



Joint Submission to the Special Rapporteur on the right to education by Inclusion Canada¹ and Inclusive Education Canada²

January 13th 2023

I. Assessing the achievements made by the mandate of the Special Rapporteur on the right to education over the last 25 years

1. In your country, are education issues approached through the lens of the human right to education, and if so, with what challenges and results? In your view, what is the added value of such an approach in your work?

As Inclusion Canada represents the interests of children with intellectual disabilities and their families, our comments will reflect their voice. In Canada, education issues are often approached through the lens of human rights. While this approach resulted in children with disabilities acquiring a right to a free and public education, it has been limited beyond that achievement. The right to education is not the concern; rather it is the right to inclusive education, as stated in the United Nations Convention on the Rights of Persons with Disabilities and ratified by Canada in 2010.

One of the challenges in the Canadian context is that education and educational rights do not lie within the purview of the Canadian government but rather within the jurisdiction of 13 individual provincial and territorial governments. As such, securing and advancing rights, particularly those of children with intellectual disabilities, which cuts across every dimension of human identity inclusive of race, ethnicity, and gender, requires families as the frontline advocates, to address systemic education rights issues within the context of 13 governments.

The primary unresolved rights issue is the right of children with intellectual disabilities to an inclusive education and the end to discriminatory practice of segregating and congregating students with intellectual disabilities in special education classrooms and schools. The right to an inclusive education only exists in policy within one small

¹ Inclusion Canada is the national federation working to advance the full inclusion and human rights of people with an intellectual disability and their families. For more information, please visit our website: <https://inclusioncanada.ca/>

² Inclusive Education Canada is a non-governmental organization by Inclusion Canada working to ensure all people with intellectual disabilities are fully included with their peers in regular education, with appropriate supports from early childhood to post-secondary and adult life-long learning. For more information, please visit our website: <https://inclusiveeducation.ca/>

Canadian province that constitutes 2% of the Canadian population, meaning 98% of Canadian children with an intellectual disability are being denied of their right to an inclusive education. The majority of Canadian children with disabilities continue to incur daily discrimination and devaluation through their prejudicial segregated placements.

While by definition children with disabilities cannot receive a quality education when confined to segregated classrooms, a right to an inclusive education does not equate to a guarantee of quality. Nevertheless, the regular classroom is the only place where a quality education can be achieved for students with intellectual disabilities.

The concept of a right to a quality inclusive education is problematic as quality is a function of the teaching profession, the curriculum, and the structure of the education system itself. For example, one cannot legislate a right to belong, but all children require a sense of belonging within their classrooms and school communities to be successful learners. Facilitating belonging, as but one example of the dimensions of quality, needs to be a teacher responsibility so that the right to a quality inclusive education can be realized.

The principles of equality, that is each student being of equal and inherent value, and equity, meaning the distribution of resources according to need, are far from universally evident in Canadian schools and school districts. These principles are foundational constructs in relation to the right to a quality inclusive education.

In addition, there is no jurisdiction in Canada that prohibits the use of seclusion and restraints in spite of repeated efforts to end this violent and abusive practice. As such, children with intellectual disabilities and other students, such as those labelled as having behaviour difficulties, have not yet secured the right to a safe and caring education.

Continuing challenges to the rights of students with intellectual disabilities to inclusive education lie in resistance from teacher unions, the general public's lack of understanding of how inclusive education benefits all children, governments' unwilling to advance the rights of children with intellectual disabilities and the continuing construct of an "industrial model" of education.

While a human rights approach remains essential and we remain committed to this approach, it is not sufficient onto itself to ensure quality inclusive education for all.

2. How do you assess the 4 A's framework of availability, accessibility, acceptability and adaptability as conditions for realizing the right to education? Is such a framework integrated in legal and policy documents relating to education

in your country, as well as used in practice? If not, what are the key obstacles? Should the framework be reviewed to include other dimensions? If so, which?

The 4 A's framework is not commonly referred to in Canada, subsequently this framework is not specifically integrated as unified construct in legal and policy documents related to education. While the 4 A's frameworks are meant to overlap, we are not certain this construct is the ideal approach to securing the rights of children with intellectual disabilities to a quality inclusive education. The 4 A's Framework originally did not incorporate inclusive education per se but rather perceived Adaptability as a later stage in educational systems development to accommodate children with disabilities and other marginalized populations. This has allowed some to argue, as their countries advance in education, that by eventually considering the education of children with disabilities through segregated and congregated contexts, they are accommodating and integrating students with disabilities when the goal must be to create systems that are inclusive of students with disabilities from the onset.

In today's Canadian context additional constructs to advance the rights of children with disabilities may be warranted; one where the right to inclusive education is embedded in every aspect of educational development, reform, transformation, or improvement.

We would certainly welcome the opportunity to engage in a review of the 4 A's Framework; possible adaptations to it or other frameworks that might better advance the rights of all children to an inclusive education.

3. The human right to education entails States' obligations to respect, protect and fulfil the right to education in international human rights law. To what extent are these obligations clearly identified in your country's legislation and in practice?

In Canada, the right to education is recognized and protected through human rights legislation. However, the right to an inclusive education for children with intellectual or other disabilities is not enshrined in Canadian human rights legislation. There are still challenges in fully implementing this right and ensuring that all learners including those with intellectual disabilities, have equal and equitable access to a quality inclusive education. While Canada generally performs well in terms of the right to education on a global scale, there are discrepancies and rights violations within the country that need to be addressed particularly as it is a provincial responsibility and a right to inclusion does not exist nationally. For example, too often across the country children with intellectual disabilities are denied a full day of schooling in comparison to their peers without disabilities, which is an infringement of their rights. Too many are also denied the adaptations and modifications to curriculum, instruction, and assessment of learning required for them to be successful learners. As many children with disabilities are unable to readily communicate to their parents about their learning experience at

school, their parents are often denied access to the communication tools and resources to ensure they know what is happening in the classroom and how they can support learning at home; a right that should be recognized.

It is important to continue to approach education issues through the lens of human rights to secure a universal right to an inclusive education for all students with intellectual disabilities.

4. Has the right to free education been progressively implemented at all levels of education in your country, based in particular on article 26 of the Universal Declaration of Human Rights, articles 13 and 14 of the International Covenant on Economic, Social and Cultural Rights, and article 28 of the Convention on the Rights of the Child? If yes, please provide examples. If not, please explain why not.

In Canada, the right to free education has been progressively implemented at all levels of education but as many schools charge additional fees, this can create challenges for parents and students who experience poverty. It appears that the country generally does well in providing education and prioritizes it as a human right. However, as noted this has not translated into a right to an inclusive education for children with disabilities and the end to segregated and congregated classrooms and schools. Canada has ratified the Convention of the Rights of Persons with Disabilities, which states *inclusive* education as a right, not just access to education³. The concluding observations by the CRPD Committee to Canada in 2017 highlight concerns regarding the persistence of segregated environments for children with disabilities, a gap in access to education and educational achievements for children with disabilities, lack of opportunity for children with disabilities to be part of after school programs, and lack of peer groups due to isolation⁴. Thus, as a country who has ratified inclusive education as a right, Canada is not meeting its commitment or being held accountable to ensure that all children receive an inclusive education.

The importance of approaching education as a human right is highlighted in the value of inclusion and equitable access for all individuals. While the human rights aspect may

³ UN General Assembly, *Convention on the Rights of Persons with Disabilities: Article 24-Education*, January 2007, available at: <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-24-education.html>

⁴ Committee on the Rights of Persons with Disabilities: *Concluding observations on the initial report to Canada*, 8 May 2017, available at: <https://www.ohchr.org/en/documents/concluding-observations/crpdccanco1-concluding-observations-initial-report-canada>

not drive the education system in Canada, it is still an important consideration in ensuring that all individuals have the opportunity to access quality and inclusive education.

5. Is the right to education considered a justiciable right in your country and if so which aspects of that right? If so, please provide a short summary of emblematic cases.

In Canada, the right to education is considered a justiciable right, meaning it can be enforced through the legal system. There have been cases where the rights of children with intellectual disabilities have been violated and have faced exclusion from education. It is important to address these issues and ensure that all children in Canada have access to their right to inclusive education. For example, schools, school districts and governments continue to find ways to isolate and exclude children they find difficult to deal with; partial day attendance being one of the common results. The right to inclusive education should require the same number of hours of participation as any student.

Setting non-academic goals, such as to manage “behaviour” rather than enhance literacy, is a common human rights problem, especially for children with communication impairments. Denial of accommodations for children with intellectual disabilities in the mainstream system is common, increasing the pressure to segregate. Despite provincial or school jurisdiction policies and practices, individual school principals have the power to limit learning expectations, deny accommodations, shorten school days and pressure parents to agree to segregated placements. Furthermore, the training and attitudes of individual classroom teachers can lower academic expectations and opportunities, fluctuating from year to year. Sending children to programs with few opportunities is denial of inclusive education. Lowered academic expectations and outcomes limit lifelong opportunities and relationships. The right to access education means access to *all* activities that are part of the total educational experience.

6. To what extent are the non-discrimination and equality principles respected in implementing the right to education in your country? Have past recommendations made by the Special Rapporteur on the right to education of vulnerable and marginalized populations been taken into account? If so, can you list which ones?

In Canada, the right to education is protected under section 15 of the Canadian Charter of Rights and Freedoms, which guarantees the right to equality without discrimination on the grounds of race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability. The Charter applies to both the federal and provincial governments, and it gives individuals the right to challenge government actions or laws that infringe upon their Charter rights. The right to education has been the subject of numerous

cases in Canada, including cases involving access to education for children with disabilities. However, the only Supreme Court Case heard in Canada on inclusive education found that a right to inclusive education did not exist at the time and that parents did not have the right to choose an inclusive education for their child with intellectual disabilities. Too often the right to inclusive education can only be secured through parental advocacy combined with external inclusive education advocacy expertise rather than as a matter of course when a parent sends their child with disabilities to school.

We are unaware of any visit to Canada by the Special Rapporteur on the Right to Education, nor any recommendations. Of note, if there were ever to be any such recommendations, they would need to be implemented in each province and territory as education is not a national responsibility.

7. In countries where the Special Rapporteur has undertaken visits, have recommendations been implemented? If so, please list recommendations acted upon.

The Special Rapporteur on the Right to Education has not made a country visit to Canada. However, the Special Rapporteur on the Rights of Persons with Disabilities made a country visit in 2019 which highlighted education ⁵. In her end of Mission Statement, on her visit, Ms. Catalina Devandas-Aguilar made several statements on inclusive education. Two notable comments were:

“I am concerned that most provincial and territorial policies are yet to implement fully inclusive education systems and that students with disabilities in other parts of Canada may receive considerably different levels of support. I was informed that many children with disabilities are still being taught in segregated classrooms or in special education schools, and I received worrisome reports that children with disabilities can be put on partial school days or temporarily removed from school, for periods of up to six months without access to education.”

“I was also informed that children with disabilities in segregated classes or those that have followed some kind of individualized education plan may receive a different certification or diploma than other children, which limits their opportunities for enrolling in education at higher levels.”

⁵ United Nations Special Rapporteur End of Mission Statement, Report by Ms. Catalina Devandas-Aguilar, 12 April 2019, available at: <https://www.ohchr.org/en/statements/2019/04/end-mission-statement-united-nations-special-rapporteur-rights-persons?LangID=E&NewsID=24481>

We recommend that the Special Rapporteur on the Right to Education consult with the Special Rapporteur on the Rights of Persons with Disabilities.

8. In countries to which the Special Rapporteur has sent communications (allegation letters, urgent appeals and other letters) , have measures been adopted to address the issues raised and ensure their non-recurrence? Please provide specifics.

The UN has made recommendations to Canada on education through the Universal Periodic Review and the Convention on the Rights of the Child. Some provinces and territories have in part attempted to act upon recommendations to improving access to education for indigenous peoples, promoting inclusivity in education, enhancing teacher training, supporting early childhood education, and improving access to higher education. We would like to note that our experts on inclusive education could not recall any specific work or recommendations made by the UN Special Rapporteur on Education.

That said, the Special Rapporteur on the rights of persons with disabilities stated the following in 2019 in her report on her visit to Canada:

“As a highly developed nation, Canada still lags behind in the implementation of its obligations under the Convention on the Rights of Persons with Disabilities. There are significant shortcomings in the way the federal, provincial and territorial governments of Canada respect, protect and fulfil the rights of persons with disabilities. Notwithstanding, the country has the potential to undertake a major transformation and fully embrace the human rights-based approach to disability introduced by the Convention.”

Of note, the Committee on the Rights of Persons with Disabilities viewed Canada’s implementation and issued its Concluding Observations in 2017. The Committee expressed concern about the persistence of segregation, the gap in access to education, educational achievements, and programming to enhance quality of life for persons with disabilities, the lower levels of educational achievement among women and girls with disabilities, and isolation of hard-of-hearing and deaf children in education due to the lack of peer groups. The Committee recommended that policies on inclusive and quality education be adopted, implemented, and monitored throughout the country guided by Article 24 of the Convention and by the Committee’s general comment No.4 (2016) on the right to inclusive education.

II. Main challenges and crucial issues for the future

9. In your view, what are the main challenges in your country in implementing the right to education?

One of the main challenges in implementing the right to education in Canada is that human rights legislation does not provide for a right to an inclusive education for children with intellectual disabilities. As education is provincially mandated, there is no national priority or action-oriented approach to ensure the right to inclusive education. This leads to significant inconsistencies in quality of and access to inclusive education for children with disabilities, from province to province, from school district to school district, from school to school or teacher to teacher.

There are examples of children being segregated from their peers in separate classrooms or being removed from the school environment all together. In some cases, restraints are being used when a child expresses certain behaviours. There is no guarantee that the quality of inclusive education that a student may have acquired in one province would follow to the next if the child needed to move for example. We often hear of parents struggling to obtain the same quality and inclusive education they had fought for years to obtain in another province or territory. In many cases, access to inclusive education is situational and dependent on a welcoming teacher or supportive principal, not an initiative backed up by a legislation and consistent systemic implementation and monitoring. A child's inclusion is vulnerable to a new teacher or a change in school leadership; a circumstance many parents experience.

Another challenge is that education issues in Canada are often influenced by factors such as politics, funding, and union considerations, rather than a focus on providing education and ensuring inclusion for all learners. Finally, there is a lack of leadership, awareness or understanding about the exclusion of certain groups of learners, such as those with intellectual disabilities, the need to address these issues, and even the obligation to the CRPD.

10. What are the crucial issues to address, nationally as well as internationally, to ensure the realization of the right to education?

To ensure the realization of the right to education, it must be the realization of a right to an inclusive education and to the dimensions of quality that are consistent with this right. This remains the central issue for students with intellectual disabilities. It is abhorrent that the principal obstacle to a right to an inclusive education lies with teacher organizations who offer organized resistance and maintain the practice of segregating students with disabilities and seclusion and restraints. Both the public mindset and governments would shift in their understanding of the benefits of inclusive education for all and the need to secure this right if teacher organizations publicly advocated for inclusion.

Across Canada there is an issue with respect to the degree of accountability by education ministries who rarely hold school districts or schools accountable for their adherence to the rights of students with intellectual disabilities. Parents should not have to continuously advocate for their child's right to a quality inclusive education and for their choice for inclusion to be respected; the Ministries of Education should be accountable for implementing education built on human rights principals and a fully inclusive approach. Safeguards need to be included to ensure public education funding does not support 1) special schools, 2) residential schools, or 3) segregation in special support classes based on (dis)ability.

We remain hopeful that advancements and improvements to the education system are possible despite some of the barriers that still exist. However, as parents and families have repeatedly told us, bold and creative leadership is necessary from the local educational authorities and from provincial/territorial Education Ministries. Collectively, we need to strengthen and sustain our effort to create a fully inclusive education system in all of Canada.

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