

Right Honourable Justin Trudeau, Prime Minister of Canada  
80 Wellington Street  
Ottawa, ON K1A 0A2  
E: pm@pm.gc.ca

January 13, 2020

Dear Prime Minister:

**Re: Schizophrenia and the UN Convention on the Rights of Persons with Disabilities, Mental Health Acts, the Criminal Code**

We, the Schizophrenia Societies of Saskatchewan and British Columbia, support the Government of Canada's ratification with its reservation of the UN Convention on the Rights of Persons with Disabilities (CRPD). However, we are very much alarmed that Canada may remove the reservation and encourage the enactment of the requirements of the UN Committee that provides the interpretation and monitoring of the CRPD. Both of these actions would imperil the health and lives of many people with schizophrenia and their families.

We seek your assurance that Canada will not drop its reservation in its April 2020 report to the UN CRPD Committee. Furthermore, we would like your assurance that Canada will not accede to the UN Committee's requirement that the 'Not Criminally Responsible on account of Mental Disorder' (NCRMD) defense be eliminated from the Criminal Code. While Mental Health Acts are a provincial responsibility, we are concerned that the Federal government might inadvertently support banning Mental Health Acts as required by the UN Committee.

Many people with schizophrenia do not accept they have an illness and refuse voluntary treatment, due to delusions, thought disorders and/or anosognosia. This, in turn, can lead to abandonment, as well as serious harm to self or others, caused by untreated illness. Currently, thousands of people too ill to accept voluntary admission are able to receive the necessary help they require because of involuntary treatment. Banning involuntary admission and treatment under 'Substitute Decision Making' could have disastrous implications – harm to themselves, but also great harm to others across our country. However, the UN Committee wants to abolish Substituted Decision Making, the mainstay of Canadian mental health laws.

According to the UN official committee, Canada is now in contravention of the CRPD. In order to *not* be in contravention, Canada must do the following:

- Eliminate all involuntary psychiatric admissions
- Eliminate all involuntary psychiatric treatment in hospital
- Eliminate all compulsory psychiatric community treatment
- Eliminate the *Not Criminally Responsible on Account of Mental Disorder* (NCRMD) defense in the Canadian Criminal Code
- Ban mental health courts used to divert people from the justice system
- Abandon Canada's ratification reservation

The UN Rapporteur made these positions very clear after recently visiting Canada. She wrote:

*“Legislation across Canada provides for the involuntary hospitalization and treatment of persons with psychosocial disabilities, in contradiction to article 14 and 25 of the CRPD.”<sup>1</sup>*

The Rapporteur is repeating the interpretation of the UN Committee, which states:

*“Committal of individuals to detention in mental health facilities, or imposition of Community Treatment Orders contravene the convention and must be eliminated.”<sup>2</sup>*

Furthermore, the UN High Commissioner for Human Rights has stated that the NCRMD defense also contravenes the convention and must be eliminated:

*“In the area of criminal law, recognition of the legal capacity of persons with disabilities requires abolishing a defense based on the negation of criminal responsibility because of the existence of a mental or intellectual disability.”<sup>3</sup>*

Adopting the extreme position of eliminating all involuntary admission and treatment in hospitals and within the community means that each year approximately 100,000 Canadian citizens with a serious mental illness (often suffering from psychosis who cannot accept voluntary treatment) must be abandoned. They will not be admitted as involuntary patients as they are now. Instead, many in a psychotic, dangerous state will be sent back to shelters, to homelessness, to single room occupancy units with no supervision, or to distressed families. Continued suffering, dangerous relapses, suicides, and criminal and prison involvement will all increase, and persons’ rights of autonomy, dignity and empowerment will be stolen by untreated mental illness.

Furthermore, the elimination of the NCRMD designation will result in offenders suffering from mental illness not being treated in forensic psychiatric hospitals, but going directly to penitentiaries and prisons. In prison, they will not receive desperately-needed medical treatment and will be victimized by other inmates. They will be incarcerated for long periods, losing their right to health, safety, liberty and other human rights.

Canada ratified the CRPD with the following reservation:

*“To the extent that Article 12 may be interpreted as requiring the elimination of all substitute decision-making arrangements, Canada reserves the right to continue their use in appropriate circumstances and subject to appropriate and effective safeguards.”*

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<sup>1</sup> End of Mission Statement by the United Nations Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas-Aguilar, on her visit to Canada, Ottawa, 12 April 2019

<sup>2</sup> (CRPD 2013) UN committee on the rights of persons with disabilities (CRPD). Concluding observations on the initial report of Australia [Internet]. Adopted by the Committee at its 10th session, [Cited 2013 September 2-13]. Available from: <http://www.refworld.org/docid/5280b5cb4.html>

<sup>3</sup> United Nations high commissioner for human rights and reports of the office of the high commissioner and the secretary-general, Annual Report. Thematic study by the office of the United Nations high commissioner for human rights on enhancing awareness and understanding of the convention on the rights of persons with disabilities [Internet]. A/HRC/10/48 [Cited 2009 January 26]. p.15 at 47. Available from: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/10session/A.HRC.10.48.pdf>

The UN Committee says that only ‘Supported Decision Making’ satisfies the CRPD and that ‘Substitute Decision Making’ does not. We strongly support Canada’s reservation because we know that many people with schizophrenia, even when provided support by family, professionals or peers would “choose” not to be admitted or receive treatment. We strongly believe that Canada’s reservation, which is similar to that of Australia and the UK, must be kept for the following reasons:

- It is a defense against the CRPD interpretation that all involuntary hospital admission and treatment must be abolished.
- It is a defense against the CRPD interpretation that all substitute decision-making and “best interest” legislation must be abolished. That includes all guardianship, mental health laws, and similar legislation used in all Canadian jurisdictions.
- It may be a defense against the abolition of the NCRMD provisions in the Criminal Code of Canada.

For its next report to the CRPD Committee, due April 2020, we urge the Government of Canada to take the following positions:

- Canada must keep its reservation regarding the ratification of the CRPD<sup>4</sup>.
- Canada does not agree with the Rapporteur’s and the Committee’s interpretation that the CRPD requires the banning of all mental health involuntary admission and treatment in Canadian provinces and territories.
- Nor does Canada agree to the ban on the *Not Criminally Responsible on Account of Mental Disorder* provisions in the Criminal Code.

We have attached ‘*Why Canada Should Retain Its Reservation on the United Nation’s Convention on the Rights of Person with Disabilities*,’ Canadian Journal of Psychiatry, as well as the Lancet article ‘*Reversing Hard Won Victories in the Name of Human Rights: A Critique of the General Comment on Article 12 of the UN Convention on the Rights of Persons with Disabilities*,’ which are supportive of our concerns. We have also attached a reply from the Attorney General of BC.

Thank you for addressing this extremely important issue to help protect all Canadians, and assist people suffering with this serious brain illness and their families. We look forward to your reply.

Most respectfully,



Bruce McKee  
President  
Saskatchewan Schizophrenia Society



David Halikowski  
President  
British Columbia Schizophrenia Society

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<sup>4</sup> Mathieu Dufour, MD, FRCPC, Thomas Hastings, MD, FRCPC, and Richard O’Reilly, MB, FRCPC. Canada Should Retain Its Reservation on the United Nation’s Convention on the Rights of Persons with Disabilities. The Canadian Journal of Psychiatry, 2018, 63, 809-812, <https://doi.org/10.1177/0706743718784939>.