

# **ENSURING ACCESSIBILITY FOR CANADIANS WITH DISABILITIES**

**Submission by the United Steel, Paper and Forestry, Rubber, Manufacturing,  
Energy, Allied Industrial and Service Workers International Union to the  
Minister of Sport and Persons with Disabilities on Federal Accessibility  
Legislation**

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## **A. INTRODUCTION – WHO WE ARE**

The United Steelworkers (“Steelworkers”, the “Union” or the “USW”) is an international trade union with approximately 220,000 members across Canada. Steelworkers are men and women of every social, cultural and ethnic background in every industry and job.

From our roots in core industrial sectors such as mining and steel, the Steelworkers has grown into the most diverse union in Canada, representing employees in all areas of manufacturing including electronics, auto parts, rubber, aluminum and glass, plastics, appliances and paints. In addition, the Steelworkers represent a large number of service employees in call-centers, retail stores, hotels, and nursing homes across the country. Of our 220,000 members in Canada, approximately 25,000 work for employers whose labour relations fall within the federal jurisdiction. These employees are railway, bank, grain elevator, and telecommunications employees.

Our union is well-acquainted with the barriers Canadians with physical and/or mental disabilities face to full participation in Canadian society, particularly in the area of employment. We fight every day on behalf of our disabled members against structural and attitudinal barriers which hamper their ability to do their job, restrict their opportunities for advancement, and leave them vulnerable to arbitrary termination by unscrupulous employers who wish to avoid the cost of accommodation efforts.

Our experience is borne out by statistics, which show shockingly low rates of employment for Canadians with disabilities. Indeed, a recent survey commissioned by the CIBC and conducted by Angus Reid found that only 50% of respondents living with a disability have a full or part-time job.<sup>1</sup> Those numbers are consistent with an earlier study conducted two years ago by Statistics Canada, which tagged the unemployment rate for disabled Canadians at 49 percent, at least 30% lower than the employment rate for the general population.<sup>2</sup> As important, almost 20% of respondents in the Angus Reid poll indicated that they had no intention of disclosing their disability to their employer at all for fear of discrimination.<sup>3</sup>

These statistics are simply unacceptable in a country as wealthy and prosperous as Canada. Meaningful work which pays a fair wage allows us to live with dignity. It is fundamental to our self-identity. And it provides us with a sense of community and shared purpose. Ensuring that Canadians with disabilities can participate fully in Canadian workplaces will do much to alleviate the experience of poverty, isolation, and exclusion with which disabled Canadians are all too familiar.

We applaud the Government’s announcement late last year that it will ratify the Optional Protocol to the UN Convention on the Rights of Persons with Disabilities (CRPD) signed by Canada in 2010. The ratification of the Optional Protocol and the implementation of Canada’s obligations under the CRPD are essential to achieving equality for disabled Canadians.

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<sup>1</sup> <http://www.theglobeandmail.com/report-on-business/economy/only-half-of-disabled-canadians-are-employed-poll-finds/article33650160/>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

We are also pleased that the Government has begun to take steps towards the passage of robust federal disabilities legislation designed to break down barriers and create a more inclusive society for all. We believe that such legislation, along with a commitment by the federal (and provincial) government(s) to provide strong disability supports, could do much to improve the everyday lives of Canadians with disabilities.

To that end, we welcome the opportunity to provide feedback to Minister on the development of new federal accessibility legislation. Our submission in response to the Minister's Discussion Guide is set out below. We thank the Minister for the opportunity to provide input on this most important law.

## **B. FEDERAL ACCESSIBILITY LEGISLATION – KEY REQUIREMENTS**

### **(a) Federal Accessibility Legislation Should Be Drafted In Close Consultation with Those Who It Is Designed to Assist**

This Government has indicated that the overall goal of federal accessibility legislation is to “increase the inclusion and participation of Canadians in society and promote equality of opportunity by improving and removing barriers in areas of federal jurisdiction”.

Our Union believes that this goal of inclusiveness must begin before the first word of any federal disability bill is put to paper. A policy of inclusion must start now. Canadians with disabilities know best what barriers they face to full participation in Canadian life. If the Government is going to implement effective legislation, it is vital that the voices of those Canadians living with disabilities, whether physical, sensory or intellectual be heard. It is through listening to their experience that this Government can best understand the nature and scope of those barriers, and the best ways in which those barriers can be removed.

It is particularly important, in our Union's view, that this Government not just make itself available to, but rather actively seek out the voices of those disabled individuals who may face multiple disadvantages, like women and girls, racialized persons, Canada's Indigenous peoples, and those in the LGBTQ community to ensure that the proposed legislation benefits all disabled Canadians. Their input is essential to ensuring that a federal disabilities act is truly inclusive, and reflects the diversity of views of those within the disabled community in Canada.

As the Council of Canadians with Disabilities has noted, the guiding philosophy behind the development of the CRPD was “nothing about us, without us”. That philosophy, in our Union's view, should also guide the drafting and implementation of this legislation.

### **(b) The Name and Purpose of the Act Should Be Clear So As To Guide Ongoing Implementation**

Federal accessibility legislation should have a name and a purpose clause which reflects both the broad policy goals of the legislation and the specific targets that the legislation is designed to achieve.

This will ensure that the implementation (and future interpretation of such legislation by the courts) is consistent with its aims.

We support a purpose clause which reflects Canada's international commitments under the CRPD, and which specifically references the rights and protections afforded disabled Canadians under the *Canadian Charter of Rights and Freedoms* and human rights legislation.

That purpose clause, in our view, should make clear that the Act is designed to enable persons with disabilities to live independently and to participate fully in all aspects of Canadian life by removing barriers to their participation in society. "Barriers" should be defined in the legislation broadly to include anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, whether a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technology barrier, a policy or a practice.

Finally, it should also be clearly stated in the Act, whether in the purpose clause or in the body of the legislation, that the obligations and duties of institutions, companies, and individuals under federal disability legislation are in addition to, and not in place of, existing obligations under Canadian or international law. Similarly, any rights accruing to disabled individuals or communities under a federal disability Act must not undermine in any way their rights under current domestic and international law.

Finally, we support the recommendation of the Council for Canadians with Disabilities that the Act be named the "National Accessibility and Inclusion Act" to accurately reflect the policy objectives of the legislation.

### **(c) Federal Accessibility Legislation Should Be As Broad As Possible In Scope**

If we are to achieve the goal of breaking down barriers to participation in Canadian society for disabled individuals any federal disability legislation must be broad in scope. This means the legislation must apply not just to Parliament or government departments and agencies, but to all organizations over which Parliament has legislative power. This includes federal crown corporations, the federal courts, the Canadian Armed Forces, the RCMP and all federally-regulated businesses and industries.

Further, the legislation must pay special attention to addressing barriers facing Canada's Aboriginal persons with disabilities. While the Union recognizes that jurisdictional issues may complicate the ability of the Government to effectively legislate in this area, it is essential that this Government work together with the provinces in consultation with Aboriginal governments to ensure that the needs of Aboriginal persons with disabilities living both on and off reserve are met.

**(d) Federal Accessibility Legislation Should Focus on Removing Barriers Which Will Have the Greatest Effect On The Lives of Disabled Canadians**

Our Union believes that any effective federal accessibility and inclusion legislation must focus on breaking down barriers by:

- Ensuring that disabled Canadians have access to reliable, affordable, and accessible modes of transportation, telecommunications, and banking opportunities, including exploring the implementation of a postal banking service through Canada Post.
- Ensuring that disabled Canadians are able to exercise their right to vote, by considering the implementation of fully accessible telephone, online, or other electronic voting systems and requiring that all candidates' campaign offices, campaign literature, and meetings be fully accessible.
- Ensuring that all information produced by federal companies and organizations, whether electronically or otherwise, be written in plain language, and be fully accessible to those with physical or mental disabilities of any kind.
- Mandating that the Government of Canada, its agencies and departments, or Crown corporations within its control, and private sector organizations under its authority, make accessibility a requirement in any procurement contract or infrastructure project to the extent that it does not constitute an "undue burden", similar to the requirement in section 508 of the *United States Rehabilitation Act of 1973*.
- Providing disabled Canadians with access to affordable, fully-accessible housing and post-secondary education.

Further, there is much that this Government can do through federal accessibility legislation (or the amendment of existing legislation) to ensure that disabled Canadians are better able to participate in Canadian workplaces and earn a living wage. As we noted earlier, disabled Canadians have unreasonably high levels of unemployment as compared to the general population. While federal and provincial human rights legislation and the *Charter* have gone some way towards mitigating against the worst effects of discrimination against disabled Canadians, the enforcement of those rights require the filing of complaints by individual Canadians with disabilities. As a result, current rights legislation operates in a piecemeal fashion and cannot be readily employed to break down systemic barriers to workplace participation.

Federal accessibility legislation can help address the shortcomings of a complaint-based model of rights enforcement and address systemic barriers, including requiring that employers build accessibility into their workplaces by ensuring that physical structures and equipment are accessible to those with disabilities and that written policies and procedures are reviewed to meet accessibility standards designed in accordance with legislative requirements.

We would also encourage the Government to amend the *Canada Labour Code* to require that federal workplaces over a certain size establish mandatory joint labour/management return to work/disability prevention committees. Such committees could operate in the same manner as joint health & safety committees which are currently mandated under occupational health and safety legislation in both the federal and provincial jurisdictions where workplaces have over a defined number of employees. Such return to work/disability prevention committees could be tasked with the job of reviewing workplaces for accessibility standards, and implementing and reviewing workplace accommodations, including job task evaluations and physical demands assessments. Canadians with disabilities will have a much better chance of achieving substantive equality in our workplaces if both labour and management are working pro-actively to achieve that goal.

**(e) Accessibility Legislation Should Establish Research Centers to Facilitate the Removal of Barriers**

In order for federal accessibility legislation to make a difference in the lives of disabled Canadians it is essential that centers of research be established to monitor and guide the implementation of the Act.

To that end, the Union supports the establishment of three research/monitoring centers as proposed by Phyllis Gordon in her 2006 paper (commissioned by the Canadian Council with Disabilities and the Canadian Association for Community Living) entitled *A Federal Disability Act: Opportunities and Challenges* to ensure the Act meets its objectives, as follows<sup>4</sup>:

- (i) **A Commissioner of Accessibility and Inclusion** - The Commissioner and his/her staff would be tasked with the job of monitoring and conducting the independent assessment of disability programs and services delivered and funded by the federal government, and would report directly to Parliament.
- (ii) **An Accessibility Design and Communications Centre** – The Centre would be responsible for accessibility design infrastructure and support. It would develop technical expertise in the area of universal design and would support and advise the Government in the design and development of guidelines and standards. Such a center would avoid duplication and overlap amongst federal department and agencies and could also have standard enforcement responsibilities.
- (iii) **A Full Inclusion Policy Centre** - The Centre would be an arm of the Canadian Human Rights Commission (CHRC) and responsible for reviewing policies and practices of organizations with obligations under accessibility legislation for the purposes of identifying and prioritizing the removal of barriers. It could, consistent with the work of the CHRC, develop guidelines

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<sup>4</sup> Gordon, Phyllis; *A Federal Disability Act: Opportunities and Challenges* <http://www.ccdonline.ca/en/socialpolicy/fda/1006>

with respect to review and revision of policies and practices. The Centre should also have the ability to launch a complaint under the *Canadian Human Rights Act* where an organization has failed to comply with its obligations under the statute.

**(f) Federal Accessibility Legislation Must Have Teeth**

It is our view that federal accessibility legislation will only be effective if the Government includes strong compliance and enforcement provisions. This will require the Government to invest significant resources in order to ensure successful implementation of the legislation.

Consistent with those principles, the Union supports a model for a federal disability Act that does not rely solely on accessibility standards for achieving results. As Gordon explains in her paper, accessibility standards take time to write. Instead, Gordon notes, a disability Act which creates the kind of research centers suggested above would provide other mechanisms for achieving enforcement of accessibility goals in the short-term, while standards are in the process of being drafted and implemented. Gordon writes:

It is anticipated that if the structures set out within this Act were adopted, then there would be other mechanisms for achieving the goals of the Act.....Recall that standards may take several years to write.

In the interim, the Disability and Inclusion Commissioner would be auditing and making recommendations and identifying required universal design initiatives, along with the Accessibility Design Centre. The Full Inclusion Policy Centre would be providing leadership, training, guidelines for policies reviews and changes and would be able to bring systemic complaints to the Canadian Human Rights Commission. Regulatory agencies would be directed to incorporate the principles of this Act into their activities and to so advise the parties that they appear before.<sup>5</sup>

Federal accessibility legislation should create tangible outcomes for disabled Canadians. The measure of the success of this legislation, in our view, will be whether or not it helps disabled Canadians achieve a similar quality of life, including access to services, as that enjoyed by Canadians without disabilities. We believe a multi-strategic approach as outlined above is the best way to achieve that goal.

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<sup>5</sup> Ibid.

**C. CONCLUSION**

We applaud this Government's decision to enact federal accessibility legislation. However, in order for the legislation to have a positive impact on the lives of disabled Canadians, this Government must ensure that it addresses the needs of those in the community it is designed to serve. This means ensuring that the voices of disabled Canadians are heard through the consultation process; that the legislation seeks to provide the supports sought, and break down the barriers identified, by disabled Canadians throughout the consultation process; that the infrastructure created by the legislation is properly resourced and implemented in a timely fashion; and that there are robust provisions providing for compliance and enforcement of the legislation.

Only under these conditions can federal accessibility legislation fulfill its promise of creating a more accessible and inclusive society for all Canadians.