



Rights and Dignity of Persons with Disabilities

Canada and the Convention on the Rights of Persons with Disabilities

As far as United Nations conventions are concerned, the Convention on the Rights of Persons with Disabilities was completed in record time – five years. It had adopted a comprehensive and broad consultative approach, although at one time there was a movement to shut out Non-Governmental Organizations (NGOs). The disability community from around the world, however, rallied and made it known that “nothing about us, without us.” Although NGOs typically play a side-bar role in such international agreements, the disability community’s voice was heard, and NGOs played a major role in the crafting of the Convention.

Canada also had a part in ensuring that the input of NGOs was included. When it looked like NGOs’ participation was in jeopardy, the head of the Canadian delegation prevailed on the Canadian Ambassador to intervene. Canadian Ambassador John McNee made a passionate intervention at the UN supporting the involvement of NGOs.

With the Canadian delegation and the NGOs, Canada also made some significant contributions to the Convention itself. For example, in early drafts there were words like, “equally”, “same treatment”, “similar”, and “equal footing”. Canada’s delegation took up the issue and promoted the language used in the equality guarantee of our Charter.

The Convention on the Rights of Persons with Disabilities was signed in March 2007. To date 65 countries have ratified the Convention. Canada is not one of them.

The Convention is not a stand alone treaty, nor does it duplicate rights found in other treaties. Rather it deals specifically with those rights that have historically been ignored or violated on the ground of disability. These rights cover the right to justice, education, housing, the right to reside with families and communities, the right to liberty and security (institutions) the right to marry and have children, the right to work and have access to social supports just to name a few.



The Rights Connection

by Yvonne Peters - Vice-Chairperson

Canadians with disabilities continue to wait

As I’m sure you know, there are a number of human rights treaties that spell out what all people have the right to, or what all people have the right to be free from. It is, however, no surprise that these entitlements and rights have not been universally applied to everyone. Persons with disabilities are one of those groups that often find themselves on the margins. And so, they decided that it was time to spell out in detail the rights they are entitled to. A cross disability movement arose from all over the world solidifying issues into real and understandable positions. It was found that what the disability community wanted in India was identical to what was needed in the USA, Canada, Japan, Thailand, New Zealand, Mexico and so on. Speaking with one voice on so many issues was a very powerful tool.

An important milestone occurred in March 2007 when The Convention on the Rights of Persons with Disabilities was signed at the United Nations. Canada made significant contributions to the Convention and was one of the signing countries. While 65 countries have already ratified the Convention, Canadians with disabilities continue to wait for the Canadian government to take this crucial step.

The Convention does not create new human rights. Rather it focuses on the rights that have been routinely violated or neglected for persons with disabilities. Specifically, it elaborates in greater detail what steps are required to implement those rights.

Undoubtedly, the Canadian government will argue that it is already taking such steps. Yet before the Convention can be recognized as a true instrument of change, three things must be accomplished.

First, we need to get Canada to ratify the Convention. Second, we need to get Canada to sign the Convention’s Optional Protocol. This will enable persons with disabilities to take their concerns to the UN Committee on the Rights of Persons with Disabilities where Canada has refused to act on a particular rights issue.

And finally, we need Canada to establish a coordinating mechanism for ensuring the full implementation and realization of the rights contained in the Convention.

MHRC Disability Settlements

Mediation is a particularly effective approach when dealing with disability complaints. The settlement rate is almost 50 percent and this is higher than the overall settlement rate for all complaints.

The following are just a few examples of successful mediation of disability complaints.

A case was recently settled just prior to adjudication. This complaint involved a young man with a learning disability who was fired for having difficulty doing price checks at the store where he was working. He had told his managers that he had trouble reading when he was hired. The Commission would have argued at an adjudication that his managers should have questioned whether a disability was involved and made further inquiries and accommodations before terminating his employment. He received \$1000 in general damages and the Human Resources Manager agreed to take the Commission's course on accommodation in the workplace.

Another case was resolved through the mediation process prior to an investigation. The Commission urges parties to try this process and has found that the level of satisfaction for both parties is much higher than after an investigation takes place. The complainant alleged that the respondent, who opened a new community centre October 2008, discriminated against him by failing to accommodate his disability as the mezzanine was not accessible. The complainant uses a wheelchair. The respondent said that the area was originally meant to be used for storage however agreed to install an elevator by October 31, 2009.

Another successful pre-investigation settlement involved a woman, who was shopping with her daughter. She filed a complaint with the Commission alleging that her daughter, who is physically and mentally challenged, was discriminated against on the basis of her disability. While shopping, the daughter began to vocalize some discomfort and rather than offering assistance, or giving the mother an opportunity resolve her daughter's difficulty, they were asked to leave the store. After a successful negotiation by a Commission mediator, the respondent wrote a letter to the complainant explaining how he could have dealt with the situation differently and apologized. The complainant also received \$250.00 worth of gift cards.

Many cases at the Commission can be resolved before a formal complaint is filed. These are called pre-complaints resolutions and often the situation is resolved very quickly. In this case, a man who uses a manual wheel chair alleged that the respondent failed to accommodate his special needs by not having a handrail installed on a ramp access to a public building. The respondent acted quickly by installing two handrails to be completed by September 2009. A third handrail will be addressed in early 2010.

Commission addresses the rise in number of disability complaints

The Manitoba Human Rights Commission is determined to address the growing number of complaints of discrimination filed on the basis of a physical or mental disability. Disability cases comprise 47.5 percent of complaints closed at the Manitoba Human Rights Commission during 2008, an increase of 10 percent over 2007.

The number of complaints based on a disability has been the highest of all grounds since 2000 and the numbers grow every year. This is not just true in Manitoba. The trend has been consistent across the country.

Some of the complaints filed at the Commission are systemic in nature and require extra time and resources to investigate, research and resolve. These complaints, however, once resolved have the biggest impact on the greatest number of people who have systemically been discriminated against. Past examples include an agreement that addressed the discrepancy in financial support adults with disabilities face when they reside with their families. Another was an agreement with the City of Winnipeg benefiting people with disabilities when they attempt to cross streets at controlled intersections. More such systemic cases are currently part of the Commission's workload.

The Commission also uses proactive ways of addressing systemic discrimination. For example according to Chairperson of the Board of Commissioners Jerry Woods, the situation of First Nations children with disabilities is very troubling and he is very aware that access to health, medical and other services is often impeded due to jurisdictional disputes.

The Commission is now part of a coalition group, which includes the Canadian Human Rights Commission, the Treaty Commissioner and various Aboriginal organizations that is looking into these concerns. The coalition is planning a human and treaty rights dialogue later this year and participants will be invited to share their concerns and stories. A public report will follow.

Other proactive initiatives include a new addition to the respected and highly successful Rights of Youth Publication series. The latest one will explain the rights of youth with disabilities, and is scheduled to be released in the fall.

Also one the Commission's new video public service announcements, which will begin airing on local television stations across the province in September, addresses visible and invisible disabilities. Arlene Ursel a former complainant who successfully won her case at a human rights hearing in the spring teamed up with comedian Big Daddy Taz to deliver the message.

And finally, the Commission continues to offer one of its most popular courses, Reasonable Accommodation in the Workplace which addresses the duty to accommodate persons with disabilities.