

Canada disability legislation survey

2/26/17

<https://www.canada.ca/en/employment-social-development/programs/disability/consultations/accessibility-legislation.html>

Brad's answers

[demographic info requested in the beginning]

(Page 3/13) Part 2: Attitudes and Awareness

## 2. Attitudes and Awareness

We all have a role to play in improving accessibility. From individuals to community organizations, businesses to governments, there are actions we can take to build a more inclusive society.

Accessibility legislation is an important step. Experience shows, however, that no matter how well designed legal measures are, legislation on its own is only part of the answer. To achieve lasting change, accessibility has to become part of our everyday thinking.

To help do this, legislation would be complemented by various initiatives to raise awareness of the importance and benefits of accessibility and of what individual Canadians and organizations can do, in general, to improve accessibility and remove barriers.

Ultimately, the objective is for all of us to see accessibility differently—not as a series of boxes to check off to show we've done the minimum required, but as an integral part of everything we do.

Questions for feedback:

How can the Government of Canada raise awareness of and change attitudes in relation to accessibility (in the short term and long term)?

*Public service announcements, social media campaigns that are integrated with a diversity of other interests*

How can the Government of Canada show leadership in improving accessibility and removing barriers for Canadians with disabilities?

*Canada can lead the world by implementing appropriate theories of disability. People with disabilities should be empowered with real options for self-determination, and they should not be put in a second-class-citizen position of having to procure or show any*

*badge or documentation in order to live their lives as others do (as some desire with respect to service animal users).*

Do you have examples of collaborative models that have led to the creation of shared expectations and sustained culture change within organizations in relation to accessibility?

*I'm the Director of Government Relations for a disability-related nonprofit. I've found it's monumentally important to have peer-based, consumer-driven perspectives included when it's time to create the rules. Otherwise, it's easy for industry interests to masquerade as the people's voice.*

(Page 4/13) Part 3: Background and Context

### 3.1. Canada's Constitutional Framework

In Canada, lawmaking power is divided between the Parliament of Canada and the provincial and territorial legislatures. The Parliament of Canada passes laws in areas under federal jurisdiction, such as banking, broadcasting and cross-border transportation. Provincial/territorial legislatures pass laws in areas such as education, social assistance and municipal government.

Accessibility legislation passed by Parliament would apply to organizations and areas under federal jurisdiction.

### 3.2. Making Laws at the Federal Level

Legislation has two main parts: An Act and regulations.

An Act is a law that has been passed by the Parliament of Canada. It is a legal statement that sets out goals in a particular area and provides authority to carry out certain activities. A draft act, called a bill, is introduced to Parliament and requires the approval of the House of Commons, the Senate and the Governor General of Canada to become law.

Regulations, which are sometimes referred to as delegated or subordinate legislation, set out the specific rules and procedures for carrying out the goals of an Act. Like Acts, they have binding legal effect. However, they are not made by Parliament, but by persons or bodies to whom Parliament has delegated the authority to make them, such as the Governor in Council (Cabinet), a Minister or an administrative agency. Authority to make regulations must be expressly delegated by an Act.

### 3.3. Existing Federal Law in Relation to Canadians with Disabilities

Canada has a number of laws in place that protect the human rights of Canadians with disabilities and promote income security and equal employment opportunities. These include,

for example, the Canadian Charter of Rights and Freedoms, the Canadian Human Rights Act and the Employment Equity Act. As well, the Government of Canada has standards and regulations in a number of areas—including broadcasting, telecommunications and transportation—to improve accessibility and remove barriers for Canadians with disabilities.

In general, Canada's current legal approach to disability is focused on protecting the human rights of Canadians with disabilities and relies on individual complaints to address what can be larger, systemic issues. In our system, the onus is usually on the person who has experienced discrimination to then seek recourse. This process can be challenging for individuals and has been slow to address ongoing inequalities and lack of accessibility.

It is envisioned that, by taking a proactive and systemic approach to improving accessibility and removing barriers, legislation would complement the laws that already exist in Canada to protect the human rights of Canadians with disabilities and build on existing federal accessibility standards and regulations.

(Page 5/13) Part 3: Background and Context

### 3.4. United Nations Convention on the Rights of Persons with Disabilities

Canada's ratification of the Convention on the Rights of Persons with Disabilities in March 2010 reaffirmed the Government of Canada's commitment to ensure greater accessibility and opportunities for persons with disabilities. The Convention covers a wide range of topics related to accessibility and inclusion. For example, Article 9 of the Convention calls on governments to take appropriate measures to ensure persons with disabilities have access, on an equal basis with others, to the physical environment, to transportation, to information and communications, and to other facilities and services open or provided to the public. Federal accessibility legislation will support the Government of Canada's ongoing implementation of the Convention.

### 3.5. Accessibility Laws in Other Jurisdictions

Various countries around the world have introduced accessibility legislation, including, for example, the United States (Americans with Disabilities Act) and Australia (Disability Discrimination Act). In Canada, Ontario (Accessibility for Ontarians with Disabilities Act), Manitoba (Accessibility for Manitobans Act) and Quebec (Loi assurant l'exercice des droits des personnes handicapées en vue de leur intégration scolaire, professionnelle et sociale) have introduced such legislation, Nova Scotia has announced its intention to do so, and British Columbia, as part of its Accessibility 2024 action plan, has said that it will consult on options for legislation in that province.

Each of these laws takes a different approach to improving accessibility—some, for example, take a regulatory approach while others use less prescriptive performance goals—which reflects the unique circumstances of each jurisdiction. We can, however, still learn from the experiences

of these other jurisdictions. For example, how were individuals and organizations engaged in the development of the laws, and what supports are provided to help organizations improve accessibility and remove barriers?

(Page 6/13) Part 4a. Goal

#### 4.1. What is the goal of the legislation?

The overall goal of the legislation is to increase the inclusion and participation of Canadians in society and promote equality of opportunity by improving accessibility and removing barriers in areas of federal jurisdiction.

Questions for feedback:

Do you have any input regarding this goal?

*Civil rights should not vary from province to province. This includes implementation. Canadians should be free to confidently travel around the nation without fear of suddenly losing the right to their assistive device when they cross a border. This is a fear of service dog users.*

How should the legislation define “accessibility” and/or “barrier”?

*In places of public accommodation, "accessibility" should be defined in terms of whether people with disabilities can reasonably, and with due dignity, obtain, use, and benefit from substantially equivalent good and services as those without disabilities. Elsewhere and more broadly, "accessibility" can be thought of in terms of the absence of undue barriers to either societal integration or to the completion of activities of daily living. In this context, a "barrier" is anything that does not prohibit a person without a disability from engaging in an activity or state, but does prohibit a person with a disability from doing so.*

(Page 7/13) Part 4b: Approach

#### 4.2. What approach should the legislation take to improve accessibility and remove barriers?

Our research suggests that accessibility legislation in other jurisdictions has taken one of two broad approaches:

1. a prescriptive approach that sets out specific accessibility requirements in law or
2. an outcome-based approach that identifies desired outcomes and establishes a planning and reporting process that organizations are to follow to achieve those

outcomes. These approaches aren't mutually exclusive, however, and aspects of one can be used in the other.

### Prescriptive Approach

With a more prescriptive approach, the legislation could:

- provide authority for the Government of Canada to use regulations to establish detailed accessibility standards in areas of federal jurisdiction;
- describe the process or processes that the Government would use to develop the accessibility standards, as well as the areas or activities to which the standards would apply; and
- describe compliance measures that the Government would use to ensure the accessibility standards have been implemented appropriately.

### Outcome-Based Approach

With an outcome-based approach, the legislation could set accessibility objectives that organizations would then try to achieve. With this approach, the legislation could enable collaborative processes for organizations to, for example, develop, publish and implement accessibility plans that would set out specific goals and commitments, as well as strategies for meeting those goals. Compliance could be monitored through measures such as reporting requirements and periodic reviews.

Questions for feedback:

Overall, which approach or approaches do you think would be best for federal accessibility legislation? Are there other approaches that you would suggest?

*A purely outcome-based approach seems to assume organizations are experts in what renders everything accessible. Seasoned disability-rights advocates know that even if one is an expert in, for example, blindness-based accessibility, that experts in different areas of disability are needed to cover the spectrum of accessibility. It seems awfully strange to think that an organization specializing in nothing to do with disability (widgets?) would somehow be able to produce broadly accessible facilities.*

*If various experts coordinate to produce standards (with public feedback), then organizations have a plan to follow. This prescriptive approach can then be \*evaluated\* based on outcomes to help guide reviews and updates. Having no prescriptions just seems like trying to navigate across a sea without a compass. Give organizations a compass, then fine-tune it based on where they land.*

If a prescriptive-type approach were to be taken, do you have any input on how standards could be developed?

*It depends on the area under consideration. There are successful laws in other countries that honor disability rights as civil rights, and Canada would be remiss to start from scratch rather than consulting what already works well in similarly situated countries. For instance, USDOJ's Titles II and III ADA regulations are excellent when it comes to service animals.*

*Also, as I mentioned earlier, please be sure to consult with peer-based, consumer-driven groups when creating laws for public consideration, so industry interests don't overshadow the interests of individuals.*

If an outcome-based approach were to be taken, do you have any input on how accessibility outcomes could be established?

*It's difficult for me to imagine what an effective outcome-based approach could possibly look like. This seems to be treating corporations like they're responsible, caring people. When they turn out not to be, I don't want to have to bring a lawsuit to interact with them.*

*Outcomes should be used for evaluating the effectiveness of prescriptions. The burden should not be on people with disabilities to show that an organization doesn't have the proper outcomes.*

(Page 8/13) Part 4c: Legislation

#### 4.3. Who should be covered by the legislation?

The legislation will outline the types of organizations to which it will apply. Within federal jurisdiction, the legislation could potentially apply to:

- Parliament of Canada
- Departments, agencies and institutions of the Government of Canada
- Federal Crown corporations
- Federally-regulated businesses and industries (e.g. banking, broadcasting, cross-border transportation)
- Federal courts
- Canadian Armed Forces
- Royal Canadian Mounted Police
- Other federal lands

Questions for feedback:

Are there other organizations within federal jurisdiction that should be covered by the legislation?

*Ideally, the legislation should cover all places of public accommodation, housing, employment, aviation, and other transportation. These may merit different standards.*

Are there organizations that should be exempt from the legislation?

*I don't believe any organization should be exempt, per se. However, there should be reasonable exceptions to particular requirements. For instance, businesses with fewer than 20 employees may not have as many training or record-keeping requirements, historical facilities (like an old mine open to tourists) may not need to remove architectural barriers if this would be impracticable, etc.*

The legislation could potentially set out different requirements and timelines for different types and sizes of organizations. Do you have any comments or suggestions for this?

*Consider putting together a committee composed of government employees, industry experts, and disability advocates to learn from each other and produce recommendations. I served on such a committee and was able to produce a much better-informed set of regulatory recommendations than before consulting with others.*

(Page 9/13) 4c : Legislation

4.4. What accessibility issues and barriers should the legislation address?

The legislation could specify the accessibility issues it will address, or describe a process for identifying these issues, or use some combination of the two.

For example, the legislation could state that it will improve accessibility and remove barriers in specific areas, such as:

- the built environment;
- program and service delivery;
- the procurement of goods and services;
- employment;
- transportation; and
- information and communications.

The legislation could also describe a process that the Government of Canada would follow to identify and prioritize areas for improving accessibility and removing barriers. Examples of potential mechanisms include:

- Advisory Council - the Government of Canada could create and support a permanent advisory committee comprised of Canadians with disabilities and other stakeholders.
- Consultations - the Government of Canada could consult periodically with Canadians with disabilities and other stakeholders.

Questions for feedback:

We have listed six areas where accessibility could be improved. Of these, which are the most important to you? Are there other areas that should be included?

*The built environment and the procurement of goods and services are most important to me, though I think Canada is great enough to handle each area listed. I don't doubt that there is some other worthy aspect of life missing from the list.*

We have listed some potential mechanisms that the legislation could describe for the ongoing identification and prioritization of accessibility issues. What do you think of these mechanisms? Are there other mechanisms you would suggest?

*I think an advisory council is excellent for routine issues of concern, and consultations are perfect for ad hoc issues and regulatory updates.*

Canada has a number of laws in place to address human rights issues and improve accessibility. Do you have any comments on how the new accessibility legislation could interact with these existing laws? Should the legislation describe a process by which these laws would be reviewed and potentially revised?

*Set up channels for open communication, or make a disability advisory council a subset of the Human Rights Commission. Disability-related laws always need to change and improve with the times. It's important for reviews to be on a regular timeline to keep from falling too far behind what's needed.*

Should the legislation build on accessibility standards already developed by provincial/territorial governments and other countries?

*Other accessibility standards should certainly be consulted. However, some disrespect the right to self-determination and should not be accepted without question.*

(Page 10/13) Part 4d: Monitoring and Enforcement

4.5. How should compliance with the legislation be monitored and enforced?

The legislation would likely contain a section or sections that describe how compliance with the legislation would be monitored and enforced. The exact monitoring and enforcement



mechanisms used would depend on the approach or approaches the legislation ultimately takes (i.e. prescriptive or outcome-based).

Potential monitoring mechanisms include:

- Action plans — the legislation could require organizations to submit action plans that would detail how they will improve accessibility and remove barriers for persons with disabilities.
- Progress reports — the legislation could require organizations to periodically submit progress reports that would detail their progress in improving accessibility and removing barriers.
- Reviews and audits — the legislation could detail how action plans and progress reports could be verified through reviews, audits and/or inspections.
- Complaints mechanisms — the legislation could detail how Canadians could submit complaints concerning an organization that may not be meeting its obligations under the legislation.

The legislation could also describe mechanisms to address issues of non-compliance. These enforcement mechanisms could include, for example:

- An informal or formal mediation process to address compliance issues;
- Public reporting of organizations that are non-compliant;
- Orders that detail an organization's areas of non-compliance and give a timeframe for the organization to become compliant; and/or
- Monetary penalties.

Questions for feedback:

What monitoring mechanisms do you think should be considered for the legislation (including ones not listed here)?

*More than one monitoring mechanism should be used. I like the idea of making it easy for Canadians to report suspected non-compliance, so they don't have to invest and erode part of their life away by suing in order to get justice.*

What enforcement mechanisms do you think should be considered for the legislation (including ones not listed here)?

*Somewhere along the path, the real threat of monetary penalties needs to be present. It has to cost more to be noncompliant than to be compliant, as some organizations will simply follow the recommendation of a basic cost-benefit analysis.*

(Page 11/13) Part 4e: How do we Support Organizations?

#### 4.6. How should organizations be supported to improve accessibility?

The legislation could include or be accompanied by programs or supports to help and encourage organizations to improve accessibility and remove barriers.

Some potential programs or supports include:

- Measures that encourage, support and recognize organizations that show accessibility leadership. This could include, for example, reduced reporting requirements, public recognition and promotion, or monetary incentives;
- The creation of a Centre of Expertise on Accessibility and Barrier Removal to provide information and tools to help organizations improve accessibility and remove barriers; and/or
- Financial support for conducting and sharing research and best practices on accessibility and barrier removal.

Questions for feedback:

Do you have suggestions for how the Government could help organizations to improve accessibility and remove barriers?

*Monetary incentives: grants or tax breaks. I also like the ideas of public recognition and promotion, and reducing reporting requirements for good players.*

Do you have suggestions for how the Government could encourage, support and recognize organizations that show accessibility leadership?

*Perhaps a government or independent certification system like the LEED system would be good.*

(Page 12/13) Part 4f: Effectiveness

#### 4.7. How will we know if the legislation is effective in improving accessibility and removing barriers?

The legislation could include a section or sections that detail when and how the Government of Canada would report on the implementation and effectiveness of the legislation, and when and how the legislation itself would be reviewed.

Questions for feedback:

In relation to the implementation and effectiveness of the legislation, how often would you want the Government of Canada to report to Canadians?

*The Canadian government should issue public reports with different frequency based on the type of report. Annual reports seems practical for complaint/resolution statistics. More thorough types of reports should probably be issued every 3–5 years, depending on the topic and depth.*

What kinds of things should this report look at?

*Reports should include information about complaints and resolutions, standardized surveys of Canadians and organizations to measure the longitudinal successes and areas of improvement of new legislation, and effectiveness and recommendations regarding incentives for organization compliance.*

How often should the legislation be reviewed?

*The legislation should be regularly reviewed every 5–10 years, depending on the topic.*

Are there specific considerations for how any such review should be conducted?

*Outside organizations, including disability advocate groups, should be consulted to aid with reviews. Public input should be welcomed, reviewed, and answered.*

(Page 13/13) Part 5: Thank You!

5. Thank you for participating in the Government of Canada Accessibility Legislation online consultation!

You can obtain information about this consultation by calling 1-877-842-5590 or by submitting a written request to ESDC under the Access to Information Act. If you have provided your contact information and would like to obtain your personal information, you may submit a request to ESDC under the Privacy Act. Instructions for making both requests are provided in the publication Info Source. When making a request, please refer to "Government of Canada Accessibility Legislation."

How to Reach Us

The best way to find out more information is through the consultation website.

You can also contact us by:

Email: [accessible-canada@hrsdc.gc.ca](mailto:accessible-canada@hrsdc.gc.ca)

Phone: 1-844-836-8126

TTY: 819-934-6649

Fax: 819-953-4797

Or by mail at the following address:

Consultation – Federal Accessibility Legislation

c/o Office for Disability Issues

Employment and Social Development Canada

105 Hotel-de-ville St., 1st floor, Bag 62

Gatineau QC K1A 0J9