

**Submission to the**

**Special rapporteur on the rights of persons with disabilities**

***rights of older persons with disabilities***

**Canadian Human Rights Commission**

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# THE CANADIAN HUMAN RIGHTS COMMISSION

The Canadian Human Rights Commission (CHRC) is Canada’s national human rights institution. It has been accredited “A-status” by the Global Alliance of National Human Rights Institutions, first in 1999 and again in 2006, 2011 and 2016.

The CHRC was established by Parliament through the *Canadian Human Rights Act* (CHRA) in 1977.[[1]](#footnote-1) It has a broad mandate to promote and protect human rights. The Constitution of Canada divides jurisdiction for human rights matters between the federal and provincial or territorial governments.

The CHRC protects human rights by investigating human rights complaints. It has jurisdiction pursuant to the CHRA over federal government departments and agencies, Crown corporations, First Nations governments and federally-regulated private sector organizations. Provincial and territorial governments have their own human rights codes and are responsible for provincially/territorially-regulated sectors.

The CHRC also conducts compliance audits under the *Employment Equity Act* (EEA). [[2]](#footnote-2) The purpose of the EEA is to achieve equality in the workplace so that no person is denied employment opportunities or benefits for reasons unrelated to ability, and to correct the historic employment disadvantages experienced by four designated groups: women, Indigenous peoples, persons with disabilities and members of visible minorities.

The CHRC has a broad jurisdiction to promote human rights and freedoms in Canada. It does this by issuing public statements, tabling Special Reports in Parliament, conducting research, developing policy, and consulting with stakeholders. It is committed to working with the Government of Canada to ensure continued progress in the protection of human rights, including Canada’s implementation of the rights and obligations enshrined in the *Convention on the Rights of Persons with Disabilities*.

## Proposed Changes to the Mandate of the CHRC

### The *Accessible Canada Act*

On June 6, 2018, the Government of Canada introduced the proposed *Accessible Canada Act* (ACA) in Parliament’s lower house. The stated purpose of the ACA is to promote the full and equal participation of persons with disabilities in Canadian society through the creation of a Canada free from accessibility barriers. Broadly speaking, the ACA would allow the Government of Canada, as well as other identified regulatory agencies, to establish accessibility regulations applying to Canada’s federal jurisdiction. These regulations would aim to remove existing barriers and prevent new ones in the following areas:

(a) employment;

(b) the built environment;

(c) information and communication technologies;

(c.‍1) communication, other than information and communication technologies;

(d) the procurement of goods, services and facilities;

(e) the design and delivery of programs and services;

(f) transportation; and

(g) areas designated under regulations.

The ACA would also establish enforcement mechanisms to ensure compliance with regulations, including administrative monetary penalties and individual compensation for persons with disabilities who suffer harm, property damage, or economic loss as the result of the breach of a regulation. The CHRC would be one of the federal bodies charged with enforcing the ACA among the federal organizations falling under its jurisdiction.

### CRPD Monitoring Mechanism

Apart for designating the CHRC as an enforcement agency for accessibility regulations, the ACA would also designate the CHRC as “a body responsible for monitoring the Government of Canada’s implementation” of the CRPD, pursuant to Article 33, paragraph 2 of the Convention.

### The CHRC’s View on these changes

Overall, the CHRC welcomes the ACA, especially with respect to its new proposed mandates and authorities. While the CHRC recognizes that the ACA may not be perfect, and will not, in itself, ensure Canada’s compliance with the CRPD, the ACA would nonetheless be a fundamental shift for Canada – laying the groundwork for a federal sector where inclusion is systemic and by design, and disability communities are not left having to fight for change one human rights complaint at a time.

# QUESTIONS TO NATIONAL HUMAN RIGHTS INSTITUTIONS

On February 6, 2019, Ms. Catalina Devandas-Aguilar, Special Rapporteur on the rights of persons with disabilities, wrote to national human rights institutions requesting information on the rights of older persons with disabilities. By way of this reply, the CHRC seeks to help inform the Special Rapporteur’s up coming report to the 74th session of the General Assembly by providing information with respect to: general trends in human rights complaints at the national/federal level; the result of a recent investigative study undertaken by the CHRC in collaboration with the federal Office of the Correctional Investigator on aging and dying in federal prisons; and inequitable and inadequate services on Indigenous reserves.

## General Trends in Human Rights Complaints

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### Disability in Canada

On November 28, 2018, Statistics Canada released the results of the Canadian Survey on Disability conducted in 2017. This Survey represents the most recent statistics available on the representation of disability in Canada. Generally, the Survey indicates that 6.2 million persons in Canada (or 22% of the Canadian population) aged 15 years and over reported having one or more disabilities that affect them in their daily activities.[[3]](#footnote-3)

Among older persons with disabilities[[4]](#footnote-4), the Survey notes that seniors are almost twice as likely to have a disability than those of working age (aged 25 to 64 years), with a prevalence of disability at 38%. Early seniors with disabilities are increasingly working beyond the typical retirement age for Canadians, and are working beyond retirement age at the same rate as early seniors without disabilities. Compared to younger persons with disabilities who have a higher rate of income inequity compared to their cohorts without disabilities, seniors with disabilities in Canada have less income inequity than their cohorts without disability. Older women on average had a median income that was two-thirds that or their male counterparts, regardless of disability or severity of disability. Generally, the Survey found that seniors with disabilities often fare somewhat better than their working age counterparts. However, employment income, and representation in the workforce, remains the lowest among persons with disabilities in Canada.

### Disability-related trends in complaints received by the CHRC

Across Canada, more complaints of discrimination are received from persons with disabilities than from any other group. At the CHRC, 1547 complaints were accepted from 2016 to 2018 which cited disability as a ground of discrimination. This represented 56% of the total complaints accepted for that timeframe. For that same period, the CHRC accepted 284 complaints where age was cited as a ground of discrimination, making-up 10% of total complaints received. 4% of total accepted complaints (or 106 complaints) cited both age and disability as a ground of discrimination.[[5]](#footnote-5) Of those complaints citing both age and disability which the CHRC accepted, 69% alleged discrimination in employment; 28% alleged discrimination in the provision of goods, services, facilities, or accommodations; 14% alleged discrimination in employment specifically related to an employer’s policy or practice; 11% alleged incidents of harassment.

## Intersections of Age and Disability: Aging and Dying in Canada’s Federal Prisons

### Findings and Recommendations

On February 28, 2019, the CHRC released the results of its investigation into the experiences of older individuals in federal custody.[[6]](#footnote-6) The investigation was a partnership between the CHRC and Canada’s Office of the Correctional Investigator.

Overall, the investigation found that Correctional Services Canada (CSC) fails to meet the fundamental purposes of Canada’s correctional laws: safe and human custody and assisting in the rehabilitation and reintegration of offenders into the community. CSC’s treatment of older individuals in federal custody was found to: not respect their human rights; not be justified in terms of institutional security or public safety; be inconsistent with the administration of lawful sentences imposed by courts; and be unnecessarily costly.

The investigation made eight (8) major findings with respect to older persons in federal custody:

1. Some older, long-serving federally sentenced offenders are being warehoused behind bars well past their parole eligibility dates.
2. There is no legal or policy recognition that older individuals represent a vulnerable population in prison or that they have unique characteristics, needs and rights which must be respected and met. As a result, their health, safety, dignity and human rights are not adequately protected.
3. Federal penitentiaries were never intended or physically designed to accommodate an aging inmate population. The physical infrastructure of institutions does not adequately meet the needs of older individuals in federal custody.
4. Correctional health care costs are rising as the number of aging individuals in federal custody with chronic disease increases.
5. Offenders with terminal illness and those requiring palliative care are living out their single greatest and expressed fear — dying in prison. Prison is no place for a person who requires end-of-life care.
6. Federal corrections lack adequate, compassionate and responsive release options for older individuals in federal custody who do not pose an undue risk to public safety.
7. Community alternatives are lacking and are not well resourced.
8. There is a clear need for an integrated, comprehensive and funded National Older Offender Strategy that meets the characteristics and needs of older individuals

The report also made a series of recommendations which call on the Government of Canada to:

1. Independently review all of the older individuals in federal custody to determine whether alternatives to their incarceration would be more appropriate;
2. Develop separate and distinct policies, directives, and training with respect to the needs and interests of older individuals and ensuring that they receive appropriate care, services, and interventions;
3. Ensuring that older individuals in federal custody have access to appropriate living facilities, activities, programs, and work opportunities; and
4. Immediately fund and implement a comprehensive National Older Offender Strategy, which should:
   1. reflect the recommendations of the investigation;
   2. go beyond an “aging in place” approach, including the mandatory and ongoing review of release options for older individuals who do not pose undue risk to public safety;
   3. examine, respect and respond to the intersectional characteristics and needs of older individuals in federal custody; and
   4. establish a timeframe for assessing, retrofitting and, where necessary, building facilities under CSC authority to ensure accessibility.

### Lived realities of older persons in federal custody

The report found that, between 2009 and 2019, the older population – defined as 50 years of age or older – within Canada’s federal correctional system increased by 50%. Of a total prison population of 14,004, older persons represent 25.2% of that population, or 3,534 individuals. Similarly, over the past decade, the number of Indigenous individuals 50 years of age and older has also increased. The number of older Indigenous persons has more than doubled—from 265 individuals in 2007–08, to 632 in 2017–18.

The investigation suggests that older individuals (particularly those who have been in the system for extended periods) face stigma and stereotyping resulting from unconscious or conscious beliefs that they cannot be rehabilitated or reintegrated – or that they are not worthy of the expenditures of resources to do so. To the extent that stigma and stereotyping against this population are contributing factors to warehousing and institutionalization, they represent a systemic and pervasive form of discrimination.

It is the growing concentration of older individuals in federal custody, and the fact that they are being housed in facilities that were not designed to hold them in the first place, that makes this an area of increasing attention and concern. Compared to their younger cohorts, older individuals in federal custody are more likely to:

* + Be serving a longer or indeterminate sentence;
  + Be convicted of a sexual offence;
  + Be classified as minimum security;
  + Have a high level of risk;
  + Be deemed a dangerous offender; and
  + Be admitted to segregation for their own safety.

In addition, older persons in federal custody have a higher prevalence of chronic diseases than Canada’s general population, and inmates aged 65 years or older have higher rates of depression, anxiety, and personality disorders.

Across Canada, CSC has 428 wheelchair accessible cells. Of those, 52 are in women’s facilities, and 38 of them are transitional (e.g. health care beds, segregations cells). All told, it means that CSC has 390 permanent barrier-free cells. This represents 2.5% of all the cells across CSC. During site visits to a number of institutions, it became clear to investigators that, while some cells/rooms may be termed “wheelchair accessible”, that did not mean that those using mobility devices could easily move around or fully participate within the institution.

The investigation found that, at times, institutional routines are ill-adapted to meet the needs of persons who are elderly and who have disabilities, as older individuals are expected to do the same things that a 20-year-old must do, with few accommodations or exceptions.

Further, the investigation found that inmates with dementia or Alzheimer’s disease face significant challenges in Canada’s federal prisons. CSC staff reported receiving little to no training with respect to dementia or Alzheimer’s disease and this was the case even among those working on units where these individuals resided. Individuals with dementia not only pose significant challenges for staff within institutions but also in terms of community reintegration (appropriate housing, care). Since violent or aggressive behaviour can be related to dementia, there is considerable stigma and/or resistance to accept or place sentenced individuals in long-term care or nursing facilities.

## Inequitable and Inadequate Services on Indigenous Reserves

The CHRC views the situation of Indigenous peoples[[7]](#footnote-7) in Canada as one of the most pressing human rights issues facing Canada today. Indigenous peoples in Canada continue to be significantly disadvantaged in terms of education, employment and access to basic needs such as water, food and housing. This includes older Indigenous persons with disabilities.

The Auditor General of Canada, an independent parliamentary officer, has noted that structural impediments – including the lack of clarity about service levels, the lack of a legislative base, the lack of an appropriate funding mechanism, and the lack of organizations to support local service delivery – severely limit the delivery of public services to First Nation communities and hinder improvements in living conditions on reserves.[[8]](#footnote-8)

Funding for services on reserves was noted as an issue of concern by former Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, in his report on his October 2013 visit to Canada. Noting the “rights and significant needs of Indigenous peoples and the geographic remoteness of many Indigenous communities”, he recommended that the Government of Canada should ensure “sufficient funding for services for Indigenous peoples both on and off reserve, including in areas of education, health and child welfare” and that “the quality of these services is at least equal to that provided to other Canadians”.[[9]](#footnote-9)

The CHRC has received several complaints that allege that federal funding for programs and services delivered on-reserve is inequitable and discriminatory when compared to provincial / territorial funding for the same services off-reserve. In a ground-breaking January 2016 decision, the Canadian Human Rights Tribunal found that the federal program and funding for child welfare services on reserve is discriminatory against First Nation children and families.[[10]](#footnote-10)

As it relates to specific services for Indigenous persons with disabilities, the CHRC has received complaints relating to the availability of and funding for disability supports and special education services on reserves.

1. Available at [laws-lois.justice.gc.ca/PDF/H-6.pdf](http://laws-lois.justice.gc.ca/PDF/H-6.pdf). Although Canada’s human rights laws are not part of the Constitution, they are considered “quasi-constitutional” in nature, meaning that all other laws must be interpreted in a manner consistent with human rights laws. [↑](#footnote-ref-1)
2. Available at [laws-lois.justice.gc.ca/PDF/E-5.401.pdf](http://laws-lois.justice.gc.ca/PDF/E-5.401.pdf). [↑](#footnote-ref-2)
3. See an extract from Statistics Canada’s 2017 results for the Canadian Survey on Disability, available at: <https://www150.statcan.gc.ca/n1/en/pub/89-654-x/89-654-x2018002-eng.pdf?st=MKzGjAHA> [↑](#footnote-ref-3)
4. The Survey categorizes older persons in the following ways: “Early Seniors” (aged 65 to 69 years); and “Seniors” (Aged 65 years and older). [↑](#footnote-ref-4)
5. It should be noted however that the CHRC’s complaints statistics system does not capture the age of a particular complainant, and so, while the CHRC can indicate how many complaints it received citing age as a discrimination ground, it cannot further specify how many of those complaints were from older persons or older persons with disabilities. [↑](#footnote-ref-5)
6. See the full report, entitled “Aging and Dying in Prison: An Investigation into the Experiences of Older Individuals in Federal Custody” available at: <http://www.oci-bec.gc.ca/cnt/rpt/oth-aut/oth-aut20190228-eng.aspx> [↑](#footnote-ref-6)
7. The term “Indigenous” or “Indigenous peoples” is used throughout this submission to refer to First Nations, Inuit and Métis peoples in Canada, also commonly referred to as Aboriginal peoples. In specific areas of this submission, the terms Aboriginal or First Nations may be used for greater specificity, for example where this is the official terminology used in a referenced law, or where a law or program is applicable only to this sub-category of the Indigneous population. [↑](#footnote-ref-7)
8. See *2011 June Status Report of the Auditor General of Canada*, “Chapter 4 – Programs for First Nations on Reserve”, available at [www.oag-bvg.gc.ca/internet/English/parl\_oag\_201106\_04\_e\_35372.html](http://www.oag-bvg.gc.ca/internet/English/parl_oag_201106_04_e_35372.html). [↑](#footnote-ref-8)
9. A/HRC/27/52/Add.2 at para 84. [↑](#footnote-ref-9)
10. A decision from the Canadian Human Rights Tribunal in January 2016 substantiated the complaint, finding that the federal government had discriminated against First Nation children and families living on reserve. Specifically, the Tribunal found that First Nation children and families were denied equal child and family services and/or differentiated adversely in the provision of child and family services. The Tribunal has reserved its decision on remedies and the parties have made submissions and have had discussions on how best to address the remedies required to alleviate the adverse differentiation and put an end to the discrimination. Given the extensive changes required in the child and family services program, the remedies have been divided into immediate, mid and long-term. Currently, the parties remain engaged in providing input and have begun the process to implement the immediate measures necessary. [↑](#footnote-ref-10)