

Background Information on the UN Convention on the Rights of Persons with Disabilities, December 2009

Introduction

On December 3, 2009, the Government of Canada tabled the UN Convention on the Rights of Persons (CRPD) with Disabilities, for consideration by Parliament. Today, December 10, 2009 Parliament passed a unanimous motion to support ratification “as soon as all provinces and territories have officially given their consent.” While CACL supports Canada’s ratification, we are disappointed to confirm that in tabling the Convention, the Government signaled its intention to impose ‘interpretive declarations’ and ‘reservations’ with respect to Article 12 and Article 33.

Proposed Interpretive Declarations/Reservations

“Canada recognizes that persons with disabilities are presumed to have legal capacity on an equal basis with others in all aspects of their lives. Canada declares its understanding that Article 12 permits supported and substitute decision-making arrangements in appropriate circumstances and in accordance with the law.

To the extent that Article 12 may be interpreted as requiring the elimination of all substitute decision-making arrangements, Canada reserves the right to continue their use in appropriate circumstances and subject to appropriate and effective safeguards. With respect to Article 12(4), Canada reserves the right not to subject all such measures to regular review by an independent authority, where such measures are already subject to review or appeal.

Canada interprets Article 33(2) as accommodating the situation of federal states where the implementation of the Convention will occur at more than one level of government and through a variety of mechanisms, including existing ones.”

CACL Position

We support Canada’s ratification but have concerns about the interpretive declarations and conditional reservations in regards to Article 12. We feel they do not affirm the spirit of the Convention, and might be interpreted to signal less than full commitment to advancing legal capacity and supported decision making, and to reforming current substitute decision making provisions. We recognize that there are many people with intellectual disabilities whose current reality is one of isolation and institutionalization and that building credible, effective and appropriate supported decision-making arrangements will take time.

However, we will be holding the Government of Canada accountable for taking the progressive steps needed to fully realize the CRPD commitment to supported decision-making in the future. Compliance with Article 12 and the safeguards it establishes would mean that substitute decision making can only be used as a last resort, after all support options and reasonable accommodations have been exhausted or a determination has been made that the supports and accommodations are not currently sufficient to support the person to fully exercise their legal capacity; and, then only as a means to facilitate making of specific decisions or types of decisions on the basis of a person’s preferences and will. Any such authorization would have to be made with the requirement that supports and accommodations continue to be developed in order to restore a person’s full exercise of their legal capacity in regard to those types of decisions in the future. We believe that substitute decision-making arrangements in Canada need progressive reform to meet these principles.

Next Steps

CACL had called for ratification without reservation. Given the expressed intent of Parliament and the Government of Canada to proceed with ratification, CACL will be working with government and community allies in an attempt to influence the substance of the interpretive declarations and reservations. In particular, our aim is to have the Government of Canada include affirmative statements about Canada’s commitment to: the spirit and intent of the CRPD; securing the full legal capacity of all Canadians with disabilities; making every effort to confine and constrain substitute decision-making arrangements as truly a last resort; and, the development of supported decision-making arrangements.