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Sub-Theme 7:  
Equality at work:  
How are equality and inequality at work evolving and what does this mean for achieving citizenship at work  

A Forgotten Cohort:  
Citizenship at Work and Persons with Disabilities  

by  
Ron McCallum\(^1\) and Hannah Martin\(^2\)  

1. Introduction  

Good afternoon ladies and gentlemen. It is both an honour and a pleasure for us to deliver this paper at the New Frontiers for Citizenship at Work in Montreal.  

The research and writing of Ron McCallum as a member of CRIMT has thus far mainly concerned industrial citizenship which is now better known as citizenship at work.\(^3\) In his writings, Ron McCallum has sought to unpack the meaning of the concept of citizenship as it applies to workers.  

This afternoon, we will involve in this discussion of "New Frontiers" a group of workers who are often left out of the discourse on the needs and aspirations of citizens at work: workers with disabilities. Our goal is to analyse the barriers to full citizenship for this group of workers (and potential workers) and to propose some constructive means to redress their inequality at work and so for them to achieve full citizenship at work. We focus in this paper on employment of persons with disabilities in Australia and in Canada.  

In this presentation, first, we will examine the situation of persons with disabilities as regards employment, canvassing their unacceptably low labour force participation rates and explaining why this is a problem. It is fundamental to our thinking on this topic that persons with disabilities both can, and should, be allowed to work.  

We will then turn to explain the international law framework governing the rights of persons  

\(^1\) Professor Emeritus, Faculty of Law, University of Sydney, and Vice-Chairperson, United Nations Committee on the Rights of Persons with Disabilities. The views expressed in this paper are the views of the authors and are not necessarily the views of the United Nations Committee on the Rights of Persons with Disabilities.  

\(^2\) BA (Hons), LLB (Hons) (Sydney), Honorary Associate, Faculty of Law, University of Sydney.  

with disabilities. This paper takes as its starting point the principle that the fullest statement of the rights of persons with disabilities is the United Nations Convention on the Rights of Persons with Disabilities (CRPD). We will briefly explain the Convention and its monitoring Committee and will consider what it has to say about work for persons with disabilities. In 20013, the Human Rights Council also discussed the employment of persons with disabilities and we shall comment on its work and also on the employment aspects of the International Covenant on Economic, Social and Cultural Rights (IESCR). We will also consider the normative standards set by the International Labour Organisation (ILO) on the employment of persons with disabilities.

Having explained these standards, we will then consider the reality, and will attempt to bridge the gap between ideal and reality by considering and comparing efforts that have been made to improve persons with disabilities' access to work, their participation in work and ultimately, their status as full citizens at work.

Over the six and a half decades of Ron’s life, many significant changes which have occurred with respect to persons with disabilities. Many of the old stereotypes are being broken down, education is more widely available, and access to buildings, to transport and to information has improved. Of course there is still much to do to bring persons with disabilities onto a level playing field, and employment requires significant improvement. The aim of this paper is to raise awareness about employment of persons with disabilities and to make clear of how important – and how achievable – is citizenship at work for persons with disabilities.

2. Setting the scene

The importance of employment

The 2011 joint World Health Organisation and World Bank report on disability showed that 15% of the world's population, approximately one billion people, are persons with disabilities. Approximately 80% live in developing countries. In most nations disability, is synonymous with poverty and often with social exclusion. That is true across the world, even in developed countries like Canada and Australia. Although there are many complex factors that put and keep people in poverty, access to fair and productive employment is a particularly important one. Access to employment is one area in which nearly all nations struggle to achieve full inclusion for persons with disabilities, who really are a forgotten cohort.

Work and employment defines us as persons. The right to work is a fundamental human right. As the Office of the High Commissioner for Human Rights has identified,

The right to work is essential for realizing other human rights and forms an inseparable and inherent part of human dignity. Work usually provides livelihood to the person and her or his family, and insofar as work is freely chosen or accepted, it

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6 World Health Organisation and The World Bank, above n 4, 235.
contributes to the person’s development and recognition within the community.\(^7\)

In most social situations, after names have been exchanged, the next words will be, “What do you do?” In other words, what sort of person are you, and how are you contributing to the progress of the nation through your work and with your skills. This is equally true for persons with disabilities, as it is for everyone else. As the World Bank and World Health Organisation have argued, “almost all jobs can be performed by someone with a disability, and given the right environment, most people with disabilities can be productive.”\(^8\)

Ensuring that people have decent work is also the most effective way to prevent them falling into welfare dependence and to a cycle of marginalization, poverty and social exclusion. There is a close connection between lack of access to work – to work at all, or to decent and fairly remunerated work – and poverty and social exclusion. One of the hallmarks of citizenship is employment or self-employment. Work not only enables us to earn remuneration to support ourselves and our families, but it allows us to contribute to the growth of our nation through the utilisation of our skills. Employment is a route out of poverty and towards social inclusion. It can provide lead to economic independence, increased living standards and improved health (both physical and mental).\(^9\)

It is one of the central modern social problems that so many persons with disabilities are unemployed or under-employed or under-utilised. It is also the case that so many persons with disabilities are confined to part-time positions in low paying jobs requiring minimal skills. At the outset, Ron wishes to say that from his own experience as a person with a disability, it is very difficult for persons with disabilities to find secure and satisfying employment. Statistics bear this out across the world. Turning specifically to the position of Australians and Canadians with disabilities in the realm of employment, we find similarities between the labour force participation rates of persons with disabilities in both countries.

In 2009, just under one in five working age Australians (that is 18.5% or 4.0 million persons) reported having a disability.\(^10\) At that time, the labour force participation rate for persons with disabilities aged 15 to 64 years was 54.3%, compared to 82.8% for the Australian workforce.\(^11\) Whereas the labour force participation rate for workers without disabilities had been growing since 1993, the labour force participation rate for persons with disabilities stayed steady throughout that period. The gap between persons with and without disabilities’ participation rates was greatest for this age group, however the trend was the same across every single age group: significantly lower labour force participation. Encouragingly, the gap


\(^8\) World Health Organisation and The World Bank, above n 4, 235.


was smallest among the 15-24 age group, however, as the demographics of the workforce change with the aging of the population, it may be that the more profound disabilities of older workers could increase the participation gap between workers with disabilities and the general workforce.

In 2009, approximately one million working age people with disabilities were in paid employment, comprising 10% of the total Australian workforce.\textsuperscript{12} The unemployment rate for persons with disabilities was 7.8% when compared with the general unemployment rate of 5.3 per cent.\textsuperscript{13} The stark reality is that nearly half (46%) of working-age people with disability were not in the labour force in 2009, and more than half of these (59%) were permanently unable to work.\textsuperscript{14} In 2009, the labour participation rate for men with disabilities was 55%, compared with 45 per cent for women with disabilities.\textsuperscript{15}

This low level of employment has persisted, certainly over the previous decade and beyond. In recent updates to the 2009 statistics, the Australian Bureau of Statistics revealed that between 2009 and 2012 the labour force participation of Australians aged 15 to 64 years remained steady for those with disability (54% in 2009 and 53% in 2012), albeit below those without disability (83% in 2012).\textsuperscript{16} It is troubling that since 2009, the rate of unemployment for those with disability has increased (9.4% in 2012 compared with 7.8% in 2009) while remaining steady for those without disability (4.9% in 2012 and 5.1% in 2009).\textsuperscript{17}

Labour force participation for women with disability has remained steady since 2009 at 49%, but has declined since 2009 for men with disability (from 60% to 57%).\textsuperscript{18} There are also very different rates of participation by people with different disabilities. In 2009, persons with mental disabilities or behavioural problems only had a labour force participation rate of 41.9 per cent.\textsuperscript{19} The unemployment rate for persons with mental disabilities or with behavioural disorders was 14.9 per cent.\textsuperscript{20}

These unemployment figures do not tell the whole story because governments do not wish to count all persons who are able to work and who may be seeking work as unemployed. We are not authorities on Australian unemployment statistics, but we can be clear that all persons who are in receipt of disability benefits are not counted as unemployed. Similarly, the spouses of persons in fulltime work are also not counted amongst the unemployed.

\textsuperscript{12} Australian Bureau of Statistics, Catalogue 4102.0 - Australian Social Trends, March Quarter 2012 (4 April 2012).
\textsuperscript{13} Australian Bureau of Statistics, Catalogue 4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2009 (16 December 2009).
\textsuperscript{14} Australian Bureau of Statistics, Catalogue 4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2009 (16 December 2009).
\textsuperscript{15} Australian Bureau of Statistics, Catalogue 4102.0 - Australian Social Trends, March Quarter 2012 (4 April 2012).
Canada’s initial report to the Committee on the Rights of Persons with Disabilities gave a disability rate of 14.3% (in 2006), meaning that over 4.4 million Canadians, or about one in seven, had an activity limitation or participation restriction associated with a physical or mental condition or health problem: 8.6% reported mild to moderate disabilities, while 5.7% reported severe to very severe disabilities.\(^{21}\)

According to the latest available Canadian survey on disability which is compiled every five years, in 2012 an estimated 3.8 million adult Canadians reported being limited in their daily activities due to a disability in 2012. This represents 13.7% of the adult population.\(^{22}\) In the previous survey, from 2006,\(^{23}\) there were 2,457,350 people with activity limitations in Canada between the ages of 15 and 64 who potentially could have participated in the labour force.\(^{24}\) Of this group, 1,259,980, that is 53.1% were employed, with 119,340 that is 4.9% unemployed, and 1,078,020, that is 43.9% not in the labour force.\(^{25}\) Compared to the population without disabilities, there were a larger proportion of people with disabilities who were not in the labour force. These same figures for people without disabilities were 75% in the labour force, 5% were unemployed and 20% were not in the labour force.\(^{26}\)

In both Australia and Canada, the type of disability a person possesses also has a significant effect on their ability to gain employment. In Australia, in 2009, People with sensory or speech impairments had the best labour market outcomes with a participation rate of 54% and an unemployment rate of 7.0%, while people whose disability was psychological had the lowest participation rate (29%), and the highest unemployment rate (19%).\(^{27}\) Even among those who were employed, those with intellectual or psychosocial disabilities worked for fewer hours per week compared to those with sensory or speech disabilities.

Of course there are often multiple complex factors inhibiting a person’s ability to be and remain employed. We do not attempt to give a comprehensive account of the factors that limit employment. In their landmark survey, the World Bank and World Health organisation cited as factors influencing labour market outcomes “productivity differentials; labour market imperfections related to discrimination and prejudice, and disincentives created by disability benefit systems”\(^{28}\) The Canadian Council for Disability has noted that only half of those with disabilities who are outside of the labour force indicate that they are completely prevented from working due to their disability. Social and economic barriers also play a role in limiting

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\(^{22}\) Statistics Canada, Disability in Canada: Initial findings from the Canadian Survey on Disability (Cat No 89-654-X - No 002) (Statistics Canada, December 2013).


\(^{24}\) Ibid, 7.

\(^{25}\) Ibid.

\(^{26}\) Ibid.


labour market participation.\textsuperscript{29}

\textit{Underemployment}

It has long been the case that persons with disabilities are more likely to be under-employed, particularly by being employed only part time.\textsuperscript{30} The latest Australian statistics reflect the phenomenon of under-employment of persons with disabilities: of those people aged 15 to 64 years who were employed and living in households, a greater proportion of people with disabilities reported working part-time (40\%) compared with those without disabilities (30\%).\textsuperscript{31}

3. The international law framework

The CRPD was open for signature at the United Nations on 30 March 2008. The ratification of the CRPD has been very speedy indeed. Both Australia and Canada have ratified the CRPD. As of April 2014, 144 countries, and also the European Union, have ratified the CRPD. This Convention has been more speedily ratified than any of the other United Nations Human Rights treaties other that the Convention on the Rights of the Child. This is because governments have recognised the need and the opportunity to protect the human rights of persons with disabilities which have only in recent times been enshrined in the domestic legislation of most nations. Canada and Australia both signed the Convention on 30 March 2007. Australia ratified the Convention on 17 July 2008 and Canada ratified it on 11 March 2010.\textsuperscript{32}

The purpose of the CRPD is stated in the first sentence of article 1, which says: ‘The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.’ The CRPD does not give persons with disabilities special rights or privileged status. Instead, what it does is to ensure that persons with disabilities are able to fully enjoy all of the human rights which most able bodied persons take for granted. It does not attempt to give them privileged citizenship, but does require them to be given \textit{full} citizenship.

The CRPD seeks to alter social attitudes by ensuring that governments, persons and bodies recognise that persons with physical, sensory, mental or intellectual impairments possess the same human rights and fundamental freedoms as do all other persons. Uniquely among the human rights conventions, the CRPD includes a statement of overriding principles: Article 3 sets out eight principles which underpin this Convention. These principles require governments, persons and bodies to treat persons with disabilities with respect, to

\textsuperscript{29} Council of Canadians with Disabilities (CCD), Submission to the United Nations Human Rights Council
Universal Periodic Review of May 2013 (9 October 2012)

\textsuperscript{30} Australian Bureau of Statistics, Catalogue 4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2009 (16 December 2009). See the table ‘Disability status (A) by labour force status’ which shows that the rate of part time employment is proportionately high for persons with disabilities, particularly men with disabilities. See also Council of Canadians with Disabilities (CCD), Submission to the United Nations Human Rights Council Universal Periodic Review of May 2013 (9 October 2012)


\textsuperscript{32} See the current list of ratifications and signatories published by the UN Treaties Collection, available at
acknowledge their inherent dignity, and to ensure that their disabilities do not restrict our full participation in society.

The concept of disability is explained in the second sentence of article 1, as including ‘those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.’ This broad definition of persons with disabilities adopts what is known as the social model of disability. It recognises that disability ‘is an evolving concept’, and that persons with impairments are often prevented from exercising all of their human rights and fundamental freedoms not solely because of their person limitations, but also because of the attitudinal and environmental barriers which have been placed in their way.

Article 8 of the CRPD furthers the aims of the social model by obliging countries to adopt measures of awareness raising of the rights of persons with disabilities in order to combat stereotypes harmful practices and prejudices.

The social model requires governments – and society generally, including employers – to recognise that disability is not just an inherent personal characteristic, but something that results from a world where systems, processes and structures do not accommodate the wide variety of skills, needs and capabilities that make up humanity. It puts the onus equally on individuals and on society to take responsibility for the situation of persons with disabilities. For example, in the employment context, it recognises that a person who has a vision impairment and is having trouble finding employment is not simply a victim of their own physical limitations. Rather, they are being prevented from full participation in employment by a combination of their impairment and the inability or unwillingness of potential employers to consider how they may be able to do the job.

The corollary of this is the other key concept in the CPRD: the concept of reasonable accommodation. ‘Reasonable accommodation’ is a means of protecting persons with disabilities against discrimination and of putting them on an equal footing with other population groups. It is defined in article 2 of the CRPD as, ‘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’. It is not the same as ensuring accessibility, but ensuring accessibility may well be a means of implementing a reasonable accommodation for a persons with disabilities in the employment context.

It is now time to turn our attention to article 27 of the CRPD which is headed Work and Employment. It is a lengthy and detailed article, however, its essence is as follows: it exhorts governments to implement programs to facilitate the undertaking of work in the open labour market by persons with disabilities. It requires countries to ‘safeguard and promote the realization of the right to work. It recognises that the right to work is a fundamental right and one which is to be enjoyed by persons with disabilities on an equal basis with others. Full enjoyment of the right to work includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. It requires freedom of access to the open labour market, as well as just and favourable conditions of work. The CRPD recognises self-employment as a form of work and promotes education and vocational training as paths towards full employment.

Under the CRPD, the right to work is both an accessibility and discrimination issue. Article
Paragraph (1) stresses the importance of legislative frameworks in protecting the right to work. It specifically refers to legislation as a means of taking ‘appropriate steps’, and sets out in sub-paragraphs (a) to (k) a non-exhaustive list of steps that states parties should take. Legislation is essential to many of these steps, such as the prohibition on discrimination on the basis of disability with regard to all matters concerning all forms of employment.

Article 27(1)(i) requires the provision of reasonable accommodation in the workplace. For example, if a large employer refused to modify a toilet to make it accessible by a wheelchair user who was a potential employee, the large employer would be guilty of discrimination because there was a failure to render reasonable accommodation to the potential employee. After all, the alteration of a toilet is hardly a disproportionate or undue burden. These are the sorts of modifications that can make the difference between a person with a disability being employed and productive and being unemployed.

The CRPD Committee mirrors the other human rights treaty monitoring bodies in structure and function. Article 34 of the CRPD establishes a committee of independent experts charged with monitoring the implementation of the CRPD in member states. It comprises eighteen members who are elected by the states parties. Article 36 paragraph 1 of the CRPD gives power to the CRPD Committee to examine reports (which article 35 requires states parties to submit, a first two years after ratification and subsequently every four years and to ‘make such suggestions and general recommendations on the report as it may consider appropriate and shall forward these to the State Party concerned.’ The manner in which the CRPD Committee examines these reports, which culminates with a constructive dialogue with the reporting country, is much the same as is the examination of state party reports by the other United Nations treaty bodies. Its members read the report from the country, and also alternative reports which are usually supplied by disabled persons organisations from that country, and then the CRPD Committee engages in a constructive dialogue with the country.

What is unique about the Committee is its composition. It is made up almost entirely of persons who have disabilities: seventeen of the current eighteen members have disabilities such as blindness, difficulties with mobility, loss of limbs and psychosocial disabilities. There is no parallel among the other treaty bodies of a monitoring body whose members are both independent experts and uniquely rights holders owing to their disabilities. Certainly, the delegates of bodies like the Human Rights Council and the Committee Against Torture are themselves rights holders, but there is no parallel to the way that the CRPD Committee models, as well as promotes, inclusion and reasonable accommodation. The CRPD Committee, by its very presence as well as its work, challenges the stereotypes and social barriers described in art 8(1)(b) of the CRPD. No doubt for some government officials (particularly those from countries without strong disabled persons organisations), their Constructive Dialogue with the CRPD Committee is the first occasion where they have found themselves questioned directly by knowledgeable and articulate persons with disabilities.

It is still early days in the work of the CRPD Committee, and not until a larger number of states parties have dialogued with the CRPD Committee will it be appropriate to make a more detailed study of its Concluding Observations. It is however abundantly clear, even from the Committee’s early concluding observations, that it is clear that it takes its educative role seriously. Often, its recommendations seek to educate governments in the manner in which persons with disabilities should be treated, and perhaps this flows from the life experiences of its members with disabilities.
To date, the comments on article 27 by the CRPD Committee in its concluding observations have been both succinct and encouraging. It seems that the committee members recognise from their own life experiences the difficulties confronting states parties in increasing the level of employment of persons with disabilities.

The CRPD Committee has expressed its concern that unemployment and underemployment rates of people with disabilities are consistently higher than for other population groups. The CRPD Committee has also been concerned that people with disabilities who are employed are often to be found in segregated or restricted occupations, such as the occupation of ‘blind massage’ in China. The CRPD Committee has observed that one facet of increasing access to employment is ensuring that persons with disabilities have access to training and development in accordance with Article 27(1)(d) of the CRPD. The CRPD Committee has commended states for vocational training programs and supported the idea of programs to improve the skills and job qualifications of persons with disabilities and enhance their employability.

One way of addressing the unemployment and underemployment of persons with disabilities is to establish quotas for public, and sometimes also private, sector organisations. The CRPD Committee has commended States parties which have implemented various quota systems (such as the Peruvian requirement that 3% of its public sector workforce be comprised of persons with disabilities and Argentina’s 4% quota), but has noted that quota systems must be followed through and implemented so as to increase employment of persons with disabilities. For example, only 22.9% of Austrian private sector employers who are required to comply with this type of quota actually do so. The remainder prefer to pay the non-compliance tax.

We express caution about quota systems. When governments establish them, they are usually not fully observed, and they become a type of "cop-out" for the governments concerned. Governments say “we have a quota, so everything is fine.” As we will discuss further below, we would prefer governments to take more positive steps to increase employment in the open labour market, for example, by establishing training programs.

The CRPD Committee has also proposed a number of other options which could improve employment of persons with disabilities, such as tax incentives (which the Committee notes that Argentina has adopted), self-employment programs, the inclusion of persons with disabilities and their representatives in national labour regulation organisations and awareness-raising campaigns designed to break down cultural barriers. It will be interesting to see the development of the thinking of the CRPD Committee on article 27 in its future concluding observations.

In recent years, the Human Rights Council which is based in Geneva, has held an annual interactive debate on some aspect of the lives of persons with disabilities. In March 2013, the Human Rights Council held an interactive debate on the high levels of unemployment of persons with disabilities throughout the world. It adopted a resolution exhorting governments to do much more to increase the employment of persons with disabilities. Finally, it is important to note that article 6 of the International Covenant on Economic,

33 Above n 7.

Social and Cultural Rights (ICESCR)\(^{35}\) enshrines the right to work as a core human right. In its general comment No 5\(^{36}\), the ICESCR Committee stated that the “right of everyone to gain his living by work which he freely chooses or accepts (Article 6(1) ICESCR) is not realised where the only real opportunity open to disabled workers is to work in so-called “sheltered” facilities under substandard conditions. In other words, like the CRPD Committee it promotes the employment of persons with disabilities in the open labour market and regards sheltered employment as a last resort.

We also note the work of the International Labour Organisation (ILO) on improving the employment rates of persons with disabilities. The starting point is the ILO's 1983 convention titled, "Vocational Rehabilitation and Employment (Disabled Persons)" Convention (No. 159), which should be read together with its Recommendation 168. Nineteen-eighty-one was designated by the United Nations as the International Year of Persons with Disabilities, and in part this recognition prompted the ILO's Convention 159. Its language strikes the current ear as a little old fashioned, but the Convention does outlaw discrimination on the grounds of disability and it encourages the employment of persons with disabilities. The most forthright and interesting document of the ILO is its Code of Practice – Managing Disability in the Workplace, 2001, which like the CRPD adheres to the social model of disability. We acknowledge Ms Barbara Murray of the ILO for her assistance, and for her work on ILO programs, especially in developing nations, to increase the employment of persons with disabilities.

4. Strategies to improve the employment of persons with disabilities in Australia and in Canada

Anti-discrimination legislation

One of the first and most significant attempts by government to ensure that persons with disabilities are able to find work was the passage of anti-discrimination legislation which prevents persons with disabilities being denied a job or discriminated against at work on the grounds of their disability. Effective anti-discrimination legislation can actually increase employment and can also play a part in breaking down employer assumptions and prejudices.

The aim of anti-discrimination legislation is to address “labour market imperfections”\(^{37}\), to counterbalance the prejudices and employer barriers that can prevent persons with disabilities using the market as do their non-disabled peers. Effective anti-discrimination laws protect both current employees and potential employees.

Anti-discrimination legislation exists at Commonwealth level and in every Australian state and territory. The federal Disability Discrimination Act 1992 (DDA) and State and Territory anti-discrimination legislation prohibit discrimination in employment.\(^{38}\) The protection offered by the DDA was expanded in 2004, following a Productivity Commission review. In a recent single judge decision, the Federal Court has held that the range of adjustments required by the DDA for a worker to enable them to perform their role is largely open-ended,

\(^{35}\) International Covenant on Economic, Social and Cultural Rights, opened for signature 19 December 1966, 993 UNTS 3 (entered into force 3 January 1976)/


\(^{38}\) See, for example, Anti-Discrimination Act 1977 (NSW).
driven by the individual's needs, technological change and the particular circumstances. This is a significant decision because it suggests that employers have far more substantial obligations than was previously thought.

In addition to the mosaic of federal and State anti-discrimination laws, its federal labour relations legislation which covers most workers, provides remedies for ‘adverse action’ taken against employees or prospective employees on discriminatory grounds, including physical or mental disability. In one recent case, an employer was found to have discriminated (on the grounds of disability) against a young vision-impaired worker by requiring her to do more than a month of unpaid training before being paid a flat rate of $7 to $8 an hour, which was below the $10 - $17 an hour she should have been paid. After action was commenced by the employment watchdog, the Fair Work Ombudsman, the employer eventually paid the employee back pay, an amount to compensation for non-monetary loss, and the employers were fined. There is also now an additional layer of protection under the Fair Work Act for persons in employment: the ability to apply to the Fair Work Commission for an anti-bullying order to prevent unreasonable behaviour that creates a health and safety risk. This has the potential to be used to protect employees with disabilities who are being isolated or excluded by colleagues or managers or who are being given difficult, impossible or demeaning tasks by managers.

Canada’s mosaic of human rights laws also prohibit discrimination in employment on the grounds of disabilities. Article 5 of the CRPD (concerning equality and non-discrimination) has much in common with section 15 of the Canadian Charter of Rights and Freedoms. These laws are integrated into Canada’s labour relations legislation, and this assists Canadian persons with disabilities to obtain employment in the open labour market.

National plans and strategies
In February 2011, the Council of Australian Governments (COAG) adopted the National Disability Strategy 2010-2020 (NDS). One of its six pillars is entitled Economic Security, which deals with economic and housing security. In relation to employment, the NDS notes that "The vast majority of people with disability can and do want to work and be as financially independent as possible, but employment is one critical area where Australia is lagging behind other countries." Australia also has a National Mental Health and Disability Employment Strategy which aims to increase the employment of persons with disabilities, promote social inclusion and improve economic productivity.

Vocational rehabilitation and employment services: training, counselling, job search assistance, placement
Another way in which the Australian Government is seeking to increase the employment rate

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40 Fair Work Act 2009 (Cth)
41 Section 351 Fair Work Act 2009 (Cth).
43 Fair Work Act 2009 (Cth) Part 6-4B, ss 789FA-789FL. At the time of writing, only 8 applications had been finalised by a decision, and only one had been granted. Despite initial concern by employers and business groups that there would be a flood of bullying complaints, the first quarter of the new jurisdiction saw only 151 complaints. The authors are not aware of whether or how many bullying complaints related to persons with disabilities.
of persons with disabilities is to act as a facilitator. This facilitation is conducted by the federal agency titled Job Access which links employers, service providers and persons with disabilities who are seeking employment. In 2013, Job Access received on the receipt of its 150,000th employment inquiry. Job Access also operates an employment assistance fund which provides equipment and which assists with workplace adjustments to enable the employment of persons with disabilities. It is access to these technologies that partly explains the greater participation rates for persons with sensory disabilities than psychosocial disabilities.

Canada, too, is taking important steps towards improving the employment of persons with disabilities. The federal government has created the ‘Opportunities Fund for Persons with Disabilities’ which helps people with disabilities prepare for, obtain and maintain employment or self-employment. This program provides funding for a wide range of projects and eligible applicants including for-profit businesses and governments as well as not-for-profit organisations. According to the Canadian government, the fund has increasingly focused on ‘providing more work experiences with small and medium-sized businesses and raising employer awareness.’

Canada has voluntary vocational rehabilitation programs that provide counselling, financial support for training and job search services which are designed to help the recipients of disability benefits return to work.

**Government strategies**

In 2010, the Australian Government introduced its National Disability Strategy (NDS). One goal of the NDS is to ‘increase access to employment opportunities as a key to improving economic security and personal wellbeing for people with disability’. The Strategy is aspirational rather than binding, but is a common cause between federal, state and territory governments.

In the 2012 Canadian federal budget, the government announced the creation of an Employment Panel to report to the Ministers of Finance and HRSDC by December 2012 on best practices within the private sector on the employment of persons with disabilities.

**Sheltered workshops and modified wage systems**

It is important to note that the CRPD protects the right of persons with disabilities to work, like everyone else, in the open labour market. There are important differences between employment on the open market and employment in sheltered workshops, which workplaces established specifically and exclusively for persons with disabilities.

There is a long history of persons with disabilities being employed in sheltered employment in both Australia and Canada. In Australia, sheltered workshops now take the form of Australian Disability Enterprises: non-profit organisations that offer work exclusively to persons with disabilities. The Supported Employment Services Modern Award (2010) is the industrial instrument governing conditions in Australian Disability Enterprises.

Modified wages is another option for giving employment to more persons with disabilities.

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44 Government of Canada, First Report of Canada on the Convention on the Rights of Persons with Disabilities (Her Majesty the Queen in Right of Canada, represented by the Minister of Canadian Heritage and Official Languages, 2014) 17 [82].
By ‘modified’ we mean reduced, usually in a manner calculated by (purported) reference to a person’s productivity, as compared with the productivity of a person without a disability.

Australia currently has a range of tools to assess pro-rata wages. The Supported Employment Services Modern Award (2010) contains within it terms which allow for reduced wages in Australian Disability Enterprises.

Other industrial instruments (other modern awards, enterprise awards and enterprise agreements) can also provide for modified wage systems in the open labour market. There is a general prohibition on those instruments containing ‘discriminatory’ terms, however terms that discriminate against “all employees with a disability, or a class of employees with a disability” are expressly allowed. Thus, modern awards can contain provisions for a “Supported Wage System” which pays employees a percentage of the relevant minimum pay rate in their award based on their assessed capacity. For a person’s wages to be reduced in this way, they must be “unable to perform the range of duties to the competence level required of an employee within the class of work for which the employee is engaged because of the effects of a disability on their productive capacity” and must also meet the impairment criteria for receipt of a Disability Support Pension.

For employees with a disability who are not covered by an award or agreement, the national minimum wage creates a “floor” for their remuneration. If a person in this situation has a disability which does not affect their work, they are entitled to the special national minimum wage 1, which is the same as the general national minimum wage. For employees whose disability does affect their work, they receive special national minimum wage 2 which is essentially a reduced portion of special national minimum wage one, reduced to a percentage which reflects the person’s “assessed productive capacity”. As for the Supported Wage System, a person must be properly assessed, it must be the case they their disability affects their productivity, and they must meet the criteria for receipt of the disability support pension. The absolute minimum rate of special national minimum wage 2 is $78 per week (compared with $622.20 per week for special national minimum wage 1).

Once again, the CRPD Committee was succinct in its observations when it considered Australia’s record on employment of persons with disabilities, but it did speak strongly against reduced wages (specifically the ‘Business Services Wage Assessment Tool’). Our view is that a better solution is the Wage Subsidy Scheme, which provides a financial incentive for employers to employ workers with disability under normal labour market conditions.

7. Conclusion

In conclusion, we trust that this paper on the employment of persons with disabilities will provoke further discussion to ensure that this cohort is no longer a forgotten one. We hope that we will soon observe further steps toward a change in social attitudes so that the public, unions and employers believe that people with disabilities need and deserve employment, with the appropriate supports and protections where necessary – all towards the goal of persons with disabilities attaining fully fledged citizenship at work.

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45 Fair Work Act 2009 (Cth) s 153(1), 195(1).
46 Fair Work Act 2009 (Cth) s 153(2)(b), 195(3)b).
48 Fair Work Commission National Minimum Wage Order 2013 PR537976 [7].
Professor Ron McCallum AO and Hannah Martin