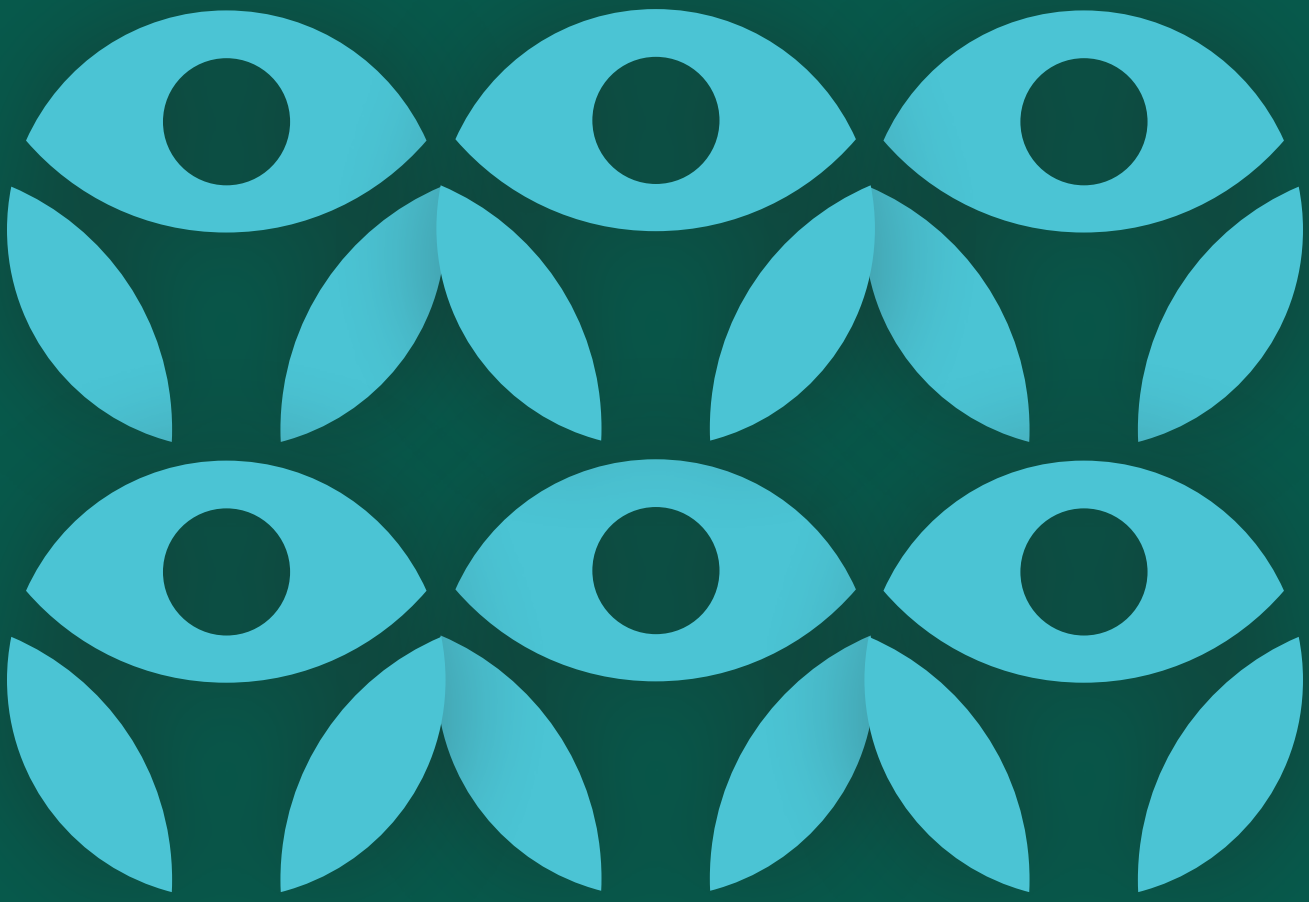
PRIMER ON DISABILITY AND PUBLIC POLICY



POLICY PRIMER

from IRIS – Institute for Research and Development on Inclusion and Society

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About IRIS

Informed by the systemic exclusion that people with intellectual disabilities and other marginalized groups face, IRIS's mission is to seed and support transformative social development. Guided by the principles of full inclusion and human rights, we carry out research to identify issues and policy options. We foster social innovation to re-imagine inclusion and design new ways to meet unmet needs. Through capacity building, we strengthen leadership and constituencies for transformative change. For more information, visit us as at *https://irisinstitute.ca or email contact@irisinstitute.ca.*

Foreword

Disability communities in Canada are undergoing profound transformations at a time when there is a growing public awareness and policy focus on access and inclusion for Canadians with disabilities. As this reorganization takes place, it is critical to sustain and grow the policy leadership of the community members so they can continue their high-quality policy work and engagement with legislatures, governments and publicly regulated sectors in Canada and beyond.

Changing dynamics of disability communities result in part from dramatic demographic shifts now underway. With increased migration and immigration, and a fast growing population of Indigenous peoples, we welcome the growth of ethno-racial-cultural diversity in Canada. Along with the aging of the population and increased life expectancy for people with disabilities this means we are becoming an increasingly diverse, 'disabled' population. And with these trends, the need for coherent, intersectionally guided policy development becomes more pressing.

At the same time disability communities are forming new organizations, networks, platforms, and hubs of activity. A growing awareness of, and voices from, Indigenous, Black, racialized migrant and refugee and 2SLGBTQ+ and gender diverse disability communities, call for incorporating an intersectional and 'from the margins in' approach to looking at public policy to advance disability and human rights. Relatedly, there is a need for corresponding knowledge mobilization strategies to reach and engage diverse communities which take advantage of the exchange and networking potential of digital technologies and platforms.

In addition to the reconfiguration of disability communities, there is a generational transformation in both community and government sectors. Several heads and senior staff of national, provincial/territorial and local organizations and senior government officials with deep knowledge of disability policy have left their roles in recent years (or will be doing so soon). A new generation of leaders are taking their place bringing leading-edge ideas, energy, experiences, and alliances to other equality seeking movements. It is of paramount importance to support this next generation of leaders and community members to strategically engage in policy conversations and reforms, vital to improving the well-being of Canadians with disabilities.

To serve this aim, we are launching our 'Disability and Public Policy' series of Primers – building on the Primer we published in 2021 on a new Canada Disability Benefit. This current primer introduces readers to disability and public policy in Canada – what it is, how it is made, ways that people with disabilities, their families, supporters and organizations can participate and help shape its terms, and how public policy impacts people, communities, and our society.

We hope this primer, and the series that follows on different policy areas, will be a helpful resource to members of disability communities and to policy makers. As ever, we continue our work to support collective efforts for law, policy and practice reforms which assure full recognition of the rights of people with disabilities and practical ways to make them real in people's daily lives and communities.

Michael Bach, PhD
Managing Director

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Introduction

This is a primer about policy. About social policy, more specifically. About disability policy, even more specifically.

Now you may think that policy is not your business. That it has nothing to do with you. That it is the concern of only a few people who "do policy."

You would be wrong.

Policy affects virtually every aspect of our being ¬and our wellbeing. The air we breathe. The food we eat. The water we drink.

Policy determines the safety of communities. It regulates the airwaves in terms of what we see and hear. It sets guidelines for how we get around – or not – as we snake our way through traffic or long airport lines.

Simply put, policy makes the world go round. It spells out the rules of our lives.

When we wake up in the morning, it is not immediately obvious how policy touches virtually every aspect of our day. Let's stop for just a moment to reflect.

First things first: You went to the kitchen or coffee shop for that essential morning cup. You probably didn't think twice that the coffee beans were imported in compliance with international trade rules. The milk you added was produced according to dairy industry regulations.

Maybe you started your day with a bowl of cereal. The ingredients you enjoyed for breakfast were listed on the side of the box. There are rules to this listing: The most comes first.

Then you rode your bike to work. You wore your helmet, as required by law. You stuck to the narrow bike lane between the curb and the cones. You yelled at the driver who cut you off as he turned right. Didn't he know the rule that gives bikers the priority at intersections?

You finally arrived at your destination. It's the second Tuesday of the month so you threw your jacket on a nearby chair. Easier to reach for the mandatory outdoor fire drill required by the city.

While it may be fire drill by day, it's garbage by night. Wednesdays are scheduled for recycling and you were careful not to dump organics into the blue bin. Those are placed in the green bin that is emptied on Thursdays.

These examples from our everyday activities may look like policy is just a book of (too many) rules whose purpose is to control our lives. But public policy is about far more than rules.

1. What is Public Policy?

i. Public policy is concerned with the quality of life

There is no single, commonly accepted or recognized definition of public policy. There are many interpretations of this term. The definition presented below is shaped by a social policy lens.

The purpose of public policy is to promote a good quality of life. It sets out the rules and guidelines that create an orderly society in which diverse people can live together.

One primary goal of public policy is to encourage positive practices (e.g., wear a seatbelt while driving) and support healthy communities (e.g., air and water quality standards must be met).

Public policy is also intended to ensure safety. Its rules require regular inspection and upgrades of equipment, buildings and structures, such as bridges.

Public policy can enhance wellbeing. It protects income though various programs, such as Employment Insurance, during temporary periods of unemployment. It improves employment prospects through a range of training programs supported by provincial/territorial governments.

Public policy has another vital objective. It seeks to create order rather than chaos, which can threaten our democratic way of life and even our lives.

Rules regarding election procedures are intended to respect the votes of citizens and thereby protect our democracy. Rules of the road reduce the potential for traffic accidents – even though it may not always feel that way when we're actually driving or crossing the street.

It's fair to say that there have been – and always will be – disagreements as to how far public policy can and should go in terms of intervening in or regulating our daily lives. While there are ongoing debates about the how and how much, there is no question about the need to create a safe and healthy context for the wellbeing of citizens, communities and the country as a whole.

At the end of the day, public policy is about balance. All nations need to strike a fine balance between individual freedom to protect ourselves and collective responsibility to protect each other.

Finding the right balance is not always easy. The COVID pandemic is the most recent example of tensions around the reach of public policy. Various groups continue to argue for and against the public health protections introduced over the course of the pandemic.

There are no easy answers. The options typically are weighed against each other to determine how much risk individuals are willing to assume in their own lives and for the community as a whole. We have rights as citizens. We also have obligations to each other.

Public policy seeks a balance between these rights and obligations.

ii. Policy is about choices

The development of public policy can be understood as carefully choosing a set of actions that protect and promote the quality of life. This quality-of-life objective is sometimes referred to as the "public good."

The first step in promoting the public good is to identify a clear, desired outcome. Various options

are formulated to determine how best to reach that goal. Each option is then assessed in terms of several factors that include:

- Who and how many individuals or households might benefit from the proposed change?
- Who might be worse off as a result?
- How might eligibility for other programs and services be affected?
- Are there unintended consequences of the proposed policy or program?
- What is the possible impact on the economy? On the environment?
- How much will the proposed options cost?
- Is the estimated cost reasonable? If not, are there equally efficient and effective ways to achieve the same goal?

The various options are usually narrowed down to a few possibilities. The design work to flesh out the details then begins.

These details are typically explored in consultation with selected individuals and community groups. The nothing-without-us principle embedded in the *Convention on the Rights of Persons with Disabilities* means that co-design with the disability community is an essential part of the policy process. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities

iii. Social policy has many parts

There are three main categories of public policy: environmental policy, economic policy and social policy. While these three areas are discrete domains, they are also closely linked. Challenges in any one area will have an impact upon the other two domains.

For example, poor-quality air (an environmental concern) will affect human health (a social concern). Poor human health can affect workforce participation (an economic concern). It is often difficult to separate one policy sphere from the influence of the other.

Moreover, each of these domains has several components. When changing current policies or developing new policies, it is important to take into account these various parts. The social policy domain, in particular, is composed of the following elements:

- income security
- health care
- child care
- social services
- education
- labour market training
- disability-related issues

2. Disability Policy

Disability policy, in particular, is embedded in all the above areas. In fact, each policy area should be scrutinized through a Disability Policy Lens. Developed by the Canadian Disability Policy Alliance, the Disability Policy Lens consists of seven questions pertaining to the implications of specific policies for people with disabilities (e.g., accessibility and available supports). https://www.disabilitypolicyalliance.ca/wp-content/uploads/2018/03/ dispol-lens-2017-New-Document.pdf

But disability-related issues also comprise a distinct policy domain because it addresses certain concerns that are unique to people with disabilities. These concerns include accessibility and disability supports.

Disability-related issues have been highlighted in an extensive set of reports that have been produced over

the years, notably by the federal government. Several reports that are considered landmark documents are summarized in Appendix A.

There are a few significant challenges that are unique to disability policy. They relate to the definitions of the term 'disability,' conceptual frameworks for understanding disability and the evolving narrative on disability.

i. Definitions of disability

The term 'disability' refers not to a single state but rather to a wide spectrum of conditions. Most obvious are physical limitations, such as mobility, visual and hearing impairment. A range of invisible disabilities are less readily identifiable but can be equally challenging. They include mental health conditions, such as cognitive impairment or mood disorders.

There is also a cluster of conditions known as developmental disabilities. Sometimes the latter term is used synonymously with intellectual disabilities. In other cases, it comprises a much wider spectrum. The US-based Centre for Disease Control, for example, includes the following conditions as developmental disabilities: autism, behavioural disorders, brain injury, cerebral palsy, Down syndrome, fetal alcohol syndrome and spina bifida.

The definition of disability is broad – and growing. Recent years have seen a rising incidence of chronic illness in Canada and throughout the developed world. Because of medical, technological and social advances, people are living longer with conditions that used to mean certain incapacitation or death.

Fluctuating conditions add another layer of complexity. Some chronic conditions, such as HIV/AIDS and multiple sclerosis, are considered 'episodic.' While these conditions are long term and permanent in duration, their associated symptoms are expressed only intermittently.

People with episodic conditions often function well and may experience few limitations for long periods. At other times and unpredictably, they contend with serious and debilitating symptoms that limit their ability to work or to participate socially in the community.

Many individuals are born with a disability while others acquire a disability throughout the course of their lifetime due to an accident or injury at work, play or home. Still others experience functional limitations involving hearing, sight, cognitive and mobility impairment as a result of aging.

The translation of this variability into disability policy often results in inequitable treatment between individuals with similar conditions. A person who is paraplegic as a result of birth trauma, for example, is typically eligible only for inadequate, rule-bound social assistance, described in the *Primer on Disability Income*.

By contrast, a person who is paralyzed as a result of a work accident may be entitled to compensation for loss and a stable income from provincial/territorial workers' compensation. Injured workers can also gain access to disability supports through various programs and services. They are seen to have an advantage over other people with disabilities in that they are part of an employment-based system which, in theory at least, is designed to meet their unique needs.

As if this complexity were not enough, there are questions as to whether certain conditions, such as addiction, should be considered a medical problem or a disability. The *Canadian Human Rights Act*, for example, employs a broad definition of disability,

including previous mental or physical disability as well as disfigurement and past or previous dependence on alcohol or drugs. https://laws-lois.justice.gc.ca/eng/acts/h-6/

There are also new conditions, such as Long COVID, which appear to have a long-term debilitating impact on day-to-day functioning. Because it is currently unknown how long its effects will last, the question arises as to whether it qualifies as a condition that is severe and prolonged.

The US Department of Health Human Services Office for Civil Rights recently provided guidance on this issue. It stated that Long COVID can be considered a disability under the *Americans with Disabilities Act*, Section 504, and Section 1557 if it substantially limits one or more major life activities. https://www.hhs.gov/civil-rights/for-providers/civil-rights-covid19/guidance-long-covid-disability/index.html

ii. Conceptual frameworks

The challenges in understanding the concept of disability are made more complex by competing conceptual frameworks to explain its various dimensions and provide guidance regarding possible interventions. The so-called medical model used to be the primary conceptual framework for understanding disability. People with disabilities typically were seen to have a medical condition with associated impairment in physical and/or mental functions.

The medical model focuses on managing, minimizing or curing the identified illness or condition. The medical model generally views disability as a personal abnormality or health condition to be fixed. Not surprisingly, physicians and health professionals, including psychologists, physiotherapists and occupational therapists, are the primary actors in the medical model.

This dominant conceptual framework began to be challenged in the 1970s on the grounds that it was both inaccurate and too narrow a conceptualization:

> A legacy of medicalization of disability has meant that disability continues in many parts of the world to be considered as a health issue to be prevented, cured or treated. This has often meant few hours of actual treatment or rehabilitation but a reliance on medical professionals rather than educators or employers and little or no support for the family. https://www.inclusion-ghana.org/resources/reports/Global-Report-Living-Colour-dr2-2.pdf

Through both academic papers and informed debate, disability activists began to shape an updated narrative in reaction to the medical model, which they felt did not adequately reflect their personal experience. The social model gradually emerged as a new framework to understand disability.

The social model views disability not as a problem embedded in a person's difference or impairment. Rather, the problem is rooted in the way in which society is organized.

According to the social model, the source of incapacitation is the broader society that makes it difficult for people with impairment in physical and/or mental functions to engage as active participants. When physical and social environments are adapted to individual need, the impact of a disabling condition can change in severity or even disappear.

The social model targets the physical, policy and attitudinal barriers that tend to segregate or exclude people with disabilities. Solutions focus more on social change than on the individual.

To capture this new thinking, the World Health Organization (WHO) introduced a framework for understanding disability. In 1980, it published the *International Classification of Impairments, Disabilities and Handicaps*, which made a distinction among three linked, but distinct, concepts. https://apps.who.int/iris/handle/10665/41003

Impairment is a long-term limitation of a person's physical, mental or sensory function. Disability refers to any limitation or functional loss deriving from impairment that prevents the performance of an activity in the time considered normal for a human being. Handicap is the disadvantaged condition deriving from impairment or disability that limits a person from performing a role considered normal in respect of age, sex, and social and cultural factors.

The social model of disability has had a profound impact upon the disability narrative. A medical or health-related condition need not be disabling in itself. At the heart of the problem is the exclusion resulting from current social arrangements. Unfortunately, the eligibility criteria for disability-related benefits, programs and services focus almost exclusively on individual capacity. This requirement creates challenges, especially when eligibility for various programs is based on more traditional models of disability.

iii. The evolving narrative

Various programs intended for people with disabilities employ a set of eligibility criteria, which require proof of incapacity. Here's where the questions arise. Disability is far from black or white, present or not. Rather, it is a matter of degree along a continuum.

The UN *Convention on the Rights of Persons with Disabilities* recognizes the complexity of this term. Its Preamble states that "disability is an evolving concept resulting from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others." https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities

While some groups have called for a single definition of disability, most agree that it likely is not possible to capture the wide-ranging complexity. Because a single definition appears neither practical nor feasible, many advocates have proposed simplified administrative processes to reduce multiple and onerous application procedures.

The evolving narrative on disability, while rooted in the social model, has embraced a human rights approach. This model seeks to enshrine in legislation the right of people with disabilities to participate in society as full citizens.

The rights-based approach to disability is described more fully below. Human rights, more generally, are protected by Canada's Constitution – the back-bone of our nation.

3. The Constitutional Framework for Policy-Making in Canada

i. The Constitution is the rule book of the nation

All areas of social policy and disability policy, more specifically, operate within the framework of the country in which they are situated. They all need a rock-solid foundation if they are to be effective.

A country's Constitution and associated legal systems comprise the foundation of all its operations. The rule of law rules.

Most people think that the Constitution has very little to do with their day-to-day lives. When someone asks how your day is going, did you ever mention the Constitution? Probably never.

Yet the rules of the land are embedded in the fabric of our lives. These rules are so deeply rooted in our world that most Canadians are not even aware that these threads weave through everything we do.

The Constitution sets out what is known formally in the country as the 'division of powers.' It says who is responsible for carrying out certain activities. It names the parties who should deliver a given program or service and who should pay for it.

The rule book – or governance framework – was originally set out in the *British North America* (BNA) *Act of 1867*. Canada was legally established as a federation with 11 parts: the federal government and 10 provincial governments.

Major changes to the Constitution could be made only by the Parliament of the United Kingdom. In 1982, the Constitution was patriated from the UK; it was brought home to Canada and renamed the *Constitution Act*. https://laws-lois.justice.gc.ca/eng/const/page-12.html

The Act allows the Constitution to be amended here at home by the federal Parliament. It includes a *Charter of Rights and Freedoms*, discussed below, whose purpose is to protect the human rights of all Canadian citizens. https://www.canada.ca/en/canadian-heritage/services/how-rights-protected/guide-canadian-charter-rights-freedoms.html

ii. The Constitution spells out who does what

Under the Constitution, the federal government is responsible for the "peace, order and good government of the country." This means that the federal government (sometimes referred to as 'Ottawa') must ensure the overall safety and security of citizens. It protects our land, our waters and ourselves. It also controls the flow of people, goods and services within and outside Canada's borders.

Another federal task is to connect the country from coast to coast to coast. The federal government's job is to link Canada's people and places through transportation and communications. Unfortunately, both these networks remain spotty in many regions.

The Constitution gives the federal government another responsibility, known as the spending power. It allows Ottawa to collect revenues and to spend those funds.

The federal government also has authority for the three territories: Yukon, Northwest Territories and Nunavut. There are special financing arrangements, discussed below, which support the provision of goods and services in the North.

Provincial and territorial governments have primary responsibility for health care, education and social services. But the federal government is also involved in these areas by virtue of its spending power. It transfers funds to the provinces and territories to support these services. Ottawa also delivers programs and services directly to designated populations, notably Indigenous Peoples, veterans and refugees.

iii. Ottawa has a special relationship with Indigenous Peoples

It is important to note that Canada is currently engaged in a formal process of reconciliation with Indigenous Peoples. The *Constitution Act* includes protection of the rights of Indigenous Peoples: First Nations, Inuit and Métis.

Section 35 of the *Constitution Act* affirms these rights, which are related to historical occupancy and use of the land. This protection is intended to ensure that Indigenous Peoples can preserve their customs and traditions for future generations. https://indigenousfoundations.arts.ubc.ca/ constitution_act_1982_section_35/

Section 35 also recognizes treaty rights, which are set out in agreements between the Crown and designated groups of Indigenous Peoples. Under the federal *Indian Act*, for example, First Nations have a range of governmental powers over reserve lands. Other Indigenous governments, such as self-governments, exercise these powers through agreements negotiated with the federal and provincial/territorial governments.

The federal government is also responsible for providing services to Inuit and Status Indians on reserve. Non-status Indians off reserve and Métis are eligible for services delivered by their respective provincial or territorial government.

Unfortunately, confusion has often arisen with respect to whether the federal or provincial/territorial government will pay for certain services. For example, a First Nations adult may move to an urban centre and try to access health care services delivered by the province. These services may be withheld until it is determined whether Ottawa or the province will pay the associated costs.

In fact, the who-will-pay issue had become so problematic in recent years that it resulted in a new federal measure, known as the Jordan's Principle. It was named in memory of Jordan River Anderson who was a First Nation child from Norway House Cree Nation in Manitoba. https://www.sac-isc.gc.ca/eng/1568396042341/1568396159824

Born with complex medical needs, Jordan spent more than two years unnecessarily in hospital while the province of Manitoba and the federal government argued over who should pay for his at-home care. Jordan died in hospital at age 5, never having spent a day at his family home.

The purpose of the Jordan's Principle is to ensure that all First Nations children up to age 18, regardless of residence or condition, have access to the services they require to meet their needs. In Quebec, people under age 21 who are studying full-time at the high school level, such as adult education or vocational school diploma, may also be eligible.

The Jordan's Principle is administered by the federal government, which will cover the costs for health care, social services and education that current services do not provide. If a waiting list for a specialized service is too long, for example, the Jordan's Principle allows the child to access this service in the private sector without delay. While this arrangement sounds excellent in theory, there have been significant problems in its implementation. https://www.theglobeandmail.com/politics/article-denial-rates-of-services-and-supports-for-first-nations-children/

Unfortunately, it appears that the Jordan's Principle is being interpreted primarily as a funding source rather than as a foundation for protecting children.

Moreover, existing services are not well suited to Indigenous Peoples – both children and adults. Programs and services need to be designed and delivered by Indigenous Peoples in order to be relevant to their needs. Adults often experience difficulties because of the preoccupation with who will pay for the service rather than its actual quality or effectiveness.

iv. The Constitution sets out the structure of democratic government

Canada's Constitution not only sets out the responsibilities of the federal and provincial governments. It also spells out the structure of democratic government. https://learn.parl.ca/understanding-comprendre/en/canada-system-of-government/the-branches-of-government/

There are three main branches of government in Canada:

- legislative
- executive
- judicial

Parliament is the *legislative* branch of the federal government. The Prime Minister and other Ministers form the Cabinet, which is responsible to Parliament for government business. Ministers are also in charge of individual departments, such as Employment and Social Development Canada and the Department of Finance Canada.

Parliament consists of the House of Commons, the Senate and the King who is represented in Canada by the Governor General. These three parts work together to create new laws.

Government bills are debated and passed by the House of Commons and the Senate. Because the King has the *executive* power in Canada, the Governor General must give Royal Assent to a bill in order for it to become law.

The Constitution also sets out the responsibilities of the *judicial* branch of government. This branch consists of judges who interpret and apply the law. The Constitution applies only to federally-appointed judges. Provincial judges are appointed under provincial laws.

To become law, any piece of legislation must first be approved by Parliament. Proposed legislation is introduced in Parliament in the form of a bill, which provides the basis to amend or repeal existing laws or to put new ones in place.

The federal government and provincial/territorial legislatures both have the authority to make laws. Parliament can pass laws for all of Canada, but only about the areas that the Constitution assigns to it. A provincial or territorial legislature can make laws only about the areas that fall within its responsibility.

A complicating factor is that Canada has two major systems of law: civil law and common law. Matters of private law are governed by civil law in Quebec, while common law applies in the rest of the country. Federal bills and regulations must respect both common and civil systems of law, and must be documented in both English and French.

Indigenous customs and traditions have also contributed to alternative approaches to laws, such as healing and sentencing circles, community justice and restorative justice. The Indigenous Justice Program gives Indigenous Peoples the responsibility to administer justice in their respective communities.

4. Human Rights as the Basis for Policy-Making in Canada

i. The Constitution includes the Charter of Rights and Freedoms

Prior to the introduction of the *Charter of Rights and Freedoms*, the Government of Canada had passed the *Canadian Bill of Rights* in 1960. The Bill guaranteed basic rights and freedoms in federal law for the first time. While technically still in effect, it was superseded in 1982 by the Charter included in the Constitution. https://laws-lois.justice.gc.ca/eng/acts/c-12.3/page-1.html

Another notable piece of legislation is the *Canadian Human Rights* Act 1976-77. Its purpose is to prohibit discrimination in federal employment and in the provision of goods, services, facilities or accommodation generally available to the public. It prohibits discrimination on several grounds – notably, race, national or ethnic origin, gender and disability.https://laws-lois.justice.gc.ca/eng/acts/h-6/

The Act applies to the Government of Canada, First Nations governments and federally-regulated businesses, including banking, airlines, telecommunications and broadcasting, and interprovincial transportation. All provinces and territories have similar human rights laws that apply in each jurisdiction.

The Canadian Human Rights Commission was established under the *Canadian Human Rights Act*. The Commission is independent from the government and has the authority to research, raise awareness and speak out on any matter related to human rights in Canada. The Commission is also responsible for administering the law, which protects people from discrimination based on the prohibited grounds set out in the Act. https://www.chrt-tcdp.gc.ca/resources/guide-to-understanding-the-chrt-en.html

The Canadian Human Rights Commission is the first point of contact for registering a complaint under the *Canadian Human Rights Act*. The Commission has the authority to investigate discrimination complaints. If it finds the complaint was warranted, it will refer the case to the Canadian Human Rights Tribunal for a hearing.

While the Tribunal basically acts like a court, it is somewhat less formal. It hears evidence from witnesses about complaints of discrimination, decides whether discrimination has occurred and determines an appropriate remedy. Its decisions can have an impact on existing or future regulations and standards. https://www.chrt-tcdp.gc.ca/index-en.html

In 1980, Canada began the process to bring home – or patriate – the Constitution, which had been developed by the UK government. It is significant that the *Constitution Act*, which took effect in 1982, embeds a *Charter of Rights and Freedoms*. The general rights and freedoms set out in the Charter can be grouped into seven categories:

- fundamental freedoms
- democratic rights
- mobility rights
- legal rights
- equality rights
- official language rights
- minority language educational rights

The Charter affirms that Canada is a multicultural society. It also protects the rights of First Nations, Inuit and Métis.

In recent years, Section 33 of the Charter has become particularly noteworthy. Known as the "notwithstanding clause," it allows the federal and provincial/territorial governments to pass laws which, under exceptional circumstances, may violate certain Charter rights. Several provinces have recently used the notwithstanding clause to pass legislation that, in some cases, is deemed to breach these rights. https://www.justice.gc.ca/eng/csj-sjc/rfc-dlc/ccrf-ccdl/ check/art33.html

The Charter allows individuals to challenge government actions that are believed to violate their rights and freedoms. The most complex and controversial Charter-based challenges may end up before the Supreme Court of Canada, the highest legal authority in the country. In the past, these challenges have set legal precedents and have led to legislative changes.

The Supreme Court has heard several disability-related cases. One of the most noteworthy is the Eldridge case, named after Susan Eldridge who was born deaf. https://scc-csc.lexum.com/ scc-csc/scc-csc/en/item/1552/index.do

Ms. Eldridge preferred to communicate in sign language. While provincial law provided funding for medically required services, no funding was available for sign language interpreters. Ms. Eldridge argued that this lack of funding infringed her equality rights.

The Supreme Court agreed that her equality rights were infringed due to lack of access to medical care based on disability. Without sign language interpreters, people who are deaf are not able to communicate effectively with their doctors, which increases the risk of misdiagnosis and ineffective treatment.

The case was considered noteworthy for the principle it defended: Equality does not necessarily mean identical treatment for all. In certain cases, it may mean differential treatment for some. Disadvantaged groups may require additional or different services or programs to enable their full participation in the community and society, more generally.

ii. Human rights are also protected in international agreements

In addition to these human rights laws, the federal government must respect the human rights spelled out in the international agreements that this country has signed.

Canada has committed to a definition of rights by ratifying a series of international covenants – notably, the UN *Universal Declaration of Human Rights* (1948), *International Covenant on Economic, Social and Cultural Rights* (1966) and *International Covenant on Civil and Political Rights* (1966). Together, these three instruments comprise the *International Bill of Human Rights*. https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights

Through their signatures, nations accept responsibility to fulfill the obligations set out in these covenants. State parties voluntarily bind themselves to bring national legislation, policy and practice into line with these obligations.

Article 25 of the *Universal Declaration of Human Rights* gives all citizens the right to a standard of living adequate for the health and well-being of themselves and their families, including food, clothing, housing, medical care and necessary social services. hchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf

The protections provided in the *International Covenant on Economic, Social and Cultural Rights* are also relevant to disability policy. Article 11 recognizes the right of all citizens to a decent standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions. Article 12 speaks to the right to enjoy the highest possible standard of physical and mental health. Article 13 protects the right of all citizens to education. https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights

Especially relevant to this set of primers is the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD), which Canada ratified in 2010. Its purpose is to promote, protect and ensure the full and equal enjoyment of human rights and fundamental freedoms by all people with disabilities and to promote respect for their inherent dignity.

The CRDP provisions also uphold the principle of "nothing without us." People with disabilities – and, in fact, other underserved groups – have made clear the importance of being actively engaged in designing the policies, programs and services that directly affect their lives. Other principles set out in the Convention include:

- freedom for each person to make choices
- fair treatment of every person
- full participation and inclusion in the community
- acceptance of people with disabilities as part of human diversity
- equal opportunity regardless of disability or gender
- access to transportation, places and information, and not being refused access due to a disability

Articles 24-28 are particularly relevant to this discussion.

Article 24 spells out the right to education.

Article 25 and 26 concern the right of people with disabilities to the same range and quality of free or affordable health care as provided to others. People with disabilities also have the right to rehabilitation services.

Under Article 27, people with disabilities have an equal right to work at a freely chosen job without discrimination.

Article 28 ensures that people with disabilities have a right to food, clean water, clothing and access to housing.

A human rights approach contends that all people, regardless of ability or other differences, are entitled to the full rights and privileges of citizenship even though they may require differential treatment and conditions, including modifications of various environments, in order to exercise those rights.

This approach to disability is more proactive than simply reducing or removing multiple barriers that the policies and programs themselves often create. The CRDP provisions are important in that they place a positive obligation on governments to improve the quality of life of people with disabilities.

iii. A human rights approach involves a positive obligation

A human rights approach to disability involves a *positive obligation* in which governments are both expected and required to put in place measures to ensure full participation in society.

Public and private institutions not only must respond to the claims of people with disabilities and other marginalized groups. These institutions also have a duty to ensure that conditions are in place for the exercise of rights.

The *UN Convention on the Rights of Persons with Disabilities*, which was adopted in 2006 and entered into force in 2008, makes clear this obligation. As noted, Canada ratified the Convention in 2010.

To enable persons with disabilities to live independently and participate fully in all aspects of life, the Covenant requires States Parties to take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures shall include the identification and elimination of obstacles and barriers to accessibility https://www.ohchr.org/en/instruments-mechanisms/instruments/ convention-rights-persons-disabilities

There are several components to this obligation, which involve universal design and welcoming communities, reasonable accommodation and authentic inclusion related to education, housing and the labour market.

a. Universal design and welcoming communities

Part of the answer to active citizenship lies in universal or inclusive design, which refers to the design of products, environments, programs and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. Universal design is helpful not only for people with disabilities but for all community members, including older adults, children and parents with babies.

The concept and practice of universal design would apply to homes, workplaces and communities right from square one. It would not be necessary to spend substantial funds on retrofit because accessibility would be baked into the initial planning and design.

On a positive note, the federal government passed the *Accessible Canada Act.* https://laws-lois.justice.gc.ca/eng/acts/a-0.6/ Its purpose is to make Canada barrier-free in areas under federal jurisdiction. It sets out how to identify and remove accessibility barriers and prevent new barriers under federal rule, including in:

- built environments (buildings and public spaces)
- employment (job opportunities and employment policies and practices)
- information and communication technologies (digital content and technologies used to access it)
- procurement of goods and services
- delivery of programs and services
- transportation by air, rail, ferry and bus carriers that operate across a provincial or international border

While a major advance, the Act applies only to spaces and procedures in the federal domain. Provincial/territorial governments and municipalities must take similar proactive steps in their respective jurisdictions. Several have already moved in this direction.

b. Reasonable accommodation

Even with universal design and welcoming communities, additional modifications will always be required in order to accommodate individual need. In fact, the *Charter of Rights and Freedoms* recognizes that advancing equality does not necessarily mean treating all individuals the same way. Rather, it means accommodating difference.

The *Convention on the Rights of Persons with Disabilities* (CRDP) defines reasonable accommodation as the "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms." https://www.ohchr.org/en/instruments-mechanisms/instruments/ convention-rights-persons-disabilities

An accommodating society would make disability supports readily available and affordable. These supports would not be embedded in income programs but would be delivered separately to encourage participation in society and reduce disincentives to work.

c. Authentic inclusion

Perhaps the most important action in moving toward a human rights approach to disability is to ensure access to opportunities in education, housing and employment, which are available to all Canadians.

> Unless communities are organized to be inclusive of people with disabilities through education, employment, social, cultural and political processes, investments in services alone will not enable the realization of the right to live and be included in the community.
>
> https://www.inclusion-ghana.org/resources/reports/Global-Report-Living-Colour-dr2-2.pdf

Authentic inclusion means fewer disability-specific programs. At the same time, it is important to recognize that there will always be a need for additional supports for some individuals. This provision must be understood as an essential part of the equation. Moreover, the direct engagement of people with disabilities in the policy process is vital to any transformative change.

With respect to education, children with disabilities should be able to attend regular schools. While these children may need additional assistance or accommodation, they still should be able to participate in a classroom with peers their age. Addressing barriers to education involves policies and programs that cut across many domains.

People with disabilities must have greater choice in their housing options. Right now, many 'choose' between institutional or group home settings, and life with their parents or other family members. Living independently with a friend and/or personal support assistant is not an option due to the lack of accessible and/or affordable housing.

In a fully inclusive society, there would be no more sheltered or segregated workshops for people with disabilities. Various training initiatives would be carried out in the training facilities intended for all Canadians. Once again, modest additional assistance or accommodation might be required for some participants. There has been notable, but insufficient, progress on this front.

Similarly, employment opportunities would mean real jobs – not specially-funded make-work projects. Most people with disabilities want real jobs with

real pay, like all other workers. Those who are unable to participate in the paid labour market fully or at all should be eligible for an income top-up or guarantee. The new Canada Disability Benefit, discussed in the *Primer on Disability Income*, hopefully will provide this income assurance.

5. Key Policy Actors

i. Governments are the primary policy actors

The Constitution sets out the basic rules for how Canada operates. It identifies who is responsible for what.

From a social policy perspective, the federal government is primarily responsible for income security. It administers a range of programs, which are described in the *Primer on Disability Income* that is part of this series. Provinces and territories also provide income benefits through last-resort social assistance.

Provincial and territorial governments are primarily responsible for the delivery of health care, education and social services. The federal government delivers health care, education and social services to certain populations, notably Indigenous Peoples, veterans and refugees.

This primer focuses largely on these senior orders of government. However, local governments, which are created under provincial law, also play a vital role in promoting the quality of life.

Local governments determine the type, quality and quantity of available housing. They ensure the provision of clean water, garbage removal and sewers. They take care of green space, playgrounds and parks. They are responsible for local road safety. These governments operate libraries and community centres that provide opportunities for learning and participation.

It should be noted that we often speak about governments only from the perspective of how and what they spend. Canadians are all concerned about where our tax dollars go. The investment of these funds in the 'public good' is seen as governments' primary function. But they have other significant roles as well. They have a number of levers that can be employed to support change.

For instance, governments can lead by example. They can be an active employer of people with disabilities.

Governments can set standards which other organizations must respect. The *Accessible Canada Act*, for example, requires federally-regulated businesses, such as airlines and banks, to adhere to certain accessibility provisions.

Governments can offer incentives for certain activities or behaviours. They can provide grants to selected organizations for various purposes, such as developing new program models, delivering services or carrying out community-based research. They can introduce tax breaks to enable the purchase of disability-related equipment or the conversion of homes or buildings for accessibility.

Knowledge transfer is another important task. Governments can convene conversations among parties doing similar work so that they can learn from each other and scale their respective initiatives.

Finally, governments purchase many different kinds of goods and services. They can support social goals by buying goods and services from social enterprises or voluntary sector organizations.

ii. Governments are not the only policy actors

The federal government, provinces/territories and municipalities are the primary actors in the world of public policy. But the process of formulating policy is not unique to government. Private businesses develop policies regarding their employment practices as well as their relationships with customers and the community.

Large corporations, in particular, have formal human resource policies. These guidelines identify procedures related to hiring, wages and benefits, codes of conduct, leaves of absence and other company protocols. Human resource policies are intended to ensure that employees are treated equally and fairly.

School and universities have policies regarding student conduct. High schools expect students to arrive by a certain time, follow classroom instructions and do their homework. Universities require students to complete their assignments and pass specific exams as part of their certification in a given field.

Groups and organizations in the voluntary sector (sometimes referred to as 'civil society') are also actively involved in policy development. While they may receive funds from governments, they are not considered public bodies. Rather, they are run by their own board of directors and are responsible to their members.

Although voluntary organizations are considered private entities, they must follow certain government rules in order to receive and maintain their charitable status. Their financial records must be audited, for example, by a qualified third party. These completed audits must be filed with government by a specified date.

Many voluntary organizations deliver services directly to their members or to a designated population. They may provide skills training, for instance, to unemployed individuals or language training to new Canadians. In other cases, the mandate of these organizations is to carry out research and raise awareness about various concerns. Some groups and organizations do both – deliver services and raise public awareness.

Voluntary organizations are an essential part of democracy. They call attention to certain problems. They give voice to individuals who typically are excluded from meaningful participation in society. They raise important questions and act as a watch-dog on governments and corporations.

Groups and organizations in the voluntary sector often put forward proposals for reforming public policy. The disability community has been particularly active in this regard.

For example, the disability community had called for public action on accessibility and was pleased to see the introduction of the *Accessible Canada Act* in 2019. https://laws-lois.justice.gc.ca/eng/acts/a-0.6/ The community had also pointed out for years the high rate of poverty among people with disabilities. It reacted positively to the 2020 federal announcement of a new Canada Disability Benefit, discussed in the *Primer on Disability Income.*

A note of caution is in order at this point. There is often reference to the 'disability community' as though it represents a single entity. The reality is that this umbrella term includes many actors: people with disabilities and their families, disability-related groups and organizations, and researchers and academics with expertise in relevant subject areas.

The disability community consists of hundreds of disability-related groups and organizations throughout the country. They are typically disability-specific and may be linked together by a provincial/territorial or national association.

There are also organizations whose purpose is to join together these diverse views into a common voice. Regardless of specific condition, diverse groups generally face the same barriers to participation and inclusion.

In fact, there is a growing global movement rooted in the notion of intersectionality. This concept offers a way of understanding how multiple social identities, such as disability, gender, race, Indigeneity, sexual orientation, age and class, may coexist in an individual and/or a group.

When people live with more than one marginalized experience, their identities combine in interlocking systems of discrimination. It is important not to prioritize one identity over another, because that is not how these multiple identities are actually experienced. But even though people with disabilities identify with many other groups, they are rarely a central focus of the story.

Finally, this discussion about policy actors would not be complete without reference to the place of media in a democracy. Traditional media include television and radio news programming as well as major national and local newspapers.

These sources provide information about local, national and international issues which policy-makers and the public require in order to make responsible decisions. The media also perform a watchdog function by verifying facts and figures to ensure the accuracy of information delivered as news.

In recent years, social media have had a considerable influence by creating various platforms for wide-ranging opinion. Around the world, these platforms are enabling citizens to have a voice – to discuss their concerns, organize around causes and hold leaders accountable for their decisions. Compared with the traditional media of the past, social media allow the expression of a more diverse range of views.

It can be argued that these multiple new avenues have made public discourse more democratic by encouraging divergent perspectives. At the same time, some of these platforms have given rise to misinformation and have made it more challenging for citizens to differentiate fact from fiction. The policy landscape has become increasingly complex as a result.

6. The Policy-Making Process in Canada

i. Several steps are involved in creating a law

There are several steps, described below, involved in creating a law. Prior to the introduction of any new legislation, there is considerable work and discussion that take place. Most public policy initiatives take months, and sometimes years, before they become law and take effect (i.e., if the public policy process is successful).

The policy work is carried out largely by public servants who work in various government departments. They are required to consult with members of the public on major initiatives in which they are involved. There have long been questions about the consultation process – who gets invited to the table, how representative these consultations actually are, how early in the policy process these

consultations take place and how meaningful they are relative to the complexity of the identified concerns. There have been calls for improved opportunities for meaningful dialogue at the earliest possible stages of policy development.

Moreover, disability groups want to ensure that they are at the front and centre of the policy process. They are often on the periphery of decision-making or consulted after key decisions have been taken.

Community groups working on various policy proposals can use this developmental time as an opportunity to engage in discussions with their respective members, collect data, conduct high-quality research and develop practicable policy options. It is also essential for community groups and governments to involve advocates and front-line practitioners in the policy-making process in order to hear first-hand the stories and personal experiences of people who are affected by the particular issue – be it insufficient training or employment opportunities, unstable and low incomes, or lack of affordable housing.

Front-line workers bring a unique 'on-the-ground' perspective. Their voices are crucial to ensure the appropriateness of the identified issues and to propose responsive and effective solutions to these concerns.

Community groups can then share pertinent data, research results and policy proposals with selected government officials and the general public. The groups can also organize meetings with relevant ministers and their staff as well as other Cabinet members who can help influence their colleagues about the value of certain proposals.

The platforms of political parties represent another noteworthy policy arena. In the time leading up to an election, political parties are actively involved in crafting their respective policy agendas. This time period represents an important window of opportunity to put forward various policy options and influence the public policy agenda.

In short, there are many informal doors to the policy process. It is essential to be prepared with well-researched policy proposals and to create as many opportunities as possible to share these options. The more formal process, described below, involves Parliamentary hearings and possible legislation.

If the overall policy direction or specific proposal is deemed viable by the government in power, then it will eventually become an official part of the public agenda. The government's intention to work on a specific proposal is formally announced in the Speech from the Throne.

The Speech from the Throne opens every new session of Parliament. The Speech introduces the current government's direction and goals, and outlines how it will work to achieve them. The House of Commons and Senate cannot conduct public business until the Governor General officially reads the Speech.

Because of the wide range of public policy issues, it is not possible for elected members of Parliament to deal with each detail of every law. To expedite the legislative process, Parliament and provincial/territorial legislatures often allow government departments the authority to make special laws, called regulations. These regulations set out the specifics that enable the implementation of general laws.

Regulations are detailed instructions issued by regulatory bodies or public authorities on how laws are to be carried out or enforced. Because regulations or rules carry the force of law, their application is mandatory.

Regulations often give rise to guidelines known as standards. These are basically reference documents

that set out conditions or requirements on how to design, operate, manufacture and/or manage a program, service or procedure. For example, various standards on accessibility are currently being developed by Accessibility Standards Canada to provide guidance on designing accessible outdoor and indoor built environments.

In short, there are multiple opportunities for influencing policy at the legislative and regulatory stages as well as at the time of standards development, where relevant.

The first step in creating legislation is for staff in various departments to draft a Memorandum to Cabinet. While the Minister of the department responsible for the proposed piece of legislation plays the primary role in advancing any given legislative initiative, other members of the Cabinet also make important contributions to the process by raising questions, voicing concerns and ensuring that the views of their respective constituents are reflected as well in the draft legislation.

Following Cabinet approval, the Department of Justice drafts a bill. A bill is the text of a legislative initiative that the Government submits to Parliament to be approved, and possibly amended, before becoming law. This drafting is done in collaboration with the relevant department's policy and legal teams.

The bill is then introduced in the House of Commons for first reading. It is assigned a number and distributed to all members of Parliament. There is no discussion, debate or vote at this stage.

During second reading, the overall purpose of the bill is debated and voted on by all members of Parliament. If a bill passes second reading, it is sent to a House of Commons Committee.

A House Committee is a working group that consists of a limited number of members of Parliament. Members study the proposed bill in greater depth than is possible in the House of Commons.

Committees generally hold public hearings to listen to the views of key stakeholders. These include individual Canadians, groups and community organizations, experts in the subject area, public servants and Ministers. When these stakeholders appear before Committees, they are known as 'witnesses.'

Consumers and organizations typically present their views in the form of a written submission, known as a brief, which summarizes their position, comments and recommendations. Some Committees have developed guidelines to help witnesses prepare their briefs.

It is at this stage that organizations representing people with disabilities often become actively involved in the policy process. However, it may not be the first time they have discussed a given policy issue. They may have been working on certain policy issues for quite some time.

It typically takes years to go from proposal to policy or legislation. But the Committee stage may be the first time these groups or organizations have had the opportunity to present and defend their views in a public forum. As part of the Committee process, their concerns and recommendations are documented as part of the public record.

After public hearings and the receipt of submissions, the Committee carries out a clause-by-clause review of the bill. Members may propose amendments based on witness proposals as well as their own deliberations.

The Committee then issues a report that summarizes its reflections and recommendations. It may request that the government reply to its report within 120 days.

After the Committee stage, the bill is sent back to the House of Commons for third reading. This stage provides another opportunity for all Members of Parliament to discuss and debate the proposed piece of legislation. All Members then vote on the bill.

If a bill is passed in the House of Commons on third reading, it proceeds to the Senate where the same process of debate and study applies. After the Senate votes to approve a bill, it is submitted to the Governor General for Royal Assent.

While all bills go through the same stages, the legislative process has been made more flexible in recent years. The steps described here represent the typical route, which can be summarized as follows:

- memorandum to Cabinet
- preparation of draft bill
- first reading in the House of Commons
- second reading in the House of Commons
- House Committee review and report
- third reading in the House of Commons
- same steps as above – this time in the Senate
- Royal Assent by the Governor General

Once a bill becomes law, regulations must then be developed. As noted, regulations spell out the details and procedures for implementing the intent of the legislation. The government departments responsible for the law begin to formulate the regulatory proposals.

As part of this process, departments are expected to consult with stakeholders to seek their views on possible approaches. Draft regulations are subsequently formulated by the Department of Justice, based on written instructions provided by the relevant departments. The responsible Minister must review and approve the draft for publication.

The approved draft regulations are published in the *Canada Gazette*, the official newspaper of the federal government. It contains formal public notices, official appointments and proposed regulations. The publication process allows Canadians a final opportunity to provide feedback.

The responsible Minister must again review and approve the final regulations. These are published in the *Canada Gazette*, Part II, and come into force on the date designated in the regulations.

ii. The federal Budget plays a central policy role

The implementation of various laws and associated regulations require adequate financing. This is done through a formal budgetary process. The federal Budget is the major document that sets out the government's economic, social and environmental priorities for the year.

The Budget is generally tabled in Parliament early in the year – typically in February or March. It is released in advance of the government fiscal year, which begins on April 1. In recent years, the timing of the Budget had become less predictable, due largely to the need to respond to the COVID pandemic.

The Department of Finance is responsible for preparing the annual Budget. The process is formally initiated when the Minister of Finance sends a letter to other government Ministers, asking for their funding proposals. The letter often identifies major themes for the Budget.

Prior to drafting the Budget, the Department of Finance holds public hearings to gather Canadians' concerns, priorities and recommendations. Members of the disability community generally engage actively in this consultation process.

The Minister of Finance and the Prime Minister make the final decisions regarding the initiatives and programs to be funded. The Budget spells out how much money is to be allocated for various purposes and programs as well as how quickly these funds will be invested and over what period of time. Cabinet Ministers are informed of these decisions in a meeting prior to the Budget's release in Parliament.

Any announcements that require legislative change must be addressed through one or more *Budget Implementation Acts*. These Acts come later in the spring or fall.

As noted, the federal government makes payments directly to individuals and families through income programs, such as the Canada Child Benefit, Canada Workers Benefit and Old Age Security. Expenditure on these programs is detailed in the federal Budget. (These programs are discussed in the *Primer on Disability Income*.)

Ottawa also invests indirectly in various programs and services through the funds it sends to provincial and territorial governments. The amount of these allocations, known as federal transfers, is presented in detail in the Budget document.

iii. Federal transfers are special payments to provinces and territories

The following section describes only those transfers pertaining primarily to social policy and disability policy. The transfers discussed below have evolved over time and have looked quite different in the past.

Moreover, these federal transfers will likely change and evolve in future. They should be understood as a continuing story. But for now, the primary federal transfers relevant to social policy are the:

- Canada Health Transfer
- Canada Social Transfer
- Equalization
- Territorial Formula Financing

The Canada Health Transfer and Canada Social Transfer are the two main instruments that Ottawa employs to direct funds to provincial/territorial governments in support of health care and social programs, respectively. There are also several transfers that help pay for labour market training, notably the Labour Market Development Agreements and Workforce Development Agreements.

a. Canada Health Transfer

The purpose of the Canada Health Transfer (CHT) is to provide long-term predictable financing for health care systems throughout the country. https://www.canada.ca/en/department-finance/programs/federal-transfers/canada-health-transfer.html

The CHT financing arrangement upholds the five principles set out in the *Canada Health Act*: https://www.canada.ca/en/health-canada/services/health-care-system/canada-health-care-system-medicare/canada-health-act.html

- comprehensiveness
- universality
- portability
- public administration
- accessibility

In order to qualify for the federal cash transfer under the CHT, provinces and territories must comply with these principles. These are intended to maintain, in theory at least, an accessible health care system by prohibiting extra-billing by doctors and user charges by hospitals.

The amount of the CHT is calculated on an equal per capita basis. This means that all provinces and territories receive a set amount of funding for each resident in their respective jurisdictions. In 2023-24, Ottawa will transfer $49.4 billion to the provinces and territories under the CHT agreement.

The CHT currently consists of a cash payment only. In the past, the federal government also provided indirect financial assistance in the form of tax points, which allowed provinces and territories more capacity to raise their own revenues.

Ottawa can decide if it wants to add to or top up the amounts under the transfer formula. It can direct additional funds to tackle specific health concerns.

Under an agreement struck between the federal and provincial/territorial governments in 2016, for example, Ottawa will transfer an extra $1.5 billion over ten years. The funds are intended to improve home and community care as well as mental health and addiction services.

In July 2022, the federal government announced an additional $2 billion as a one-time top-up to the CHT. The purpose of these funds is to help provinces and territories reduce the backlog of surgeries and procedures that had been delayed by the COVID pandemic.

Unfortunately, the health care system itself is in need of emergency assistance. Even before the stresses of COVID, it had experienced serious problems related to long wait times and work overload.

The provinces and territories have called for a substantial increase in federal health care transfers. For its part, the federal government has argued that any increase in financing must come with accountability for results.

Not surprisingly, the provinces and territories prefer pay with no say. They would like no conditions or very few strings attached to the transfers they receive from Ottawa. The availability, quality and funding of health care are the subjects of ongoing policy debate.

After extensive negotiations, the federal and several provincial governments finally reached a new funding deal. In February 2023, Ottawa proposed a $198.6 billion, 10-year health financing agreement, of which $46.2 billion is new funding. https://pm.gc.ca/en/news/news-releases/ 2023/02/07/working-together-improve-health-care-canadians

This funding includes an immediate, unconditional $2 billion Canada Health Transfer (CHT) top-up to address immediate pressures on the health care system. Another $17.3 billion will help increase the federal transfer over the next 10 years faster than planned. While the per capita formula will remain in place, smaller provinces will get a bigger share to help them keep pace with new demands.

Of the total, $25 billion will go toward bilateral – or one-on-one – deals with each province in four areas of shared priority: family health services;

health workers and backlogs; mental health and substance use; and a modernized health system. In order to receive the funds, all provinces must develop specific plans regarding future expenditures and clear quality improvements.

b. Canada Social Transfer

The Canada Social Transfer (CST) supports three broad areas of social programs: https://www.canada.ca/en/department-finance/programs/federal-transfers/canada-social-transfer.html

- social assistance and social services
- early childhood development, early learning and child care
- postsecondary education

Unlike the CHT, which requires adherence to the conditions set out in the *Canada Health Act*, the CST is paid to provinces and territories on a largely unconditional basis. There is one exception: Provinces and territories are not allowed to impose minimum residency requirements when determining eligibility for social assistance.

Since 2007-08, the CST has been calculated on an equal per capita cash basis, according to the population of each jurisdiction. As of 2009-10, CST funding has been legislated to grow by three percent annually.

In 2023-24, the federal government will transfer a total of $16.4 billion to the provinces and territories under the CST. They do not need to report how these funds are spent.

c. Equalization

Equalization is a third major federal transfer. Its purpose is to ensure that all provinces have the financial capacity to offer residents similar services at comparable rates of taxation. https://www.canada.ca/en/department-finance/programs/federal-transfers/equalization.html There is a separate program (Territorial Formula Financing) for the Yukon, Northwest Territories and Nunavut.

The funds under this transfer arrangement are paid unconditionally. This means that provinces are free to spend the funds according to their own priorities. In 2023-24, the federal government will transfer a total of $24.0 billion in fiscal equalization payments. Equalization was written into the Canadian Constitution in 1982. By reducing differences in the financial capacity of provincial governments, this transfer reduces the wide disparities in services that would occur without these payments. The arrangement was intended to ensure that all Canadians are treated relatively equally.

Unfortunately, the calculation of the Equalization formula has been fraught with problems over the years. One main challenge is how to account for the value of natural resources. Resource-rich provinces typically have argued that they pay money into the federation but don't receive their fair share of funds in return. This particular transfer will likely be the subject of ongoing debate between Ottawa and the provinces.

d. Territorial Formula Financing

The three territorial governments in Canada do not receive Equalization transfers. Ottawa assists these governments through a separate program called Territorial Formula Financing (TFF). https://www.canada.ca/en/department-finance/programs/federal-transfers/territorial-formula-financing.html In 2023-24, the federal government will transfer an estimated $4.8 billion under this arrangement.

Similar to Equalization, the purpose of the TFF is to enable the Territories to provide public services in the North that are comparable to those offered

by the provinces in the South and at relatively similar levels of taxation. The TFF helps recognize the high cost of delivering these services to a large number of sparsely-populated, remote communities.

iv. Ottawa also collects revenues

Discussions about financing in Canada typically focus on the expenditure side of the equation. Of course, there must be revenues in order to have expenditures.

Ottawa generates funds primarily through taxation. Most of us are familiar with the income tax we pay on our earnings and the sales tax we pay on the goods and services we purchase.

Payroll contributions are paid by employers and employees. Businesses pay corporate taxes. Excise taxes are levied on certain goods, such as fuel-inefficient vehicles, while excise duties are imposed on alcohol, tobacco and cannabis products.

There are other forms of revenue as well, such as fees for certain services. For example, Canadians pay a fee for a passport to travel outside of the country or for the processing of a trademark or patent for a business.

Conclusion

The core policy concepts discussed in this overview are intended to set the stage for more specific policy discussions. The *Primer on Disability Income*, which is part of this series, will explore that policy domain in more depth.

Sherri Torjman

Appendix A: Selected Federal Disability Initiatives

Selected Landmark Reports

Obstacles 1981

In respect of the International Year, the federal government appointed an all-party Special Committee on the Disabled and the Handicapped to undertake a comprehensive review of federal legislation pertaining to persons with disabilities. The Committee produced the *Obstacles* report, which put forward 130 recommendations on all aspects of public policy including human rights, income security, assistive devices, transportation and communications. https://parl.canadiana.ca/view/oop.com_HOC_3201_8_4/8

The major achievement of the Committee was to ensure the inclusion of people with physical and mental disabilities in the equality rights section of the *Charter of Rights and Freedoms* introduced in 1982. Canada continued its work in this area throughout the United Nations Declaration of the International Decade of Disabled Persons (1982-1993).

The inclusion of physical and mental disability as a prohibited ground of discrimination in the *Charter of Rights and Freedoms* was important for two reasons. First, it effectively set the federal government as a champion of the rights of persons with disabilities. Second and equally important, the provisions of the Charter affect all jurisdictions. The Charter protections confer certain obligations on the federal government as well as the provinces and territories to take positive steps to protect and promote equality rights.

Equality in Employment: A Royal Commission Report 1984
In 1984, the federal government established the Royal Commission on Equality in Employment to examine the employment practices of 11 designated crown and government-owned corporations. The inquiry was led by Justice Rosalie Abella and is sometimes referred to as the "Abella Commission."

The mandate of the Commission was to explore the most efficient, effective and equitable means of promoting equality in employment for four groups: women, Indigenous peoples, people with disabilities and racialized groups. The findings are summarized in its *Equality in Employment* report. https://publications.gc.ca/collections/collection_2014/rhdcc-hrsdc/MP43-157-1-1984-1-eng.pdf

The first section of the report, entitled "The Case for Equality," identifies the factors that comprise equality in employment. It summarizes the concerns of the identified groups as well as the results from the questionnaires completed by the 11 designated corporations about possible solutions to employment inequities.

The second part of the report, entitled "Implementing Equality," considers proposals to eradicate workplace barriers. Education and training are highlighted as the key tools to enable members of the four groups to qualify for and compete more equitably for employment opportunities.

Equality for All 1985
In 1985, the House of Commons Committee on Equality Rights issued *Equality for All*, which developed an equality framework for meeting the specific needs of persons with disabilities. https://parl.canadiana.ca/view/oop.com_HOC_3301_24_4/1 That same year saw the establishment of the federal Status of Disabled Persons Secretariat whose mandate was to raise awareness and support the full participation of persons with disabilities.

Challenge: Putting Our House in Order 1987
In 1985, Parliament set up a Sub-Committee on the Disabled and the Handicapped, which explored the question of access to employment in the federal government. It produced the report *Challenge: Putting Our House in Order* to encourage the preparation of federal actions plans to achieve employment equity.

A Consensus for Action: The Economic Integration of Disabled Persons *1990*
In its 1990 report, *A Consensus for Action: The Economic Integration of Disabled Persons*, the House of Commons Standing Committee on Human Rights and the Status of Disabled Persons recommended that all federal departments, Crown corporations and agencies be required to review and reform legislation and regulations in order to promote the integration of people with disabilities. The report called for an effective mechanism to ensure ongoing monitoring of all policy, legislation and regulations pertaining to people with disabilities. https://books.google.ca/books/about/A_Consensus_for_Action_the_Economic_Inte.html?id=dN8ZjwEACAAJ&redir_esc=y

Pathway to Integration: Final Report, Mainstream 1992
In 1992, the conference of Federal/Provincial/Territorial Ministers of Social Services announced a Mainstream Review to develop a collective strategic framework for the full integration of Canadians with disabilities. The Review proposed a conceptual framework to support the shift from segregation to mainstreaming – from 'warehouse' to 'open house.'

As True as Taxes: Disability and the Income Tax System *1993*
In 1993, the House of Commons Standing Committee on Human Rights and the Status of Disabled Persons produced *As True As Taxes: Disability and the Income Tax System.* The report explored the tax measures directed specifically toward persons with disabilities and proposed several reforms of these measures.

Completing the Circle 1993
That same year, the House of Commons Standing Committee on Human Rights and the Status of Disabled Persons published the report *Completing the Circle.* The report highlighted the wide-ranging and unique needs of Indigenous Canadians with disabilities. https://www.google.ca/books/edition/COMPLETING_THE_CIRCLE_A_REPORT_ON_ABORIG/J500zwEACAAJ?hl=en

The Grand Design: Achieving the Open House Vision 1995
In 1995, *The Grand Design: Achieving the Open House Vision* further developed the 'open house' vision put forward in the *Mainstream Review.* The *Grand Design* assessed the successes and limitations of the National

Strategy for the Integration of Persons with Disabilities. The report recommended the appointment of a Secretary of State to coordinate federal activities related to disability, conduct a mandatory impact assessment of all proposed measures and prepare an annual report to be referred to a House of Commons Standing Committee.

Equal Citizenship for Canadians with Disabilities: The Will to Act 1996
The Federal Task Force on Disability Issues (also known as the 'Scott Task Force') was established in June 1996 by the Ministers of Human Resources Development, Finance, Revenue and Justice. Its mandate was to make recommendations on the role of the federal government as it relates to people with disabilities.

The Task Force recommended the application of a 'disability lens' in the development of all laws, policies and programs. It also suggested an ongoing accountability mechanism to track government actions, the publication of an annual report, changes to existing labour market programs and improved tax assistance to help offset disability costs.

The Task Force organized 16 public consultations throughout the country. It commissioned research papers on five issues: national civil infrastructure/citizenship, legislative review, labour market integration, income support and the tax system. In October 1996, the Task Force issued its report entitled *Equal Citizenship for Canadians with Disabilities: The Will to Act.* https://www.crwdp.ca/sites/default/files/Research%20and%20Publications/Enviornmental%20Scan/4.%20Federal%20Task%20Force%20on%20Disability%20Issues/Equal%20Citizenship%20for%20Canadians%20with%20Disabilities%20-%20The%20Will%20to%20Act.pdf

In Unison: A Canadian Approach to Disability Issues 1998
The principles of citizenship and inclusion comprised the foundation of the federal-provincial/territorial vision paper *In Unison: A Canadian Approach to Disability Issues*, which was published in 1998 by the Federal-Provincial/Territorial Ministers Responsible for Social Services. https://www.crwdp.ca/sites/default/files/Research%20and%20Publications/Enviornmental%20Scan/5.%20In%20Unison/1.%20In%20Unison%20-%20A%20Canadian%20Approach%20to%20Disability%20Issues%20-%20Compressed.pdf

In Unison described three building blocks - disability supports, employment and income - in which changes must be made to promote inclusion. Each of the building blocks identified a set of objectives and associated policy directions for the federal and provincial/territorial governments. Proposals included ensuring greater access to disability supports and offsetting disability-related costs, enhancing employment opportunities for people with disabilities and removing work disincentives in current income programs.

The commitment to its principles was reinforced in a follow-up report, *In Unison 2000: Persons with Disabilities in Canada.* https://www.crwdp.ca/sites/default/files/Research%20and%20Publications/Environmental%20Scan/5.%20In%20Unison/2.%20In%20Unison%202000%20-%20Persons%20with%20Disabilities%20in%20Canada.pdf

Selected Noteworthy Developments

Annual reports on disability
The federal government began to publish annual reports on disability issues. Each report focused on a specific theme of concern to the disability community. The 2010 Federal Disability Report, for example, was the eighth annual report in this series. It explored the role of accessibility in ensuring that Canadians with disabilities are able to achieve the highest possible quality of life.

Convention on the Rights of Persons with Disabilities (CRDP)
In 2010, Canada ratified the United Nations *Convention on the Rights of Persons with Disabilities* (CRDP). https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html Since the adoption of the CRDP, the human rights agenda has shaped the disability conversation. In 2012, for example, the Canada Human Rights Commission published a report entitled the *Report on Equality Rights of Persons with Disabilities*. https://www.chrc-ccdp.gc.ca/sites/default/files/rerpd_rdepad-eng.pdf

Disability Inclusion Plan 2020
The federal government announced a Disability Inclusion Plan in the 2020 Speech from the Throne. The Plan has three components:

- a new Canadian Disability Benefit modelled after the Guaranteed Income Supplement for seniors
- a robust employment strategy for Canadians with disabilities
- a better process to determine eligibility for government disability programs and benefits

The associated Disability Inclusion Action Plan announced in 2022 spelled out five key objectives to implement the 2020 Disability Inclusion Plan. https://www.canada.ca/en employment-social-development/programs/disability-inclusion-action-plan.html The federal government intends to:

- reduce poverty among Canadians with disabilities
- get more persons with disabilities into good quality jobs
- help meet the *Accessible Canada Act* goal of a barrier-free Canada by 2040
- make it easier for persons with disabilities to access federal programs and services
- foster a culture of inclusion

These objectives are clustered under four interrelated pillars: financial security, employment, accessible and inclusive communities, and a modern approach to disability. https://www.canada.ca/content/dam/esdc-edsc/documents/programs/disability-inclusion-action-plan-2/action-plan-2022/ESDC_PDF_DIAP_EN_20221005.pdf

Since these groundbreaking announcements, the disability community has focused significant time and effort in helping to shape the design of the Canada Disability Benefit. This new benefit is discussed in the *Primer on Disability Income.*