

No Barriers – It's Time!

Unifor submission on Accessibility Legislation
October 2016



unIFOR
theUnion | lesyndicat

unifor.org | [@UnifortheUnion](https://twitter.com/UnifortheUnion)

No Barriers – It's Time!



**This submission was produced and prepared by
Unifor Legal Department 2016**

Context

Unifor is the largest private-sector trade union in Canada representing over 310,000 members who live in all regions of Canada, and working in virtually every sector of the economy. Since its inception, the Union has understood that changing the lives of working people, for the better, would require engagement in political, social and economic spheres. For that reason, Unifor has been active in advocating for changes to laws that could meaningfully improve the quality of life for many. National accessibility legislation or a Canadian Disability Act (“CDA”) offers such a possibility.

Disability Legislation in the Broader Context

Canada was one of the early signatory states to the UN Convention on the Rights of People with Disabilities in 2007.¹ By signing this international agreement Canada recognized that attitudinal and environmental barriers were hindering full and effective participation in society, on an equal basis with others, by persons with disabilities. Acknowledging that barriers to the equal participation of people with disabilities creates disadvantage and frequently leads to negative outcomes for people with disabilities, while important, is not enough. If it was, Canadians with disabilities would have fared better than they have in the 6 years since Canada ratified the Convention. They have not and they are exceedingly unlikely to fare better until Canada engages in a national conversation with the goal of creating a robust and nuanced regime that includes national standards that support the inclusion of persons with disabilities in all of our social, political and economic institutions, in services and facilities.

Article 9 of the Convention on the Rights of Persons with Disabilities requires signatories to develop, promulgate and monitor the implementation of minimum standards and guidelines for a wide variety of measure to promote accessibility in facilities and services. This includes such matters as the design of transportation, roadways and educational institutions and the development, production and distribution of accessible information and communications technologies.² Despite these broad promises, Canadians with disabilities remain systematically excluded from important swaths of public life. Given that over 4 million Canadians are affected by a disability, the need to act remains a pressing one.³ Simply put, accessibility is a precondition to ensuring the full and equal participation in society by persons with disabilities. It is the path to dignity for many.

Globally, Canada lags behind other countries in developing and implementing standards that provide a clear and comprehensive national mandate for the elimination of discrimination and the removal of barriers that limit participation in everyday life by individuals with disabilities. For example, the United States enacted the federal *Americans with Disabilities Act* over 25 years ago. Similarly, the UK and Australia have also adopted national legislative initiatives (both entitled the *Disability Discrimination Act*). It has been argued that Canada does not need national standards.⁴ Instead, government efforts could be better focused on “harmonizing an approach to economic considerations for Canadians with disabilities, including training, employment, income replacement and taxation.”⁵

A harmonized approach to address the economic challenges faced by persons with disabilities is vitally necessary to improving their circumstances and lived realities. Unifor will continue to advocate for federal government intervention in addressing poverty, and its roots causes, amongst individuals with disabilities. The Union remains of the view that the promulgation of national laws is also of profound value to individuals with disabilities

and the families and groups that provide support. Anti-discrimination statutes matter. They can, and are, used to address human rights abuses, but because they are complaint driven, they are responsive to a problem manifested in some form of social exclusion. Accordingly, they are severely limited in their capacity to create inclusiveness and accessibility by design rather than as a response.

A national statute allows us to design and build the kind of inclusivity that advances and underpins meaningful and equal participation of people with disabilities in everyday life. Moreover, the creation and implementation of a national law carries with it infinite possibilities to change way the way we view and talk about disability. Because laws both reflect and influence societal norms and social covenants, the creation of a national law, with dignity and real inclusion at its heart, has tremendous potential to positively impact the way individuals with disabilities are viewed as well as the way the view themselves. A national disability act can “speed up the march toward equality and inclusion”⁶, if we seize the opportunity and act.

Starting Points for Building Inclusion

As the federal government engages in broad consultations it is helpful to remember that a number of provinces have already conducted similar consultations resulting in various provincial standards, plans and goals. Ontario has a fairly comprehensive set of accessibility standards as enumerated in the *Accessibility for Ontarians with Disabilities Act, 2005* (“AODA”). Under this piece of provincial legislation the province mandates standards for customer service, information and communications, transportation, employment and design of public spaces. These standards are intended

to address the same barriers and exclusion that must be confronted by the federal government. The reality is that the knowledge, understanding, practices and tools already exist to build an accessible Canada, but they are decentralized and piecemeal.

The federal government has available to it an opportunity to take all of these strands and weave them together into a durable and enduring social safety net for persons with disabilities.

Unifor's Response

What Should Federal Accessibility Legislation Look Like?

4.1 The overarching goals of the legislation has been identified as increasing inclusion and participation of Canadians in society and promoting equality of opportunity by improving accessibility and removing barriers in areas of federal jurisdiction. These lofty goals are so very broadly defined that they are potentially meaningless. Specific objectives must be identified. Otherwise, endless consultation and development of toothless legislation could masquerade as action despite there being no salutary effect on persons with disabilities. The legislation must be imbued with identifiable and significant measures and standards that can transform the lives of people with disabilities.



Attitudes and Awareness

The government can show leadership, raise awareness and influence changing attitudes by developing a CDA. Complaint driven systems work for persons able to advocate for themselves or for those with advocates working on their behalf. Many people with disabilities are excluded from these systems. The effect is that they are fundamentally and systematically deprived of the right to full and equal participation in the world around them. Failure to provide this very basic equality of opportunity also leaves us deprived of the tremendous contributions people with disabilities can make. Efforts to build equality into all of our systems, all of our institutions and all of our services and facilities will allow differently abled individuals to exercise their rights and provide openings for challenging conceptions about disability.

Positive impacts of equitable and dignified participation in the world around us cannot be overstated. Seeing faces of persons with disabilities reflected in all of society's institutions, and at every level within those bodies, sends the strongest message; that every person can contribute and that we all have value. Our *Canadian Charter of Rights and Freedoms* (1982) has, since its inception, recognized the right to equality of all persons. It is time that the noble idea becomes more than words on a page for people living with disabilities.



A CDA that addresses barriers within all Federal government workplaces, programs and facilities, for example by providing Braille signage, live assistance and accessible websites, would demonstrate a commitment to change. Requiring that entities wishing to engage in business with the Federal Government build barrier-free accessibility into proposed projects, services and into their corporate culture would further evidence the government's desire to be a leader in transformation. Building in inclusivity and transparency into the legislative framework and the processes that guide it will require participation of the disability community. Viewpoints of people with a variety of disabilities, experts and academics working in the field should be sought when developing accessibility standards because these are the people best positioned to provide meaningful insight. Periodic review of the efficacy of and possible amendments to the legislation should also include input from persons with disabilities, as these individuals are most able to identify what is working and what is not.

In order to avoid complaint driven processes as the only trigger for possible oversight, an independent committee should be established and charged with auditing government and federal employers for compliance with the standards of the CDA.

Legislation must recognize that failure of policy makers, planners and builders to take societal barriers into account creates conditions of exclusion. A concerted effort to remove the socially constructed barriers that function to disable individuals, and to develop a society that is inclusive and respectful of persons across a wide spectrum of differences, will take political will. A robust CDA, that includes mandatory education, the creation of opportunity and effective enforcement can meaningfully contribute to changing the everyday reality of marginalisation faced by people with disabilities.



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

Unifor is of the view that a mix of performance-based and prescriptive approaches to regulation is needed. Prescriptive regulations which state or describe what must be done will matter. Ongoing exclusion and marginalisation of people with disabilities from job markets, from services and from institutions of government have not been addressed by voluntary measures. Prescriptive regulatory approaches can set clear standards and bench marks for achieving workplace, economic, cultural and social inclusion.

Performance-based regulations, however, can provide flexibility in compliance because they focus on outcomes rather than on the precise factors to be controlled or the means of controlling them. Developing, for example, a Code of Practice tool that can be used to augment regulations and provide practical guidance on how to achieve compliance would be assistive in creating buy-in to the process and encouraging creative solutions. Absent prescriptive regulations, performance-based regulations could fail to address the pre-existing disadvantage faced by people with disabilities in accessing and participating in economic, social and political institutions and alone would be inadequate

A CDA must reflect an active approach and seek to remove all barriers that create hardship and segregation including:

- a)** Seeking input and feedback from people with disabilities when developing the legislation;
- b)** Ensuring the standards in the CDA reflect best practices and incorporate elements of national and international agreements and laws;
- c)** Establishing an efficient and simple process for people, including those with disabilities, to provide feedback and alert the independent committee when they face barriers (new or old) by various methods including toll free telephone numbers, website, text message, app, etc.;
- d)** Establishing adequate enforcement procedures which include penalties for non-compliance that are costly enough for the business or organization to take note of the importance of complying;
- e)** Creating effective, independent, third-party oversight of the legislative promises with the power to make recommendations on changes to respond to developing concerns or the failure of mechanisms to address identified ones and conduct compliance audits.



4.3 Who should be covered by the legislation?

First and foremost it is imperative that the legislation ensures that all people with disabilities are covered by a CDA, regardless of whether the disabilities are related to mental health or physical self, or are visible or invisible. This will require a broad definition and nuanced understanding of disability. Failure to guarantee that everyone facing barriers to equal and meaningful participation in, and access to, all of society's institutions, programs and services intensifies the marginalisation of people already negatively impacted by the society that has been built around them.

No federal employer, volunteer organisation, educational institution, government program or service, building or facility should be exempt from regulatory compliance or standards. Accessibility and dignified participation in the world requires the broadest application of a CDA as is legally possible. Any exemptions or exclusions would suggest that the factors and systems that serve to disenfranchise and alienate people with disabilities are not universal and are not inexorably intertwined with human rights. That is a proposition that should be categorically rejected.

4.4 What accessibility issues and barriers should the legislation address?

We reject the idea that any one area of the six identified needs the most urgent attention. If we are to build a society with inclusion at its heart, we must focus our attention on any and every area which results in social, political and economic exclusion. To do otherwise would leave in place systems which systematically marginalise people with disabilities and this would be an untenable situation and run counter to the stated goal of rebuilding our society with accessibility in mind.

A CDA can complement existing legislation and commitments, both national and international, by focusing on the creation of standards that move us towards a more inclusive society. It can also help change misconceptions, prejudices and stereotypes about people with disabilities by changing the national narrative about their abilities to contribute to and enhance public policy and institutions.

The Federal government should build on accessibility standards already developed by provincial/territorial governments and other countries. There is a wealth of existing knowledge that could move people with disabilities forward. The proverbial wheel does not need reinvention. However, because technological change and development has incredible potential to positively impact the lives of persons with disabilities remains important that there be mechanisms of review and reconsideration of standards to use technological advancement to identify and remove more barriers and promote inclusion.

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

We have already addressed the importance of oversight and enforcement and suggested that the creation of an independent, third party body would be appropriate. It is imperative that this body be provided with legislated powers to ensure and encourage compliance to the CDA.

Our vision of a compliance regime, overseen by this third party body would have the following features:

- a)** Random investigations for determining compliance;
- b)** Where a company, facility of government program is found in violation of the legislation a non-compliance alert should be provided;
- c)** That alert should specify strategies or steps to be taken to address non-compliance and stipulate a deadline for implementation and provide the consequences of continued non-compliance by a stipulated deadline;
- d)** Cases of ongoing non-compliance should be posted in a place available to the public in the form of bulletins that include facts and penalties applied in such cases as this is likely to discourage non-compliance.

The CDA should also include features that:

- a)** Address all physical and architectural barriers that impede the ability to move freely in the built environment, use public transportation, access information or use technology;
- b)** Combat attitudes, beliefs and misconceptions that many people may have about limitations of people with disabilities;
- c)** Create policy options that reject outdated views of persons with disabilities and their ability and desire to fully participate in the world;
- d)** Acknowledge the varying abilities and disabilities that people may have and the multitude of barriers they face including physical, legal, bureaucratic, communication, technological and attitudinal.

A robust and nuanced national accessibility law, in the form of a CDA, would be evidence of a genuine commitment to building a more just and inclusive world. It is a promise that is long overdue.

¹ UN Convention on the Rights of Persons with Disabilities available online at: <http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

² For a detailed listing please refer to the entirety of Article 9 of the Convention, supra, Note 1.

³ Disability is becoming increasingly common in Canada. The disability rate in 2006 was 14.3%, meaning that over 4.4 million Canadians, or about one in seven, had a disability (2006 data). http://www.esdc.gc.ca/eng/disability/arc/disability_2006.shtml accessed October 3, 2016.

⁴ McColl et al., "A Canadians with Disabilities Act" Queen's University Centre for Health Services & Policy Research, (2010) accessible at: <http://69.89.31.83/~disabio5/wp-content/uploads/2011/07/CDA-reformat.pdf>, accessed October 2, 2016.

⁵ Ibid.

⁶ This process requires workplaces, communities and institutions reflect all of us, in all of our remarkable diversity. Until they do, we will not have fulfilled the mandate and the government will not have addressed barriers to inclusion including attitudinal, physical and social ones. are accessible. See for example Barrier Free Canada's vision of inclusivity and a barrier free Canada at: <http://barrierfreecanada.org/home/>.

