First Nations and First Nations Persons with Disabilities
Engagement on Federal Accessibility Legislation
March 2017 Report (Draft)

“Working Together to Build a More Inclusive and Accessible First Nation”
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Note: *Nothing in this submission abrogates or derogates from any inherent Aboriginal and Treaty Right. Nothing in this document and proposed processes shall supersede or hinder bilateral treaty and self-government tables.*
FIRST NATIONS AND FIRST NATIONS PERSONS WITH DISABILITIES ENGAGEMENT ON FEDERAL ACCESSIBILITY LEGISLATION

The Assembly of First Nations (AFN) has started to gather First Nations views on how accessibility legislation may impact First Nations and First Nations Persons with Disabilities (FNPWD). This work is guided by resolution 55/2016 First Nation Federal Accessibility Legislation\(^1\) passed at the 2016 Annual General Assembly, which mandates the AFN to call on the federal government to develop a First Nations-specific and distinct engagement process to inform federal accessibility legislation. The AFN undertook a number of activities to engage First Nations including a webinar, survey and upcoming activities that will be posted from time to time on the AFN website at www.afn.ca.

The Honorable Minister, of Sport and Persons with Disabilities Carla Qualtrough has been mandated by Prime Minister Justin Trudeau to lead an engagement process with provinces, territories, municipalities, and others that will lead to the passage of a Canadians with Disabilities Act, now referred to as Federal Accessibility Legislation. Thematic areas include, but are not limited to: employment, procurement, service delivery, transport, the built environment, and information and communications.

This report was prepared as a starting point for discussion – and does not represent any final word or agreement on subjects dealing with First Nations and FNPWD in engagement on accessibility legislation. As part of AFN’s work in gathering First Nations views on accessibility legislation, the AFN sought to strengthen its networks and partnerships with disability related agencies, organizations, the federal government and the disability community among others. The AFN is seeking to build on these relationships and partnerships for greater engagement potential going forward.

There is a strong and compelling business case to be made in providing tailored and flexible capacity building support for First Nations and FNPWD in the following activities undertaken in the early stages of this development.

FIRST NATIONS EMPLOYMENT AND TRAINING ORGANIZATIONS
Aboriginal Skills and Employment Training Strategy (ASETS) and First Nations Persons with Disabilities (FNPWD)

In efforts to close the gap in employment, training, income and education between First Nations

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and the rest of Canada, the AFN continues to build on its strong relationship with the department of Employment and Social Development Canada (ESDC) and, in particular, with the Aboriginal Skills and Employment Training Strategy (ASETS).

The AFN is seeking to leverage key opportunities in addressing gaps and services and enhancing employment and training opportunities for FNPWD. Through engaging ASETS holders, the AFN is looking to glean key insights and perspectives on proposed federal accessibility legislation and important improvements in addressing program gaps and services specific to FNPWD.

The First Nations Service Delivery network consists of 57 First Nations’ ASETS mandated organizations with a capacity and expertise to establish labour market assessment/ analysis and determination of labour market needs in First Nations communities. The AFN is well positioned to work and identify FNPWD and to partner within its network to establish a case management system that will assist in the assessment and determination of the unique needs of FNPWD to improve and facilitate transition to employment and/ or training opportunities as required.

The AFN continues to build on its positive relationship with ESDC through collaborative efforts including participation in the national ASETS meeting in Gatineau Quebec, June 27-28, 2016. Subsequently, the AFN successfully organized the AFN First Nations Labour Market Forum in Winnipeg on July 27-28, 2016 and facilitated two disability focused sessions. The sessions proposed to advance education and awareness on federal accessibility legislation and to discuss key issues and gaps facing FNPWD.

**AFN First Nations Labour Market Forum Breakfast Session on Disabilities**

A Breakfast Dialogue Session was held Thursday July 28, 2016 with 35 participants. The session was moderated by Wendall Nicholas, Chairperson, Wabanaki Council on Disability and Doreen Demas, Indigenous Disability Rights Advocate and provided participants with information around the proposed federal accessibility legislation and FNPWD.

The morning session provided the First Nations ASETS service delivery network an early opportunity to provide their input and to consider some recommendations on how such legislation would affect First Nations.

Presenters provided participants with a background to the proposed legislation, followed by the current situation of FNPWD in First Nations. An overview of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and the United Nations Declaration on the Rights of Indigenous Peoples (Declaration) was provided to participants and its relevance to FNPWD.

Participants were asked to provide feedback and input into how accessibility legislation would apply to First Nations and FNPWD, and the need for a First Nations engagement process.
Early suggestions for consideration include, but not limited to:

- Consider holding talking circles for FNPWD on their concerns, issues and promising practices (Wabanaki Council on Disability)
- Opportunities and means to engage FNPWD into the labour market

Elder Elmer Courchene and chair of the AFN Elders Council presented at the session and spoke about his experiences with disability and those in his community who had disabilities, including family members. He urged participants to ensure that the situation of seniors and Elders were included in this important development.

The breakfast session provided an opportunity to lay the foundation for the discussion leading to the afternoon session on issues for persons with disabilities and federal accessibility legislation. Data was shared from the First Nations Information Governance Centre’s Regional Health Survey highlighting the high incidence of disability in First Nations and the need for improved data collection.

**Among First Nations youth on-reserve and northern communities:**

2.4% had ADD/ADHD in 2002/03 vs. 3.8% in 2008/10. Among those with the condition, 34.2% (E) were treated in 2002/03 vs. 45.0% in 2008/10. (E: signifies interpret with caution due to high variability in the rates).

1.9% had blindness or serious vision problems in 2002/03 vs. 3.5% in 2008/10. Among those with the condition, 16.7% (E) were treated in 2002/03 vs. 48.0% in 2008/10.

0.8% had a cognitive or mental disability in 2002/03 vs. 0.8% (E) in 2008/10. Among those with the condition, 57.6% (E) were treated in 2008/10. The numbers for 2002/03 was suppressed due to low counts.

1.7% had a hearing impairment in 2002/03 vs. 1.9% in 2008/10. Among those with the condition, 35.6% were treated in 2008/10. The number for 2002/03 was suppressed due to low counts.

3.5% had a learning disability in 2002/03 vs. 5.8% in 2008/10. Among those with the condition, 12.6% (E) were treated in 2002/03 vs. 44.3% in 2008/10.

0.8% had a physical disability in 2003/03. Among those with the condition, 37.2% (E) were treated in 2002/03.
Among First Nations adults on-reserve and northern communities in 2008/10:

- 16.2% had chronic back pain.
- 8.8% had hearing impairment
- 3.6% had a learning disability
- 3.6% had blindness or serious vision problems
- 3.5% had osteoporosis
- 3.3% had psychologic or nervous disorders
- 1.9% had effects of stroke
- 1.6% had glaucoma
- 1.2% had a cognitive or mental disability
- 1.1% had attention deficit disorder (ADD) or attention deficit hyperactivity disorder (ADHD).

**First Nations Labour Market Forum Afternoon Session on Persons with Disabilities**

The Dialogue session on Federal Accessibility Legislation and FNPWD was held in the afternoon of July 27, 2016 that included Presenters: Doreen Demas and Wendall Nicholas and moderated by Marie Frawley-Henry

The moderator welcomed twenty participants to the afternoon meeting and provided an overview of the goals and objectives for the session and potential for engagement on accessibility legislation.

Doreen Demas presented information on the proposed legislation, including the areas that this legislation would focus on and presented a history of some of the barriers and issues faced by FNPWD. Background information was provided on the applicability of the Canadian Human Rights Code and highlights of some of the International mechanisms such as the CRPD and the Declaration and other processes affecting FNPWD. Importantly, there is a need for FNPWD to be provided the appropriate housing accommodations and to work to make First Nations communities accessible by applying the “principles of universal design.” FNPWD have the fundamental right to make their own choices and their own decisions.

Wendall Nicholas shared his experiences with his involvement with the development and implementation process of the CRPD, and the relevant articles within the convention. He provided information and an update on the Child Caring Society’s human rights complaint, and the need to provide services to all FNPWD regardless of age. (child, youth, adult and senior). Foremost, there is a need to have updated accurate data on FNPWD that reflects the high incidence of disability within First Nations, along with the need to have discussions with the federal government around relevant issues for FNPWD. In addition, current levels of funding for employment and training for FNPWD is inadequate and needs to be increased. Furthermore, there is a need to hear the perspectives of First Nations from different regions through
engagement sessions, particularly those living in remote areas and the far north. “The reality of living in the north is quite different than the south.” That there is a need to address prevention and to identify what tools are required to address employment and training opportunities for FNPWD and First Nations.

A number of questions were raised from participants, including the following: how would the proposed legislation impact First Nations and FNPWD; how would the legislation work; is legislation good for FNPWD; and, can it bring about the necessary changes?

One participant asked how to identify “disability”, given the many types of disabilities and if there was a definition for First Nations? In response Wendall Nicholas noted that disability includes many social factors including physical and mental conditions, and it’s important not to generalize. Doreen Demas suggested that rather than labeling, focus should be placed on the barriers faced by the person with a disability. She shared the World Health Organization’s classification of disability, and that many organizations applied this definition within their work.

Some of the early findings and recommendations from this session include:

- To be successful in assisting FNPWD around employment and training, there is a need to have awareness training for staff and potential employers.
- To allocate 25 per cent of funding towards important data collection on FNPWD.
- The importance of applying a (treaty based formula) to the budget.

EARLY OBSERVATIONS: ASETS
The AFN is the national body representing First Nations governments and approximately 1.5 million people living on reserve and in urban and rural areas. The AFN is dedicated to advancing the priorities and aspirations of First Nations through review, study, response and advocacy on a broad range of issues and policy matters.

There are 634 First Nations in Canada with established governance systems, each led by a Chief who is entitled to be a member of the Assembly. The AFN National Executive is made up of the National Chief, 10 Regional Chiefs and the chairs of the Elders, Women’s and Youth councils. First Nations are part of more than 50 distinct nations with unique cultures and languages.


In 2016, the AFN was invited by ESDC to parallel the Minister’s process and develop a proposal
of activities to advance a distinct First Nations engagement process on the proposed accessibility legislation. As part of the planned activities, the AFN has developed key guiding documents, comprising of the *Federal Accessibility Legislation* (and) *Potential Implications for First Nations and First Nations Persons with Disabilities* including a *First Nations Discussion Guide* located at [www.afn.ca](http://www.afn.ca). These documents serve to guide First Nations in their decision making processes and to inform accessibility legislation developments specific to First Nations and FNPWD.

Early in this development, the AFN sought out networking opportunities with affiliates of the First Nations Service Delivery network and ASET mandated organizations with capacity and expertise to determine among others, the fundamental labour market needs of FNPWD. Across this network, the AFN is able to identify FNPWD and to partner within this linkage to establish a case management system that will facilitate the assessment and determination of the distinctive needs of FNPWD; and to facilitate their transition to meaningful employment and training opportunities.

While some matters have been identified over early networking opportunities, further work will be required to provide an opportunity for the First Nations Service Delivery network and ASET mandated organizations to engage in a more in-depth discussion to inform this key development that will actively include FNPWD.

Some of these early findings include, but are not limited to:

**Governance and Capacity:**
- Establish comprehensive employment and training programs for FNPWD.
- Support First Nations and our mandated organizations to track the number of FNPWD transitioning to training and work employment.
- Ensure organizational capacity to identify additional assessment tools that are required to support the identification of FNPWD clients’ unique needs; this is in harmonization with essential staff receiving important training and tools necessary to accommodate FNPWD disability related needs.
- Determine national tools to support capacity development within a new Labour Market Strategy; and educating the general public on the various barriers encountered by FNPWD that currently impact First Nations.

**Operationalizing**
- Identify additional assessment tools to support identification of FNPWD client and individual skill sets and source out other training supports and tools that may be required to access programs, training, and childcare, through and with First Nations and employment and training organizations.
- Analyze unique needs of FNPWD: conducting research on the physical, systemic and attitudinal barriers faced by FNPWD and developing essential sensitivity training for
service providers and staff to support FNPWD.

- Identify adequate funding needed for FNPWD transition to work/employment; this is in addition to developing policy to support the frame of time it will take in assisting the unique needs of FNPWD.
- Establish a data base of information specific to the needs of FNPWD to facilitate further advancements (for example, in the process/steps of case management, acquire numbers, identify needs, etc., and or interventions).

Making Room for Additional Considerations

- Study how best to incorporate the Case Management System to assist in transition in support of FNPWD for life skills and career development.
- Current research ought to incorporate the Child Welfare and numbers currently available to develop a long term plan to support FNPWD in First Nations.
- Conduct research on environmental and attitudinal barriers faced by FNPWD and develop essential skills training and identify the strategies and supports required to remove barriers for full inclusion.
- Support communities and organizations to identify types of accommodations that will be required to support employers who would like to hire or support FNPWD.
- Raise awareness and sensitivity training as to how employment and training opportunities may assist in raising FNPWD out of isolation and poverty, and is essential to restoring dignity, hope, purpose and belonging; resulting in enriched benefits for all within this continuum.
- Subsequently, it will be important to develop training tools and programs to assist employers who are interested in hiring or supporting FNPWD.

AFN INTRODUCTORY POLICY DISCUSSION ON ISSUES FOR FNPWD

On December 6th, 2016 the AFN held an introductory policy discussion on the issues and barriers affecting FNPWD at the AFN Special Chiefs Assembly (SCA) in Gatineau, Quebec. In preparation for the meeting the AFN reached out to senior officials of federal departments and agencies, and the First Nations disability community to discuss potential linkages and prospects for further dialogue, collaboration and opportunities to advance the issues for FNPWD.

The meeting was guided by the following agenda items: the tabling of a draft resolution at the AFN-SCA to establish a First Nations Persons with Disabilities Office at the AFN; a brief overview of programming roles and responsibilities by federal departments and agencies on persons with disabilities issues; including a project milestone discussion on Federal Accessibility Legislation and AFN planned proposal/ project activities. The meeting concluded with a discussion on preventative measures and a proposed continuum of care model on persons with disabilities, along with the inclusion of a social lens as a priority in advancing issues for persons with disabilities. The meeting concluded with consensus for on-going meetings and/or convening
Other comments included the need for leadership and legislation to work hand-in-hand with education leaders, in that schools/buildings often act as a barrier for students with special needs and frequently parents don’t want to further stigmatize their children by labeling their child with a disability. Though there may be existing legislation protecting the rights of students in most regions, provinces or territories, for First Nations this requires advocacy work on behalf of the AFN as part of its work in the newly proposed AFN Office on Disabilities as directed by AFN resolution 105/2016 to Establish a First Nations Office of Disability Issues Unit at the AFN.3

AFN WEBINAR REPORT
OVERVIEW
The purpose of the First Nations webinar on Federal Accessibility Legislation was to engage First Nations, service providers, program delivery staff, caretakers, FNPWD and others to inform the development of federal accessibility legislation. The Webinar audience consisted of 5 viewers from the North; 14 from Atlantic Canada; 34 from Quebec; 49 from Ontario; 43 from Manitoba; 41 from Saskatchewan; 45 from Alberta and 48 from British Columbia for a total audience of 279.

The AFN is looking forward to the continued participation of First Nations nationally, regional organizations, PTO’s, Tribal Councils, governments, individual First Nations and leadership, First Nations persons with disabilities, caretakers, service organizations, advocacy groups and mainstream persons with disabilities, agencies and others.

The Webinar was held on February 23, 2017 between 1:30 and 4:00 p.m. Ottawa time.

The Honorable Minister of Sport and Persons with Disabilities, Carla Qualtrough has been mandated by Prime Minister Trudeau to lead an engagement process with provinces, territories, municipalities, and stakeholders that will lead to the passage of a “Canadians with Disabilities Act,” now referred to as Federal Accessibility Legislation.

Thematic areas for consideration include: employment, procurement, service delivery, transport, the built environment, information and communications. Minister Qualtrough anticipates introducing a Bill before the House of Commons by late 2017 or early 2018.

The AFN was invited by Employment and Social Development Canada/ the Office of Disability Issues to parallel the Minister’s process and develop proposal activities to advance a distinct First Nations engagement process with program deliverers, service providers, First Nations and First

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Nations persons with disabilities, among others.

The theme of the undertaking was Empowering First Nations and First Nations People with Disabilities. Accessibility Legislation: What does an Accessible community mean to you?”

First Nations and workplaces benefit when everyone can participate equally in everyday life. There has been much progress in making our society more inclusive, but we can do better. Many First Nations persons with disabilities face barriers that affect their ability to participate in daily activities that others take for granted.

The AFN initiated an engagement process with First Nations persons with disabilities, First Nation leadership and other stakeholders to determine how such an accessibility legislation would benefit First Nations and how such legislation would result in a more inclusive and accessible environment for First Nations persons with disabilities.

The Government of Canada is seeking input on the following points:

- Feedback on the overall goal and approach;
- Whom it should cover;
- What accessibility issues and barriers it should address;
- How it could be monitored and enforced;
- When and how often it should be reviewed;
- How and when to report to First Nations on its implementation; and
- How to more generally raise accessibility awareness and support First Nations in improving accessibility.

The webinar sought to have First Nations feedback on the following questions:

- Are you a First Nation with accessibility needs, or have positive examples to share?
- Are you a First Nations person with a disability (FNPWD)?
- Are you a service provider, program deliverer, special needs educator or other?
- Do you know persons with difficulty in activities of daily living, or have hearing loss, vision loss, mental wellness concerns, home and community care needs, or other?

The agenda consisted of two panels. The first part was a Leadership Panel which included a message from the National Chief, Perry Bellegarde, ESDC/Office of Disability Issues, Director General, James Van Raalte, AFN Elder’s Council Chair, Elmer Courchene, Chief Candace Paul of St. Mary’s First Nation in New Brunswick, of the AFN Women’s Council, and Trevor Augustine from the AFN Youth Council.

The second panel was an Expert’s Panel that included Doreen Demas a member of the Indigenous Persons with Disabilities Global Network and Indigenous Persons with Disabilities Caucus, Wendall Nicholas, Chairperson of the Wabanaki Council on Disability, Cherlyn Billy of
the Shuswap Nation and Program Director of the Aboriginal Skills Employment and Training Strategy (ASETS) and Neil Belanger, Executive Director of the BC Aboriginal Network on Disability Society (BCANDS). The event was moderated by Dr. Rose-Alma McDonald.

After each panel presentation, there was an opportunity for the audience to participate in a Q & A by sending in questions around the legislation that panel members were asked to respond to. There was a break at 2:45 pm to facilitate transition from the leadership panel to the expert panel.

The Webinar concluded with the moderator offering thanks to the leadership and expert panel speakers for their valuable participation and to the audience for logging in to the webinar.

Thanks was also offered to Marie Frawley-Henry and the AFN staff for coordination of the webinar and to the technicians behind the cameras.

The audience was reminded that there are additional opportunities to provide comments and questions regarding the engagement process and how accessibility legislation may provide options for First Nations consideration.

The AFN is undertaking a number of additional activities to engage First Nations and First Nations persons with disabilities across the country. As a result there are various ways to get involved by participating in other upcoming webinars through linkages at the AFN Annual General Assembly in July, and AFN Special Chiefs Assembly in December 2017.

Other activities will be posted on the AFN website at www.afn.ca. First Nations can also provide comments by email, fax or other accessible formats or by using the survey.

The webinar on federal accessibility legislation can be celebrated as a success and a historic event, and a learning experience for AFN. This is Canada’s first attempt at federal accessibility legislation. It has brought us together to look at a better world for persons with disabilities.

**LEADERSHIP PANEL PRESENTATIONS SUMMARY**

**NATIONAL CHIEF PERRY BELLEGARDE, AFN**

The National Chief opened his remarks by thanking, on behalf of the Assembly of First Nations Executive, the Honorable Minister of Sport and Persons with Disabilities Carla Qualtrough, for her leadership in developing Canada's first Federal Accessibility Legislation. He went on to state that this is an opportunity to provide feedback on the Federal Government's proposed themes: employment, procurement, service delivery, transport and the built environment.

National Chief Bellegarde stated that it is clear that any new legislation needs to recognize that equality for persons with disabilities in Canada means equality for First Nations persons with disabilities. “Our words and direction will help everyone understand the ways this proposed legislation could impact our people, governments and communities. This is a fundamental
human rights issue.” Canada has committed to implementing the United Nations Declaration on the Rights of Indigenous Peoples. This declaration calls on all states to ensure continually improved Indigenous peoples’ social and economic conditions. It recognizes the rights and special needs of Indigenous persons with disabilities. The Federal Government also agreed to implement the 94 Calls to Action by the Truth and Reconciliation Commission. Disability issues are a consistent theme in the TRC’s Calls to Action.

The National Chief indicated that this is an opportunity to invest in First Nations, and First Nations persons with disabilities. The needs are great, but with proper support we can meet those needs. It is also important that we look at the jurisdictional issues; the issues of responsibility between the federal and provincial governments in providing services on-reserve and, in particular, the application and full implementation of Jordan's Principle.

The National Chief concluded by stating that it is important that we work together to break down barriers facing First Nations persons with disabilities. “We need to eliminate all forms of discrimination and we must support the inherent and cultural rights of First Nations.” First Nations have to be included in the development of any plans, policies or laws that affect us. “That means taking our rightful seat at the table and determining the solutions that work best for us. This is a chance to build better communities for all our people.”

JAMES VAN RAALTE, Director General, Office of Disability Issues, ESDC

Mr. Van Raalte highlighted the early indications of what they have been hearing as they travelled across the country. He emphasized the goal of the Federal Accessibility Legislation which is to eliminate systematic barriers in the areas of federal jurisdiction and to promote equal opportunities for all people living with disabilities or who may have functional limitations. He indicated that Minister Qualtrough was given an extensive mandate regarding consultation for the development of legislation. This nation-wide process was launched in June of last year. As of today, 18 public sessions in cities across the country and 19 thematic roundtables have been
completed.

On November 1st an all-day youth forum was held in Ottawa which had representation that also included indigenous youth from across the country. In addition to these in-person consultations, there have been over 3,000 people who have provided input to an online questionnaire.

Mr. Van Raalte indicated that they have heard about indigenous specific challenges in the context of, higher rates of disabilities amongst Indigenous peoples, the rural and remote locations of First Nations impacting on access to policies, programs and services, and, the very different starting points for accessibility within First Nations. They also heard about programs, such as non-insured health benefits that prevent Indigenous persons with disabilities from accessing resources because of eligibility requirements.

He concluded by stating that excluding indigenous accessibility in the planned legislation would widen the gap further for the most vulnerable persons with disabilities. This legislation will need to be coupled with a change in culture, attitude and behavior. “It's about recognizing that we as a society, as peoples, have come to move beyond the conversation of the duty to accommodate, to a conversation about inclusion. We have a big task ahead of us and we look forward to continuing the dialogue in the months ahead.”

ELDER ELMER COURCHENE, AFN Elder’s Council Chairperson

Elder Elmer Courchene spoke about the under-resourced and overlooked perspective of First Nations elders and senior population. He stated that research indicates that there are approximately 40,000 Indigenous people 65 or older, and this number is expected to triple by 2026. First Nations seniors have higher trauma-related disabilities and rates of disability due to injuries, chronic disease and residential school experiences.

He stated that this engagement is an opportunity to address challenges for seniors living on-reserve that include, but are not limited to, inadequate home care, income insecurity, old age security, disability supports, continuing care support and long-term care.

“We know that many of our seniors are being sent away to live in long-term care facilities far from their loved ones to receive health services or palliative care/end of life care that is not culturally safe. We are seeking to inform this legislative development and to work with government to ensure that there are culturally safe facilities, structured day programs and urgent care for our Elders.”

Elder Courchene concluded by stating that jurisdictional issues, such as Jordan’s Principle, impact First Nations seniors. Recently the AFN created a task force on First Nations seniors and aging to make recommendations on emerging seniors’ issues. “We would like to ensure that the recommendations of this task force also serve to inform this key legislative development. First
Nations seniors and elders are our historians, wisdom keepers and they deserve the best possible care and to be among their family and loved ones.”

CHIEF CANDACE PAUL, St. Mary’s First Nation, NB; Member of the AFN Chief’s Committee on Health and AFN Women’s Council.

Chief Paul indicated that in 2009, the AFN Women’s Council developed a culturally sensitive Sex and Gender Balanced Analysis Framework and Implementation Plan that was supported by AFN resolution. She stated that from our perspective gender balance is not new to First Nations. “Sex and Gender balance is a tool to help restore the traditional balance between men and women, boys and girls (and those along the gender continuum) that existed in our communities long before colonization. This is a tool to shine a light on the socioeconomic status of First Nations and address gender imbalances more accurately.”

Chief Paul went on to say that we must work together to uplift the most vulnerable members of our communities, that of First Nations women and girls with disabilities. “First Nations persons living with disabilities face discrimination on many levels. This discrimination is compounded for First Nation women and girls with disabilities who face significant gaps in health services and social supports. These gaps are often linked to the issue of violence against First Nation women and girls, and that is why we are working equally hard with our federal partners to address this very serious issue.”

She concluded that we must look forward to working together to build more inclusive and accessible communities for First Nations women and girls and for all of us.

TREVOR AUGUSTINE, AFN Youth Council

Mr. Augustine indicated that access and inclusiveness is important for First Nation Youth. We know that a feeling of belonging is necessary for mental wellness. “First Nations youth under the age of 25 make up to close to 50 percent of the overall First Nations population. Within this population there is a significant number of First Nations youth with disabilities.”
The AFN Youth Council is working hard to get a better sense of how to help First Nation youth feel included and supported and to be better advocates on their behalf. “Over the past year, the AFN National Youth Council has been talking to youth, leadership and the Federal Government on numerous topics that, in particular, include mental wellness. There is a mental wellness crisis across the country among our youth. They need hope. Currently there are very few options available to them.”

Mr. Augustine concluded by stating that we believe that employment is a valuable tool along with skill development. Employment and skills training can serve to uplift youth by providing them with a positive sense of themselves, as well as the means to support themselves and their families. “Beyond employment and training we must work together to break down the barriers and address the gaps, so that First Nations youth with disabilities can fully participate in their communities. It is my commitment that in my role as a representative of the AFN National Youth Council, I will look to engage more with youth with disabilities.”

LEADERSHIP PANEL AUDIENCE QUESTIONS

Are public buildings subject to the Ontario's Access Disabilities Act legislation for public buildings and commercial wheelchair vehicular transportation?

The Accessibility for Ontarians with Disabilities Act covers what we call built environment, under the jurisdiction of the Province of Ontario. Ontario government buildings and Ontario Crown Corporation buildings are considered public buildings. Ontario parks are public spaces, whether they are a municipal park or a provincial park or even a municipal playground, within the private sector and within Ontario. These are all covered by that piece of provincial legislation.

Part of what we're trying to do is be conscious in our work on federal legislation so that for someone moving from within federal jurisdiction into provincial jurisdiction that treatment is fair and consistent. We need to be thinking about how people are treated and how they're cared for. (James Van Raalte)

Can you tell me how First Nations will be engaged in the optional Convention on the Rights of Persons with Disabilities (CRPD) protocol discussion that has been announced?

Canada is a signatory to the United Nations Convention on the Rights of Persons with Disabilities. Canada adopted that Convention in 2010 and attached to that Convention is another treaty called the optional protocol. The optional protocol allows for citizens within countries to take complaints or concerns of discrimination that are in violation of the Convention to a committee within the United Nations.

An important aspect of that optional protocol is that you must have gone through your systems of rights and the court systems within Canada before you go to the UN.
committee. When Canada signed on to the parent Convention in 2010, it did not sign on to the optional protocol at that time.

The federal government has launched a web consultation process on the ESDC departmental website seeking input from all Canadians with respect to considerations around Canada's signing on to this optional protocol treaty. We can share that website link and encourage everybody to participate in the process. (James Van Raalte)

Access to information, available programs and funding is an issue for First Nations persons with disabilities and communities. What would you suggest would be the best way for sharing information about services for persons with disabilities?

There is a general challenge in the volume of different kinds of information and programs and services available. There is a lot of “noise” in terms of how to filter and find your way to that right information, to that one program or service that may help.

As public servants we are challenged to figure out what is the best way to get that information out there. We use traditional channels such as websites and social media. We also work with community organizations and do a bit of outreach. What works best is working with stakeholders and eligible recipients by targeting both the message and the methods in terms of how we communicate information. There is a lot of material and information out there that people have to navigate. (James Van Raalte)

When will the accessibility legislation be introduced? Will there be new dollars specifically for First Nations persons with disabilities this coming year and if so how will it be allocated?

The Minister is hoping to table the legislation in late 2017, early 2018. At this point it's a little bit too early to talk about any funding requirements that would be associated with the legislation. We are going to need some funding in terms of supporting and implementing the legislation. (James Van Raalte)

How long will it take to develop the federal legislation and for it to be implemented across Canada?

The consultations wrap up at the Government of Canada level at the end of this month. In March we will be working with the Minister to develop a "What Was Said Report” which is anticipated for release sometime in May of 2017. The “What Was Said Report” will be used to inform the policy development that goes behind the legislation. In the interim, work has already begun on some of the aspects of the legislation. From that point we are looking at about eight or nine months in terms of development of the legislation.
The Minister will have to have a conversation with her cabinet colleagues for them to all come to a consensus on the legislation, and then we are looking at the Minister introducing the legislation in the House of Commons in late 2017 or early 2018. It is an aggressive timetable. It will be complicated legislation because it touches quite a few aspects of what the Government of Canada does. That means a lot of work across the whole of government to ensure that we get that proposal right. (James Van Raalte)

After the legislation is developed and there’s a draft of it, what happens then? Is there going to be an opportunity for engagement again?

It then goes through the legislative process within Parliament. The Minister will table the legislation in the House of Commons. It will go through first, then second reading. From there it is referred to a Standing Committee for study. The Standing Committee within the House of Commons will hold consultations and seek input on the legislation. The Standing Committee then reports back to the House of Commons, with proposed amendments, or if there are none, the legislation will proceed as it stands. Then there is a vote, if there is none, there will be third reading in the House of Commons.

The legislation then goes to the Senate and it goes through the same steps in the Senate. What is nice about the process is a lot of upfront work has been done to inform the development of the legislation, and then Parliamentarians take over and do their duty in terms of examining the legislation and having effective debate, and engaging again with Canadians from across the country before passage of the legislation. (James Van Raalte)
DISABILITY EXPERTS PANEL PRESENTATIONS SUMMARY

DOREEN DEMAS, Indigenous Persons with Disabilities Global Network

Ms. Demas started her presentation by stating that regardless of how we proceed from here, one key principle that is critically important is to be mindful of the importance of the inclusion of First Nations persons with disabilities at all junctures of the engagement process. Given the history of struggles and barriers faced by First Nations persons with disabilities, it is clear that some kind of strategy is required to address these problems. “Applying a rights-based framework to addressing the needs of First Nations persons with disabilities is fundamentally important. Applying a social model of disability, too, that identifies the systematic barriers made of attitudes and exclusion by society is also critically important to whatever process that we as First Nations persons undertake.”

“Let's proceed by respecting and celebrating our differences. First Nations persons with disabilities strongly desire to be independent, self-sufficient and contributing members of their communities. First Nations persons with disabilities want to exercise their rights to make their own decisions, make mistakes and take risks just like other people do. First Nations persons with disabilities have the right to an education, to work and have a career, marry and have children. Most importantly they have the right to be equal within their First Nations communities.”

“First Nations persons with disabilities can live independently and be self-sustaining if they are accorded the aids and devices they require, including, but not limited to, physical access such as ramps and wheelchair-accessible washrooms and doorways, alternate formats of printed materials and plain language formats for those with intellectual disabilities. Sign language interpretation for those that are deaf, flexibility for those suffering from episodic disabilities such as arthritis, chronic fatigue and pain, and those living with mental health issues. These are but a few of the kinds of accommodations that need to be in place, respected and honored in order for a successful process.”

Ms. Demas concluded her presentation by stating that “First Nations persons with disabilities have legal protection through mechanisms such as the United Nations Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples which are critically important within an accessibility legislation discussion. Empowerment for First Nations persons with disabilities is about "nothing about us without us.”

WENDALL NICHOLAS, Chair of the Wabanaki Council on Disability.

Mr. Nicholas strongly stated that we need to engage our leadership in order to facilitate their understanding of the complex issues that persons with disabilities live with at the community level. The rights of Indigenous persons with disabilities are protected in both Canadian and
international law.

“In 2008 the Canadian Human Rights Act was amended to suspend an exemption that allowed discrimination for people with disabilities on-reserve. It also related to matrimonial real property. It has changed the way that the rights of Indigenous people with disabilities are envisioned in Canada. Canada is now making a commitment to the adoption of the optional protocol. This is a very serious area that we want to be fully engaged in to ensure that we are protecting our rights.”

Mr. Nicholas concluded by stating that “Canada has made the step to implement these rights through the establishment of greater monitoring mechanisms. The Wabanaki Council on Disability is preparing a shadow report on Canada’s report to the United Nations on the Convention on the Rights of Persons with Disabilities. This is to take place in Geneva in April. What is important about this exercise is to share the experiences of people in their communities that have encountered discrimination in accessing programs and services. As indigenous persons with disabilities, we are the ones that breathe life into these treaties. We are the ones that give understanding of what these documents and words mean, so that they lift off the page and are given life.”

CHERLYN BILLY, Shuswap Nation Program Director Aboriginal Skills Employment and Training Strategy (ASETS)

Ms. Billy indicated that her presentation focuses on the concerns ASETS holders face when it comes to First Nations persons with disabilities and to share how we can work together to help raise awareness and promote change.

“There are 57 First Nations ASETS holders across the country. First Nations persons with disabilities face difficulties in accessing employment. For those First Nations who are job ready, changing legislation cannot be the only answer.”

“Current labor market information indicates that individuals with less than a high school diploma qualify for four percent of the jobs available. Over the next 10-20 years, labor market research indicates that 42 percent of all Canadians are at risk of losing their jobs to automation which are entry-level jobs. The Federal Government will need to increase funding to provide meaningful training for First Nations persons with disabilities to increase their chances of being employed within this context.”

Ms. Billy concluded by stating that “with future trends indicating that 78 percent of employment options will require a trades, diploma or degree. Programs need to be customized to suit the needs of persons with disabilities rather than just funding. It is important to build on what exists. Accessibility will require the federal government to look at their programs and determine how much additional funding they are willing to provide to improve marketing, engage with
employers, and upgrade locations that currently exist. Let me leave you with the knowledge that most of our people do not consider themselves as disabled. We need to thank them for the lessons they have taught us today.”

NEIL BELANGER, Executive Director of the BC Aboriginal Network on Disability Society

Mr. Belanger reported that the frequency of disability within the indigenous population in Canada is twice that of the general population, especially since communities are faced with limited assistance to address specific disability needs. There is limited information on available resources including the requirements to access and address jurisdictional mandate issues, poverty, remoteness, transportation, housing, communities and facility requirements of First Nations persons with disabilities. The high transition of social development and health employees are only a few of the barriers experienced by First Nation communities.

He stated that “on an annual basis his organization maintains approximately 7,000 client files. A federal accessibility engagement process is in place that involves sitting at various advisory committee tables, both federal and provincial, relating to disability issues. This presents a unique opportunity for Nations to inform government on policy priorities that ensure First Nation persons who live with disabilities maximize their social and economic inclusion, which is a right for everyone.” “Some policy areas that are part of ongoing government-to- government dialogues include: housing, infrastructure, home and community care, disability funding, non-insured health benefits, transportation, disability benefits and registered disability savings plans.”

Mr. Belanger concluded by stating that “it is important that a comprehensive overview of the realities and limitations of the current system be presented, while highlighting the exceptional work performed by First Nations across Canada on a daily basis.”
DISABILITY EXPERTS PANEL AUDIENCE QUESTIONS

We are presently conducting a study on First Nations persons living with a disability to better understand their obstacles and needs to access employment in their communities or in urban areas. Are there other surveys taking place in other provinces? Also, when will the results of the ESDC’s research be made public?

_The First Nations Information Government Centre has recently completed research on employment and they explored some questions around disability as part of that work. Go to www.fnigc.ca to see information related to that question of employment and disability._ (Wendall Nicholas)

_Also, the publication of the “What Was Said Report” based on the accessible legislation engagement process is anticipated for release in May of 2017._ (James Van Raalte)

Will the legislation deal with mainstream discrimination against persons with disabilities and First Nations persons with a disability as we face both as First Nations individuals and First Nations persons with disabilities?

_First Nations persons with disabilities face a double jeopardy as indigenous persons and as persons with disabilities. It is discrimination by race, disability and, also in many cases, by gender. A collective agreement, as well as a collective responsibility is required to eliminate discrimination towards persons with disabilities. That requires policy change, attitude changes and enforcement mechanisms, whatever that may be. We have to address this important issue and not be afraid to have the tough conversations throughout the engagement process, as it continues to unfold._ (Doreen Demas)

What actions do you think could be taken at a federal level that would help reduce stigma and promote inclusion and mutual understanding for First Nations persons with disabilities?

_The idea of changing people’s attitudes and thinking about disability is critically important. The more people understand, and the more information they have, the more they are willing to change. The environment for people with disabilities will become easier as a result of change. Persons with disabilities are people first, and in this case, if someone is an indigenous person, their disability should be secondary. Having a disability should not be what defines you._

_We need to start looking at persons with disabilities as human beings. We’ve come a long way in terms of changing people’s thinking about indigenous people and we can do the same for First Nations persons with disabilities._
What are the greatest barriers to accessibility for First Nations persons with disabilities on reserve?

*Federal and provincial governments discriminate in First Nation communities through the lack of accessible homes, programs and services. As a result we still have incredible barriers in First Nation communities. Many First Nation persons with disabilities have had to leave their community because there is no access for them. Barriers to persons with disabilities are not only structural; they are also environmental and attitudinal. This causes First Nations persons with disabilities to be very frustrated. We still have a long way to go for change at a variety of levels.* (Wendall Nicholas)

**EARLY OBSERVATIONS: WEBINAR ANALYSIS AND CONCLUSIONS**

The Webinar was a tremendous success and achieved its goals for engagement requirements in this first dialogue process. The Webinar was one of a number of additional activities that are planned to engage First Nations persons with disabilities across the country. Additional engagements are anticipated through linkages at the AFN Annual General Assembly in July and the AFN Special Chiefs Assembly in December 2017.

Other activities include a survey on the AFN website, and links where First Nations can provide comments by e-mail, fax and other accessible formats.

Our goal is to engage with First Nations nationally, regionally, individual First Nations, First Nations persons with disabilities, caretakers, service organizations, AFN Provincial and Territorial Organizations, advocacy groups and mainstream persons with disabilities organizations. The Webinar connected with 279 viewers who represented this target population.

This historic event was a first disability accessible undertaking of this scale by the Assembly of First Nations. It was telecast across the country via the internet with closed captioning, sign language interpretation in English and French, chat capabilities to facilitate engagement with the audience and English and French language interpretation. The pictures contained in this report illustrates a truly accessible and inclusive event.

The Webinar was a great success, as the two and a half hour event provided opportunities for information sharing, as well as information seeking. Webinar participants were able to hear key issues from the leadership, as well as disability experts and through the chat function send in questions in live time for the panelists to respond to.

The webinar set a new bar for the AFN for ensuring that future events and engagements are accessible, thus allowing FNPWD equal access and inclusion. In addition, partnership between First Nations and government was clearly evidenced in the Webinar through the open and candid discussion that took place during the session.
A survey was conducted during the Webinar and as a result 32 participants responded to the survey. The majority of the respondents (43.75%) were from urban communities less than 50 km from a service centre. Another 40% chose not to identify. Sixteen percent reported their home was in a rural area with year round access to a road.

In addition, 31% of survey participants reported they lived primarily on-reserve and 28.12% reported they reside off-reserve.

Forty-nine percent of the respondents were between the ages of 26 and 59. 40% of the respondents chose not to identify. 21% of the respondents were between 18 and 39 years of age.

When asked if an engagement process on accessibility legislation was important to them, 56.25% replied yes. Forty-four percent did not complete the question. For those who responded they indicated that: accessibility legislation engagement was important to them because community engagement is a key process to ensure the success of community-based initiatives. To ensure positive outcomes of the accessibility legislation, it is important for the decision-makers and the leaders who are involved with this initiative to engage with the key stakeholders and individuals who will be the most impacted by this legislation. Further research is required to determine how to best serve our most vulnerable people.

Respondents also reported that they have members of their family that have disabilities and they see the struggles they face and how these struggles impact their lives. When survey respondents were asked whether First Nations government have a role in changing attitudes around accessibility issues, 46.8% reported yes. 46% did not reply.

For those who replied, they reported that” Native communities need to promote accessibility and integration of all of their community members.” “How can these individuals be heard if they can’t get into the building?” At the same time traditionally First Nation people looked after our brothers and sisters with disabilities, elected officials need to model that in their planning; and, the lack of appropriate funding influences leadership decisions on accessibility. Elected officials are expected to advocate for the funds needed and to change Ottawa's way of thinking about our needs and priorities.

Respondents also reported that: it is important that First Nations be involved as they are the ones who are in the position to identify barriers and solutions and to encourage community change. It is vital for community leaders to ensure inclusion, non-discrimination and promote the valuable and important contributions their membership who are living with a disability bring to the community, Nation, province and Canada.

“We need to be included in any legislative changes that affect us in any way. Our leadership needs to be front and centre to advocate for our rights.”

When asked if First Nations governments have a role in changing attitudes and how should they
begin to do this, 43.75% of respondents reported that First Nations government roles should begin with ensuring the community is accessible and that persons with disabilities are included in all planning and services, regardless of funding that is, or is not, available.

Survey participants also stated that: we need to develop our own people and human resources in order to address local issues. We need to be able to access more funding to address our people's needs. First Nations governments also can change attitudes by developing strong understandings of disability issues and by working with partners in finding and implementing solutions.

Leadership needs to educate the community about the importance and potential impacts of new legislation. A list of questions needs to be provided. For example, how will this legislation impact our education service delivery? What about daycare? As an employer what would be required to fulfill legislation obligations? Proposing these well-structured questions to the community will make them think about the level of importance of legislation for the future.

First Nation governments can be a strong voice towards closing the gaps and addressing challenges for persons living with disabilities and assist with raising the awareness to those living in rural areas, urban settings, as well as businesses, federal, provincial, local governments and Canada.

In conclusion, the following comments from the survey participants are excellent next steps and recommendations for continued federal engagement on accessibility legislation. They are as follows:

1. Our ability to access resources is crucial to our social and economic prosperity to ensure First Nations persons with disabilities needs are being met.
2. First Nations input especially for laws and programs made on-reserve must have the voices of indigenous peoples. This is the only way to ensure that laws affecting First Nation communities meet our individual community needs.
3. Increased funding will help to address short term issues with regard to jurisdictional issues but there also must be long term sustainable plans in place to ensure all First Nation community members with disabilities can access the same services as in the urban centres.
4. A comprehensive strategy is needed to increase awareness of accessibility issues and to change the attitudes and behaviours around accessibility barriers for various sub-population groups, including First Nation persons with disabilities.
5. If there is no legislation that speaks to the jurisdictional issue than things stay the same. Services will not be provided at the same quality level as off-reserve.
6. “You can't see each community and their needs from Ottawa, you need to have input from the people actually living in First Nation communities.”
7. It is important to consider the input and feedback of anyone who would like to participate in the process. It is also important to consider various ways of participation (e.g.
8. All First Nations should have the option to be included in developing the legislation. However, the first question is to determine whether First Nations agree with the proposed legislation.

9. Our legal and treaty rights both need to be looked at. Both need to be recognized by the federal and provincial governments. Communication is crucial at all levels.

10. In order to meet the needs of First Nations persons with disabilities, the right to self-determination and equality is essential, which is everyone's right, no matter who you are.

11. Our culture and language is slowly disappearing in some First Nations across the country, and if this legislation address's this issue then we will be able to re-vitalize our culture and language in a more meaningful way through this engagement process, because our voices will make a difference.

12. Since confederation Ottawa has been imposing laws on-reserve without respecting the culture and language of the people that the laws effect. In 175 years it has been proven that this practice doesn't work. Legislation that works must be co-developed in an atmosphere of mutual respect. This is the only way to ensure success of the legislation.

CALGARY EDUCATION AND SPECIAL NEEDS DISCUSSION SESSION TO INFORM FEDERAL ACCESSIBILITY LEGISLATION
On March 2, 2017 the AFN hosted a discussion session on Federal Accessibility Legislation and Educational and Special Needs during the AFN First Nations Directors Forum in Calgary, Alberta.

Over thirty five participants attended this session at standing room capacity. One common concern among participants was the potential impact this legislation may have on inherent Aboriginal and treaty rights. To ensure these fundamental rights were respected and protected, participants strongly recommended the need for further study on the development of a method that would legislate and safeguard inherent First Nations treaty rights. Further, the federal
government must enter into this vital discussion in the spirit of treaty. The intent of the treaty must be the foundation for any legislation impacting First Nations.

Many First Nations across the country have limited capacity and financial resources to assume potential costs that this proposed legislation might impose; this was a recurrent concern for participants. Participants added the need for more, concrete, information on barriers and gaps and data to better service the unique needs of FNPWD. One participant also voiced that many FNPWD are “invisible” and First Nation leadership needs to be a strong voice for FNPWD.

Access to inclusive education for children with disabilities; there is a need for qualified staff and teachers, particularly in isolated and rural areas

AFN is challenged by insufficient data and information specific to students with disabilities, and access to inclusive education. However, First Nation Educators have identified inadequate funding for students with “special needs” to be the largest barrier around First Nations education, including: but not limited to transportation, pedagogical supports, technology, curriculum supports to name a few.

In view of this, accurate and up-to-date health information is required to set priorities, guide resource allocation, and to evaluate the success of policies and programs already in place. *(Regional Health Survey (RHS) 2008-10, Chapter 13, Page 115).* According to the Regional Health Survey, ongoing health surveillance in First Nations communities is essential for determining the prevalence of chronic health conditions recognizing emerging health problems, identifying risk factors and determinants of health, and identifying changes over time. The RHS Further states: First Nations children are at a particularly high risk for injury. Research has demonstrated that long-term disability and death can result from an injury; therefore, reducing the proportion of First Nations children who become injured would contribute to improving quality of life and reducing mortality rates as well. As injury poses a significant problem for First Nations, specifically infants and school-aged children; intervention strategies that are implemented to keep First Nations children safe must continue to be developed and improved.

**EARLY CONCLUSIONS AND RECOMMENDATIONS**

The purpose of this report was to provide a brief overview of the early findings and observations impacting FNPWD in Canada in anticipation of the proposed federal accessibility legislation. It was found that FNPWD are marginalized by discrimination based on ethnicity, disability and gender in the following areas: employment, procurement, service delivery, transport, the built environment, and information and communications. Specifically, FNPWD who reside on-reserve or in remote northern communities experience difficulty attaining the services that they require in their communities, which forces a large number of FNPWD to leave to urban centres in the hopes that they will receive better care. Yet, urban-dwelling FNPWD also experience challenges when accessing disability related programs and services, largely due to the residual
social stigma that persists in these environments. Additionally, FNPWD are subject to the continuous jurisdiction disputes between provincial/territorial, federal governments impacting band/council processes. This jurisdictional feud continues to be one of the most debilitating elements of Indigenous healthcare in Canada.

Approaches to healthcare must come from the determinants of health perspective. This means using holistic and individual-based methods that incorporate individual and cultural history, to ensure that each person receives the care that they need. Care and supports for FNPWD must be culturally sensitive and incorporate Indigenous definitions of disability and Indigenous care practices.

On a national level, any services designed to meet the needs of FNPWD must be culturally sensitive, and incorporate traditional and cultural practices throughout the implementation process of the proposed legislation. It is required that the Government of Canada work on the Calls to Action as written in the Truth and Reconciliation Commission Final Report, to work towards reducing the gap between Indigenous and non-Indigenous populations in Canada.

Finally, any legislation must coordinate with the international frameworks such as the United Nations Declaration on the Rights of Indigenous Peoples and the United Nations Convention on the Rights of Persons with Disabilities. In order to create effective and systemic changes at all levels, we must address Canadian race based policies and legislation, institutionalized racism and ongoing discrimination of First Nations and FNPWD. The Government of Canada must also work with First Nations to address both the quantifiable concerns of access to employment, transport, housing, education, among others, and equitable access to care for FNPWD in First Nations.

In conclusion, we must acknowledge the tireless work of First Nations and families, and FNPWD advocates who are striving every day to make a difference in the lives of FNPWD. The process to inform accessibility legislation presents an opportunity to “hold up” the most vulnerable members of our society; and when we come together in support of First Nations and FNPWD, we all stand to win.

“First Nations persons with disabilities are persons with extraordinary abilities.”
- National Chief Perry Bellegarde
Federal Accessibility Legislation

Potential Implications for First Nations and First Nations Persons with Disabilities

Working Together to Build Inclusive and Accessible First Nations
ABOUT THE ASSEMBLY OF FIRST NATIONS

The Assembly of First Nations (AFN) is the national, political representative of First Nations governments and their citizens in Canada, including those living on reserve and in urban and rural areas. Every Chief in Canada is entitled to be a member of the Assembly. The National Chief is elected by the Chiefs in Canada; who in turn are elected by their citizens.

The role and function of the AFN is to serve as a national delegated forum for determining and harmonizing effective collective and co-operative measures on any subject matter that the First Nations delegate for review, study, response or action and for advancing the aspirations of First Nations.

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INTRODUCTION

First Nations persons with disabilities benefit from Indigenous People’s fundamental and collective right to self-determination; this must be respected when enacting legislation or regulations that could affect the rights of First Nations persons with disabilities. This includes the right to participate in life-affecting decisions, to participate in political and public life, and the right of Indigenous Peoples to maintain and develop their political, economic and social systems or institutions. Furthermore, First Nations persons with disabilities ought to be active participants in their political and organizational systems.

Improving accessibility and removing barriers for First Nations persons with disabilities will cut across multiple areas of responsibility, such as health, social services, funding, and on-reserve considerations. Both the Federal and Provincial governments will need to play a role in the implementation of contemplated potential accessibility legislation. To be effective, this legislation will need to address the jurisdictional issues that First Nations have been caught in between the federal and provincial governments regarding provision of equitable services on-reserve.

The opportunity for First Nations to provide input to the federal government prior to potentially drafting legislation is one that could benefit both First Nations and Canada. Canada benefits from hearing directly from First Nations on the issue of how First Nations are uniquely affected by disabilities and how this proposed legislation may impact them in ways that are different from other communities in Canada. Further, First Nations have a constitutional right to be meaningfully consulted on any proposed legislation that may impact Aboriginal and treaty rights—this includes accessibility legislation.

First Nations on-reserve may benefit from an open process through which to express their unique perspectives and address their priorities in regards to matters relating to First Nations persons with disabilities. Additionally, it is an opportunity to express the long-standing, historic and systemic challenges First Nations face in trying to seek equity and equality for persons with disabilities on-reserve, especially as it pertains to equitable access to programs and services that are provided to persons with disabilities living off-reserve.

It is the ultimate concern and constitutional obligation of the federal government to ensure these rights are considered in drafting legislation that will heavily affect First Nations persons with disabilities and their communities.

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1 United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) preamble
2 These are rights codified in the preamble of Chapter 7, articles 4(3), 29 of the Convention on the Rights of Persons with Disabilities (CRPD), and articles 5, 11, 18, 19, 20, and 33(3) of the Declaration.
2. BACKGROUND

In 2015, the federal Liberals campaigned, in part, on introducing Canada’s first federal accessibility legislation. After taking office, Prime Minister Trudeau appointed Carla Qualtrough as the first ever Minister of Sport and Persons with Disabilities. In her mandate letter, the Prime Minister states one of her top priorities is to “[l]ead an engagement process with provinces, territories, municipalities, and stakeholders that will lead to the passage of a Canadians with Disabilities Act.”

Minister Qualtrough anticipates introducing a Bill before the House of Commons by late 2017 or early 2018.

Employment and Social Development Canada (ESDC) is the department taking the lead on the engagement process to develop federal accessibility legislation with the goal to “increase the inclusion and participation of Canadians in society and promote equality of opportunity by improving accessibility and removing barriers in areas of federal jurisdiction.”

In mid-2016, ESDC released a Discussion Guide to solicit feedback on the potential proposed federal accessibility legislation. The ESDC Discussion Guide is a public document available at: www.canada.ca/accessible-canada.

It provides information on the proposed legislation and public engagement, including:

1. Objectives
2. How to Participate
3. Background and Context to the Development of accessibility legislation
4. Topics for discussion on accessibility legislation
5. Contact information

In addition to the information, the Discussion Guide asks 8 sets of questions regarding:

- Attitudes and Awareness
- Goals of the Legislation
- Improving accessibility and Removing barriers
- Who should be covered by the legislation
- Accessibility issues and barriers
- Compliance, monitoring and enforcement

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3 Prime Minister of Canada. “Minister of Sport and Persons with Disabilities Mandate Letter”, online: Prime Minister of Canada. online: <http://pm.gc.ca/eng/minister-sport-and-persons-disabilities-mandate-letter>


5 Employment and Social Development Canada. “Accessibility Legislation: What does an Accessible Canada mean to you?”, online: <https://www.canada.ca/content/dam/esdc-edsc/documents/programs/disability/consultations/No.653-Layout%20Discussion%20Guide-EN.PDF>
• Support for organizations to improve accessibility, and
• Effectiveness, Reporting, and Outcomes

The Minister has stated that the idea is to create proactive legislation that will create some standards/guidelines to be applied nationally. The Minister is not sure what the wording of the anticipated legislation will include, but says it will set expectations on businesses, service providers and program deliverers regarding what an accessible Canada should look like. Overall, the Minister appears to be proposing a proactive law that will allow for intervention in advance of a complaint of discrimination.

Input from First Nations governments, citizens, and persons with disabilities into the new accessibility legislation is optional but is also important because:

• First Nations perspectives are essential in the development of any federal government legislation that affects the rights of First Nations, with special considerations for legislation that impacts First Nations persons with disabilities;
• The regional, cultural and individual diversity of First Nations need to be expressed and considered;
• Jurisdictional issues and gaps should be considered and addressed; and
• Any new legislation needs to ensure that equality for persons with disabilities in Canada means equality for First Nations people with disabilities.

3. ISSUES
The essential issues that will be reviewed in this document are:

• Facts – information regarding disability and First Nations; existing federal and provincial legislation; and international mechanisms
• Aboriginal and Treaty rights
• Jurisdiction
• Potential implication of proposed legislation
• Priority areas for the First Nations

4. FACTS
   A. Disability and First Nations Communities
It is difficult to know the full extent of the issues for consideration because data relating to the disability and First Nations communities is sparse. A 2014 report entitled “Expanding the Circle:

6 Employment and Social Development Canada. “Accessibility Legislation: What does an Accessible Canada mean to you?”, online: <https://www.canada.ca/content/dam/esdc-edsc/documents/programs/disability/consultations/No.653-Lay out%20Discussion%20Guide-EN.PDF> at p. 3
Aboriginal People with Disabilities Know their Rights” (Expanding the Circle) states that “[w]hile 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.”

Where data is available, there are discrepancies in the findings. Anecdotal claims have stated that the disability rate of Indigenous persons with disabilities is twice the rate of the non-Indigenous population in Canada. In 2006, the Council of Canadians with Disabilities noted that “[t]he incidence of disability among Aboriginal Peoples in some age categories is almost twice that of the rest of the Canadian population.” The 2002 First Nations Regional Health Survey (RHS) reported that the proportion of First Nations adults living with a disability was 1.6 times that of the general Canadian population. In 1991, Statistics Canada found that persons with disabilities were highly overrepresented in Aboriginal communities (31%) compared with the total Canadian population (13%). However, a more recent 2009 Health Canada study found that the age-standardized prevalence of disability reported among First Nations adults on-reserve (28.5%) was similar to the prevalence among the general Canadian population (25.8%). Unfortunately, more recent studies on disabilities in Canada, such as the 2012 Canadian Survey on Disability, excluded sampling from the population living on-reserve for ‘operational reasons’.

Even without recent data, approaches to developing accessibility legislation that will be meaningful to First Nations persons with disabilities must consider their unique personal and community histories, environments, and circumstances.

As noted in the Expanding the Circle report:

“Due to the intersectional impact of aboriginal status and disability status, this disproportionately large population of aboriginal Canadians with disabilities faces...”

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8 York University. “Expanding the Circle: Aboriginal People with Disabilities Know their Rights” (Spring 2014), online: <http://drpi.research.yorku.ca/NorthAmerica/ExpandingTheCircle>


massive barriers and challenges in accessing appropriate educational opportunities, accessible transportation, housing, support services, employment, recreation, and cultural opportunities...

... Indigenous people with disabilities in Canada also experience disproportionately high rates of homelessness ... 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 ... 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 ... 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.”

The above captures similar sentiments that First Nations have expressed in terms of the realistic, logistical and systemic challenges First Nations face in trying to seek justice, equity and equality for First Nations persons with disabilities and their families.

B. Existing Federal Legislation

Although the proposed accessibility legislation will be new, there are other related federal laws, which provide some guidance. By reviewing existing and related legislation, First Nations may be able to draw some similarities as to how proposed accessibility legislation may impact First Nations persons with disabilities, as well as their families, communities and regions. In contemplating the proposed accessibility legislation, First Nations may want to consider gaps that could be filled by this new legislation, opportunities it presents for First Nations persons with disabilities, while considering the potential additional responsibilities new legislation may add to First Nations.

i. The Canadian Charter of Rights and Freedom

The Canadian Charter of Rights and Freedoms15 (the “Charter”) is part of the Constitution of Canada. Section 52(1) of the Constitution Act, 1982 provides that “[t]he Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.” In other words, any law that is inconsistent with the Charter can be struck down as unconstitutional.

Section 15(1) of the Charter provides

“Every individual is equal before and under the law and has the right to the equal...”

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14 York University. “Expanding the Circle: Aboriginal People with Disabilities Know their Rights” (Spring 2014), online: <http://drpi.research.yorku.ca/NorthAmerica/ExpandingTheCircle> at p 8.
15 online:<http://laws-lois.justice.gc.ca/eng/const/page-15.html>
protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability” [emphasis added].

Generally speaking, it has not been definitively settled that the *Charter* applies to First Nations governments. For example, section 25 of the *Charter* provides that the rights and freedoms guaranteed therein “shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal Peoples of Canada.” Moreover, section 32 provides that the *Charter* applies to the Parliament, the Government of Canada as well as to the legislature and government of each province. Further, any Charter decisions in relation to a section 15 challenge on physical disability would only be applicable to First Nations to the extent that the decision does not abrogate or derogate from Aboriginal and treaty rights. Charter challenges can also be very burdensome on the party bringing forth the challenge.

**ii. The Canadian Human Rights Act**

The *Canadian Human Rights Act* (CHRA) protects people, including First Nations, in Canada from discrimination based on 11 prohibited grounds of discrimination, including race and disability, when they are employed or receive services from entities under federal jurisdiction. Until its repeal in 2008 (which took effect in 2011), section 67 of the CHRA shielded decisions or actions by First Nation band councils made under or pursuant to the *Indian Act* from human rights complaints. It also shielded the federal government from human rights complaints brought by First Nations.

The repeal of section 67 exposed the federal government to human rights complaints by First Nations. A case in point is *First Nations Child and Family Caring Society of Canada et. al. v. Attorney General of Canada*, the child welfare case in which the Canadian Human Rights Tribunal found that the federal government discriminates against First Nations children by underfunding child welfare services on-reserve and in the Yukon. But it also exposed First Nations governments to potential liability for human rights complaints arising from band members. For example, in its 2013 Annual Report, the Canadian Human Rights Commission noted that between 2011 and 2013, they received 317 human rights complaints against First

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16 With the exception, for example, of the guarantee of gender equality under section 28; see McNeil, Kent. “Aboriginal Governments and the Canadian Charter of Rights and Freedoms.” Osgoode Hall Law Journal 34.1 (1996) : 61-99 at pp. 89-90; online:<http://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1632&context=ohlj>

17 *Canadian Human Rights Act*, RSC, 1985, c H-6 s 3(1).


Subsequently, between 2013 and 2015, the Commission received an additional 265 human rights complaints against First Nations governments. Notably, among the 11 prohibited grounds of discrimination under the CHRC, 58% of complaints received by the Commission in 2015 were on the grounds of disability.

These figures are not an anomaly, as ‘disability’ typically ranks highest among grounds of discrimination that form the basis of human rights complaints. For example, in 2014, ‘disability’ constituted 57% of all complaints and in 2013 ‘disability’ constituted 55% of all complaints. Therefore, not only has there been a surge in human rights complaints against First Nations governments specifically due to the repeal of section 67 but generally speaking the majority of human rights complaints are generated on the basis of ‘disability’. The enactment of federal legislation that may involve promoting accessibility and place positive obligations on public authorities that fall under federal jurisdiction may alleviate the need for human rights complaints. If the rights of First Nations persons with disabilities are upheld, then they will be less likely to be discriminated against, and therefore compelled to file a human rights complaint.

The Canadian Human Rights Commission (CHRC) also took steps to be more inclusive of First Nations. The CHRA was amended to add a non-derogation clause that the CHRC, the CHRT and other courts interpreting the CHRA are required to consider s. 35 Rights in all decisions. Further, interpretive provisions were developed to give guidance on and mandate consideration of First Nations legal traditions and customs while balancing individual and collective rights, as well as gender equality.

iii. The Employment Equity Act

Canada’s Employment Equity Act (EEA) was enacted:

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“to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, aboriginal Peoples, persons with disabilities and members of visible minorities by giving effect to the principle that employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences”\textsuperscript{26} [emphasis added].

The Act defines “persons with disabilities” to include:

“persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who (a) consider themselves to be disadvantaged in employment by reason of that impairment, or (b) believe that an employer or potential employer is likely to consider them to be disadvantaged in employment by reason of that impairment, and includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace.”\textsuperscript{27}

For the EEA to apply, employees must self-identify to an employer or agree to be identified by an employee.\textsuperscript{28}

Employers are obligated to:

1) identify and eliminate employment barriers against persons in designated groups that result from the employer’s employment systems, policies and practices that are not authorized by law; and
2) institute such positive policies and practices and make such reasonable accommodations as will ensure that persons in designated groups achieve a degree of representation in each occupational group in the employer’s workforce that reflects their representation in
   a) the Canadian workforce, or
   b) those segments of the Canadian workforce that are identifiable by qualification, eligibility or geography and from which the employer may reasonably be expected to draw employees.\textsuperscript{29}

Employers are not required to implement measures that would constitute ‘undue hardship’; hire persons without essential qualifications; promote someone without merit where merit is required, or; create new positions.\textsuperscript{30}

Additionally, every employer must collect information and analyze

\textsuperscript{26} Employment Equity Act, SC 1995, c 44, s 2.
\textsuperscript{27} Employment Equity Act, SC 1995, c 44, s 3.
\textsuperscript{28} Employment Equity Act, SC 1995, c 44, s 9(2)
\textsuperscript{29} Employment Equity Act, SC 1995, c 44, s 9.
\textsuperscript{30} Employment Equity Act, SC 1995, c 44, s 16.
their workforce to determine the degree of underrepresentation of persons in designated groups and review of their employment systems, policies and practices in order to identify employment barriers against persons in designated groups. Furthermore, employers shall keep employment equity records in respect of their workforce, employment equity plan and the implementation of employment equity.

The Canadian Human Rights Commission is responsible for enforcement of the obligations listed above. However, the guiding policy of the compliance regime is that, wherever possible, cases of non-compliance shall be resolved through persuasion and the negotiation of written undertakings on the part of employers to take specified measures to remedy non-compliance; while orders/directions are only to be issued as a measure of last resort. The Commission may also establish an Employment Equity Review Tribunal that can make any order it considers appropriate and reasonable in the circumstances to remedy non-compliance.

C. Existing Provincial Legislation

Similar to the federal laws, an overview of relevant, existing provincial legislation also provides First Nations with some parallels as to what could be included and what should be avoided in the proposed federal accessibility legislation from a First Nations on-reserve perspective.

It should be noted that all provinces have human rights legislation (territories utilize the federal process) and none of the provincial statutes impose the requirements of their respective Acts on-reserve or on private corporations or residences.

i. Manitoba: Accessibility for Manitobans Act ("AMA")

The AMA became law on December 5, 2013. The AMA is broad, as it applies to employment, accommodation, buildings and transportation, in businesses, and “a prescribed activity or undertaking”. The focus of the AMA is to develop and enforce mandatory accessibility standards in 5 areas: Customer Service (regulations passed in November 2015); Employment (under development); Information and Communication; Transportation (sector specific), and; the Built environment. The AMA does not define the term “disability” and is subordinate to the Manitoba Human Rights Code.

In order to develop standards, the Manitoba government established an Accessibility Advisory Council to engage public stakeholders and develop standards. Once draft standards are

32 Employment Equity Act, SC 1995, c 44, s 17.
33 Employment Equity Act, SC 1995, c 44, s 22(1).
34 Employment Equity Act, SC 1995, c 44, ss 22(2) & 25(1).
35 Employment Equity Act, SC 1995, c 44, ss 28(1) & 30(1)(b).
36 Accessibility for Manitobans Act, SM 2013, c 40, s 2(1).
developed, they go through a public review before being presented to the Minister. Standards can be incorporated into regulations.

ii. Ontario: Accessibility for Ontarians with Disabilities Act (AODA)

Ontario’s accessibility legislation, the *Accessibility for Ontarians with Disabilities Act*\(^ {38}\) (AODA) was introduced in 2005 and has the goal to make Ontario fully accessible “with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises” through development and enforcement of standards.\(^ {39}\) The AODA does apply to “every person or organization in the public and private sectors of the Province of Ontario.

The term “disability” is also defined broadly to include:\(^ {40}\)

\[
\begin{align*}
(a) & \text{ any degree of physical disability [...] caused by bodily injury, birth defect or illness [...]}. \\
(b) & \text{ a condition of mental impairment or a developmental disability,} \\
(c) & \text{ a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,} \\
(d) & \text{ a mental disorder, or} \\
(e) & \text{ an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997; (“handicap”)}
\end{align*}
\]

Further, the AODA applies to more than just physical barriers. Section 2 (Definitions) defines the term “barrier” to mean:

\[
\text{anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice; (“obstacle”)\(^ {41}\)
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Similar to the AMA, the AODA also allows the Lieutenant Governor in Council to make accessibility standards through regulations and provides that these standards apply to the public sector within Ontario.

iii. Québec: Loi assurant l’exercice des droits des personnes handicapées en vue de leur intégration scolaire, professionnelle et sociale (An Act to Secure the Exercise of the Rights of Persons with Disabilities with a View to Their Educational, Occupational and Social Integration) (the Act)

\(^{39}\) *Accessibility for Ontarians with Disabilities Act*, 2005, SO 2005, c 11, s 1(a)  
\(^{40}\) *Accessibility for Ontarians with Disabilities Act*, 2005, SO 2005, c 11, s 2  
\(^{41}\) *Accessibility for Ontarians with Disabilities Act*, 2005, SO 2005, c 11, s 2
The Act was originally adopted in 1978 with a review by the National Assembly in 2004. The Act essentially delegates an authorized body of 16 people (the “Board”) to ensure compliance with the objective of the Act. Additionally, the government policy called “In Every Respect: For a real exercise of the right to equality” that establishes the Board that coordinates implementation and evaluation was adopted in 2009.

There are three main areas outlined in the Act:

1. Increased involvement
   a. Make public services more accessible

2. Responsibilities
   a. Develop annual plans for people with disabilities
   b. Develop transportation plans
   c. Supply of accessible goods and services

3. Establishing the Office of Disability Québec with duties and powers of monitoring
   a. Provide advice to the Minister, government and public/private partners
   b. Ensure society is making progress in improving opportunities
   c. Be the watchdog, coordinator, conduct assessments and provide support for people with disabilities and their families

Similar to the AMA and AODA the Board may make regulations, but its regulations are limited to internal management, to establish a committee, and to determine powers and duties of staff.

iv. Other Provinces

None of the other Provinces or the Territories have accessibility legislation. However, most of the Provinces have laws or regulations in regards to building accessibility (ex. Alberta’s Safety Code Act, or New Brunswick’s Community Planning Act). British Columbia has a 10-year action plan called “Accessibility 2024”. Nova Scotia’s Accessibility Act was introduced in the legislature on November 2, 2016 and is currently going through the legislative process to become law.

D. International Mechanisms

The examination of international mechanisms is useful in contemplation of ensuring First Nations representation with proposed federal accessibility legislation because international mechanisms provide guidance on a rights-based approach to the implementation of domestic measures.

At the international level, there are Indigenous-specific mechanisms such as the United Nations Permanent Forum on Indigenous Issues, Expert Mechanism on the Rights of Indigenous Peoples, and Special Rapporteur on the Rights of Indigenous Peoples. Additionally, the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) was adopted by the UN General Assembly in 2007 and was endorsed with qualifications by Canada in 2010 (with an unqualified endorsement in 2016). There are also other international mechanisms that are of

The International Labour Organization Indigenous and Tribal Peoples Convention No. 169, created in 1989, was one of the first pieces of international legislation that recognized the rights of Indigenous peoples on an international level. This Convention recognizes health rights.\textsuperscript{42} Even though this convention is not signed by Canada, it is nevertheless an instrument that can be used in draft legislation pertaining to disabilities and indigenous rights. Canada is urged to sign on to this Convention; and in doing so, Canada would be signaling that they intend to live up to the commitments that they have made to the Indigenous peoples of Canada.

The two main international instruments regarding Indigenous Peoples and disability are the Convention on the Rights of Persons with Disabilities (CRPD) and the United Nations Declaration on the Rights of Indigenous Peoples (Declaration).

i. United Nations Convention on the Rights of Persons with Disabilities ("CRPD")

Canada ratified the United Nations Convention on the Rights of Persons with Disabilities ("CRPD") in March 2010.\textsuperscript{43} The Convention adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms. It clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations have to be made for persons with disabilities to effectively exercise their rights and areas where their rights have been violated, and where protection of rights must be reinforced.

The preamble of the CRPD specifically references Indigenous Peoples as a group of persons of special concern due to being subject to "multiple or aggravated forms of discrimination."\textsuperscript{44} As a signatory, Canada must report to the Committee on the Rights of Persons with Disabilities (the Committee) every four years. The last report Canada submitted in 2012 contained very little


information in regards to Aboriginal People and disability.\textsuperscript{45} Canada’s next report is due in 2017, and the Committee has specifically requested that Canada report on: measures to eliminate multiple and intersectional discrimination including against Indigenous Peoples (including remedies and redress); measures for the advancement, development and empowerment of, in particular, indigenous women and girls; violence against indigenous women and girls with disabilities; measures to prevent and eliminate all forms of violence; steps taken to implement the recommendations of the Truth and Reconciliation Commission and repeal section 43 of the Penal Code; sexual and reproductive health rights of indigenous women with psychosocial impairments, and; disaggregated information about indigenous persons with disabilities who receive funding for housing and adaptation.\textsuperscript{46}

The approaches to draft accessibility legislation may include provisions of the CRPD, and if this is the case, then Canada would be expected to consult with First Nations on any adverse impacts, and if necessary, Canada would also be expected to accommodate First Nations concerns before the ratification of this particular instrument.

Canada has not yet signed on to the CRPD complaints mechanism. The Optional Protocol to the Convention on the Rights of Persons with Disabilities (“protocol”) is a side agreement that established a complaints mechanism for contraventions of the CRPD. The CRPD Optional Protocol Committee can accept complaints from individual or group complainants who feel their individual human rights under the convention have been violated.\textsuperscript{47}

In addition, the protocol allows complainants bring forth inquiries concerning systemic violations of the CRPD.

While Canada has not yet formally ratified the Optional Protocol to the CRPD,\textsuperscript{48} Canada made a commitment on December 1, 2016, where both the Honourable Minister Carla Qualtrough, Minister of Sport and Persons with Disabilities and the Honourable Stéphane Dion, then Minister of Foreign Affairs announced that Canada would ratify the Optional Protocol in 2017.\textsuperscript{49}

\begin{footnotesize}
\begin{enumerate}
\item[49] Council of Canadians with Disabilities, “Canada to Ratify CRPD’s Optional Protocol”, (23 December, 2016)
\end{enumerate}
\end{footnotesize}
First Nations once again, will have to be consulted before the Optional Protocol is signed and ratified. This protocol requires ratification and implementation in a manner that is consistent not only with Indigenous constitutional rights, but also with regard to other rights that they have under other domestic laws such as those under the Canadian Human Rights Act. As such, any steps to ratify this protocol through legislative means would have to reflect the concerns of First Nations pertaining to disabilities. Such steps to consult with First Nations would have to be in place in the very near future.

ii. United Nations Declaration on the Rights of Indigenous Peoples (“the Declaration”)

In November 2010 Canada endorsed and in May 2016 provided its unqualified support for the United Nations Declaration on the Rights of Indigenous Peoples (“the Declaration”).

The Declaration codified the rights of Indigenous Peoples and provides guidance on the implementation of Indigenous rights. In interpreting the articles of the Declaration, it calls for special consideration for Indigenous persons with disabilities.

Article 21 specifically places an obligation on states to take effective and appropriate measures to address the issues of disability. While the Declaration is not a legally binding instrument, nevertheless, this article is of value when considering implementation through the accessibility legislation.

iii. UNPFII Study on Situation of Indigenous Peoples with disabilities

In 2013, the UNPFII published a study on the situation of Indigenous Peoples with disabilities.

This study confirms that there is a lack of data globally on Indigenous Peoples with disabilities and that there is a:

“serious gap in the implementation and enjoyment of a wide range of rights, ranging from self-determination and individual autonomy to access to justice, education, language, culture and integrity of the person. There are significant unmet needs and rights that are not being addressed, of which gaps in access to health, life expectancy,

52 online:<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/224/58/PDF/N1322458.pdf?OpenElement>
educational qualifications, income, safety of the person and participation in decision-making are just a few examples.\textsuperscript{53}

In its recommendations, the UNPFII urges action from Member States, Indigenous Peoples organizations, and the UN system, highlighting urgent intersectional and interconnected nature of the issue. As such, it would be advantageous to Indigenous peoples to advance this work by addressing the concerns of this study in any accessibility legislative provisions, especially in light of the accessibility legislation proactive approach.

5. ABORIGINAL AND TREATY RIGHTS

First Nations have Aboriginal and constitutional rights as Indigenous Peoples in Canada. In addition, some rights also flow from the various Treaties that were signed between First Nations and the Crown. Although Indigenous rights are now provided for in the Declaration, the Indigenous rights framework in Canada has evolved differently than at the international level. Separate from the rights that are outlined in Treaties, the common law on what constitutes an “Aboriginal right” according to Canadian law has developed to mean a practice or activity that was “integral to the distinctive culture” at the time of first contact with Europeans and still exists in some form today.\textsuperscript{54} Aboriginal rights are protected from unnecessary infringement under section 35 of the Constitution Act, 1982.\textsuperscript{55}

First Nations persons with disabilities also have the full benefit of their rights as Aboriginal Peoples, Indigenous Peoples, Treaty People (if they are such), and as persons with disabilities. First Nations children with disabilities, like all children, carry these rights in addition to their rights as children. First Nations could recommend that the government include enabling provisions within the legislation whereby First Nations can choose to adopt or modify aspects of the legislation based on their inherent right to self-government.

In contemplating legislation, the government should consider any impacts on Aboriginal and Treaty rights, including the inherent right to self-government, but also where Treaties include health (medicine chest) or education clauses. In sum, accessibility legislation should be consistent with section 35 of the Constitution, 1982, which protects Aboriginal and Treaty rights.

\textsuperscript{54} Olthuis, Kleer, Townshend LLP. Aboriginal Law Handbook, 4th i (Toronto, ON: Thomson Reuters Canada Limited, 2012) at p 33.
\textsuperscript{55} Constitution Act, 1982, s 35, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.
6. **JURISDICTIONAL DISPUTES**

Section 91(24) of the *Constitution Act, 1867*, provides the federal government with exclusive authority to make laws with respect to “Indians, and Lands reserved for the Indians”\(^{56}\) meaning First Nation affairs and reserve lands falls within the federal sphere of jurisdiction. The main piece of federal legislation governing Indian affairs is the *Indian Act*.\(^{57}\) The *Indian Act* provides that First Nation bands\(^{58}\) may enact by-laws with respect to, among other things: the health of residents on reserve\(^{59}\) and the regulation of the construction, repair and use of buildings.\(^{60}\) The *Indian Act*, and the powers it prescribes, creates delegated authority and potential liability for decision making by First Nation governments.

Of course, First Nation governments also assert a right to self-determination and an inherent right to self-government, which is protected under s. 35 of the *Constitution Act, 1982*. Any federal accessibility legislation needs to be mindful of this right and work towards its recognition and implementation. This includes ensuring that there are options for First Nations to adopt or adapt aspects of the legislation to meet the needs of their community. In addition, adequate resourcing will have to be provided to First Nation governments in order to fulfill their responsibilities to their citizens who are persons with disabilities.

The federal government is responsible for matters relating to First Nations living on-reserve. Yet, provincial governments are responsible for matters relating to health and social services. This split in responsibility is referred to as the division of powers under the *Constitution, 1867*.

A recent and prominent example of the issues with jurisdiction is the efforts to meaningfully operationalize Jordan’s Principle.

As stated in the landmark Canadian Human Rights Tribunal ruling on First Nations children in care:

> “Jordan’s Principle is a child-first principle and provides where a government service is available to all other children and a jurisdictional dispute arises between Canada and a province/territory or between departments in the same government regarding services to a First Nations child, the government department of first contact pays for the service and can seek reimbursement from the other government/department after the child has received the service. It is meant to prevent First Nations children from being denied essential public services or experiencing delays in receiving them.”\(^{61}\)

\(^{56}\) *Constitution Act, 1867*, 91(24).

\(^{57}\) *Indian Act*, RSC 1985, cI-5.

\(^{58}\) *Indian Act*, RSC 1985, cI-5, s 2(1).

\(^{59}\) *Indian Act*, RSC 1985, cI-5, s 81(1)(a).

\(^{60}\) *Indian Act*, RSC 1985, cI-5, s 81(1)(h).

Jordan’s Principle could be expanded in contemplation of accessibility legislation to apply to any First Nations person, regardless of age, with any type of disability or disabilities caught in a jurisdictional dispute where those services are available off-reserve.

First Nations may want to consider providing materials and recommendations relating to Jordan’s Principle in any submissions to Canada on accessibility legislation to ensure jurisdictional disputes are resolved in the contents of the legislation itself and not left for First Nations governments and First Nations persons with disabilities to have to resolve.

7. POTENTIAL IMPLICATIONS / IMPACTS OF FEDERAL ACCESSIBILITY LEGISLATION

It is challenging to attempt to consider potential impacts of something that does not yet exist. This is why the above information was provided: to give examples of what has occurred in other jurisdictions and provide some indication potential impacts of this proposed legislation.

A) Opportunities/Processes for Policy Input

Clearly First Nations have rights, interests and obligations that stand to be significantly affected by federal accessibility legislation. Therefore, it is important for the AFN and First Nations to consider the various points in the policy/legislative process to provide input into the proposed federal accessibility legislation. The following points are intended to provide some areas for consideration for First Nations to provide input and feedback into this process, should they choose to do so.

First and foremost, because of the potential impact on constitutionally protected aboriginal and treaty rights, the federal government must ensure that First Nations are meaningfully consulted and engaged early in the policy/legislative process. First Nations are not simply stakeholders. The process for their engagement must meet the unique circumstances of First Nations and must be consistent with the nation to nation relationship which the Trudeau government has promised to build with First Nations. As the organization representing First Nations in Canada, the AFN can facilitate the federal engagement in a manner consistent with the nation to nation relationship. Regional feedback processes that include First Nation persons with disabilities and First Nation researchers in health, law and governance might be helpful in the development of a national response.

In addition, the AFN and First Nations will have the opportunity to be involved in the Parliamentary legislative process. Upon completion of the stakeholder and public engagement, the Government typically drafts the legislation and at that point First Nations should still have the opportunity to have input. The draft legislation will be required to go through the same procedure as all legislation. Before it comes into force, proposed legislation (a “Bill”) will be

CHRT 2 at para 351.
introduced in Parliament (First reading); debated by Members of the House of Commons (Second reading); undergo House of Commons Committee review (Committee Stage); Debated again in the House of Commons after committee review (Report Stage); Voted on by the House of Commons (Third reading); Senate review (First, Second and Third readings in the Senate); and finally Royal Assent (granted by the Governor General).

Such processes would not replace the federal government’s constitutional obligation to consult but rather is another opportunity for the AFN to create a national response with the unique regional considerations from the community level. It could also serve as means to prepare First Nation communities to participate in a consultation process with Canada on the accessibility legislation.

Overall, federal accessibility legislation has the potential to be beneficial for First Nations, particularly First Nation persons with disabilities, by imposing positive obligations on organizations, service providers and other entities under federal jurisdiction to ensure that their programs, services, buildings and operations are accessible to First Nations persons with disabilities.

However, the proposed legislation could also be unhelpful or even harmful if it does not take account of the unique interests and circumstances of First Nations. For example, under current human rights legislation, the onus is on the individual or group to prove prima facie discrimination first before being able to seek remedies. Such a burden on a First Nations person with disabilities effectively perpetuates systemic issues against persons with disabilities. One measure in assessing the approaches in the legislation will be the user-friendliness of the redress process that results in a quick resolution and is responsive while not limiting access to a human rights complaint. Likewise, the legislation will be harmful if the burden of addressing the needs of persons with disabilities is simply off-loaded onto First Nation governments without adequate resources to meet those needs. It will also be harmful if it is not culturally sensitive to the customs and traditions of First Nations.

B) Factors the AFN and First Nations may use to Assess Impacts

In addition, here are some other factors that First Nations may want to consider in assessing impacts of proposed accessibility legislation:

**Legislative Drafting**

- Will the legislation, when drafted, contain a non-derogation clause?

**Standards**

- Will standards express recognition of the Rights and the unique circumstances (history, socioeconomic conditions, etc.) of First Nations?
• How will standard development consider historic disadvantage of First Nations (as a result of the history of colonialism, and governmental assimilation policies, particularly Indian Residential Schools) and keep standards contextual to First Nations capacity and respective history?
• How will the legislation reduce excessive exposure to liability due to requirements on First Nations to administer and enforce standards?
• How will the government ensure that First Nations have the means, including the financial, institutional and infrastructural capacity, to fulfill the obligations under the legislation?

Committees
• If advisory or standards committees are established, will there be guaranteed inclusion of First Nations and First Nation persons with disabilities representation?

Compliance
• Will First Nations be subject to the legislation?
• Will First Nations have a role in enforcing the legislation?
• What measures will be put in place to ensure the legislation is not merely aspirational, but helps meet the needs of First Nations persons with disabilities?
• Will the legislation contemplate compliance mechanisms to hold federal departments to account?
• Will the federal government consider including positive obligations for government departments to coordinate services to alleviate the burden on First Nations governments and persons with disabilities to navigate complicated systems?
• Will there be inspections or audits?
  o If so, who will conduct them?
  o Will there be adequate, culturally appropriate/sensitive ongoing training for inspectors or auditors?
• Will there be measures to ensure inspections or audits are contextual to First Nations?
• Who will decide what constitutes non-compliance?
• Will there be penalties for non-compliance?
  o If penalties are levied, could they placed in a separate fund for First Nation research support or additional funding for First Nation compliance?

Reporting
• Will reports add to First Nations’ already-heavy reporting burden?
  o If reports are required, will they be made available to First Nation researchers conducting research relating to under-examined First Nations accessibility issues?

Monitoring and Implementation
• What should be the role of First Nations in monitoring?
• What types of remedies should be available for lack of implementation?
• What happens if First Nations governments are held to be non-compliant?
• Will there be periodic review of the legislation?
  ○ If so, what would be the periodic review period?
• Would there be a body established to write interpretative provisions, develop policy guidelines, or model policies?
• What does effectiveness look like from a First Nations perspective?
• Will the legislation also consider specific supports for First Nations persons with disabilities who may also be Two-Spirit, Gay, Lesbian, or Trans?
• How will the legislation balance individual rights and collective rights and interests?

Complaints

• Would the CHRC or another Tribunal be charged with hearing complaints?
• Will there be First Nations adjudicators?
• Will there be specific training for adjudicators relating to historic disadvantage, and other contexts to keep in mind while enforcing standards?
• Will there be a specific tribunal or hearing process dedicated to Accessibility?

First Nations Role in Building and Maintaining Accessible Communities

• Would there be funds or other opportunities available through the legislation for First Nations to be proactive and propose measures to building and maintaining accessible communities?

Awareness Raising and Training

• Would there be supports available for the development of culturally-relevant/appropriate training and awareness raising? For First Nations, general public, and public institutions (ex. Service providers, bureaucrats, etc.)
• Who would or could provide ongoing culturally-sensitive accessibility training?
• Could training be eligible for credit (ex. for lawyers, social workers, doctors, etc.)?
• Are there any incentives that could be offered?
• Would there be supports to develop and promote rights-based community resources to raise awareness and tackle stereotypes?
• What will be developed to provide clarity between disability and human rights legislation

Jurisdictional Issues

• Would legislation contemplate evolving the relationship between provincial and federal governments, especially service providers in health, social services, and education to ensure First Nations persons with disabilities, especially children and elders, have full access to essential services?
• How would this legislation ensure provision of equitable health and social services and access to education accommodations for students with special needs?

**Funding**

• Will there be a funding pot to assist communities meet legislative obligations?
• Who would be able to apply?
• What would the fund cover?
• Could the legislation create a research institute or body, funded by the federal government and staffed by Indigenous researchers, to research First Nations accessibility issues?  

8. **PRIORITY AREAS FOR FIRST NATIONS AND FIRST NATIONS PERSONS WITH DISABILITIES**

It is important for the Federal Government to be aware of First Nations priorities in regards to disability and accessibility. These priorities will differ from region to region and First Nation to First Nation.

The ESDC Discussion guide requests feedback into what accessibility issues and barriers the legislation should address. They would like to know whether it is better to identify and prioritize key thematic areas, to describe a process for identifying the issues, or have a combination of both.

The ESDC Discussion Guide highlighted the following six areas as potential priority areas:

• The Built Environment
• Employment
• Procurement of Goods & Services
• Program and Service Delivery
• Transportation
• Information and Communications

In addition to the priority areas that were identified, First Nations may have additional priority areas. Some of these areas may include, but are not limited to:

• Education
• Emergency Planning
• Non-Insured Health Benefits

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62 This point in particular would help meet the Calls to Action 53, 65 and 78 of the Truth and Reconciliation Commission Final Report. Truth and Reconciliation Commission of Canada: Calls to Action, 2015, online: <http://www.trc.ca/websites/trcinstitution/File/2015/Findings/Calls_to_Action_English2.pdf>
• Fetal Alcohol Spectrum Disorder (FASD)
• Violence against Indigenous women and girls

First Nations may identify with the above-noted lists or may also want to consider other priority areas that affect the persons with disabilities in their communities.

Choosing to prioritize static thematic areas may be problematic because they may not adequately reflect the diversity of First Nations. Additionally, for any community or individual who falls outside an enumerated priority, they may end up falling through the cracks. The benefit is that fewer priorities may result in more action being undertaken in those areas.

The procedural option may focus too much on the makeup of the process and note enough on the outcomes. In essence, the process could become the outcome. Alternatively, a procedural approach may allow for flexibility and ability to react to current or emergent issues.

9. CONCLUSION
First Nations persons with disabilities should have the full benefit of their rights and equitable opportunities to contribute to the well-being of their communities, both individually and collectively, in ways that do not compromise their autonomy or self-determination, or that of their First Nations. First Nations governments and Canadian society should embrace and promote opportunities to eliminate social, economic, physical and attitudinal barriers and provide accessible policies, programs, and services.

First Nations persons with disabilities face discrimination and barriers twice over based on their Indigenous status and disability, and First Nations already face barriers to access to health care, education, and employment opportunities. First Nations persons with disabilities face layered disadvantages due to lack of access to services and exclusion because of barriers on everyday activities. For these reasons, and more, First Nations persons with disabilities ought to be afforded proper support to fully participate in their communities.

Environmental Scan

First Nations and First Nations Persons with Disabilities Engagement on Federal Accessibility Legislation

“What Working Together to Build a More Inclusive and Accessible First Nation”
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Background

Introduction

This document provides an overview of prior and current material relating to First Nations Persons with Disabilities (FNPWD) to coincide with the accessibility legislation proposed by Prime Minister Justin Trudeau in his mandate letter to Minister of Sport and Persons with Disabilities, Carla Qualtrough.

The areas of focus to be addressed by the proposed legislation include employment, procurement, service delivery, transportation, the built environment, and information and communications. This document will attempt to address how these topics are specifically applicable to the unique needs of FNPWD. It will begin with a brief overview of the legal frameworks that relate to FNPWD, and then move into a discussion of the current issues and barriers that face FNPWD, and conclude with an analysis of current programming and methods for success moving forward.

Objective

The purpose of this document is to provide an analysis of the effectiveness of pre-existing strategies to serve as the groundwork for future programming. It is necessary that future programs assess the needs of FNPWD through the intersection of both disability and indigeneity as FNPWD are doubly disadvantaged by discrimination based on both aspects of their identities. This document aims to call attention to insufficiencies of current programming and reveal opportunities for the successful application and implementation of the proposed legislation.

Defining Indigeneity

In legal purposes, indigeneity in Canada is defined by the structures of the Indian Act. However, it is necessary to recognize that this legislative definition is a perpetuation of colonialism in the present day. Most Indigenous people in Canada do not base their identity around the definition of Indigeneity created by the status provisions of the Indian Act. These provisions limit Indigenous identity to a restrictive measure of blood quantum and were established as a bureaucratic assimilation policy that aimed to gradually reduce the recorded population of Indigenous peoples. Many Indigenous peoples were left out of these provisions despite their Indigenous heritage and cultural identity. In a modern context, definitions of Indigeneity rarely revolve around the classifications of the Indian Act, and when they do, it is usually for legal purposes as many Indigenous rights are still tied to this historical definition.

Modern strategies of measuring the Indigenous population in Canada are more inclusive than those set out by the Indian Act. According to Statistics Canada, there are four questions in the National Household Survey that relate to measuring the Indigenous population. These questions
ask participants about their “Aboriginal ancestry (ethnic origin); Aboriginal Identity; Registered or Treaty Indian status; and Membership in a First Nation/Indian band”\(^1\). In 2011, approximately 1.4 million individuals identified as Aboriginal persons, 4.3% of the total population of Canada\(^2\). This is the fastest growing demographic in Canada, as a result of a higher birth rate amongst Indigenous populations and an increasing likelihood of self-identifying as Indigenous. In the past, many individuals who have Indigenous ancestry choose not to identify as Indigenous due to active discrimination of Indigenous peoples and a persisting social stigma surrounding Indigenous identification. In recent years, these limitations have lessened slightly, allowing for more Indigenous people to feel comfortable identifying with their cultural heritage.

**Defining Disability**

Disability is also difficult to qualify as it exists in a multitude of forms and severities, resulting in an extensive range of needs and experiences. The issue of defining disability is particularly pertinent in the discussion of FNPWD as many Indigenous groups have different conceptions of disability, and many do not view disability as a weakness but as “strength”. One pertinent consideration is the inclusion of mental illness in the definition of disability under the accessibility legislation. As Indigenous populations in Canada experience disproportionate cases of mental illness, the provision of mental health treatment is a necessary consideration. To further inform this key development, considerations must also be given to addressing cumulative trauma related disabilities or Post Traumatic Stress Disorder (PTSD) which is substantially higher among First Nations than in mainstream society. Essentially, it is necessary that the accessibility legislation takes into account the diversity of qualifications of disability and not limit the effectiveness and scope of this legislation with narrow definitions.

**Demographics of FNPWD**

In relation to health, only 52% of Aboriginal people rate their overall health as excellent; which is significantly lower than the national average\(^3\). Food insecurity is another health issue that disproportionately affects Indigenous peoples in Canada, as 22% of off-reserve First Nations people have reported experiences with food insecurity\(^4\). Further, Indigenous peoples experience high rates of Type II diabetes, a debilitating and service-intensive disease that is difficult to treat in rural and northern communities. According to the determinants of health model, many of these health issues are related to the substandard living conditions on reserves as a result of historical discrimination. Beyond this, many residual health issues in Indigenous communities are a result of the impacts of the Indian Residential School system and its inter-generational effects. The

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\(^4\) Ibid.
current inadequate health conditions faced by Indigenous populations today is a result of impacts of colonization including historical injustices led by the government of Canada; particularly in connection to the Indian Residential School experience as noted above.

Findings on Canadians with disability come from Statistics Canada’s Canadian Survey on Disability which uses the World Health Organization’s International Classification of Functioning, Disability and Health framework of disability. According to this survey, 13.7% of Canadians live with a disability, with one-quarter of these people classified as having a very severe disability. Although data on FNPWD specifically is extremely limited, it is estimated that Indigenous people are affected by disability 20-50% greater than non-Indigenous populations. Indigenous peoples in Canada experience a rate of disability almost twice the national average due to “a higher rate of environmental and trauma-related disabilities”. This again points to the continued impact of historical state-led discrimination.

**Research Limitations**

There is a scarce amount of research and data on FNPWD in Canada, due in part to the difficulty in defining these identities, and to a lack of government priority, attention and funding over the last several years. As a result, there are very limited sources available that are directly applicable to the proposed legislation.

This lack of data and research is a substantive barrier to access to appropriate services and care and is a necessary consideration in the application of the material discussed in this document and in informing Accessible Legislation for FNPWD. The Government of Canada is encouraged to engage in ameliorating this knowledge gap as an integral step in addressing the limitations of services and programs available for FNPWD in this important development.

**Legal Frameworks**

This section details the legal mechanisms that pertain to FNPWD on an international, federal, and provincial/territorial level. Many of these mechanisms serve as the fundamental protection of the rights of FNPWD, while others, particularly the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration), and have yet to be implemented by the government of Canada.

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6 Ibid.
7 Jamie C. MacDougall, PhD, Paula Rickard, and Bonnie Destounis. Where the River Flows: Aboriginal People with Disability. Pg. 7
International

The *United Nations Convention on the Rights of Persons with Disabilities* (CRPD) details the rights of persons with disabilities on an international scale. Notably, the legislation references those persons with disabilities who face multiple forms of discrimination, such as indigenous persons with disabilities.\(^8\)

Although the *Declaration* has yet to be implemented in Canada, it recognizes the historic injustices and future legislative needs of Indigenous peoples and must be considered in the accessibility legislation. The *Declaration* also mentions the intersection of multiple forms of discrimination, including Indigenous persons with disabilities and Indigenous women and girls, who are multiply disadvantaged by societal barriers and discrimination.\(^9\) On May 10, 2016, the Honourable Minister of Indigenous and Northern Affairs, Carolyn Bennett, announced Canada’s support for the *Declaration* at the United Nations Permanent Forum on Indigenous Issues;\(^10\) however, the Liberal Government is yet to take measures toward implementing the *Declaration*.

Together, these documents are paramount in the international legal recognition of the rights of FNPWD. As such, it is worthwhile to understand the distinctions between these two documents. Notably, the CRPD is a legally binding convention that has been ratified into law by the UN member states, including the Government of Canada. This differs from the *Declaration*, a *Declaration* of rights that does not hold legal authority but, rather, acts as a policy recommendation. Further, the CRPD recognizes Indigenous peoples with disabilities in its preamble, implying the application of the totality of the document to FNPWD. Similarly, the *Declaration* acknowledges persons with disabilities within its text signifying the inclusion of FNPWD, in particular articles 21 and 22.

Federal

The *Canadian Charter of Rights and Freedoms* is perhaps the most pivotal section in the Canadian Constitution. This document recognizes the fundamental rights of all Canadians, including persons with disabilities and Indigenous peoples. The Charter also guarantees the rights and freedoms of Indigenous peoples under the treaties, the *Royal Proclamation*, the *Indian Act*, and any land claims agreements.\(^11\)

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\(^8\) "Convention on the Rights of Persons with Disabilities" United Nations. Pg. 2


Another key piece of legislation is the *Canadian Human Rights Act* which aimed to prevent discrimination in employment and services. Section 67 of this legislation was amended to allow First Nations peoples to file complaints on and off-reserve. Before the amendment, Band Councils and the Government of Canada were protected from legal action under the CHRA if their actions were said to have been made under the *Indian Act*. This meant that these governments could openly engage in discriminatory policy or action as long as it involved the provisions of the *Indian Act*. This, of course, meant that all registered Indians, members of Bands, and those living on reserve, had no legal protection from discrimination in the implementation of services. In 2008, the Government of Canada repealed Section 67, allowing individuals to pursue human rights complaints against Band Councils or the Government of Canada under the *Indian Act*.

Finally, the *Employment Equity Act* protects persons with disabilities in the labour force by ensuring that workplaces are barrier-free and accessible to all Canadians. It also ensures the “reasonable accommodation of persons with disabilities…within the federal workplace”\(^{14}\). Legal frameworks such as this are an integral part of the continued elimination of active discrimination in the workforce.

**Provincial/Territorial**

Many provinces and territories have specific legislation regarding persons with disabilities, human rights legislation, and legislation regarding Indigenous peoples within the province/territory. These documents should be used in the creation of a legislation such as that proposed by the Government of Canada.

Not all provinces have specific disability legislation, namely Ontario and Manitoba have an explicit accessibility act for persons with disabilities. In Ontario, the *Accessibility for Ontarians with Disabilities Act* (AODA) was ratified in 2005. This legislation works on “recognizing the history of discrimination against persons with disabilities in Ontario… by developing, implementing and enforcing accessibility standards”\(^{15}\). It also necessitates the inclusion of persons with disabilities in the “development of the accessibility standards”. This engagement process is fundamental in ensuring that these initiatives are effective and beneficial in addressing the genuine needs of persons with disabilities.

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\(^{12}\) "Canadian Human Rights Act (R.S.C., 1985, c. H-6)." Legislative Services Branch.


Other provinces, like Saskatchewan, Alberta, and Nova Scotia, do not have a specific act but have supplemental human rights acts or legislation that addresses a specific need of persons with disabilities. In Alberta, disability legislation comes in the form of multiple acts that each identify a need of persons with disabilities. Some of which include the Assured Income for the Severely Handicapped Act, the Family Support for Children with Disabilities Act, and the Personal Directives Act. Similar legislation exists in British Columbia, where the Employment and Assistance for Persons with Disabilities Act outlines the right to accessibility in employment services throughout the province.

The province of Quebec has a notorious shortcoming in the provision of adequate accessibility legislation. If Canada is to move forward with this federal legislation it is necessary that it address the deficiencies and strengths of each individual province or territory.

Current Issues

This section will briefly address some of the largest issues that face the Government of Canada in the implementation of this proposed legislation. This is not an exhaustive list, but merely draws attention to a handful of the most prominent issues that are barriers to FNPWD.

Jurisdictional Conflict

The jurisdictional divide between federal and provincial/territorial interests is one of the most limiting factors in FNPWD access to healthcare services and other disability related programs. The responsibility to First Nations peoples falls under federal jurisdiction, while healthcare and rehabilitation services remains up to the discretion of the province/territory. As a result, many Indigenous peoples face difficulty obtaining adequate healthcare. FNPWD in particular face this barriers as it relates to the jurisdictional divide, as their healthcare needs are often more extensive than on average. One such person, Jordan River Anderson, was greatly affected by this jurisdictional disparity. Jordan, a young boy from a small community in rural Manitoba, died in hospital while federal and provincial governments disputed the funding of his treatment. The loss of Jordan epitomized the failure of jurisdictional responsibility in Indigenous healthcare and led to the development of Jordan’s Principle, which requires the branch of government of first contact responsible for the payment of services. Notably, Jordan’s Principle is recognized in the recommendations of the Truth and Reconciliation Commission and naturally will be recognized in the implementation of their recommendations. While Jordan’s Principle is an excellent example of a program designed to ameliorate access to care, it is necessary to acknowledge the deficiencies of this program. The most prominent shortcomings of Jordan’s Principle are the stringent eligibility criteria and the child only policy, providing no greater access to services or

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protection from jurisdictional wrangling for FNPWD over 18 years of age; including meeting the urgent needs of the First Nations seniors or Elder population.

Some solutions to this issue, as mentioned in *Completing the Circle: A Report on Aboriginal People with Disabilities*, include “the establishment of a tripartite federal/provincial-territorial/band action plan to ensure ongoing collaboration on issues pertaining to Aboriginal people with disabilities”\(^\text{18}\). On a federal scale, this would be an enormous action plan that would need individual specifications for each Indigenous community and province/territory. Despite these difficulties, it is necessary to establish a framework to deal with the insufficiencies of Canadian federalism in Indigenous healthcare for FNPWD regardless of age.

**Viewing FNPWD through a Social lens**

Due to the fact that there is no clear governmental department that should be responsible for providing services to FNPWD, it is necessary that the government develop a cross-departmental coordinated effort that includes Minister Carla Qualtrough’s department to ensure a comprehensive provision of services. To do this, the government must view the lives of FNPWD through a social lens; meaning that they must take into account all of the determinants that affect FNPWD on a day-to-day basis. Again, it is important to recognize the importance of a holistic approach that includes community, culture, family and the socio-economic factors facing FNPWD. The government should work to provide accessible programs that distinguish these social influences in the provision of services.

In order to provide adequate access to services through this lens, it is integral to undertake an interdepartmental approach that takes into consideration all of the different services and programs used by FNPWD. This ought to could include Indigenous Northern Affairs Canada (INAC), Health Canada, Employment and Social Development Canada, Canada Mortgage and Housing, among others, as well as federal, provincial/territorial, municipal, and Band governance. This legislation should work on the strategic coordination of these relevant departments in easing the burden of access to services on FNPWD. It is also notable to mention that any legislation that attempts to address the needs of FNPWD, naturally must address all of these various departments as they are all integral in the lives of FNPWD. The implementation of this legislation must ensure a coordinated horizontal approach and consistent communication among the levels and branches of government in coordination with First Nations.

**Intersectionality of Disability, Ethnicity, and Gender**

The AFN report to the UN Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) referenced the intersectionality of disability, ethnicity and gender, stating that an “overwhelming

\(^{\text{18}}\) Completing the Circle: A Report on Aboriginal People with Disabilities (26 May 1993). 4
number of FNPWD are girls and women and are multiply disadvantaged by poverty, gender, racism, sexism, and disability.” Disabled Women’s Network of Canada (DAWN Canada) states that women with disabilities experience multiple forms of discrimination as a result of layered forms of oppression related to their gender and disability. Women with disabilities have difficulty accessing and completing their education as 48% of women with disabilities have not completed high school, as compared to 28% of able-bodied women. The unemployment rate of women with disabilities is 75%, compared to only 60% for men with disabilities, contributing to the higher rates of poverty amongst women with disabilities. DAWN Canada states that “A woman with disabilities lives with an average of $8360.00 a year while a man with disabilities lives with an average of $19,250.00.” These women also experience higher rates of harassment and abuse in the workplace, by their relatives or partners, and by their healthcare workers. A DAWN study states that 60% of women with disabilities experience abuse and often need to seek asylum in shelters. But, because of the lack of women’s shelters and appropriate housing for persons with disabilities, women attempting to escape violence and abusive situations may have no choice but to return to these dangerous situations. These disadvantages also affect a woman’s ability to mother and maintain custody of her children.

Just as a woman with disabilities is disadvantaged by her gender, her disabilities, and the manifestation of the two, Indigenous women face multiple forms of discrimination. The Native Women’s Association of Canada (NWAC) discusses the impact of the intersection of these forms of discrimination, stating that Indigenous women are more often victims of crime and abuse than their male counterparts. NWAC also addresses the community benefits that occur when policies are centred on improving educational services to women and girls. Improved education can have a ripple effect throughout the community and across generations as a woman is often a child’s primary educator before formal education. It is important that the legislation apply an intersectional lens to better understand and address the multiple forms of discrimination faced by Indigenous women with disabilities, two-spirited persons with disabilities, as well as Trans and non-gender-conforming persons with disabilities.

Trends

There have been numerous successful trends in programming available for FNPWD; as this document aims to outline opportunities for future success, some of the more successful and pertinent trends are outlined below and are intended as guidelines for effective strategies.

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19 Assembly of First Nations. Submission of the Assembly of First Nations to the UN EMRIP. 20
21 Ibid.
22 "Education." NWAC.
Determinants of Health Model

The determinants of health model are a holistic method that incorporates a broad definition of health and well-being into healthcare services. This model addresses the underlying non-medical factors that may influence an individual’s health and well-being, including an individual’s past, present, and future needs in terms of mental and physical health; home life; family situation; financial situation; and other individual-based factors. The International Labour Organization (IL0) Indigenous *Persons with Disabilities: Access to Training and Employment*, discusses the need for holistic employment programs. These programs must assess individual contexts that include family dynamics, job preference, residence, and health rehabilitation. Finally, “multiple structural barriers to employment, training and good livelihoods need to be addressed. Such barriers include multiple forms of discrimination, historical marginalization, lack of access to land and to social services such as healthcare and education”\(^2\). According to this model, the historical discrimination of FNPWD has contributed to their lower standard of living. It is necessary that the Government of Canada recognize these historical injustices through the implementation of the Truth and Reconciliation Commission recommendations, the *Declaration*, and continued communication with Indigenous communities in order to ameliorate the effects of these policies.

First Nations and FNPWD Full and Meaningful Engagement

There has also been sufficient success in programming that is geared towards First Nations involvement and activity; particularly as it relates to northern, rural and isolated communities where access to adequate health services is often limited by a lack of trained members. By both providing the physical services and training, and encouraging members of First Nations to pursue careers in healthcare and services; these types of programs can help ameliorate the lack of services to many First Nations. Community engagement is also important for FNPWD due to the prevalence of the role of “community” in many Indigenous cultures. This strategy works to engage Indigenous cultural and historical practices in the future implementation of programs and services. The incorporation of traditional Indigenous practices is particularly important in health care as many Indigenous health care methods vary substantially from Western practices. The Government of Canada must ensure the presence of Indigenous communities and voices in the provisions of the Accessibility Legislation.

Non-Insured Health Benefits Program

This program was designed by Health Canada to cover the needs of First Nations and Inuit persons who do not have extended health coverage through other insurance benefits or services.

This program covers payments for additional medical services such as “dental, pharmacy, and medical supplies and equipment”\textsuperscript{24}. Eligible persons must be either “a registered Indian according to the 
\textit{Indian Act}; an Inuk recognized by one of the Inuit Land Claim organizations; or an infant less than one year of age, whose parent is an eligible client”\textsuperscript{25}.

The Non-Insured Health Benefits Program (NIHB) is one example of a pre-existing service that aims to bridge the gap of services that exist for FNPWD. Many FNPWD rely heavily on this program for their intensive healthcare needs; however, the NIHB is far from perfect. One of the largest issues with the NIHB is that it was not created with the specific intention of serving persons with disabilities. The program attempts to bridge a gap of services available to First Nations and Inuit people, but fails to provide adequate services for persons with disabilities within these groups. FNPWD face a multitude of issues as a result of their disability, indigeneity, and the intersection of the two. Many programs attempt to address the needs of persons with disabilities or Indigenous peoples, but very few make specifications for FNPWD. Where one would hope that FNPWD would have access to twice the number of services, instead, FNPWD are delivered a mismatch of services that fail to adequately meet their needs. As a result, it is imperative that future services are designed specifically to meet the needs of this doubly-disadvantaged group. Programming that targets a specific need or lack of service for FNPWD should be implemented in the proposed legislation.

\textbf{Accessibility and Transportation}

The Accessible Transportation Unit is responsible for the creation and ongoing implementation of the \textit{Intercity Bus Code of Practice}, which established a baseline of accessibility requirements in public transportation across the country. This program also works to research new emerging accessibility strategies that attempt to ameliorate the physical and cultural barriers to accessing transportation. Programs that use needs-based research are largely more successful at addressing these barriers.

It is also relevant to note the Canadian Transportation Agency’s accessibility guidelines\textsuperscript{26} provides protection to ensure that persons with disabilities are able to use all federal transportation services and facilities without encountering additional barriers. This includes transportation by air, rail, ferry, bus as well as their respective airports, railway stations and other transportation terminals. Federal guidelines are integral in providing services to FNPWD, however, those FNPWD living on reserve or in northern remote areas often do not have

\textsuperscript{25} Ibid.
accessible and available access to transportation services. This gap of service provision between rural and urban access must be addressed. One solution is to subsidize air travel for persons in remote and isolated communities who need access to medical services. This would be multiply beneficial as it would allow individuals to maintain the integral connection to their community that so many FNPWD must leave behind in order to access the medical services that they need in foreign urban settings.

**Indigenous and Northern Affairs Canada (INAC)**

Indigenous and Northern Affairs Canada (INAC) is the federal department most responsible for providing services to Indigenous peoples in Canada. Although INAC does not have significant guidelines or regulations specifically for FNPWD, they do have the Assisted Living Program\(^{27}\) which provides additional social support to Indigenous persons with intensive needs. FNPWD can use this forum to access support if they qualify, however this program is not extensive enough to cover all FNPWD needs in Canada. It is necessary to involve INAC in any provision of services created by this legislation, which could potentially be modelled off of the Assisted Living Program and other best practices such as those services provided by the British Columbia Aboriginal Network on Disability Society (BCANDS).

BCANDS offers services and programs in areas such as: Disability Case Management; Indigenous Registered Disability Saving Navigation Services; Persons with Disability Application Adjudications and Indigenous/Federal/Provincial Government Liaison, to name a few.

**Aboriginal Skills and Employment Training Services (ASETS)**

ASETS is a program designed to support Indigenous Canadians in the labour force by aiding with “skills development; training for high-demand jobs; job finding; programs for youth; programs for urban and Aboriginal people with disabilities; and access to child care”\(^{28}\). The success of this program can be attributed to its holistic and integrative approach to addressing the needs of applicants. As stated above, ASETS has designed programs to meet the specific needs of FNPWD who are often left out of employment initiatives due to their disability related employment needs. Many FNPWD have difficulty finding employment that is flexible enough to meet their disability related requirements and is compatible with their abilities. Programs for FNPWD must address the implications of indigeneity and disability on employment services.

\(^{27}\) Government of Canada; Indigenous and Northern Affairs Canada; Communications Branch. "Assisted Living Program."

Additional programming such as the First Nations and Inuit Child Care Initiative (FNICCI) addresses an indirect barrier to employment. For many Indigenous peoples, particularly Indigenous women, finding employment is impossible when child care is costly or unavailable in the region. Women with children who are searching for employment must also have access to additional resources, such as childcare, so that they are able to leave their children in order to find work. Programming should look for these less-visible barriers to access to employment that have an enlarged effect on women with disabilities who often take on childcare roles in their family life. The success of ASETS can be attributed to its need-based design as it has enabled it to work with, rather than around these implicit barriers. A potential solution to this issue could be encouraging workplaces to incorporate childcare services into their facilities. Any program or service that means to address the lag of employment services available to FNPWD must also address these indirect barriers.

**Conclusion and Summary**

In the implementation of the proposed Accessibility Legislation, the Government of Canada must incorporate the rich and invaluable experiences of FNPWD. The Government must acknowledge the previous rights and legislation pertaining to FNPWD on international, federal, and provincial/territorial levels. This will be of particular importance in the discussion on the jurisdictional divide in Indigenous healthcare in Canada.

The Government of Canada is advised to pay particular attention to the successful programs and methods outlined in this document. Holistic determinants of health model along with the development of “Disabilities across the Life-Course/ Continuum” would be positive holistic measures towards assessing the issues and gaps that face FNPWD in all realms. Combined with active First Nations engagement, these models would sufficiently aid the division of services between rural, isolated and urban for all FNPWD impacted. Finally, programming that targets a specific weakness or failure of current programs, such as the NIHB, is another example of the types of initiatives that the Government of Canada must consider in the development of Accessibility Legislation.

The Government of Canada must also address the lack of awareness of the barriers facing FNPWD. One of the greatest barriers to access of services for FNPWD is “attitude”, particularly the attitudes of those providing the programs and services for FNPWD. The Government is encouraged to engage with various First Nations and disability advocacy groups to promote education and awareness on FNPWD in the general public at large. Stigmatization and discrimination have a substantial impact on the lives of FNPWD who are multiply disadvantaged. Cultural sensitivity training is a key tool in changing the attitudes of those providing services to FNPWD; however, it does not address the attitudes of the Canadian public overall. The Government of Canada must work with First Nations in the education and promotion of the many contributions of Indigenous peoples in Canada and the positive teachings
and strengths offered by FNPWD in order to address continuing institutionalized racism, marginalization, stereotypes and discrimination. Further, the Government must adopt and adhere to the “Principles of Universal Design”, in order to achieve full physical, attitudinal and systemic equality and access for FNPWD and for all Canadians. Addressing the misperceptions of FNPWD is an integral step in eliminating the current gaps that exist in services, policies and programs.
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What Does an Accessible First Nations Mean to You?

“Working Together to Build More Inclusive and Accessible First Nations”
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INTRODUCTION

In 2015, Prime Minister Justin Trudeau mandated Minister of Sport and Persons with Disabilities, Carla Qualtrough, “To lead an engagement process with provinces, territories, municipalities, stakeholders and First Nations that will lead to the passage of a Canadians with Disabilities Act”\(^1\). The mandate proposed the following topics: employment; procurement; service delivery; transport; the built environment; and information and communications. The goal of this discussion guide is to determine how such an Accessibility Legislation could impact First Nations and First Nations Persons with Disabilities (FNPWD).

1) Objectives

First Nations and workplaces benefit when everyone can participate equally in everyday life. There has been much progress in making our society more inclusive, but we can do better. This is why the government of Canada is committed to developing new accessibility legislation to promote equality of opportunity and increase the inclusion and participation of Canadians who have disabilities or functional limitations, including FNPWD. Many First Nations with disabilities face barriers that affect their ability to participate in daily activities that others take for granted. These include inter alia:

- Physical barriers such as lack of ramps to band councils, health centers and nursing stations, and other community buildings, lack of wheelchair accessible washrooms, lack of accessible transportation, lack of accessible housing, lack of information in different formats and lack of sign language interpretation for members who are deaf;
- Attitudes, beliefs and stereotypes that some may have about FNPWD and what they can do and cannot do;
- Outdated policies, programs and services that do not meet the needs of FNPWD

The Assembly of First Nations (AFN) has initiated an engagement process with FNPWD, First Nation leadership and other stakeholders to determine how such an accessibility legislation would benefit First Nations and how such legislation would result in a more inclusive and accessible environment for FNPWD. The Government of Canada is seeking input on the following points:

- Feedback on the overall goal and approach;
- Whom it should cover;
- What accessibility issues and barriers it should address;
- How it could be monitored and enforced;
- When and how often it should be reviewed;

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\(^1\) Canada. Office of the Prime Minster. *Minister of Sport and Persons with Disabilities Mandate Letter.* By Justin Trudeau.
How and when to report to First Nations on its implementation; and

How to more generally raise accessibility awareness and support First Nations in improving accessibility.

How to participate?

The purpose of this guide is to encourage and facilitate discussion. Questions are included throughout the guide to seek your views on what the legislation might look like. There are various ways to get involved: participate in the AFN webinar “Empowering First Nations and First Nations Persons with Disabilities” to include a survey link – taking place on February 23, 2016, at www.afn.ca, participate in other upcoming webinars in linkages with the AFN Annual General Assembly in July and AFN Special Chiefs Assembly in December 2017; provide your comments by email, fax or other accessible formats. Contact information is provided at the end of this guide.

2) Attitudes and Awareness

We all have a role to play in improving accessibility either as individuals, businesses, leadership, First Nations, and other orders of government. There are actions we can take to build a more inclusive society. Accessibility legislation is an important step. Experience shows us however, that no matter how well designed legal measures are, legislation on its own is only part of the answer. To achieve lasting change, accessibility has to become part of our everyday thinking. To help achieve this, legislation would be complemented by various initiatives to raise awareness of the importance and benefits of accessibility and of what individuals and communities can do to remove barriers and improve accessibility. Ultimately, the objective is for all of us to view accessibility as a right that everyone in the First Nation has, and must be respected and honored to achieve full inclusion.

Questions for feedback:

1. How can First Nations governments raise awareness of and change attitudes in relation to accessibility (in the short term and long term)?

2. How can First Nations governments show leadership in improving accessibility and removing barriers for FNPWD?

3. Would there be funds or other opportunities as part of the accessibility legislation process for First Nations to be proactive and propose measures to building and maintaining accessible First Nations?

Will this process and developmental process of the legislation be mindful of the cultural customs and traditions of First Nations, keeping in mind that First Nations in Canada are not homogeneous in their cultures, languages and practices?
3) Background & Context to the Development of Accessibility Legislation

A) Canada’s Constitutional Framework

In Canada, lawmaking power is divided between the Parliament of Canada, and the provincial/territorial legislatures. The Parliament of Canada passes laws in areas under federal jurisdiction, such as banking, broadcasting and cross-border transportation. Provincial/territorial legislatures pass laws in areas such as education, social assistance and municipal government. Accessibility legislation passed by Parliament would apply to organizations and areas under federal jurisdiction.

B) Making Laws at the Federal Level

Legislation has two main parts:

I. An Act and regulations.

II. An Act is a law that has been passed by the Parliament of Canada.

It is a legal statement that sets out goals in a particular area and provides authority to carry out certain activities. A draft act, called a bill, is introduced to Parliament and requires the approval of the House of Commons, the Senate and the Governor General of Canada to become law.

Regulations, sometimes referred to as delegated or subordinate legislation, set out the specific rules and procedures for carrying out the goals of the Act. Like Acts, they have binding legal effect. However, they are not made by Parliament, but by persons or bodies to whom Parliament has delegated the authority to make them, such as the Governor-in-Council (Cabinet), a Minister or an administrative agency. Authority to make regulations must be expressly delegated by an Act.

4) Existing Federal Law in Relation to Persons with Disabilities in Canada

Canada has a number of laws in place that protect the human rights of Canadians with disabilities and promote income security and equal employment opportunities. These include, for example, the Canadian Charter of Rights and Freedoms, the Canadian Human Rights Act and the Employment Equity Act. As well, the Government of Canada has Standards and regulations in a number of areas including broadcasting, telecommunications and transportation to improve accessibility and remove barriers for persons with disabilities.

In general, Canada’s current legal approach to disability is focused on protecting the human rights of persons with disabilities and relies on individual complaints to address what can be larger, systemic issues. In our system, the onus is usually on the person who has experienced discrimination to then seek recourse. This process can be challenging for individuals and has been slow to address ongoing inequalities and lack of accessibility.
It is envisioned that, by taking a proactive and systemic approach to improving accessibility and removing barriers, legislation would complement the laws that already exist and build on existing federal accessibility standards and regulations.

For First Nation and FNPWD to benefit from the proposed accessibility legislation, a number of factors must be taken into consideration:

- Does the federal government have a legal obligation to consult with First Nations, acknowledging the nation to nation relationship as promised by the Prime Minister?
- Will the federal government be mindful of the inherent right to self-government of First Nations, treaty rights to health, education, section 35 of the Constitution 1982, which protects Aboriginal and treaty rights?
- Jurisdictional issues related to the Indian Act
- Jurisdictional issues impacting First Nations between the Federal and Provincial and Territorial governments

### A) United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

Canada’s ratification of the *Convention on the Rights of Persons with Disabilities* in March 2010 reaffirmed the Government of Canada’s commitment to ensure greater accessibility and opportunities for persons with disabilities. The Convention covers a wide range of topics related to accessibility and inclusion. For example, Article 9 of the Convention calls on governments to take appropriate measures to ensure persons with disabilities have access, on an equal basis with others, to the physical environment, to transportation, to information and communications, and to other facilities and services open or provided to the public. Accessibility legislation will support the Government of Canada’s ongoing implementational process of the Convention.

Multiple forms of discrimination are recognized within the preamble of the CRPD Convention, including specific reference to Indigenous peoples:

> Concerned about the difficult conditions faced by persons with disabilities who are subject to multiple or aggravated forms of discrimination on the basis of race, color, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status.

None the less, First Nations and FNPWD can look to the CRPD Convention as an important international legal instrument that promotes and offers protection of their human rights and fundamental freedoms and respect for their inherent dignity.
B) United Nations Declaration on the Rights of Indigenous Peoples (the Declaration)

The Canadian government has made the commitment to honor and implement the articles of the Declaration, which includes the protection and recognition of the rights, culture, language, dignity and well-being of Indigenous peoples.

FNPWD are specifically referenced in articles 21 and 22 as follows:

Article 21 (1): Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

Article 21 (2): States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22 (1): Particular attention shall be paid to the rights and special needs of indigenous elders women, youth, children and persons with disabilities in the implementation of this Declaration.

In considering how an accessibility legislation would affect First Nations, attention must be paid to other Federal legislation such as the Indian Act, section 35 of the Canadian Constitution act 1982 that affirms the right of First Nations to self-determination and the inherent right to self-government, Treaties, the Canadian Charter of Rights and Freedoms, in particular section 25, Canadian Human Rights Act, Employment Equity Act and the recommendations from the Truth and Reconciliation Commission (TRC).

Questions for feedback:

1. Does the Federal government have a legal obligation to consult with First Nations?
2. Given the nation to nation relationship between First Nations and the Federal government, what steps and measures would be taken to ensure that First Nations are meaningfully engaged and included in the development of Accessibility Legislation?
3. Given that First Nations are governed and referenced in other laws and legislation, such as the Indian Act, The Canadian Constitution, treaties and the Canadian Human Rights Act, what steps would the proposed Accessibility Legislation take to be consistent and mindful of these rights?
4. Would the proposed legislation address the relationship and jurisdictional issues between the federal government and the provinces and territories as it affects First Nations and more specifically FNPWD?
5. Will the legislation when drafted contain a non-derogation clause for First Nations, given their inherent right as Indigenous peoples?
6. Other.

C) Accessibility Laws in Other Jurisdictions

Various countries around the world have introduced accessibility legislation, including, for example, the United States (Americans with Disabilities Act; ada.gov (only available in English) and Australia (Disability Discrimination Act; humanrights.gov.au (only available in English). In Canada, Ontario (Accessibility for Ontarians with Disabilities Act; Ontario.ca/page/accessibility), Manitoba (Accessibility for Manitobans Act; accessibilitymb.ca) and Quebec (Loi assurant l’exercice des droits des personnes handicapées en vue de leur intégration scolaire, professionnelle et sociale; ophq.gouv.qc.ca) have introduced such legislation. Nova Scotia has announced its intention to do so, and British Columbia, as part of its Accessibility 2024 action plan, has said that it will consult on options for legislation in that province.

5) Topics for Discussion on Accessibility Legislation

A) What is the goal of the legislation?

The overall goal of the legislation is to increase the inclusion and participation of Canadians in society and promote equality of opportunity by improving accessibility and removing barriers in areas of federal jurisdiction.

Questions for feedback:

1. How should the proposed legislation define “accessibility” and/or “barrier” and “disability”?
2. Should First Nations apply an intersectional lens in their engagement process to ensure that all aspects of barriers and inequalities be addressed, including barriers faced by women and girls with disabilities, two spirited persons, children and elders?
3. How important is it to include “Jordan’s Principle” in the engagement process, and how can it be expanded to meet the access needs of all FNPWD regardless of age?
4. How will the proposed legislation balance individual rights and collective rights for First Nations and FNPWD?
5. Will there be resources available to First Nations to carry out engagement in their communities, and will there be resources available to assist First Nations during the development stage of the legislation process to support First Nations to have meaningful participation?
B) What approach should the legislation take to improve accessibility and remove barriers?

Research suggests that accessibility legislation in other jurisdictions has taken one of two broad approaches: 1) a prescriptive approach that sets out specific accessibility requirements in law or 2) an outcome-based approach that identifies desired outcomes and establishes a planning and reporting process that organizations are to follow to achieve those outcomes. These approaches aren’t mutually exclusive, however, and aspects of one can be used in the other.

The approach that First Nations may take in their engagement on accessibility legislation will vary depending on the individual nation. First Nations must consider a number of issues and factors when considering the feasibility of accessibility legislation.

a) Who in the First Nation would benefit from accessibility legislation?

b) What barriers exist in the First Nation that an accessibility legislation might assist FNPWD to the enjoyment of a more inclusive and accessible environment?

c) Why it is important for First Nations to consider how accessibility legislation could help to create an environment that is fully accessible and barrier free for all members including FNPWD?

d) How will an accessibility legislation be developed that will be culturally appropriate and sensitive to FNPWD disability related needs?

e) When should engagement sessions be held with First Nations, in order to ensure that the perspectives of First Nations and FNPWD are included in the development of accessibility legislation?

C) Who should be covered by the legislation?

The legislation will outline the types of organizations to which it will apply. Within federal jurisdiction, the legislation could potentially apply to:

- Parliament of Canada
- Departments, agencies and institutions of the Government of Canada
- Federal Crown corporations
- Federally-regulated businesses and industries (e.g. banking, broadcasting, cross-border transportation)
- Federal courts
- Canadian Armed Forces
- Royal Canadian Mounted Police
- Other federal lands
Questions for feedback:

1. Are there other organizations within federal jurisdiction that should be covered by the legislation?
2. Should First Nations be exempt from the legislation, if so why?
3. The legislation could potentially set out different requirements and timelines for First Nations. Do you have any comments or suggestions for this?

D) What accessibility issues and barriers should the legislation address?

The legislation could specify the accessibility issues it will address, or describe a process for identifying these issues, or use some combination of the two. For example, the legislation could state that it will improve accessibility and remove barriers in specific areas, such as:

- the built environment;
- program and service delivery;
- the procurement of goods and services;
- employment;
- transportation;
- information and communications;
- Non-Insured Health Benefits program under Health Canada;
- Education;
- Home and community care in First Nations;
- Other.

The legislation could also describe a process that the Government of Canada would follow to identify and prioritize areas for improving accessibility and removing barriers. Examples of potential mechanisms include:

- **Advisory Council**—the Government of Canada could create and support permanent advisory committee comprised of Canadians with disabilities and First Nations representation.

- **Consultations**—the Government of Canada could engage periodically with Canadians with disabilities and First Nations.

Questions for feedback:

We have listed six areas where accessibility could be improved. Of these, which are the most important to you? Are there other areas that should be included?

1. We have listed some potential mechanisms that the legislation could describe for the ongoing identification and prioritization of accessibility issues. What do you think of these mechanisms? Are there other mechanisms you would suggest?
2. Canada has a number of laws in place to address human rights issues and improve accessibility. Do you have any comments on how the new accessibility legislation could interact with these existing laws? Should the legislation describe a process by which these laws would be reviewed and potentially revised?

3. Should the legislation build on accessibility standards already developed by provincial/territorial governments and other countries?

4. How should compliance with the legislation be monitored and enforced?

The legislation would likely contain a section or sections that describe how compliance with the legislation would be monitored and enforced. The exact monitoring and enforcement mechanisms used would depend on the approach or approaches the legislation ultimately takes. Potential monitoring mechanisms include:

- **Action plans**—the legislation could require organizations to submit action plans that would detail how they will improve accessibility and remove barriers for persons with disabilities.

- **Progress reports**—the legislation could require organizations to periodically submit progress reports that would detail their progress in improving accessibility and removing barriers.

- **Reviews and audits**—the legislation could detail how action plans and progress reports could be verified through reviews, audits and/or inspections.

- **Complaints mechanisms**—the legislation could detail how Canadians could submit complaints concerning an organization that may not be meeting its obligations under the legislation.

The legislation could also describe mechanisms to address issues of non-compliance. These enforcement mechanisms could include, for example:

- An informal or formal mediation process to address compliance issues;
- Public reporting of organizations that are non-compliant;
- Orders that detail an organization’s areas of non-compliance and give a timeframe for the organization to become compliant; and/or
- Monetary penalties.

How well the above suggestions would work or be applicable to First Nations will depend on the outcomes of engagement processes with First Nations.

**Questions for feedback:**

What monitoring mechanisms do you think should be considered for the legislation (including ones not listed here)?
1. What enforcement mechanisms do you think should be considered for the legislation (including ones not listed here)?

2. How should First Nations be supported to improve Accessibility?

The legislation could include or be accompanied by programs or supports to help and encourage First Nations to improve accessibility and remove barriers. Some potential programs or supports include:

- Measures that encourage support and recognize First Nations that show accessibility leadership. This could include, for example, reduced reporting requirements, public recognition and promotion, or monetary incentives;
- The creation of a Centre of Expertise on Accessibility and Barrier Removal to provide information and tools to help First Nations improve accessibility and remove barriers; and/or
- Financial support for conducting and sharing research and best practices on accessibility and barrier removal.

**Questions for feedback:**

1. Do you have suggestions for how the Government could help First Nations to improve accessibility and remove barriers?
2. Do you have suggestions for how the Government could encourage, support and recognize First Nations that show accessibility leadership?

6) How will we know if the legislation is effective in improving accessibility and removing barriers?

The legislation could include a section or sections that detail when and how the Government of Canada would report on the implementation and effectiveness of the legislation, and when and how the legislation itself would be reviewed.

**Questions for feedback:**

In relation to the implementation and effectiveness of the legislation, how often would you want the Government of Canada to report to First Nations?

1. What kinds of things should this report look at?
2. How often should the legislation be reviewed?
3. Are there specific considerations for how any such review should be conducted?
How to reach us:
The best way to find out more information is to visit the AFN website at [www.afn.ca](http://www.afn.ca), and/or you may provide your submission at the following email: fnpwd@afn.ca

You can also contact us by:
Email: fnpwd@afn.ca
Phone: 613-241-6789 ext. 272 or 613-241-6789 ext. 233
Fax: 613-241-5808
First Nations Privacy Notice

In accordance with traditional sharing practices and respect for First Nations personal privacy, we remain committed to protecting your privacy and we understand that your participation in this engagement is voluntary and acceptance and refusal to participate will in no way affect any relationship with the Assembly of First Nations (AFN). This is in addition to the relationship with Employment and Social Development Canada or the Government of Canada, (ESDC) and, or the Government of Canada.

Personal and other related information provided to AFN/ Department of Employment and Social Development Act (DESDA) regarding this engagement can be subject to access to information and privacy requests and will be administered in accordance with the Access to Information Act and Privacy Act. The information is collected under the authority of the Department of Employment and Social Development Act for the 2016–2017 Accessibility Legislation Consultation. It may be used by ESDC, including the Office for Disability Issues, other Government of Canada departments, or other levels of government, for policy analysis and research; however, these uses and/or disclosures of your personal information will never result in an administrative decision being made about you. Additionally, the information collected by the AFN may be used to help improve inclusive and accessible First Nations.

Those providing information are requested not to provide any identifying personal information about themselves or anyone else, other than name, organization and contact information; alternately, you may choose to remain anonymous. You have the right to the protection of, access to and correction of your personal information. You have the right to file a complaint with the Privacy Commissioner of Canada regarding the institution’s handling of your personal information.
Literature Review Pertaining to First Nations Persons with Disabilities (FNPWD) in Anticipation of Federal Accessibility Legislation

“Working Together to Build a More Inclusive and Accessible Community”
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Introduction and Background

The following document is a general review of existing discussion pertaining to the rights of First Nations Persons with Disabilities (FNPWD) in preparation of the proposed federal accessibility legislation. In 2015, Prime Minister Justin Trudeau mandated that Minister of Sport and Persons with Disabilities, Carla Qualtrough, “Lead an engagement process with provinces, territories, municipalities, and stakeholders that will lead to the passage of a Canadians with Disabilities Act”\(^1\). The mandate proposed the following topics: employment; procurement; service delivery; transport; the built environment; and information and communications. In response to this mandate, the goal of this document is to identify how accessibility legislation would affect the lives of FNPWD. This document will analyse pre-existing legal frameworks in regional, national, and international contexts, and then discuss some of the barriers that exist for FNPWD.

FNPWD face an array of challenges involving the proposed topics listed above, many of which are aggravated by the intersection of racism combined with discrimination against persons with disabilities. As a result, FNPWD are doubly disadvantaged by societal barriers to education, appropriate housing, and employment, which disproportionately affect both Indigenous peoples and persons with disabilities. The proposed legislation must address the intersectionality of discrimination based on disability as well as discrimination based on ethnicity if it is to address the concerns of FNPWD.

Further, the legislation must implement the pre-existing frameworks on both the rights of Indigenous peoples and persons with disabilities. This includes the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), the *United Nations Convention on the Rights of Persons With Disabilities* (UNCRPD), and the Truth and Reconciliation Commission (TRC) and its Calls to Action. In its submission to the United Nations Expert Mechanism on the Rights of Indigenous Peoples, the Assembly of First Nations reiterated the need to affirm the right to self determination as written in the UNDRIP. In the context of FNPWD, this means that Indigenous voices must be present and given the space to be heard in any policy deliberation, including in the implementation of the proposed legislation.

Data and Statistics

One of the greatest difficulties in the compilation of this document was the astounding lack of resources on and by FNPWD. The persistence of this knowledge gap is a problem worldwide,

\(^{1}\) Canada. Office of the Prime Minister. *Minister of Sport and Persons with Disabilities Mandate Letter*. By Justin Trudeau.
despite globally increasing rates of Indigenous peoples with disabilities\(^2\). There is a general lack of funding for data and research on the experiences and issues that face Indigenous peoples with disabilities. In Canada, identifying FNPWD is extremely difficult, as individuals must identify both as a First Nations person and a person with a disability, which are both difficult to define and come attached with social stigma that deters individuals from accurately identifying themselves.

Defining Indigeneity in Canada necessitates some discussion of the status provisions of the Indian Act; however, many Indigenous people in Canada choose not to identify themselves based on these colonial, state-driven definitions of identity. Statistics Canada uses surveys like the National Household Survey or the Aboriginal Peoples Survey to gather statistics on Indigenous people in Canada, both status and non-status. According to Statistics Canada, there are four questions in the National Household Survey that relate to measuring the Indigenous population. These questions ask participants about their “Aboriginal ancestry (ethnic origin); Aboriginal Identity; Registered or Treaty Indian status; and Membership in a First Nation/Indian band”\(^3\). In 2011, approximately 1.4 million individuals identified as Aboriginal persons, 4.3% of the total population of Canada\(^4\). This is the fastest growing demographic in Canada, as a result of a higher birth rate amongst Indigenous populations and an increasing likelihood of identifying as Indigenous as the social stigma and racism decline in the larger society.

In relation to health, only 52% of Aboriginal people rate their overall health as excellent, significantly lower than the national average\(^5\). Food insecurity is another health issue that disproportionately affects Indigenous Canadians, as 22% of off-reserve First Nations people have reported experiences with food insecurity\(^6\). Further, Indigenous peoples in Canada experience extremely high rates of Type II diabetes, a debilitating and service-intensive disease.

Findings on Canadians with disability comes from Statistic Canada’s Canadian Survey on Disability which uses the World Health Organization’s International Classification of Functioning, Disability and Health framework of disability\(^7\). According to this survey, 13.7% of Canadians live with a disability\(^8\), with one quarter of these people classified as having a very severe disability. Although data on FNPWD specifically is extremely limited, it is estimated that


\(^6\) Ibid.


\(^8\) Ibid.
Indigenous people are affected by disability at a rate 20-50% greater than non-Indigenous populations. Indigenous peoples in Canada experience a rate of disability almost twice the national average due to “a higher rate of environmental and trauma-related disabilities”.

**Overview of Legal Frameworks**

The following section discusses the legal framework relating to FNPWD on international, federal, and provincial/territorial levels. These materials dictate the rights and freedoms of FNPWD and must be considered and referenced in the implementation of legislation pertaining to FNPWD.

**International**

The international framework on the rights of FNPWD exists at the intersect of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP). Together, these documents form the institutional basis of rights for Indigenous persons with disabilities around the world, and have contributed to the push for domestic-level legislation in many countries.

The creation of the UNCRPD was a drastic shift from a social welfare to a rights-based approach to persons with disability and recognized the destructive nature of the societal barriers that face persons with disabilities. The UNCRPD outlines the specific rights attributed to all persons with disabilities, and directly specifies the rights of those persons with disabilities who face multiple forms of discrimination as a result of “race, colour, sex, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status”.

It recognizes that disability is a complex and fluid concept with diverse needs and values, and the need to raise awareness on the issues that affect persons with disabilities in all aspects of their lives. Article 25 Health dictates the right to the highest standard of health without discrimination, including the right to services “as close as possible to people’s own communities, including in rural areas”.

Mirroring this, Article 21, Clause 2, of the UNDRIP states that “Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities”. The UNDRIP also recognizes the historic injustices that have limited Indigenous

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9 Jamie C. MacDougall, PhD, Paula Rickard, and Bonnie Destounis. *Where the River Flows: Aboriginal People with Disability*. Pg. 7
11 "Convention on the Rights of Persons with Disabilities" United Nations. Pg. 2
12 Ibid.
peoples in their “right to development in accordance with their own needs and interests”\textsuperscript{14}, and their right to self-determination, autonomy and self-government in internal and local affairs. It also addresses the right to cultural and traditional practices, to teach and develop spiritual and religious traditions and ceremonies, and to establish and control their education system\textsuperscript{15}.

Beyond these documents, the \textit{International Labour Organization Indigenous and Tribal Peoples Convention No. 169}, created in 1989, was one of the first pieces of international legislation that recognized the rights of Indigenous people on an international level. As a result, this legislation remains a coveted piece of the international framework, particularly to anti-discrimination in employment, education, communication, and health rights\textsuperscript{16}.

Also adopted in 1989, the \textit{UN Convention on the Rights of the Child} addresses the rights of Indigenous children to “enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language”\textsuperscript{17}. The Convention also recognizes the respect of these rights to all children “irrespective of the child’s or his or her parent’s… race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”\textsuperscript{18}.

Other countries, like Australia, the United Kingdom, and the United States, have moved forward with disability legislation that follows the guidelines set by the international framework above. The Government of Canada should look to these countries as examples in formulating our own policy; however, the Government of Canada should also recognize the important structural differences between our country and these others. Jurisdictional feuds have become one of the most significant obstacles in the implementation of any legislation involving Indigenous peoples in Canada, particularly in regards to health. For this reason, it is necessary that the Government recognizes the structural differences of Canadian federalism that create these jurisdictional issues while examining foreign legislation. One useful example is the \textit{Americans with Disabilities Act}\textsuperscript{19}, which adverted the problem of jurisdiction by placing the rights and responsibility of government to persons with disabilities into the hands of state and local government. The impact of jurisdiction in the implementation of Indigenous healthcare will be discussed in detail in the next section.

\textsuperscript{14} Ibid.
\textsuperscript{18} Ibid.
\textsuperscript{19} Prince, Michael J. "What about a Disability Rights Act for Canada? Practices and Lessons from America, Australia, and the United Kingdom.". 202
Federal

The Canadian Charter of Rights and Freedoms plays an essential role in the conservation of rights in Canada, particularly to those individuals with disabilities. Section 15 Clause 1 recognizes the equality of all individuals before and under the law “without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability”\(^\text{20}\), while Clause 2 protects affirmative action programs and legislation that attempt to prevent further discrimination towards disadvantaged groups. The Charter also guarantees the rights and freedoms of Indigenous peoples under the Treaties, the Royal Proclamation, the Indian Act, and any land claims agreements\(^\text{21}\).

The Indian Act (1985) is a necessary piece of legislation in Indigenous politics in Canada. The legislation is controversial as it has contributed to the racialized policies that have perpetuated the effects of colonialism in Canada; however, the Indian Act plays an essential role in ensuring that the Government of Canada upholds its obligations to the Indigenous population. The Act details provisions for Indian status, reserves, and band governance. The Department of Indigenous and Northern Affairs Canada (INAC) is the overarching legislative body that oversees the provisions of the Indian Act and all other areas that pertain to Indigenous issues in Canada. INAC does not hold a focus on FNPWD, a contributing factor to the lack of resources and information available on FNPWD.

The Supreme Court of Canada case Eldridge v. British Columbia (Attorney General), [1997] 3 S.C.R. 624, left an important healthcare legacy for Canadians with disabilities. The appellants claimed that Section 15 equality rights are challenged when persons with disabilities are expected to pay for additional medical fees required by their disability. The appellants specified a deaf person’s need to pay for sign language interpretation, particularly when they must hire interpreters to communicate with their doctors and other health care providers\(^\text{22}\). The Supreme Court of Canada ruled that sign language interpreters must be provided to deaf persons while seeking medical services.

One of the current mechanisms that allow for discrimination recourse include the Canadian Human Rights Act, which was set in place in 1977 with the goal of preventing discrimination in employment or services based on race, ethnicity, colour, religion, age, sex, sexual orientation, marital status, family status, mental or physical disability, or pardoned conviction\(^\text{23}\). Despite its good intentions, Section 67 of this legislation which exempted the Indian Act from the CHRA,


\(^{21}\) Ibid.


\(^{23}\) "Canadian Human Rights Act (R.S.C., 1985, c. H-6)." Legislative Services Branch.
quickly became problematic. Actions of band councils or the federal government under the 
jurisdiction of the Indian Act were exempted from the CHRA, meaning that they could actively 
discriminate based on any of the above qualifiers without any legal preventative measure. In 
2008, Section 67 was repealed in the Supreme Court of Canada, now allowing First Nations 
peoples to file complaints on reserve.

Provincial/Territorial

Federal accessibility legislation must also address the regional discrepancies that affect FNPWD. It is necessary to adjust for the diversity of needs within each province/territory in order to 
provide adequate and effective services for all FNPWD in Canada. Some provinces/territories 
have implemented effective programming that needs to be copied and made accessible in other 
areas of the country.

Examples of such programming includes: British Columbia’s Tripartite Framework Agreement 
on First Nation Health Governance, and Ontario’s Community Access Centres\textsuperscript{24}. Further, 
organizations like the First Nations Health Authority (FNHA) in British Columbia must be 
included in the implementation of services and programming to FNPWD, as they already have 
accumulated expertise in Indigenous healthcare needs within their region\textsuperscript{25}.

It is also necessary to take into account the different governing bodies that need to be addressed 
in the various regions, whether they be band, local, provincial/territorial governing bodies, as 
well as the different historical treaties that cover different areas of the country. For example, “First Nations and Inuit children with complex care needs who live on-reserve in Alberta, 
Saskatchewan and Manitoba receive home care and community support services funded and 
administered through Health Canada’s First Nations and Inuit Health Branch” while in Yukon 
care for the same groups of people must be “coordinated between the Yukon government, First 
Nations governments and specific programs and services”\textsuperscript{26}.

Problems Facing FNPWD

General

Many of the issues that face FNPWD in regards to employment; procurement; service delivery; 
transport; the built environment; and information and communications, come from the division

\textsuperscript{24} Canadian Home Care Association. Home and Community-Based Services and Supports: Children with Complex 
Care Needs. 2016. Pg. XIV
\textsuperscript{25} Ibid. 32
\textsuperscript{26} Canadian Home Care Association. Home and Community-Based Services and Supports: Children with Complex 
Care Needs. 2016. Pg. XIV
of resources on and off reserve. Before addressing this dissonance, this paper will outline some more general issues that affect FNPWD in rural and urban settings.

Cultural Definitions of Disability

Current means to address FNPWD are Western-centric and fail to take into account Indigenous cultural and traditional practices. For many Indigenous people, healthcare is centred around a holistic interpretation of well-being, the medicine wheel. The four parts of the medicine wheel include spiritual, mental, physical and social well-being. This interpretation necessitates an individual’s involvement with their community, an element that is often not available to FNPWD who are forced to leave their communities to seek appropriate care and services.

*Indigenous Persons with Disabilities: Access to Training and Employment*\(^{27}\), a document prepared by the International Labour Organization (ILO), provides a larger analysis of the barriers to employment faced by Indigenous persons with disabilities. This document emphasizes key weaknesses in current programs and policies for Indigenous persons with disabilities, including: the dominance of Western literature in research on persons with disabilities; the lack of traditional and cultural methods and perspectives; and a lack of community supports and community-based rehabilitation programming. It is necessary to recognize Indigenous perspectives on ‘disability’, many of which do not view disability as a disadvantage, by allowing future programming and policy to be led by Indigenous persons with disabilities.

Determinants of Health

Many FNPWD have very specific needs and concerns that cannot be addressed with a broad umbrella policy. A policy that aims to address the multi-faceted needs of FNPWD must come from a determinants of health framework. A holistic approach must consider an individual’s past, present, and future needs in terms of mental and physical health; home life; family situation; financial situation; and other individual-based factors. The ILO document *Indigenous Persons with Disabilities: Access to Training and Employment*, discusses the need for holistic employment programs. These programs must assess individual contexts that include family dynamics, job preference, residence, and health rehabilitation. Finally, “multiple structural barriers to employment, training and good livelihoods need to be addressed. Such barriers include multiple forms of discrimination, historical marginalization, lack of access to land and to social services such as healthcare and education”\(^{28}\).

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\(^{28}\) Ibid. 32
Socio-Economic Gaps

In its submission to the UN Expert Mechanism on the Rights of Indigenous Peoples (UN EMRIP), the AFN stated the following:

“The social and economic gap between First Nations and Canadians has been well documented in countless reports stretching back decades. In 1967, the Hawthorne report stated bluntly: ‘It is more or less plainly recognized that the Indians have long been neglected and that their economic and social position is well below that of other Canadian citizens.’ A Northern Affairs official has summed up the situation in these few words: During the first 90 years of our existence the Indian people of Canada have not shared in our growth in the way those of us whose parents and grandparents have come to this country have done. The enormous economic gap between the Indian and non-Indian communities is due to the fact that for a very long time, the Indians were excluded from the economic life of the rest of Canada”

The social and economic gaps that continue to exist between First Nations peoples and the average Canadian are a result of historical government policies that systematically discriminated against Indigenous peoples and contributed to the perpetuation of social discrimination in the form of racism. Indian Residential Schools, racialized government policy, and residual racism all contribute to the exclusion of Indigenous peoples from Canadian society.

The AFN submission also necessitated that the government work towards the Calls to Action as written in the Truth and Reconciliation Commission Final Report, stating that any means to ameliorate Indigenous healthcare in Canada must address the concerns of the TRC. In its final report and Calls to Action, released in 2015, the Truth and Reconciliation Commission of Canada addresses the disproportionate incidence of Indigenous peoples with disabilities including mental health issues.

Intersectionality of Disability, Ethnicity, and Gender

The AFN report to the UN EMRIP referenced the intersectionality of disability, ethnicity and gender, stating that an “overwhelming number of FNPWD are girls and women and are multiply disadvantaged by poverty, gender, racism, sexism, and disability.” The Disabled Women’s Network of Canada (DAWN) states that women with disabilities experience multiple forms of

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30 Ibid. 3
31 Ibid. 5
32 Assembly of First Nations. Submission of the Assembly of First Nations to the UN EMRIP. 20
discrimination as a result of multiple oppressions related to their gender and disability. Women with disabilities have more difficulty accessing and completing their education as 48% of women with disabilities have not completed high school, as compared to 28% of able-bodied women\textsuperscript{33}. The unemployment rate of women with disabilities is 75%, compared to only 60% for men with disabilities, contributing to the higher rates of poverty amongst women with disabilities. DAWN Canada states that “A woman with disabilities lives with an average of $8360.00 a year while a man with disabilities lives with an average of $19 250.00”\textsuperscript{34}. These women also experience higher rates of harassment and abuse in the workplace, by their relatives or partners, and by their healthcare workers. A DAWN study states that 60% of women with disabilities experience abuse and often need to seek asylum in shelters. But, because of the lack of women’s shelters and appropriate housing for persons with disabilities, women attempting to escape violence and abusive situations may have no choice but to return to these dangerous situations. These disadvantages also affect a woman’s ability to mother and maintain custody of her children. Just as a woman with disabilities is disadvantaged by her gender, her disabilities, and the manifestation of the two, Indigenous women face multiple forms of discrimination. The Native Women’s Association of Canada (NWAC) discusses the impact of the intersection of these forms of discrimination, stating that Indigenous women are more often victims of crime and abuse than their male counterparts. NWAC also addresses the community benefits that occur when policies are centered on ameliorating education services to women and girls. Better education can have a ripple effect throughout the community and across generations as women are often a child’s primary educator before formal education\textsuperscript{35}. It is necessary that the legislation address the intersection of multiple forms of discrimination, particularly Indigenous women with disabilities.

Access to Services

FNPWD experience significant barriers in access to services like education, employment, and adequate housing. For instance, affordable housing options for persons with disabilities are limited as there is no federal accessibility requirement for low-income housing. Programs such as Aboriginal Skills Employment and Training Services (ASETS) aim to bridge the gap in employment services available to Indigenous people in Canada, while similar programs have attempted to aid Indigenous education. One of the main features of these programs is their integration of Indigenous learning and teaching processes, which work to lift and engage the community in the success of their programming. One of the greatest divisions in the experiences of FNPWD is the location which they reside, particularly the division of resources available to those living on and off-reserve.

\textsuperscript{33} "DAWN Canada." DAWN RAFH Canada RSS. Accessed January 18, 2017.
\textsuperscript{34} Ibid.
On-Reserve

For those FNPWD who reside on-reserve or in remote areas, the most common challenge is limited access to required medical and other resources. Some of the factors that may affect the delivery of resources to these communities include: “demand for services; availability of local expertise based on demand for services and recruitment and retention challenges for care providers; year-round infrastructure for transportation; and weather and climate barriers impacting year-round service”[^36]. As many of these communities are small and remote, they lack essential services, like medical care and homecare, that are integral for FNPWD. Many buildings on reserves are not accessible to persons with disabilities, and are not mandated to meet accessibility guidelines like many provincial/territorial and federal government buildings[^37]. Significantly, the issue of winter-roads affects many northern reserves and communities, making it difficult for FNPWD to have extensive and available access to the services that they require. As a result, many FNPWD must leave their home communities and move to urban centres in order to receive the necessary resources.

Off-Reserve

Many FNPWD who reside in urban communities are faced with unique challenges that differ from those in remote or rural communities. A study by Dr. Douglas Durst out of the University of Regina called *Urban First Nations People with Disabilities Speak Out* concluded that some barriers facing urban FNPWD are: independent living; transportation; employment and income; education and training; housing; and personal supports[^38]. Many of the participants in this study also experienced detrimental cultural shock upon moving to an urban setting in order to receive adequate medical resources. For many FNPWD independence is a necessary element of lifestyle, yet many physical and social obstacles prevent FNPWD from becoming independent. Much of this is perpetuated by the dependency stigma that dominates perceptions of persons with disabilities, which promotes policies that paternalize decision-making. FNPWD are doubly stigmatized by both their disability and their Indigeneity. Many FNPWD do not receive adequate funding as Indigenous people living off-reserve can be excluded from band government support[^39]. Due to the large number of FNPWD who relocate to urban centres, band funding cannot support all individuals. In regards to housing, there is current limited availability of affordable accessible housing for people with disabilities.

[^38]: Durst, Douglas, MSW, PhD, Shelly Manuel South, MSW, and Mary Bluechardt, MSc, PhD. *Urban First Nations People with Disabilities Speak Out*. Journal of Aboriginal Health, 2006. 36
[^39]: Ibid. 39
Jurisdiction Issue

One of the most stringent issues in Indigenous politics in Canada is the confusion of jurisdictional responsibility, particularly in regards to health. Canadian federalism allocates healthcare as a provincial responsibility, while the rights and responsibilities to Indigenous peoples remain under the federal jurisdiction. This shortcoming has contributed to issues for many FNPWD, “for example, a simple repair to a wheelchair might involve Medical Services of Health Canada, Indian and Northern Affairs Canada and the band administration”. This jurisdictional problem led to the establishment of Jordan’s Principle, named after Jordan River Anderson, a young boy who died in hospital while multiple levels of government fought over the funding of his treatment.

“Jordan’s Principle is a child-first principle aimed at resolving jurisdictional disputes around the care of First Nations children. Jordan’s Principle states that where there is any question of who has jurisdictional responsibility for payment of government services to First Nation children with complex medical conditions, and the service(s) is available to non-First Nations children, the government ministry or department of first contact must pay for the service without delay or disruption. The matter of who ultimately should be responsible for payment can be then dealt with through a subsequent mechanism.”

Although Jordan’s Principle was a significant step forward in the disputes between provincial/territorial and federal governments, the jurisdiction issue remains one of the most extreme barriers of FNPWD’s access to adequate healthcare and other services and programs.

The jurisdictional problem is aggravated by the fact that persons living on reserve are a federal responsibility, while many persons with disability must leave the reserve in order to receive care. It is unclear whether the federal or provincial/territorial governments should be responsible for the healthcare needs of FNPWD. Completing the Circle: A Report on Aboriginal People with Disabilities proposed the following solution: “the establishment of a tripartite federal/provincial-territorial/band action plan to ensure ongoing collaboration on issues pertaining to Aboriginal people with disabilities”40. The aforementioned solution used in the Americans with Disabilities Act placed responsibility for persons with disability into the hands of the States; however, it is important to recognize the differences in American and Canadian federalism and policy regarding Indigenous peoples.

Conclusion and Recommendations

The purpose of this document was to provide a brief overview of the difficulties that face FNPWD in Canada in anticipation of the proposed federal accessibility legislation. It was found

40 Completing the Circle: A Report on Aboriginal People with Disabilities (26 May 1993). 4
that FNPWD are doubly disadvantaged by discrimination based on ethnicity and disability in the following aspects: employment; procurement; service delivery; transport; the built environment; and information and communications. Specifically, FNPWD who reside on-reserve or in remote communities experience difficulty attaining the services that they require in their communities, which forces a large number of FNPWD to leave to urban centres in the hopes that they will receive better care. Yet, urban-dwelling FNPWD also experience difficulties in access to programs and services, largely due to the residual social stigma that persists in these environments. Additionally, FNPWD are subject to the continuous battle of jurisdiction between band/council, provincial/territorial, and federal governments. This jurisdictional feud continues to be one of the most debilitating elements of Indigenous healthcare in Canada.

Approaches to healthcare must come from the determinants of health perspective. This means using holistic and individual-based methods that incorporate individual and cultural history, to ensure that each person receives the care that they need. Care and supports for FNPWD must be culturally sensitive and incorporate Indigenous definitions of disability and Indigenous care practices. On a national level, any services designed to meet the needs of FNPWD must be culturally sensitive, and incorporate traditional and cultural practices throughout the implementation of legislation. It is required that the Government of Canada work on the Calls to Action as written in the Truth and Reconciliation Commission Final Report, to work towards reducing the gap between Indigenous and non-Indigenous populations in Canada. Finally, any legislation must coordinate with the international framework of the UNDRIP and UNCRPD. If the Government of Canada would like to create effective change for FNPWD, it is necessary that they address both the quantifiable concerns of access to employment, transport, housing, education, and appropriate care, as well as the continued forms of systematic discrimination.
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