

**Submission to the CRPD Committee on General Comment no. 8**

**Plain Language Summary**

**Key Message:**

* People with an intellectual disability have one demand when it comes to employment. They want real work for real pay.

**Key issues about employment for people with an intellectual disability and their families:**

* People who have an intellectual disability are often discriminated against. This happens in many ways when they are trying to get a job.
* Employers must make people who have an intellectual disability a top concern after the pandemic is over.
* Many policies send the wrong message to people with disabilities. They tell people that they are better off staying on income support instead of working.
* People with intellectual disabilities need more information about how to get a job.
* The process of getting hired for a job can be hard for people with an intellectual disability.

**We Recommend the CRPD Committee tell Governments to:**

* Make policies that will help people with an intellectual disability after the pandemic is over.
* Use strong words that protect wages for people with a disability.
* Make sure that programs for people to be an intern or an apprentice are inclusive.
* Remove barriers to getting a job that are created by governments.
* Make sure that the work of social enterprises is inclusive.

* Make sure that employment programs are inclusive. Make sure these programs include all people with an intellectual disability.
* Encourage unions to be more inclusive of all workers. Make sure they consider the different needs of workers with intellectual disabilities.



**Response to Draft General Comment no. 8**

**Article 27**

**The Right to Work & Employment**

*Inclusion Canada, People First of Canada, and UBC’s Canadian Institute for Inclusion and Citizenship*

**Introduction**

Inclusion Canada and People First of Canada welcome the opportunity to respond to the draft General Comment (GC) no. 8, *Article 27: The Right to Work and Employment*. Our response highlights the GC’s strengths, identifies areas that require additional effort, and makes several recommendations.

Inclusion Canada and People First of Canada are both national not-for-profit organizations dedicated to advancing the rights of people with intellectual disabilities. Inclusion Canada is one of Canada’s largest not-for-profits. It has a membership of over three hundred local associations and provincial and territorial associations across the country, which work within their communities to advocate for the interests of people with an intellectual disability. Inclusion Canada leads the way in building an inclusive Canada by strengthening families, defending rights, and transforming communities into places where everyone belongs.

People First of Canada, with approximately 3300 members nationwide, is a self-advocacy organization with a membership made up of people who have been labelled as having an intellectual disability.

The UBC Canadian Institute for Inclusion and Citizenship (CIIC) is at the forefront of building Canada’s capacity in the field of intellectual and developmental disabilities research. We work to advance the inclusion and full citizenship of individuals with disabilities and their families, and to engage in research that informs policy and practice that advances these goals provincially, nationally, and globally.

Inclusion Canada and People First of Canada are members of Inclusion Inter-Americana and Inclusion International, the regional and global federations working to advance the full inclusion and human rights of people with an intellectual disability and their families. Inclusion Canada and People First of Canada fully endorse [Inclusion International's submission on GC no. 8](https://inclusion-international.org/wp-content/uploads/2021/03/Inclusion-International-Written-Submission-DGD-Article-27.pdf) and submit the following as a Canadian perspective on the draft comment.

This submission emphasizes the issues related to the right to work of persons with an intellectual disability in a Canadian context. Working-age adults with an intellectual disability have a singular demand – Real work for real pay.

**The Core Principle of Inclusion**

*Article 27* of the *UN Convention on the Rights of Persons with Disabilities* (*CRPD*) affirms the right to work for all persons with disabilities. However, Inclusion Canada and the individuals and families we represent are concerned that existing employment policies, programs, and legislative measures do not consistently promote inclusive employment for all persons with an intellectual disability.

The core principle of inclusion should be the guiding principle and lens of General Comment no. 8 and its interpretation from the outset. All of the avenues to employment need to be inclusive - segregated avenues are not acceptable.

This core principle includes the lens of persons with an intellectual disability and their families.

**Identified Strengths of Draft GC No. 8:**

1. Interpretation of article 27 (b) part III: Measures to eliminate discriminatory attitudes and harassment, particularly against women, migrants and refugees with disabilities

This interpretation is critical to women with an intellectual disability. Research continues to show that women with intellectual disabilities face significantly more barriers to employment than other marginalized groups.[[1]](#footnote-1) For women who have an intellectual disability, large economic disparities especially amongst Canadian Indigenous population continue to exist. Specific reference about the commitments around gender and Indigenous people is essential.

**Overall Comments on Draft GC No. 8:**

1. Intellectual Disability

The drafting of General Comment no. 8 must give particular attention to the area of intellectual disability as this population of individuals face unique challenges in securing meaningful and inclusive employment. Employment standards are quite often related to accommodating individuals with mental health challenges and physical disabilities. However, our research and experience show that there's very little policy or legislation around accommodations and support for people with an intellectual disability.

1. Pandemic and Post-Pandemic Recovery

We know that the consequences of contracting COVID-19 for people with intellectual disabilities and their families are significant. Many individuals have experienced increased anxiety and there have been losses in employment. Personal isolation and “social distancing” have separated individuals from friends, family, regular health care, or support systems and services. Persons with disabilities are further marginalized within a COVID context from the labour market.

Based on Canada's national disability community's experiences to date, we anticipate that post-pandemic, persons with disabilities will not be a priority for private and public sector employers to re-employ employees with intellectual disabilities or create new employment opportunities. We encourage the GC drafters to acknowledge or make reference to the “pandemic rebuild phase” and that governments and the business community must not further marginalize persons with disabilities particularly given economic austerity measures and state obligations under CRPD Articles 11 and Article 27. States have a role and obligation to promote inclusive workplaces and hiring regardless of current economic circumstances.

1. Income eligibility and Disability Related Supports

There is a disincentive to work for many people with disabilities if disability related income assistance, benefits, and disability supports become clawed back from their earned income. There is a host of policies and practices that send the wrong message to people with disabilities that they are much better off staying on income support and out of the labour market. We recommend that General Comment no. 8 address the disincentive to work and call on governments to encourage real work/ real pay and eliminate barriers that government policies create.

**Specific Recommendations on Draft GC No. 8:**

1. Interpretation of Article 27.1 (a): Discrimination in the workplace, including workplace segregation

People with an intellectual disability face multiple forms of discrimination in their attempt to secure and maintain employment. This has resulted in a significant and unacceptable rate of unemployment for people with an intellectual disability. In Canada today, working aged adults with an intellectual disability are far more likely to be found in sheltered workshops, sheltered employment, day programs or home doing nothing as they are in the competitive labour force.

* Employment rate of persons with an intellectual disability = <20%

Sheltered workshops, day programs, vocational training centres and other forms of segregated employment for people with an intellectual disability are an unnecessary violation of individual rights, life wasting, a drain on resources and an economic loss. [[2]](#footnote-2) They stream people into environments that severely limit their ability to choose real, dignified, and meaningful employment and contribute to the economy and society. We recommend that this be stated strongly in the General Comment. Additionally, we recommend that State Parties be encouraged to adopt “Employment First” policies with adequate support to transition people with a disability out of sheltered programs into paid employment using evidence-based supported employment models and to prevent individuals from ever entering them.

In many provinces and territories in Canada, persons with an intellectual disability are often labelled as ‘unemployable’ and as a result are not considered eligible for the programs / services that are made available to other individuals as part of an intentional and proactive path to employment. As a result, these individuals remain trapped in the income support system, often attending segregated services/programs, and as the research indicates the longer one remains in these environments the less likely one is to become inclusively employed.

Furthermore, recruitment processes are problematic for persons who have an intellectual disability. Such problems include:

* recruitment is rarely accessible for people with an intellectual disability;
* job descriptions and application forms are not provided in plain language;
* online application process that people with an intellectual disability often do not have access to (i.e. access to technology); and
* employers often include psychometric tests or other discriminatory assessments as part of the recruitment process;
* employers do not actively recruit individuals with intellectual disabilities and do not recognize the value they bring to the workplace;
* Individuals with intellectual disabilities are often not considered in business’ commitment to diversity and inclusion;
* organized labour, at times, can limit individuals with intellectual disabilities filling particular jobs designed to accommodate their talents and skills;
* human resource departments and officers too often act as a barrier to inclusive employment of individuals with intellectual disabilities.

Prevailing stereotypes and assumptions that people with an intellectual disability cannot work in the labour force also represent a major obstacle to employment.[[3]](#footnote-3) Disability knowledge training should be made mandatory for HR professionals who are involved in the recruitment process; and similar training be made available to all members of the workforce.

Additionally, guardianship laws and the non-recognition of the legal capacity of persons with an intellectual disability can prevent job seekers with an intellectual disability from signing employment contracts or opening a bank account to receive their pay.

There is insufficient data on the inclusion of people with disabilities in the labour market, and where such data does exist it is often not disaggregated, so there is very limited accurate data specifically about people with an intellectual disability.

1. Interpretation of Article 27 (b): The right to equal remuneration for work of equal value

People with an intellectual disability who are working earn less than half that of people without a disability. The use of wage subsidies has proven to be an ineffective tool in enabling inclusive and sustainable employment to be realized.[[4]](#footnote-4) The most frequent outcome of wage subsidies is that the job lasts only as long as the subsidy resulting in individuals with disabilities experiencing repeated failure through no fault of their own.

Many people are attending day programs or sheltered workshops where they are paid stipends or training allowances which are usually far below the minimum wage level. Some jurisdictions also permit subminimum wages in regular employment settings. We recommend that the General Comment use stronger language that these policies and practices are contrary to Article 27, and that States have the obligation to provide for equal and adequate minimum wage protections for persons with a disability.

Eligibility for disability related supports can be linked in some jurisdictions to income, which results in a risk of persons with an intellectual disability losing these benefits if they have employment income (over a certain level). This forces them to choose between working and losing their disability benefits and having to pay out of pocket for their additional disability-related costs (including support, transportation, health care costs, etc).

Allowable income levels for people moving off the income support system are usually very low, and earned income is then clawed back. Obtaining paid employment may or can result in a financial loss for adults with an intellectual disability.

1. Interpretation of article 27 (c): Labour and trade union rights on an equal basis with others

One of the challenges in Canada, and in many other jurisdictions, is the promotion of customized employment (in which job duties are negotiated based on the person’s skills and requirements for accommodation) in situations where there are collective agreements with defined roles or job descriptions.

Organized labour are rightly protective of their bargaining agreements, and while it can be a protective factor, it can also be a barrier especially for persons who have an intellectual disability - as persons with an intellectual disability don’t often enjoy specific protection in collective agreements. General statements that treat people with disabilities as a homogenous group sometimes overlook, the specific and unique needs of the diversity of persons who have an intellectual disability.

1. Interpretation of article 27 (d) and (j): Access to inclusive education and inclusive vocational training

Provide training to instructors in skills/training development programs (i.e.. apprenticeships, internships, etc.) to ensure that necessary modifications and accommodations are made to curriculum and instruction to facilitate the recruitment, admission, and success of persons with an intellectual disability.

Internships are different from apprenticeships. Internships are a more flexible vehicle for providing job experience and training. There are some excellent models of supported internships for people with an intellectual disability that should be acknowledged and encouraged. Additionally, we recommend a reference to equitable access to bursaries and scholarships to participate in learning opportunities such as internships for example, or to continue or assist in funding their education.

1. Interpretation of article 27 (h): Affirmative action programs and special attention to persons with disabilities who are particularly excluded from the labour market

Rights violations can and do occur against persons with disabilities and intellectual disabilities within the context of special programs. These are often established to provide people with work experience but can be highly segregating and pay less than legislated minimum wage.

Special programs and some social enterprise endeavors can be a significant issue for persons with an intellectual disability, given that a lot of these are segregated operations with poor pay. We recommend that GC no. 8 highlight some serious issues with special programs and certain social enterprises and measures necessary to ensure that they are not segregated and offer people a real choice to make a real wage. We note that issues with special programs are often more prevalent in rural communities.

We recommend that GC no.8 ensure that the work of social enterprises, which are often subsidized by state incentives, are designed and implemented to fully conform with the provisions of Article 27 (i.e., they are designed with an inclusive lens and are subject to minimum wage protections).

There needs to be a consideration of incentives when the private or the public sector do not create or provide jobs that people with an intellectual disability can fill. Persons with an intellectual disability often need an alternative route to gain employment and cannot easily compete for regular postings. Governments and businesses need to be proactive with job supports and create employment for this particular population which requires more than being able to apply for a current job when it is not going to be a job they can perform or qualify for.

***3.I - Particular obligations within the context of article 27***

***a) The impact of new technologies in the labour market, including artificial intelligence and deep learning, on persons with disabilities.***

Discriminatory Algorithms

AI Algorithms should be designed as not to perpetuate further stereotypes and inequalities against persons with disabilities. These hidden biases can be difficult to detect.

***b) Telework of persons with disabilities***

Virtual Hiring Processes

As more and more recruitment and hiring methods are becoming virtual, employment application processes and practices are becoming a severe barrier for persons with an intellectual disability.

Without the help and support of third parties with application processes and finding opportunities, persons with an intellectual disability are facing more significant disadvantages. There must be legislated or considered obligations to ameliorate these disadvantages with proactive employment measures.

Social Isolation

A caution about the advent of remote working: The social networks of persons without intellectual disabilities tend to be on average larger than those of people with an intellectual disability. Working at home with a smaller or more limited social network may be detrimental to people's sense of belonging and other social determinants of health.

***A Note on Quotas***

We echo Inclusion International's remarks on quotas - People with intellectual disabilities, who are among the most marginalized within the disability community, rarely benefit from cross-disability quota systems, which generally only create a path to employment for people with physical and sensory disabilities. When States do introduce quotas, they must be intentionally designed to ensure that people with intellectual disabilities, including those with the most significant barriers to employment, also benefit from the systems. There must be clear buy-in from employers to ensure that people are not being hired without the appropriate accommodations in their workplace.

As well, with the requirement of quotas, they sometimes are accompanied by wage subsidies. Subsidies designed to encourage hiring or increasing labour force participation of marginalized groups are okay initially to help the employer with training or accommodations needed for the particular employee. If there is no employer commitment to prepare for sustainability after the subsidy ends, it usually fails.

**Conclusion**

We strongly believe the drafting of General Comment no. 8 must give particular attention to intellectual disability as this population of individuals face unique challenges in securing meaningful and inclusive employment. People with an intellectual disability have one demand when it comes to employment. They want real work for real pay. We thank the CRPD Committee for the opportunity to submit a brief on draft GC no. 8 and wish them all the best as they finalize the Comment.

***For Further Information Please Contact:***

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1. Arvidsson et al. 2016; Boeltzig et al., 2009; Carter et al., 2012; Sung et al., 2015; Taylor et al., 2015; [↑](#footnote-ref-1)
2. Sheltered employment outcomes are associated with lower wages as compared to other types of employment for people with IDD (Almalky, 2020; Cimera et al., 2012) [↑](#footnote-ref-2)
3. Kocman, A.., Fischer, L., & Weber, G. (2018). The employers’ perspective on barriers and facilitators to employment of people with intellectual disability: A differential mixed-method approach. Journal of Applied Research in Intellectual Disability, 31, 120 – 131. DOI: 10.1111/jar.12375 [↑](#footnote-ref-3)
4. Jongbloed, L. (2010). Wage subsidies for people with disabilities. A report for the Canadian Disability Policy Alliance. Accessed July 19, 2019 <http://69.89.31.83/~disabio5/wp-content/uploads/2010/09/Wage_Subsidies_Review_Sept_2010_REVISED.pdf>; Lindsay, S., Goodfellow, A., Stergiou-Kita, M., Kirsch, B., & Lero, D. (2013). Improving the participation of under-utilized talent of people with physical disabilities in the Canadian Labour Market: A scoping review. Toronto: Bloorview Research Institute and University of Toronto. [↑](#footnote-ref-4)