-1214.

Wilson, D., & Macdonald, D. (2010). *The income gap between aboriginal peoples and the rest of Canada*. Ottawa; Canadian Centre for Policy Alternatives.