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# Children with Disabilities and An Act to Ensure a Barrier-free Canada

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## Summary:

Canada is a signatory of two UN treaties related to the current ***Act to ensure a barrier-free Canada***: The Convention on the Rights of Persons with Disabilities, and the Convention on the Rights of the Child. Both Conventions have special considerations and provisions for children with disabilities. These considerations are in place as this population is particularly at risk for discrimination and often disregarded when legislation, services, and political structures are developed and implemented. As it reads, the *Act to Ensure a Barrier-free Canada* does not have explicit mention of children with disabilities, though its objective is “to enhance the full and equal participation of all persons in society” FOOTNOTE 1, which should include children. The legal and regulatory implications of the *Act* will certainly have repercussions for children with disabilities and their families. Special considerations should therefore be put in place.

BEGIN FOOTNOTE 1:

Accessible Canada Act p. ii

END FOOTNOTE 1.

We present a review of academic research on rights-based approaches for children with disabilities and identify aspects of the Act that will have an impact on children with disabilities in Canada. The observations presented take into consideration three principles underlying both the CRC and CRPD, which should be applied to the Act:

1) Non-discrimination

2) The right to participate

3) Inclusion

The research literature emphasizes the importance of facilitating children’s and families’ agency in understanding and accessing their rights, creating reasonable accommodations at the individual and systems levels, promoting systems that are universally accessible from their onset, considering services that are child and family centered, and building capacity and coordination across systems for people and organizations promoting the rights of children with disabilities. The *Act to ensure a barrier-free Canada* is therefore a unique opportunity to set the system right from the onset of the legislation, to protect the rights of one of the most vulnerable populations within the group of persons with disabilities.

Specific recommendations based on research evidence and analysis of the legislation in the light of the UN CRC and CRP key principles are outlined at the end of this brief.

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## Preamble:

The implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD) in Canada has important gaps in creating a fully inclusive environment for vulnerable populations such as children with disabilities. This was emphasized in the UN’s 2017 *Concluding Observations on the Initial Report of Canada*:

BEGIN INDENT:

“The Committee is concerned about the absence of formal, recorded consultations on comprehensive plans for the implementation of the Convention, and about the absence of information on mechanisms to foster the leadership and participation of […] children with disabilities in consultations. The Committee notes with concern that the Government of Canada has not collected data on children with disabilities since 2006. […] It is further concerned about the lack of criteria established for applying the principle of the best interests of the child in actions concerning children with disabilities.”

END INDENT.

*It is imperative that policy makers take special consideration related to children with disabilities in light of the UNCRPD Concluding Observations* FOOTNOTE 2 *and the upcoming Convention on the Rights of the Child (CRC) Report to the UN.*

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https://bit.ly/2Rm5c0d

END FOOTNOTE 2.

The *Act to ensure a barrier-free Canada* does not make any explicit mention of children with disabilities, though the legal and regulatory implications of the Act will certainly have repercussions for children with disabilities and their families.

## Research on the Rights of Children with Disabilities

We present recommendations based on a research literature review and other documentation to support specific actions related to the three key principles espoused in the CRC and CRPD. We further outline how these principles can be addressed in aspects of the Accessible Canada Act.

A series of rights-based approaches and considerations to address the human rights of children with disabilities were identified in scientific articles and include the following FOOTNOTE 3:

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Research references to support these themes are available upon request

END FOOTNOTE 3.

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1. Creating mechanisms to facilitate children’s and families’ agency in understanding and accessing their rights;

2. Creating reasonable accommodations at the individual and systems levels, promoting systems that are universally accessible from their onset;

3. Considering services that are centered on the needs of children and families;

4. Building capacity and coordination across systems for individuals and organizations promoting the rights of children with disabilities.

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Research reveals that human rights approaches for children with disabilities are not at the forefront of government decisions. A *positive approach to rights* is should consider measures at the policy and program development phase, to respect the rights of children rather than a negative approach, where measures are taken *after* a right was violated. Canada has

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historically adopted a negative approach to the rights of children with disabilities, *but currently has, with the new legislation, the opportunity to build a positive approach to the rights of children with disabilities*.

The key principles that are essential to the CRC and CRPD and should be considered in the legislation are FOOTNOTE 4:

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Articles 2,23(CRC); 5,29,30,7(CRPD)

END FOOTNOTE 4.

1) non-discrimination

2) the right to participate

3) inclusion

### 1) NON DISCRIMINATION

The *Accessible Canada Act* certainly seeks to address the discrimination people with disabilities face. Part 6 of the *Act* provides for a new special “*complaints process for, and the awarding of compensation to, individuals that have suffered physical or psychological harm, property damage or economic loss as the result of--or that have otherwise been adversely affected by--the contravention of provisions of the regulations*”. However, **it is unclear how matters pertaining to children will be handled within this body**. Further, Part 7 of the *Act* provides for “*the appointment of the Chief Accessibility Officer and sets out that officer’s duties and functions, including the duty to advise the Minister in respect of systemic or emerging accessibility issues*”. Mechanisms should be in place to make **the CAO aware of issues pertaining to children and families**.

**Recommendation #1**: A complaints mechanism be put in place so that caregivers will be able to place complaints on behalf of their children, and also for children and youth to place complaints for themselves, with special mechanisms and protections granted for them. In addition, we recommend creating a mechanism through which children, youth, and families have a particular access to the Chief Accessibility Officer for consultations in an advisory capacity.

### 2) RIGHT TO PARTICIPATE

Equal participation for persons with disabilities, ***including children***, is central to the *Accessible Canada Act* and listed as one of its five guiding principles FOOTNOTE 5, including the establishment of the Canadian Accessibility Standards Development Organization (CASDO). To accomplish the CASDO mandate to “*contribute to the progressive realization of a Canada without barriers by, among other things*:

BEGIN FOOTNOTE 5:

*Accessible Canada Act* p.4

END FOOTNOTE 5.

*(a) the development and revision of accessibility standards;*

*(b) the recommendation of accessibility standards to the Minister;*

*(c) the provision of information, products and services in relation to the accessibility standards that it has developed or revised”*

To address these:

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**Recommendation#2**: Youth and families should participate on the CASDO governance board.

**Recommendation#3**: Accessibility standards should include special considerations for children and families and their particular needs in public spaces;

Examples include (but are not limited to):

- changing stations in all public buildings for older children and adults with disabilities who require diaper changes;

- accessibility features that accommodate for small children using wheelchairs and families with strollers and other mobility devices in all public buildings, sidewalks, and transportation;

- communication standards that are inclusive of children who are deaf, blind, and who have cognitive delays and autism spectrum disorders in all public services, buildings, and broadcasting.

Additionally:

“*(d) the promotion, support and conduct of research into the identification and removal of barriers and the prevention of new barriers; and*

*(e) the dissemination of information, including information about best practices, in relation to the identification and removal of barriers and the prevention of new barriers.*”

**Recommendation #4**: Research incentives should have special allocations for identifying barriers and solutions related to children and families, as well as strategic, targeted dissemination of information to that public.

### 3) INCLUSION OF CHILDREN WITH DISABILITIES

Part 2 of the Act refers to the establishment and monitoring of accessibility standards, including those that may affect children with disabilities and their families. Part 3 of the Act authorizes the Accessibility Commissioner to provide the Minister with information, advice and written reports in respect of the administration and enforcement of the Act. It also requires the Accessibility Commissioner to submit an annual report on his or her activities under the Act to the Minister for tabling in Parliament.

A concern pointed by the UN CRPD committee was the lack of monitoring and data collection on children with disabilities. The last data collection on Children (Participation and Activity Limitation Survey) is outdated and the new survey planned FOOTNOTE 6 does not cover key aspects of service provision and utilization, health, education and social inclusion, and excludes children under 15 years old FOOTNOTE 7.

BEGIN FOOTNOTES:

6. http://www23.statcan.gc.ca/imdb/p2SV.pl?Function=getSurvey&SDDS=4450

7. Arim, R. et al. What Statistics Canada survey data sources are available to study neurodevelopmental conditions and disabilities in children and youth?

END FOOTNOTES.

**Recommendation #5**: Data collection strategies at the federal level specifically for children with disabilities and their families should be considered and used to benchmark progress on the Accessibility legislation. A section of the report from the Accessibility Commissioner should focus on monitoring advances in the data collection on children with disabilities and set specific indicators pertaining to children (i.e. disaggregated data by province, type of disability and how the legislation’s impact on children’s and families’ inclusion).

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Key provincial-regulated services are absolutely necessary for accomplishing the children’s rights of a healthy development FOOTNOTE 8. It is not clear how the Accessibility act will be enforced at education establishments, hospitals, leisure facilities and other community living spaces. Research shows that **children with disabilities and their families face discrimination in all these spaces FOOTNOTE 9 and policies regulating the physical space accessibility and the programming and services provided should be monitored and regulated** by federal government.

BEGIN FOOTNOTES:

8. www.childcarecanada.org

9. Shikako-Thomas & Law. Policies supporting participation in leisure activities for children and youth with disabilities in Canada: from policy to play

END FOOTNOTES.

**Recommendation #6**: Spaces and services that are under provincial jurisdiction but are essential for child development such as education, leisure, health, and community living spaces should be regulated in the Accessibility act through funding (i.e. federal funding being conditional on meeting certain accessibility criteria) or other enforcement mechanisms.

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**Specific recommendations and considerations outlined in this brief:**

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1. A dedicated complaints mechanism for caregivers on behalf of their children, and special mechanisms and protections to allow children and youth the ability to present complaints themselves;

2. Including youth and family participation on the governance board, for truly representation;

3. Accessibility standards should include special considerations for children and families and their particular needs in public spaces

4. Research incentives should have special consideration of identifying barriers and solutions pertinent to children and families, as well as dissemination of information to that public.

5. Data collection strategies be put in place at the federal level specifically for children with disabilities and their families should be considered and used to benchmark progress on the Accessibility legislation

6. Spaces and services that are under provincial jurisdiction, which are essential for child development (such as education, leisure, health, and community living spaces) be regulated in the Accessibility act through funding (i.e. federal funding being conditional on meeting certain accessibility criteria) or other specific enforcement mechanisms.

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END TEXTBOX.

**Authors:**

All authors are part of the research team led by Keiko Shikako-Thomas, Canada Research Chair in Childhood Disabilities. The research lab is affiliated with the McGill University School of Physical and Occupational Therapy, and the Center for Interdisciplinary Research in Rehabilitation, the McGill Institute of Health and Social Policy and the McGill University Health Center Department of Pediatrics. The research reported in this brief was collected systematically and as part of the research program of the Chair. A detailed brief, complete reference list, and more information on policies and research in Childhood Disability can be found here: <https://www.childhooddisability.ca/policies/>.

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