



The Importance of Accessibility Legislation in Alberta



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Alberta Civil Liberties Research Centre

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By the

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Acknowledgments



Dedication

This project is dedicated to the memory of Linda McKay-Panos, B.Ed., J.D., LL.M., Executive Director (1992-2024), whose vision, dedication, and contributions were integral to this report.

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I. Introduction

Accessibility allows everyone to participate in various aspects of their community, such as the use of buildings and facilities, work opportunities, transportation, leisure activities and technology.

Equal access eliminates discrimination by ensuring individuals with disabilities have the same opportunities and services as those without disabilities. This is achieved by removing barriers that might otherwise prevent them from fully engaging and participating in their community. In many societies, limited access to facilities and services can pose a significant setback for persons with disabilities, preventing them from being fully included.

People without disabilities typically have no trouble getting around. They can easily use stairs, sidewalks, curbs, and rely on traffic signals and signs to guide them. However, individuals with disabilities may encounter barriers when using stairs or navigating curbs. Additionally, signs often do not assist those who are visually impaired unless they are strategically placed and accessible for tactile reading. Similarly, loudspeaker announcements at airports do not help those who are deaf or hard of hearing.¹

Physical features that people without disabilities often take for granted can present significant challenges for people with disabilities - especially when those features were not designed with accessibility in mind. This lack of consideration can also extend to how people with disabilities are treated when seeking employment, education or services.²

¹ Section 4. Ensuring Access for People with Disabilities, online: Community Tool Box <<https://ctb.ku.edu/en/table-of-contents/implement/physical-social-environment/housing-accessibility-disabilities/main>> [Community Tool Box].

² Community Tool Box.

A disability can limit a person's actions and abilities. For example, wheelchair users on upper floors may be at great risk during a fire if the elevators are not operational. To navigate daily life effectively, people with disabilities need to have equal access to the same spaces, facilities, and services as everyone else. When accessibility is ensured, their disability becomes less of an obstacle, allowing them to more fully participate in community life.³

Human Rights Watch affirmed that:

People with disabilities have the right to access the physical environment, including buildings, roads, schools, housing, medical facilities, workplaces, and other facilities and services open or provided to the public, in both urban and rural areas, on an equal basis with others. People also have the right to live independently and be included fully in their communities. They also have the right to the highest attainable standard of health, including rehabilitation and services specific to their disabilities. The government also has an obligation to raise awareness about the rights and dignity of people with disabilities and to combat stereotypes, prejudices, and harmful practices.⁴

Many countries have handled this issue by enacting laws that protect people with disabilities from discrimination, and provide them with access to facilities, employment, services, education and more.

According to the United Nations:

Accessibility is about giving equal access to everyone. Without being able to access the facilities and services found in the community, persons with disabilities will never be fully included. In most societies, however, there are innumerable obstacles and barriers that hinder persons with disabilities. These include such things as stairs, lack of information in accessible formats such as Braille and sign language, and community services provided in a form which persons with disabilities are not able to understand.⁵

³ Community Tool Box.

⁴ I Am Equally Human, (26 June 2018), online: Human Rights Watch <<https://www.hrw.org/report/2018/06/27/i-am-equally-human/discrimination-and-lack-accessibility-people-disabilities-iran>> [Human Rights Watch].

⁵ Accessibility: A guiding principle of the Convention, online: United Nations <<https://www.un.org/esa/socdev/enable/disacc.htm#:~:text=Accessibility%20is%20about%20giving%20equal,that%20hinder%20persons%20with%20disabilities>>.

In 2023, the World Health Organization (WHO) estimated that over 1 billion people will experience disability due to chronic health conditions and population ageing.

The WHO stated:

disability is a human rights issue, with people with disability being subject to multiple violations of their rights, including acts of violence, abuse, prejudice and disrespect because of their disability, which intersects with other forms of discrimination based on age and gender, among other factors. People with disability also face barriers, stigmatization and discrimination when accessing health and health-related services and strategies.⁶

Moreover, people with disabilities often experience high rates of unemployment or underemployment and tend to earn lower salaries compared to those without disabilities. However, when people with disabilities find suitable employment, they can make important contributions in the workplace.⁷

According to Statistics Canada, in 2022, almost 8 million (27% of the population) aged 15 years and over, identified as having a disability.⁸ Additionally, the data showed that “three in five (62%) persons with disabilities were employed, compared to almost four in five (78%) persons without disabilities.”⁹ The unemployment rate was even higher for those with severe disabilities.

Canada has long upheld laws, at both the federal and provincial levels, that prohibit discrimination against people with mental and physical disabilities.¹⁰ However, these laws alone

⁶ Disability and Health, (7 March 2023), online: World Health Organization <<https://www.who.int/en/news-room/fact-sheets/detail/disability-and-health>> [WHO Disability and Health].

⁷ Facts on Disability in the World of Work, (November 2007), online: International Labour Organization <https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_087707.pdf>.

⁸ Canadian Survey on Disability: A demographic, employment and income profile of persons with disabilities aged 15 years and older, 2022, (28 May 2024), online: Statistics Canada <<https://www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2024001-eng.htm>> [Statistics Canada 2022].

⁹ Statistics Canada 2022.

¹⁰ Canadian Accessibility Laws: A Guide to the Accessible Canada Act, (4 December 2024), online: Level access <<https://www.essentialaccessibility.com/blog/canadian-accessibility-laws>>.

are not enough to ensure barrier-free accessibility for individuals with disabilities. There is a need to identify, remove and prevent accessibility barriers across the country. These barriers include both physical obstacles and non-physical challenges that can prevent individuals with disabilities from fully participating in society.¹¹

According to the Canadian Government:

Persons with disabilities ... represent a significant potential client base for businesses. As the number of persons living with a physical disability is expected to rise from 2.9 million to 3.6 million over the next 13 years, nearly double the pace of the population as a whole, their real spending is expected to rise from 14 to 21% of the total consumer market. Removing barriers that prevent persons with disabilities from purchasing goods and services (e.g. financial services) is critical to both improving their quality of life and growing the Canadian economy.¹²

To address these gaps, the Federal Government enacted the *Accessible Canada Act*¹³ with the purpose of identifying removing existing barriers, and preventing new barriers, in specific areas. Similarly, some provinces – including Ontario, Manitoba, Nova Scotia, British Columbia, Newfoundland and Labrador and Saskatchewan have enacted accessibility legislation aimed at identifying and removing barriers to support people with disabilities, allowing them to participate fully in their communities."

II. Definitions

A. Disability

Article 1 of the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) reads:

¹¹ Canada Gazette, Part I, Volume 155, Number 7: Accessible Canada Regulations (13 February 2021), online: Government of Canada <<https://gazette.gc.ca/rp-pr/p1/2021/2021-02-13/html/reg2-eng.html>> [Canada Gazette].

¹² Canada Gazette.

¹³ *Accessible Canada Act*, SC 2019, c 10 [*Accessible Canada Act*].

Persons with disabilities include those who have some long-term physical, mental, intellectual or sensory impairments which in interaction with various barrier may hinder their full and effective participation in society on an equal basis with others.

Disability is a physical, mental, cognitive, or developmental condition that impairs, interferes with, or limits a person's ability to engage in certain tasks or actions or participate in typical daily activities and interactions.¹⁴

The WHO stated that:

Disability refers to the interaction between individuals with a health condition (e.g., cerebral palsy, Down syndrome and depression) and personal and environmental factors (e.g., negative attitudes, inaccessible transportation and public buildings, and limited social supports).¹⁵

The WHO's *International Classification of Functioning, Disability and Health* (the ICF model), describes three elements for recognizing whether a person has a disability: impairment, activity limitations, and participation restrictions.¹⁶

In Canada, definitions of disability vary between jurisdictions. Usually, a disability exists where a person's physical or mental condition prevents them from participating in activities that others can do.¹⁷

According to section 2 of the *Accessible Canada Act*:

Disability means any impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment — or a functional limitation — whether permanent, temporary or episodic in nature, or evident or not, that, in interaction with a barrier, hinders a person's full and equal participation in society. (*handicap*)

¹⁴ *Convention on the Rights of Persons with Disabilities*, GA Res 61/106, UNGAOR, 61st Sess, Supp No 49, UN Doc A/61/49 (2006).

¹⁵ WHO Disability and Health

¹⁶ *International Classification of Functioning, Disability and Health* (2001), online: World Health Organization <<https://apps.who.int/iris/bitstream/handle/10665/42407/9241545429.pdf;jsessionid=5DE79F7BEC672B174C4C3B9A9D46481C?sequence=1>> at 10.

¹⁷ Mason, Nicol & Walker, "An Examination of the Duty to Accommodate in the Canadian Human Rights Context (Background Paper)", 2012-01-E (1 December 2020), online: Library of Parliament <<https://lop.parl.ca/staticfiles/PublicWebsite/Home/ResearchPublications/BackgroundPapers/PDF/2012-01-e.pdf>> at 6.

Section 3(1)(i) of the *Accessibility Act*¹⁸ in Nova Scotia states:

“[D]isability” includes a physical, mental, intellectual, learning or sensory impairment, including an episodic disability, that, in interaction with a barrier, hinders an individual’s full and effective participation in society.

Section 44(1) of the *Alberta Human Rights Act*¹⁹ defines mental and physical disability as follows:

- h) “[M]ental disability” means any mental disorder, developmental disorder or learning disorder, regardless of the cause or duration of the disorder;
- (l) “[P]hysical disability” means any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness . . .

Section 2(c) of the Newfoundland *Human Rights Act*²⁰ reads:

- "[D]isability" means one or more of the following conditions:
- (i) a degree of physical disability,
 - (ii) a condition of mental impairment or a developmental disability,
 - (iii) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or language,
 - and
 - (iv) a mental disorder.

Section 2 of *The Saskatchewan Human Rights Code*²¹ has a long list of what constitutes a disability:

- (a) any degree of physical disability, infirmity, malformation or disfigurement, including:
 - (i) epilepsy;
 - (ii) any degree of paralysis;
 - (iii) amputation;
 - (iv) lack of physical coordination;

¹⁸ *Accessibility Act*, SNS 2017, c 2.

¹⁹ *Alberta Human Rights Act*, RSA 2000, c A-25.5.

²⁰ *Human Rights Act*, 2010, SNL 2010, c H-13.1.

²¹ *The Saskatchewan Human Rights Code*, SS 2018, c S-24.2 [*The Saskatchewan Human Rights Code*].

- (v) blindness or visual impediment;
 - (vi) deafness or hearing impediment;
 - (vii) muteness or speech impediment; or
 - (viii) physical reliance on a service animal, wheelchair or other remedial appliance or device; or
- (b) any of the following disabilities:
- (i) an intellectual disability or impairment;
 - (ii) a learning disability, or a dysfunction in one or more of the processes involved in the comprehension or use of symbols or spoken language;
 - (iii) a mental disorder.

In *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Montréal (City)*; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v Boisbriand (City)*, the Supreme Court of Canada defined handicap as:

. . . the result of a physical limitation, an ailment, a social construct, a perceived limitation or a combination of all of these factors. Indeed, it is the combined effect of all these circumstances that determines whether the individual has a “handicap” for the purposes of the *Charter*.²²

B. Accessibility

According to Anna Lawson:

Persons with disabilities may experience different types of barriers to accessibility and additional barriers can be the result of multiple discrimination of intersectional discrimination.

...
 Accessibility is a precondition for the enjoyment of human rights for persons with disabilities. Indeed, without it, rights such as rights to education, work, health, freedom of expression, voting and holding political office are placed beyond the reach of many persons with disabilities. Even the possibility of accessing justice by seeking redress and obtaining remedies for infringement of rights would be impeded.²³

²² *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, 2000 SCC 27 (CanLII), [2000] 1 SCR 665 at para 79.

²³ Anna Lawson, “Accessibility of information, technologies and communication for persons with disabilities”, Contribution to the Council of Europe Strategy on the Rights of Persons with Disabilities (June 2017), online: <https://rm.coe.int/final-study-accessibility-of-information/168072b420> at 6-7 [Anna Lawson].

Access for people with disabilities can include: 1) Physical access such as accessible routes, curb ramps, parking, elevators, restroom accommodations, etc. 2) Access to communication and information such as access to the media; 3) Employment; 4) Education; 5) Community access such as religious services, restaurants, shopping malls, etc.²⁴

Ron McCallum, the former Chair of the United Nations Committee on the Rights of Persons with Disabilities stated that “we cannot think of anything more crucial for persons with disabilities than accessibility.”²⁵

Accessibility is not specifically defined in any Canadian statute. However, Accessibility Services Canada describes it as “the design of products, devices, services, or environments for people who experience disabilities.”²⁶

Accessibility means that everyone can participate in their communities through employment, services and other daily activities. Accessibility is a term usually used “to describe the degree to which a product, device, service, or environment is available” to be used by everyone.²⁷ According to the Government of Ontario, “there are five identified barriers to accessibility for persons with disabilities. These barriers are attitudinal, organizational or systemic, architectural or physical, information or communications, and technological.”²⁸

According to Human Rights Watch:

To live an independent and dignified life within society, people with disabilities should have access to services and devices that facilitate their participation in the community on an equal basis with others. People with different types of disabilities require differentiated services. For example, assistive equipment such

²⁴ Community Tool Box.

²⁵ Anna Lawson at 8.

²⁶ Definitions, online: Accessibility Services Canada < <https://accessibilitycanada.ca/aoda/definitions/>>.

²⁷ Understanding Barriers to Accessibility, online: Ontario’s Universities Accessible Campus < <https://accessiblecampus.ca/understanding-accessibility/what-are-the-barriers/>> [Accessible Campus].

²⁸ Accessible Campus.

as motorized wheelchairs and elevators in public buildings may be essential for some. Others may require personal assistance services, whereby a professional assistant supports an individual with daily tasks such as dressing, bathing, cooking, shopping, and participating in other activities.²⁹

Andrea Broderick said that “accessibility refers to the inclusive practice of removing barriers to ensure equal access for persons with disabilities to, among others, built environments, goods and services, as well as facilities.”³⁰

Without being able to use the facilities and services found in their communities, people with disabilities will never be fully included.

C. Barrier

Barriers to accessibility can take many forms, ranging from physical obstacles to societal attitudes, and they can significantly hinder individuals with disabilities from participating fully in society. The following definitions from various accessibility acts outline the broad scope of what constitutes a barrier, emphasizing the need to address these challenges to ensure equal participation for all.

Section 2 of the *Accessible Canada Act* defines barrier as:

... anything — including anything physical, architectural, technological or attitudinal, anything that is based on information or communications or anything that is the result of a policy or a practice — that hinders the full and equal participation in society of persons with an impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment or a functional limitation. (*obstacle*)

Section 2 of the *Accessibility for Ontarians with Disabilities Act*³¹ defines barrier as:

²⁹ Human Rights Watch.

³⁰ Andrea Broderick, “Of rights and obligations: the birth of accessibility”, *The International Journal of Human Rights* 24:4 (2019) 393-413, online: <<https://www.tandfonline.com/doi/full/10.1080/13642987.2019.1634556>>.

³¹ *Accessibility for Ontarians with Disabilities Act*, SO 2005, c. 11.

anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice.

Section 3(1) of *The Accessibility for Manitobans Act*³² defines barrier as follows:

For a person who has a physical, mental, intellectual or sensory disability, a barrier is anything that interacts with that disability in a way that may hinder the person's full and effective participation in society on an equal basis.

Section 3(2) gave the following examples:

- (a) a physical barrier;
- (b) an architectural barrier;
- (c) an information or communications barrier;
- (d) an attitudinal barrier;
- (e) a technological barrier;
- (f) a barrier established or perpetuated by an enactment, a policy or a practice.

A barrier can be anything that stops people with disabilities from being included. It is an obstacle for people with disabilities to participate in activities that others take for granted, such as using public transportation, public spaces, shopping, working, etc. People's attitudes towards disability can be a barrier as well.³³

D. Duty to Accommodate

Accommodation is a tool used to prevent discrimination³⁴ based on disability, religion, age or any other ground prohibited by the *Canadian Charter of Rights and Freedoms*³⁵ or

³² *The Accessibility for Manitobans Act*, CCSM, c A1.7.

³³ Accessibility legislation plain language summary (17 June 2021), online: Government of British Columbia < <https://www2.gov.bc.ca/gov/content/governments/about-the-bc-government/accessibility/legislation/summary#01> > [BC Plain Language Summary].

³⁴ Discrimination is an action or a decision that treats a person or a group unfairly or negatively for reasons such as their race, age or disability. Discrimination – What can I do about it? online: Canadian Human Rights Commission < <https://www.chrc-ccdp.gc.ca/resources/publications/discrimination-what-can-i-do-about-it> >.

³⁵ *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act (UK)*, 1982, c11.

human rights legislation. Discrimination can result from the failure to provide accommodation for a person with a disability.³⁶

Section 2 of the *Canadian Human Rights Act*³⁷ asserts that the purpose of the *Act* includes:

the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated ... without being hindered in or prevented from doing so by discriminatory practices.

Section 15(2) of the *Canadian Human Rights Act* states that for any discriminatory practice to be justified, “it must be established that accommodation of the needs of an individual or a class of individuals affected would impose undue hardship on the person who would have to accommodate those needs, considering health, safety and cost.”

According to the Manitoba Government, the duty to accommodate “is the responsibility to address and remove unreasonable burdens or barriers based on a protected characteristic that limit access to opportunities and benefits available to others.”³⁸

There are three factors in the duty to accommodate:

(1) a duty to remove existing barriers that preclude a person with a disability from participating in existing services covered by the equality guarantee; (2) a duty to take interim steps to provide individualized accommodation where it proves impossible to immediately remove barriers; and (3) a continuing obligation to prevent the creation of future barriers.³⁹

³⁶ Human Rights and Reasonable Accommodations, online: The Government of Manitoba <<https://www.gov.mb.ca/fs/imd/hr.html>> [Reasonable Accommodations].

³⁷ *Canadian Human Rights Act*, RSC 1985, c. H-6.

³⁸ Reasonable Accommodations.

³⁹ Ravi Malhotra, “Has the Charter Made a Difference for People with Disabilities?: Reflections and Strategies for the 21st Century,” *The Supreme Court Law Review: Osgoode’s Annual Constitutional Cases Conference* 58 (2012), online: Osgoode York University

<<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1256&context=sclr>> at 276.

In addition to removing barriers, organizations need to provide appropriate accommodation to individuals with disabilities, unless doing so would constitute undue hardship. Appropriate accommodation should allow equal opportunity of benefits and privileges to everyone, including people with disabilities. Appropriate accommodation “respects dignity, responds to a person’s individualized needs and allows for integration and full participation.”⁴⁰

III. Accessibility in the International Context

Numerous international documents address the issue of accessibility to protect the rights of individuals with disabilities, ensuring they are treated equally and without discrimination.

A. *United Nations Convention on the Rights of Persons with Disabilities (CRPD)*

The Preamble of the *CRPD* asserts that “...discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person.”

Article 1 of the *CRPD* states its purpose, which 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 define “accessibility”, but it defines “discrimination”, “reasonable accommodation” and “universal design” in article 2:

Discrimination on the basis of disability” means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation;

⁴⁰ Duty to accommodate, online: Ontario Human Rights Commission <https://www.ohrc.on.ca/en/policy-ableism-and-discrimination-based-disability/8-duty-accommodate#_ednref127>.

Reasonable accommodation means 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;

“Universal design means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

Article 3 of the *CRPD* outlines the guiding principles, which include:

1. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
2. Non-discrimination;
3. Full and effective participation and inclusion in society;
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
5. Equality of opportunity;
6. Accessibility;
7. Equality between men and women;
8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

Article 9 discusses the right to accessibility:

(1) To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- b) Information, communications and other services, including electronic services and emergency services.

Article 9(2) defines the obligations of the States which must guarantee that persons with disabilities have equal opportunities for participation in their communities. States must enforce

accessibility in all areas of public life such as physical environment, transportation, communications and information.⁴¹

In March 2007, Canada signed the *CRPD* and ratified it in March 2010. By ratifying the convention, Canada committed to upholding its obligations under the *CRPD*. Therefore, the government of Canada had to consider the *CRPD*'s provisions while developing and drafting federal accessibility legislation.⁴²

B. *Optional Protocol*

The *Optional Protocol*⁴³ is an additional part of the *CRPD*. It establishes a complaint mechanism for individuals and groups who allege that their rights under the *CRPD* have been violated. But before filing a complaint with the United Nations Committee on the Rights of Persons with Disabilities, the plaintiff(s) must exhaust all available domestic remedies.⁴⁴

The *Optional Protocol* has two procedures to reinforce the implementation of the *CRPD*:

- 1) an individual communications procedure which allows individuals and groups to file a complaint with the above-mentioned Committee; 2) an inquiry procedure which allows the Committee to investigate about violations of rights under the *CRPD*.⁴⁵

⁴¹ Anne Sieberns, "Universal Design and Human Rights: The UN Convention on the Rights of Persons with Disabilities (CRPD)" (3 August 2018), online: Library, German Institute for Human Rights <<https://library.ifla.org/id/eprint/2269/1/094-sieberns-en.pdf>> at 3.

⁴² Paper – Discussion Paper on Proposed Federal Accessibility Legislation and the Convention on the Rights of Persons with Disabilities (2017), online: ARCH Disability Law Centre <<https://archdisabilitylaw.ca/resource/discussion-paper-on-proposed-federal-accessibility-legislation-and-the-convention-on-the-rights-of-persons-with-disabilities/>>.

⁴³ *Optional Protocol to the Convention on the Rights of Persons with Disabilities*, GA Res 61/106, UNGAOR, 61st Sess, Supp No 49, UN Doc A/61/49 (2006) [*Optional Protocol*].

⁴⁴ *Optional Protocol*, art 2.

⁴⁵ Dabrusin, Response to Petition (28 November 2018), online: House of Commons <https://www.ourcommons.ca/Content/ePetitions/Responses/421/e-1768/421-02976_ESDC_E.pdf> [Dabrusin].

In 2018, Canada acceded to the *Optional Protocol* and took a major step to strengthen the protection of rights of people with disabilities.⁴⁶ In Canada, international treaties like the *CRPD* are only enforceable only when incorporated into domestic law. This can be achieved by either enacting new legislation that adopts the language of the convention, in whole or in part, or by introducing legislation that explicitly integrates the convention's provisions into Canadian law.

According to the Minister of Public Services and Procurement and Accessibility in 2018:

The Government of Canada is committed to the ongoing implementation of the principles contained within the *Convention* (i.e. including accessibility, housing and living independently in the community), and has worked diligently with provincial and territorial governments towards accession to the Optional Protocol. With the support of all provinces and territories, the Government of Canada acceded to the Optional Protocol to the *Convention* in December 2018. Federal, provincial and territorial governments are responsible for the ongoing implementation of the *Convention* in the areas under their jurisdiction.⁴⁷

To honour this commitment, the Government of Canada enacted federal accessibility legislation which applies to organizations and areas that fall under federal jurisdiction. Similarly, many provinces have passed accessibility legislation to remove barriers and to develop standards of accessibility for individuals with disabilities.

IV. Accessibility in the Canadian Context on the Federal Level

Canada has different statutes that protect the rights of persons with disabilities at the federal and provincial levels. These laws protect persons with disabilities from discrimination and support equality for them.

⁴⁶ Canada accedes to the Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities (3 December 2018), online: Government of Canada <<https://www.canada.ca/en/employment-social-development/news/2019/01/canadaaccedes-to-the-optional-protocol-to-the-united-nations-convention-on-the-rights-of-persons-with-disabilities.html>>.

⁴⁷ Dabrusin.

A. *Charter of Rights and Freedoms*

i. Section 15

The *Charter of Rights and Freedoms* (the *Charter*) protects equality, mobility, legal, democratic and linguistic rights of Canadians.

Section 15(1) of the *Charter* reads:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

This section guarantees the right to equal protection under the law regardless of race, religion, national or ethnic origin, colour, sex, age, physical or mental disability. As a result, governments are prohibited from discriminating on any of these grounds.

Section 15(2) permits the enactment of laws or programs that aim to ameliorate the conditions of disadvantaged individuals or groups, including those with mental or physical disabilities.

According to Mary Ann McColl et al.:

The *Charter* holds an iconic place in Canadian society as the primary guarantor of minority rights, alongside federal and provincial human rights codes. It is lauded as a powerful legal tool that has invigorated the struggles of people with disabilities in Canada.

...

In particular, section 15 ensures equal treatment before and under the law for five designated groups: people with disabilities, women, ethnic minorities, Aboriginal people, sexual and transgendered minorities. The *Charter* supersedes the policies or actions of any level of government or its agents, and is enforced by the courts rather than by a government agency or panel.⁴⁸

⁴⁸ Mary Ann McColl et al., "People with Disabilities and the Charter: Disability rights at the Supreme Court of Canada under the Charter of Rights and Freedoms", *Canadian Journal of Disability Studies* 5.1 (2016), online: University of Waterloo <<https://cjds.uwaterloo.ca/index.php/cjds/article/view/251/438>> at 184.

The *Charter* is part of the Constitution and takes precedence over any other Canadian laws that are found to violate *Charter* rights. Governments may only infringe upon *Charter* rights if the infringement can be justified under section 1, which determines whether the violation is reasonable in the circumstances. Additionally, federal, provincial and territorial human rights codes prevail over other legislation in the same jurisdiction, unless a law explicitly states otherwise. Therefore, discriminatory practices cannot occur under provincial laws such as building codes, health and safety requirements or labour laws.⁴⁹

ii. Disability Discrimination and Section 15

The case of *Eldridge v British Columbia*⁵⁰ is a landmark legal decision that addresses significant issues regarding accessibility and equality within the health care system in British Columbia (BC).

In BC, hospitals are funded by the government under the *Hospital Insurance Act*⁵¹, while services delivered by doctors and other health care practitioners are funded under the Medical Services Plan⁵² (established and regulated by the *Medical and Health Care Services Act*⁵³). Neither program covered sign language interpretation for the deaf.

In *Eldridge v. British Columbia*, the appellants, who were born deaf, sought to use sign language for communication with their health care providers. They argued that the lack of interpreters hindered effective communication, increasing the risk of misdiagnosis and

⁴⁹ Mason, Nicol & Walker at 1-2.

⁵⁰ *Eldridge v. British Columbia (Attorney General)*, 1997 CanLII 327 (SCC), [1997] 3 SCR 624 [*Eldridge*].

⁵¹ *Hospital Insurance Act*, RSBC 1996, c 204.

⁵² Medical Services Plan (MSP) for British Columbia (B.C.) Residents, (30 July 2024) online: Government of British Columbia <<https://www2.gov.bc.ca/gov/content/health/health-drug-coverage/msp/bc-residents>>.

⁵³ *Medical and Health Care Services Act*, SBC 1992, c 76.

inadequate treatment. Additionally, they claimed that this deficiency violated their right to equal benefit under the Medical Services Plan, as protected by Section 15 of the Canadian *Charter of Rights and Freedoms*, on the grounds of disability.

The appellants were unsuccessful at the lower courts, but the Supreme Court upheld the appeal and affirmed that the *Charter* applies to these private decision-makers where they have been delegated a governmental function:

... The alleged discrimination -- the failure to provide sign language interpretation -- is intimately connected to the medical service delivery system instituted by the legislation. The provision of these services is not simply a matter of internal hospital management; it is an expression of government policy. Thus, while hospitals may be autonomous in their day-to-day operations, they act as agents for the government in providing the specific medical services set out in the Act. The Legislature, upon defining its objective as guaranteeing access to a range of medical services, cannot evade its obligations under s[ection] 15(1) of the *Charter* to provide those services without discrimination by appointing hospitals to carry out that objective. In so far as they do so, hospitals must conform with the *Charter*.⁵⁴

The Supreme Court stated that the right to equality obliges governmental agents to make sure that disadvantaged groups have full advantage of public benefits. The Supreme Court found that the government had failed to demonstrate that it had a reasonable basis for denying medical interpretation services considering their cost.⁵⁵

The Supreme Court ruled that:

... the failure to fund sign language interpretation is not a “minimal impairment” of the s[ection] 15(1) rights of deaf persons to equal benefit of the law without discrimination on the basis of their physical disability. The evidence clearly demonstrates that, as a class, deaf persons receive medical services that are inferior to those received by the hearing population. Given the central place of good health in the quality of life of all persons in our society, the provision of

⁵⁴ *Eldridge* at para 51.

⁵⁵ *Eldridge* at para 87.

substandard medical services to the deaf necessarily diminishes the overall quality of their lives. The government has simply not demonstrated that this unpropitious state of affairs must be tolerated in order to achieve the objective of limiting health care expenditures. Stated differently, the government has not made a “reasonable accommodation” of the appellants’ disability. In the language of this Courts’ human rights jurisprudence, it has not accommodated the appellants’ needs to the point of “undue hardship”.⁵⁶

... where sign language interpreters are necessary for effective communication in the delivery of medical services, the failure to provide them constitutes a denial of s[ection] 15(1) of the *Charter* and is not a reasonable limit under s. 1. Section 24(1) of the *Charter* provides that anyone whose rights under the *Charter* have been infringed or denied may obtain “such remedy as the court considers appropriate and just in the circumstances”. In the present case, the appropriate and just remedy is to grant a declaration that this failure is unconstitutional and to direct the government of British Columbia to administer the *Medical and Health Care Services Act* (now the *Medicare Protection Act*) and the *Hospital Insurance Act* in a manner consistent with the requirements of section 15(1).⁵⁷

The Supreme Court concluded:

A declaration, as opposed to some kind of injunctive relief, is the appropriate remedy in this case because there are myriad options available to the government that may rectify the unconstitutionality of the current system. It is not this Court’s role to dictate how this is to be accomplished. Although it is to be assumed that the government will move swiftly to correct the unconstitutionality of the present scheme and comply with this Court’s directive, it is appropriate to suspend the effectiveness of the declaration for six months to enable the government to explore its options and formulate an appropriate response. In fashioning its response, the government should ensure that, after the expiration of six months or any other period of suspension granted by this Court, sign language interpreters will be provided where necessary for effective communication in the delivery of medical services. Moreover, it is presumed that the government will act in good faith by considering not only the role of hospitals in the delivery of medical services but also the involvement of the Medical Services Commission and the Ministry of Health.⁵⁸

⁵⁶ *Eldridge* at para 94.

⁵⁷ *Eldridge* at para 95.

⁵⁸ *Eldridge* at para 96.

This case was important for different reasons. First, it confirmed that the *Charter* applies to public institutions, such as hospitals as they are government actors. Second, it established that adverse effects discrimination violates section 15 of the *Charter*. Even if the government did not intend to discriminate, failing to consider the needs of vulnerable groups can still constitute discrimination under the *Charter*.⁵⁹

Moreover, because of the Supreme Court decision, several advocacy initiatives took place to improve services for people with disabilities.⁶⁰

B. *Canadian Human Rights Act*

The *Canadian Human Rights Act* guarantees equality for individuals who may face discrimination based on various prohibited grounds, including disability. It prohibits discrimination in access to goods, services, accommodations, employment and wages. Employers are required to accommodate the needs of their employees, unless doing so constitutes undue hardship.

According to the Government of Canada:

The *Canadian Human Rights Act* is a law to prohibit discrimination in employment and services within federal jurisdiction. Under the Act, Canadians are protected from discrimination when they are employed or receive services from:

- the federal government;
- First Nations governments; or
- private companies that are regulated by the federal government, including banks, trucking companies, broadcasters and telecommunications companies.

This means that employers and service providers must ensure that all employees are treated equally.⁶¹

⁵⁹ Marry Ann McColl et al. at 197-198.

⁶⁰ *Eldridge v. British Columbia (Attorney General)* [1997] 3 SCR 624, online: ESCR-Net <<https://www.escri-net.org/caselaw/2006/eldridge-v-british-columbia-attorney-general-1997-3-scr-624>>.

⁶¹ Rights in the workplace, online: Government of Canada <<https://www.canada.ca/en/canadian-heritage/services/rights-workplace.html>>.

The purpose of the *Canadian Human Rights Act* is to make sure that:

all individuals have opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices.⁶²

Since the *Canadian Human Rights Act* governs only federal jurisdictions, each province and territory in Canada has enacted its own human rights legislation.

C. *Employment Equity Act*

The purpose of the *Employment Equity Act*⁶³ (*EEA*) is to promote workplace equality, ensuring that individuals are not denied employment opportunities or benefits for reasons unrelated to their abilities, such as race, gender, disability, or other protected characteristics. It requires that employers “correct the conditions of disadvantage in employment experienced by women, Aboriginal peoples, persons with disabilities and members of visible minorities.”⁶⁴

Section 3 of the *EEA* defines persons with disabilities as

persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who (a) consider themselves to be disadvantaged in employment by reason of that impairment, or (b) believe that an employer or potential employer is likely to consider them to be disadvantaged in employment by reason of that impairment, and includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace.”

Employers are not required to take specific measures to implement employment equity if doing so would cause undue hardship. They are also not obligated to hire or promote persons

⁶² *Canadian Human Rights Act* at a 2.

⁶³ *Employment Equity Act*, SC 1995, c 44 [*Employment Equity Act*].

⁶⁴ *Employment Equity Act* at s 2.

who do not meet the essential qualifications for the job, hire or promote persons without merit where merit is required, or create new positions.⁶⁵

Furthermore, employers must collect information and conduct an analysis of their workforce to determine the degree of underrepresentation of persons in designated groups; and must conduct a review of their employment systems, policies and practices in order to identify employment barriers against persons in designated groups.⁶⁶

D. *Accessible Canada Act*

In June 2018, the Federal Government introduced Bill C-81, *An Act to ensure a barrier-free Canada* (the *Accessible Canada Act*) in Parliament. The *Accessible Canada Act* (*ACA*) received Royal Assent in June 2019 and came into force in July 2019.

The purpose of the *ACA* is to have a barrier-free Canada by 2040. The legislation benefits everyone, particularly persons with disabilities, through the identification, removal of barriers and the prevention of new barriers in the following areas:

- (a) employment;
- (b) the built environment;
- (c) information and communication technologies;
- (c.1) communication, other than information and communication technologies;
- (d) the procurement of goods, services and facilities;
- (e) the design and delivery of programs and services;
- (f) transportation; and
- (g) areas designated under regulations made under paragraph 117(1)(b)⁶⁷

The *ACA* applies only to federal entities, such as the Canadian Military, Crown corporations, banks, airlines and “...any person, partnership or unincorporated organization that

⁶⁵ *Employment Equity Act* at s 6.

⁶⁶ *Employment Equity Act* at s 9.

⁶⁷ *Accessible Canada Act* at s 5.

operates a work or carries on an undertaking or business that is within the legislative authority of Parliament...”.⁶⁸ However, the *ACA* specifies that its provisions do not apply to the governments in the Yukon, Northwest Territories or Nunavut.⁶⁹

The *ACA* established the Canadian Accessibility Standards Development Organization to help create a barrier-free Canada. Accessibility Standards Canada’s mandate includes:

- (a) the development and revision of accessibility standards;
- (b) the recommendation of accessibility standards to the Minister;
- (c) the provision of information, products and services in relation to the accessibility standards that it has developed or revised;
- (d) the promotion, support and conduct of research into the identification and removal of barriers and the prevention of new barriers; and
- (e) the dissemination of information, including information about best practices, in relation to the identification and removal of barriers and the prevention of new barriers.⁷⁰

In addition, the *ACA* requires organizations to prepare and publish accessibility plans, set up a feedback process and prepare and publish progress reports. Accessibility plans must be published in consultation with persons with disabilities.⁷¹

The *ACA* is enforced by the Accessibility Commissioner who can use different tools to make sure that organizations are meeting their accessibility obligations. That includes:

- inspections
- production orders (ordering an organization to provide records and reports)
- compliance orders (ordering an organization to correct a contravention, and to take steps to ensure the contravention does not happen again)
- notices of violation (notices setting out a warning or requiring an organization to pay a penalty of up to \$250,000 per violation), and
- compliance agreements (when an organization agrees to correct a violation within set terms).⁷²

⁶⁸ *Accessible Canada Act* at s 7.

⁶⁹ *Accessible Canada Act* at s 8.

⁷⁰ *Accessible Canada Act* at ss 17-18.

⁷¹ *Accessible Canada Act* at ss 47-49.

⁷² Summary of the *Accessible Canada Act*, online: Government of Canada

< <https://www.canada.ca/en/employment-social-development/programs/accessible-people-disabilities/act-summary.html> > [Summary *ACA*].

According to the Government of Canada:

If an organization has not complied with a regulation under the [ACA], individuals can file an accessibility complaint if they:

- experienced physical or psychological harm, property damage or financial loss, or
- were otherwise adversely affected

These complaints will generally go to the Accessibility Commissioner, who will deal with complaints in all the areas for which they are responsible.

Accessibility complaints under the *Accessible Canada Act* are different from discrimination complaints under the *Canadian Human Rights Act*. Organizations that meet requirements under the *Accessible Canada Act* could still be subject to discrimination complaints under the *Canadian Human Rights Act*.⁷³

In August 2021, the Federal Government published a report showing that in federal sector organizations during 2019-2020, 73% of Canadians with disabilities encountered an accessibility barrier.⁷⁴ According to the report, “62.5% report[ed] a transportation barrier, 61.5% report[ed] a communication barrier and 44.6% report[ed] an information and communication technologies barrier.”⁷⁵

In December 2021, the *Accessible Canada Regulations*⁷⁶ (*Regulations*) came into force. These *Regulations* describe many of the obligations imposed on employers under the *ACA*, including the requirement to prepare accessibility plans, establish feedback processes and submit progress reports. The *Regulations* also establish monetary penalties to encourage compliance with the *ACA*.

⁷³ Summary *ACA*.

⁷⁴ Accessibility in Federal Sector Organizations in Canada, 2021, online: Statistics Canada <<https://www150.statcan.gc.ca/n1/pub/89-654-x/89-654-x2021001-eng.htm>> [Accessibility in Federal Sector].

⁷⁵ Accessibility in Federal Sector.

⁷⁶ *Accessible Canada Regulations* (SOR/2021-241).

V. Accessibility in the Canadian Context at the Provincial Level

Provinces and territories in Canada have their own human rights act or code. These laws make it illegal to discriminate against people with disabilities in various areas including the provision of goods and services, employment and housing.

Human rights laws give people the right to file complaints when their rights are violated; however, they usually do not address systemic problems. In contrast, accessibility legislation, establishes mechanisms to address systemic barriers.⁷⁷

In addition to human rights laws, several provinces – such as Ontario, Manitoba, Quebec, Nova Scotia, British Columbia, Newfoundland and Labrador and Saskatchewan, have enacted accessibility legislation. This recognizes that accessibility requires both removing existing barriers and preventing new ones. The goal of this legislation is to ensure equal participation for individuals with disabilities with respect to public services and employment.

Unlike these other provinces, Alberta still does not have accessibility legislation as of the writing of this report.

A. Ontario

i. *Human Rights Code*

Under the Ontario *Human Rights Code*⁷⁸ people with disabilities are protected from discrimination and harassment based on disability with respect to access to goods, services and facilities, housing, contracts, employment, membership in a union, professional association or other vocational association.⁷⁹

⁷⁷ British Columbia Framework for Accessibility Legislation, online: Government of British Columbia < <https://www2.gov.bc.ca/assets/gov/government/about-the-bc-government/accessible-bc/disability-consultation/2019-consultation/framework-for-accessibility-legislation.pdf> > at 10.

⁷⁸ *Human Rights Code*, RSO 1990, c H.19 [Ontario *Human Rights Code*].

⁷⁹ Ontario *Human Rights Code* at ss 1-4, 5-6.

Section 9 of the *Code* prohibits any direct or indirect infringement of the *Code*. Section 11 talks about constructive discrimination where “a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination.”

ii. *Accessibility for Ontarians with Disabilities Act*

In 2001, the *Ontarians with Disabilities Act (ODA)*⁸⁰ was passed by the Government of Ontario. Its purpose is to “improve opportunities for persons with disabilities and to provide for their involvement in the identification, removal and prevention of barriers”.⁸¹

The *ODA* requires the Government of Ontario to consult with persons with disabilities and others in developing barrier-free design guidelines to promote accessibility to buildings, structures and premises.⁸² It also requires that the Government of Ontario accommodate the accessibility needs of its employees in accordance with the *Human Rights Code*.⁸³ In addition, some public sector organizations are required to establish annual accessibility plans and accessibility advisory committees.⁸⁴

However, given the limited scope of the *ODA*, Ontario passed the *Accessibility for Ontarians with Disabilities Act*⁸⁵ (*AODA*) in 2005 to expand and enhance accessibility measures.

The purpose of the *AODA* is to make Ontario fully accessible by 2025 “for people with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises” through development and enforcement of standards.⁸⁶

⁸⁰ *Ontarians with Disabilities Act*, SO 2001, c. 32.

⁸¹ *Ontarians with Disabilities Act* at s 1.

⁸² *Ontarians with Disabilities Act* at s 4(1).

⁸³ *Ontarians with Disabilities Act* at s 8(1).

⁸⁴ *Ontarians with Disabilities Act* at ss 14-17.

⁸⁵ *Accessibility for Ontarians with Disabilities Act*, SO 2005, c.11.

⁸⁶ *Accessibility for Ontarians with Disabilities Act* at s 1(a).

The *AODA* introduced several standards that public and private organizations must implement within certain time limits. Section 6(6) reads:

An accessibility standard shall,

- (a) set out measures, policies, practices or other requirements for the identification and removal of barriers with respect to goods, services, facilities, accommodation, employment, buildings, structures, premises or such other things as may be prescribed, and for the prevention of the erection of such barriers; and
- (b) require the persons or organizations named or described in the standard to implement those measures, policies, practices or other requirements within the time periods specified in the standard.

In 2008, the government introduced the first standard, customer service, which required organizations to develop, implement and maintain policies for serving people with disabilities that are consistent with the principles of dignity and independence, integration, equal opportunity and communication that takes disability into account.⁸⁷

Then in July 2011, the government passed *the Integrated Accessibility Standard Regulation*⁸⁸ to address standards for employment, information and communications, transportation and the design of public spaces and customer service.

Section 14 of the *Integrated Accessibility Standards* describes requirements to guarantee that websites and web content conform with the World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0. These requirements aim to remove online barriers for individuals with disabilities by ensuring that digital content is accessible to all users.

⁸⁷ How to make customer service accessible, online: Government of Ontario < <https://www.ontario.ca/page/how-make-customer-service-accessible>>.

⁸⁸ *Integrated Accessibility Standards*, O Reg 191/11, at s 1.

In addition, Ontario developed accessibility standards in five areas, customer service, employment, transportation, information and communications, and design of public spaces. It is also developing accessibility standards in the areas of health care and education.⁸⁹

It is important to note that the *AODA* complements the Ontario *Human Rights Code* to ensure individuals are free from discrimination, as confirmed by the Ontario Human Rights Commission:

The *AODA* is an important piece of legislation for improving accessibility in the lives of people with disabilities. It complements the Ontario *Human Rights Code*, which has primacy over the *AODA*. The development and implementation of standards under the *AODA* must have regard for the *Code*, related human rights principles, and case law. Compliance with the *AODA* does not necessarily mean compliance with the *Code*. Responsible organizations must follow both. For example, even where an organization meets all of its obligations under the *AODA*, it will still be responsible for making sure that discrimination and harassment based on disability do not take place in its operations, that it responds to individual accommodation requests, *etc.*⁹⁰

Furthermore, the *AODA* requires the government to appoint a Standards Development Committee to review the contents of an accessibility standard. The Committee should include representatives from the public, the disability community, and the private sector.⁹¹

Finally, the *AODA* requires businesses to train their staff in accessibility, known as *AODA* training.⁹²

⁸⁹ About accessibility laws, online: Government of Ontario < <https://www.ontario.ca/page/about-accessibility-laws>>.

⁹⁰ Legal Framework: Ontario *Human Rights Code*, online: Ontario Human Rights Commission <<https://www.ohrc.on.ca/en/book/export/html/18911>>.

⁹¹ David Lepofsky, “Discussion Paper on What to Include In the Canadians with Disabilities Act” (15 March 2016), online: March of Dimes < https://www.marchofdimes.ca/en-ca/aboutus/govtrelations/national/Documents/Canadians_with_Disabilities_Act_Discussion_Paper-Mr2015.pdf> at 14-15.

⁹² General AODA Requirements, online: Accessibility for Ontarians with Disabilities Act < <https://www.aoda.ca/general-aoda-requirements/#:~:text=AODA%20training%20is%20required%20if,for%20example%2C%20a%20board%20member>>.

B. Manitoba

i. Human Rights Code

The Manitoba *Human Rights Code*⁹³ prohibits discrimination against individuals and groups. Section 9(1)(d) of Manitoba's *Human Rights Code* specifically defines discrimination as including the “failure to make reasonable accommodation for the special needs of any individual or group, if those special needs are based upon” the prohibited grounds.

The Manitoba *Human Rights Code* prohibits discrimination based on different characteristics including mental and physical disability.⁹⁴

ii. Accessibility for Manitobans Act

The *Accessibility for Manitobans Act (AMA)* was enacted in 2013 with the goal to have Manitoba accessible by 2023.

The goal of the *AMA* is to achieve accessibility by preventing and removing barriers in five areas:

- (a) employment;
- (b) accommodation;
- (c) the built environment, including
 - (i) facilities, buildings, structures and premises, and
 - (ii) public transportation and transportation infrastructure;
- (d) the delivery and receipt of goods, services and information; and
- (e) any prescribed activity or undertaking.⁹⁵

In achieving accessibility, the following principles should be considered:

Access: Persons should have barrier-free access to places, events and other functions that are generally available in the community;

⁹³ *The Human Rights Code*, CCSM, c H175 [Manitoba *Human Rights Code*].

⁹⁴ Manitoba *Human Rights Code* at s 9(2).

⁹⁵ *Accessibility for Manitobans Act* at s 2(1).

Equality: Persons should have barrier-free access to those things that will give them equality of opportunity and outcome;

Universal design: Access should be provided in a manner that does not establish or perpetuate differences based on a person's impairment;

Systemic responsibility: The responsibility to prevent and remove barriers rests with the person or organization that is responsible for establishing or perpetuating the barrier.⁹⁶

The Manitoba Government established an Accessibility Advisory Council to develop standards, determine their content and implement them.⁹⁷ Once draft standards are developed, they go through a public review before being recommended by the Minister to the Lieutenant Governor in Council.⁹⁸

Council members must include individuals with disabilities caused by barriers as well as representatives from organizations that advocate for persons with disabilities. Additionally, there should be representatives from sectors or organizations that may be impacted by the accessibility standards.⁹⁹

Section 20 of the *AMA* states that “a person or organization that is subject to an accessibility standard must comply with the standard within the time period specified in the standard.” Additionally, according to section 33(2), since “2016 and for every second year after that, a public sector body must prepare an accessibility plan that addresses the identification, prevention and removal of barriers” that affect people with disabilities.

⁹⁶ *Accessibility for Manitobans Act* at s 2(2).

⁹⁷ *Accessibility for Manitobans Act* at ss 13-14.

⁹⁸ *Accessibility for Manitobans Act* at ss 9-10.

⁹⁹ *Accessibility for Manitobans Act* at s 15(2).

Organizations can have different requirements and timelines, but once a standard has been approved by the government, all organizations must comply within the given timelines. Non-compliance or infractions may result in penalties for individuals and organizations.¹⁰⁰

Standards can be incorporated into regulations.¹⁰¹ At the time of writing this report, the Manitoba Government has enacted four standards under the *AMA*.

The first standard enacted was the *Customer Service Standard Regulation*¹⁰² in 2015. This accessibility standard focuses on customer service. The goal is to achieve respectful, barrier-free customer service in all organizations and businesses that have at least one employee.

Under this standard, organizations must:

- meet the communication needs of customers, clients or members
- allow assistive devices, such as wheelchairs, walkers and oxygen tanks
- welcome support people, who are there to assist
- welcome people with service animals
- ensure accessibility is maintained as intended (ramps, wide aisles, removal of clutter)
- let customers know when accessible features and services are not available
- invite customers to provide feedback
- train staff on accessible customer service, including reasonable accommodations under *The Human Rights Code*.
- make public events accessible (large public sector organizations only).¹⁰³

The second mandate enacted was the *Accessible Employment Standard Regulation*¹⁰⁴ in 2019. Its purpose is to remove and prevent barriers that affect current and potential employees.

As of May 1st, 2022, all businesses and organizations with at least one employee in Manitoba are required to:

¹⁰⁰ *The Accessibility for Manitobans Act (AMA)*, online: Siteimprove < <https://www.siteimprove.com/glossary/accessibility-for-manitobans-act/> >.

¹⁰¹ *Accessibility for Manitobans Act* at s 35(1).

¹⁰² *Customer Service Standard Regulation*, Man Reg 171/2015.

¹⁰³ *Accessible Customer Service Standard Regulation*, online: Manitoba Accessibility Office < <https://accessibilitymb.ca/accessibility/act-standards/the-accessibility-standard-for-customer-service.html> >.

¹⁰⁴ *Accessible Employment Standard Regulation*, Man Reg 70/2019.

- offer reasonable accommodations when recruiting new employees
- inform candidates of available accommodation policies and practices when making an offer of employment
- establish policies and processes for determining reasonable workplace accommodations for employees
- develop and implement individual accommodation plans for employees and policies setting out the process by which employees can request such plans
- develop and implement policies on the return-to-work process for employees who have been off work due to disability
- provide appropriate training about accessible recruitment and employment, accommodation policies and practices, and related legislation to Human Resources staff.¹⁰⁵

The third standard is the *Accessible Information and Communication Standard Regulation*¹⁰⁶ which was enacted in 2022. This accessibility standard focuses on removing and preventing barriers that exist digitally or in-print.

Starting May 1st, 2025, all businesses and organizations with at least one employee in Manitoba will be required to:

- establish and implement measures, policies and practices respecting accessible communication
- provide accessible communication training to staff in public-facing and/or communication-based roles, including with respect to (i) the identification, prevention, and removal of barriers to accessible communication, (ii) the provision of information through a communication support or accessible format, and (iii) the Manitoba Act and provincial human rights legislation
- offer to provide information, on request, through a communication support or accessible format as part of providing reasonable accommodations, to the point of undue hardship
- inform the public and employees that information may be provided through a communication support or accessible format
- develop and implement measures, policies and practices for receiving and responding to feedback about accessible communication.¹⁰⁷

¹⁰⁵ Kelly O’Ferrall et al., “Accessibility with a plan: new accessibility regulations in British Columbia and Manitoba” (12 May 2022), online: OSLER <<https://www.osler.com/en/resources/regulations/2022/accessibility-with-a-plan-new-accessibility-regulations-in-british-columbia-and-manitoba>> [O’Ferrall et al].

¹⁰⁶ *Accessible Information and Communication Standard Regulation*, Man Reg 47/2022.

¹⁰⁷ O’Ferrall et al.

In addition to these requirements, also starting May 1st, 2025, large employers (50 or more employees) in Manitoba, will be required to keep written records of their accessible communication training policies.¹⁰⁸

iii- Accessible Transportation Standard Regulation

The *Accessible Transportation Standard Regulation*¹⁰⁹ was enacted in 2023. This standard focuses on improving accessible public transportation. Its objective is to help “conventional and paratransit service providers, schools, vehicles-for-hire and municipalities create a system of transportation that is more inclusive for all Manitobans, regardless of abilities.”¹¹⁰

Under the standard, the following organizations will be impacted and required to adhere to the accessibility standards set out in the regulation:

- conventional transportation providers
- paratransit providers
- schools
- vehicles-for-hire
- municipalities¹¹¹

Beginning January 1, 2027, organizations will be required to adhere to accessibility standards related to training and policy development, equipment and vehicle design and public communication.

¹⁰⁸ O’Ferrall et al.

¹⁰⁹ *Accessible Transportation Standard Regulation*, Man Reg 151/2023.

¹¹⁰ *Accessible Transportation Standard Regulation*, online: Manitoba Accessibility Office: <<https://accessibilitymb.ca/accessibility/act-standards/the-accessibility-standard-for-transportation.html>> [Manitoba Accessibility Office].

¹¹¹ Manitoba Accessibility Office.

Service providers will need to develop policies and practices for accessible transportation, provide training for front-line staff, and document measures to ensure accessibility.¹¹²

Conventional transportation vehicles must include accessible features such as ramps, kneeling entrances, priority seating, and spaces for mobility aids. Providers must ensure that accessibility equipment is functional and inform the public when it is out of service. It is worth noting however, that conventional transit operators will have until January 1, 2042, to upgrade existing buses to meet physical accessibility standards.¹¹³

Transit providers must also communicate clearly about accessibility features, such as priority seating, and notify passengers of any disruptions or alternative accessible arrangements.¹¹⁴

iii. Québec

i. *Charter of Human Rights and Freedoms*

Quebec has a *Charter of Human Rights and Freedoms*¹¹⁵ which is a fundamental law and takes precedence over other laws. The *Charter* prohibits discrimination, with section 10 stating:

Every person has a right to full and equal recognition and exercise of his human rights and freedoms, without distinction, exclusion or preference based on race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status, age except as provided by law, religion, political convictions, language, ethnic or national origin, social condition, a handicap or the use of any means to palliate a handicap.

Discrimination exists where such a distinction, exclusion or preference has the effect of nullifying or impairing such right.

¹¹² Manitoba Accessibility Office.

¹¹³ *Accessible Transportation Standard Regulation* at s 6(3).

¹¹⁴ Manitoba Accessibility Office.

¹¹⁵ *Charter of Human Rights and Freedoms*, CQLR c C-12.

Discrimination is prohibited in employment, housing, public services and judicial acts.¹¹⁶

ii. *Loi assurant l'exercice des droits des personnes handicapées en vue de leur intégration scolaire, professionnelle et sociale (Act to Secure Handicapped Persons in the Exercise of their Rights with a View to Achieving Social, School and Workplace Integration)*

The *Act to Secure Handicapped Persons in the Exercise of their Rights with a View to Achieving Social, School and Workplace Integration*¹¹⁷ was first enacted in 1978 and amended in 2004.¹¹⁸

The *Act* does not define “barrier”, but section 1(g) defines “handicapped person” as “a person with a deficiency causing a significant and persistent disability, who is liable to encounter barriers in performing everyday activities.”

Section 1.1 reads:

The object of this *Act* is to secure handicapped persons in the exercise of their rights and, through the involvement of government departments and their networks, municipalities and public and private agencies, to help them integrate into society to the same extent as other citizens by providing for various measures to apply specifically to handicapped persons and their families, their living environments and the development and organization of resources and services for them.

¹¹⁶ Overview of Human Rights Codes by Province and Territory in Canada (January 2018), online: Canadian Centre for Diversity and Inclusion < <https://ccdi.ca/media/1414/20171102-publications-overview-of-hr-codes-by-province-final-en.pdf> > at 22.

¹¹⁷ *Act to Secure Handicapped Persons in the Exercise of their Rights with a View to Achieving Social, School and Workplace Integration*, CQLR c E-20.1 [*Act to Secure Handicapped Persons*].

¹¹⁸ The Rights of People with an Intellectual Disability, online: Quebec Intellectual Disability Society < <https://www.sqdi.ca/en/defending-rights/the-rights-of-people-with-an-intellectual-disability/#:~:text=An%20Act%20to%20secure%20handicapped,and%20was%20amended%20in%202004> >.

The *Act* delegates an authorized body of 16 people (the Board of the Office¹¹⁹) to ensure compliance with the objective of the *Act*.¹²⁰

The *Act* outlines the duties of the Office, which include enhancing public engagement by improving the accessibility of public services, developing annual and transportation plans for individuals with disabilities, ensuring the provision of accessible goods and services, advising the Minister, government, and public/private partners on disability-related matters, monitoring societal progress in creating better opportunities for individuals with disabilities, conducting assessments, and providing support for people with disabilities and their families.¹²¹

iii. *Act Respecting Equal Access to Employment in Public Bodies*

The *Act Respecting Equal Access to Employment in Public Bodies*¹²² provides equal employment opportunities for individual from groups that face discrimination in the workplace, particularly persons with disabilities. It seeks to improve their employment prospects and ensure the full exercise of their rights by achieving social, school and workplace integration.¹²³

This *Act* applies to public-sector employers, requiring them to report how many of their employees belong to protected groups, and to determine whether a target group is underrepresented in certain occupations.¹²⁴

¹¹⁹ “Office” means the Office des personnes handicapées du Québec established under *Act to Secure Handicapped Persons* at s 1(e).

¹²⁰ *Act to Secure Handicapped Persons* at s 6.

¹²¹ *Act to Secure Handicapped Persons* at s 25.

¹²² *Act Respecting Equal Access to Employment in Public Bodies*, CQLR c A-2.01 [*Act Respecting Equal Access to Employment in Public Bodies*].

¹²³ *Act Respecting Equal Access to Employment in Public Bodies* at s 1.

¹²⁴ *Act Respecting Equal Access to Employment in Public Bodies* at ss. 2,3 and 7.

In addition, public bodies subject to this *Act* must establish an equal access employment program.¹²⁵ The purpose of this program is to increase the representation of protected groups in the workforce and to correct practices in employment systems.¹²⁶

iv. Nova Scotia

i. *Human Rights Act*

The Nova Scotia *Human Rights Act*¹²⁷ which was enacted in 1989, prohibits harassment and discrimination against people based on specific protected characteristics including mental and physical disability.

Discrimination is prohibited with respect to:

- (a) the provision of or access to services or facilities;
- (b) accommodation;
- (c) the purchase or sale of property;
- (d) employment;
- (e) volunteer public service;
- (f) a publication, broadcast or advertisement;
- (g) membership in a professional association, business or trade association, employers' organization or employees' organization.¹²⁸

ii. *Accessibility Act*

The Nova Scotia *Accessibility Act* was passed in 2017 with the goal of making Nova Scotia inclusive and barrier-free by 2030. The *Act* aims to achieve accessibility by removing barriers that disable people in relation to:

- (i) the delivery and receipt of goods and services,
- (ii) information and communication,
- (iii) public transportation and transportation infrastructure,
- (iv) employment,

¹²⁵ *Act Respecting Equal Access to Employment in Public Bodies* at s 10.

¹²⁶ *Act Respecting Equal Access to Employment in Public Bodies* at s 13.

¹²⁷ *Human Rights Act*, RSNS 1989, c 214 [Nova Scotia *Human Rights Act*].

¹²⁸ Nova Scotia *Human Rights Act* at s 5(1).

- (v) the built environment,
- (vi) education, and a prescribed activity or undertaking.¹²⁹

The *Accessibility Act* defines barrier as

anything that hinders or challenges the full and effective participation in society of persons with disabilities including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice.¹³⁰

The *Accessibility Act* also outlines the mandate of the Minister, who is responsible for the “general supervision and management of this *Act* and the regulations.”¹³¹

The mandate of the Minister is to achieve accessibility by:

- (a) Raising awareness of how persons with disabilities are disabled by barriers;
- (b) Promoting and encouraging the prevention and removal of barriers;
- (c) Overseeing the development and implementation of accessibility standards necessary to attain the purpose of this Act;
- (d) assisting in the integration of applicable accessibility standards into the activities of all persons in the Province; and
- (e) ensuring persons in the Province are consulted in the development of accessibility standards and informed about their duties and responsibilities under the standards once created.¹³²

The *Accessibility Act* establishes the Accessibility Directorate which is responsible for implementing and administering the *Act*.¹³³ It also establishes the Accessibility Advisory Board which is responsible for advising and making recommendations to the Minister about accessibility.¹³⁴ The Board will establish standard development committees to assist with the recommendations on the content and implementation of accessibility standards.¹³⁵

¹²⁹Nova Scotia *Accessibility Act* at s 2(a).

¹³⁰ Nova Scotia *Accessibility Act* at s 3(c).

¹³¹ Nova Scotia *Accessibility Act* at s 6.

¹³² Nova Scotia *Accessibility Act* at s 7.

¹³³ Nova Scotia *Accessibility Act* at ss 10,12.

¹³⁴ Nova Scotia *Accessibility Act* at ss 13-17.

¹³⁵ Nova Scotia *Accessibility Act* at s 18.

These committees must include persons with disabilities or organizations representing persons with disabilities, organizations affected by the developed standards, and government entities that have responsibilities related to the developed standards.¹³⁶ Individuals or organizations will have the right to provide feedback on the proposed accessibility standard.¹³⁷

Furthermore, the *Accessibility Act* outlines individuals and organisations it applies to and establishes compliance and enforcement measures.¹³⁸ It also provides with whom consultations must take place when recommendations for proposed accessibility standards happen.¹³⁹

Compliance with the standards is mandatory and the *Accessibility Act* imposes fines for non-compliance. The most serious ones can be fined up to \$250,000.¹⁴⁰

The development of accessibility standards is currently underway.¹⁴¹ Work on the first two standards - focused on built environment and education - began in 2018. These standards establish requirements to prevent and remove accessibility barriers in spaces where people live, work, learn, and play across Nova Scotia. In addition to the built environment and education, other standards were supposed to be developed, one standard per year, starting 2021. The Accessibility Advisory Board recommends the order in which they are developed.¹⁴²

In addition to the *Accessibility Act*, the Nova Scotia Government offers the Business ACCESS-Ability grant program to help small businesses in removing barriers for individuals with disabilities.¹⁴³

¹³⁶ Nova Scotia *Accessibility Act* at s 19.

¹³⁷ Nova Scotia *Accessibility Act* at s 34.

¹³⁸ See Nova Scotia *Accessibility Act* at ss 29, 45-62.

¹³⁹ Nova Scotia *Accessibility Act* at s 23.

¹⁴⁰ Nova Scotia *Accessibility Act* at s 68.

¹⁴¹ Access by Design 2030: Achieving an Accessible Nova Scotia, online: Government of Nova Scotia <<https://novascotia.ca/accessibility/access-by-design/>> [Access by Design].

¹⁴² Access by Design.

¹⁴³ Business ACCESS-Ability Grant Program, online: Government of Nova Scotia <<https://cch.novascotia.ca/business-access-ability-grant-program/>>.

v. **British Columbia**

i. ***Human Rights Code***

The British Columbia *Human Rights Code*¹⁴⁴ protects individuals from harassment and discrimination. The grounds of protection include mental and physical disability.

Discrimination is prohibited in the following areas: accommodation, services and facilities, purchase of property, tenancy, employment, unions and associations.¹⁴⁵ The *Human Rights Code* also prohibits publications, notices, signs and symbols that express hatred towards individuals or groups because of their physical or mental disability.

ii. ***Accessible British Columbia Act***

The *Accessible British Columbia Act*¹⁴⁶ came into force in June 2021 with several key objectives. It supports Canada's ratification of the *CRPD* by promoting and ensuring the full and equal enjoyment of all human rights and fundamental freedoms for individuals with disabilities while fostering respect for their inherent dignity. The *Act* aims to identify, remove, and prevent barriers that people with disabilities face in their daily lives through the development, implementation, and enforcement of accessibility standards. It also encourages collaboration between persons with disabilities and both public and private sector stakeholders to ensure the timely development of these standards. Additionally, the *Act* establishes mechanisms to track progress on accessibility and promotes compatibility between the *Accessible Canada Act* and federal and provincial accessibility standards.

¹⁴⁴ *Human Rights Code*, RSBC 1996, c 210 [BC *Human Rights Code*].

¹⁴⁵ BC *Human Rights Code* at ss 8-14.

¹⁴⁶ *Accessible British Columbia Act*, SBC 2021, c 19.

Under the *Act*, organizations are required to establish accessibility committees to help identify barriers and advise on ways to remove or prevent them.¹⁴⁷ These committees must be diverse, with at least half of the members being persons with disabilities or representatives from organizations that support them, reflecting the full diversity of the disability community in British Columbia. Additionally, at least one member must be Indigenous, ensuring the committee represents the broader demographic diversity of the province.¹⁴⁸

The organizations are responsible for developing accessibility plans in consultation with their accessibility committees. When creating these plans, they must consider “the principles of inclusion, adaptability, diversity, collaboration, self-determination, and universal design.”¹⁴⁹ Accessibility plans must be reviewed at least once every three years and organizations must establish a process to receive feedback from the public on their accessibility plans and any barriers to accessibility.¹⁵⁰

Under section 13, regulations may be made in relation to:

- (a) Employment
- (b) Delivery of services
- (c) Built environment
- (d) Information and communications
- (e) Transportation
- (f) Health
- (g) Education
- (h) Procurement.¹⁵¹

This *Act* does not contain any compliance and enforcement mechanisms, nor does it set deadlines for the removal of barriers. According to the government, the law does not include

¹⁴⁷ *Accessible British Columbia Act* at s 9(1).

¹⁴⁸ *Accessible British Columbia Act* at s 9(2).

¹⁴⁹ *Accessible British Columbia Act* at s 17.

¹⁵⁰ *Accessible British Columbia Act* at ss 11(2),12.

¹⁵¹ *Accessible British Columbia Act* at s 13(2).

deadlines because other provinces showed that deadlines did not speed up the removal of barriers.¹⁵²

The *Act* has faced criticism from members of the disability community for being restrictive and not as detailed as other provincial accessibility legislation. For instance, Disability Alliance BC released a list of concerns¹⁵³ highlighting issues such as limited definitions, the absence of clear timelines, ineffective enforcement mechanisms and missing reference to human rights legislation. Disability Alliance BC also criticized the *Act* for not aligning with the standards that have been set out in the *Accessible Canada Act*.

vi. Newfoundland and Labrador

i. Human Rights Act

The Newfoundland and Labrador *Human Rights Act*, passed in 2010, replaced the previous *Human Rights Code*. The *Act* prohibits discrimination and harassment with respect to employment, membership in a trade union, provision of goods, services, accommodations and facilities, commercial and residential rentals, publications and contracts.¹⁵⁴ When an individual is discriminated against due to one of the prohibited grounds of discrimination including disability, a human rights violation occurs under the *Act*.¹⁵⁵

¹⁵² BC Plain Language Summary

¹⁵³ Review of Bill 6 - 2021: The Accessible British Columbia Act (7 May 2021), online: Disability Alliance BC <<https://disabilityalliancebc.org/wp-content/uploads/2021/05/Disability-Alliance-BC-Review-on-Bill-6.pdf>>.

¹⁵⁴ Part II of the Newfoundland *Human Rights Act*.

¹⁵⁵ Newfoundland Human Rights Act at s 9.

ii. Act Respecting Accessibility in the Province

In late 2021, Newfoundland and Labrador passed *An Act Respecting Accessibility in the Province*¹⁵⁶ (*Accessibility Act*) to “improve accessibility by identifying, preventing and removing barriers that prevent persons with disabilities from fully participating in society”.¹⁵⁷

The *Act* allows the establishment of accessibility standards aimed at improving accessibility for persons with disabilities.¹⁵⁸ It also establishes an advisory board to assist the minister responsible for the status of persons with disabilities by offering guidance on the development, content and implementation timelines of these standards.¹⁵⁹

In July 2022, the minister announced the establishment of the Accessibility Standards Advisory Board under the *Act*.¹⁶⁰ Accessibility standards apply to individuals, organizations or public bodies that:

- (a) designs and delivers programs and services;
- (b) provides information or communication;
- (c) procures goods, services and facilities;
- (d) offers accommodations;
- (e) provides education;
- (f) provides healthcare;
- (g) employs persons;
- (h) owns, operates, maintains or controls an aspect of the built environment other than a private residence with 3 or less residential units; or
- (i) conducts an activity or undertaking prescribed in the regulations.¹⁶¹

Inspectors may be appointed to “inspect, examine the premises, processes, book and records of a person that the inspector may consider relevant for the purpose of determining

¹⁵⁶ *Accessibility Act*, SNL 2021, c A-1.001 [Newfoundland *Accessibility Act*].

¹⁵⁷ Newfoundland *Accessibility Act* at s 3.

¹⁵⁸ Newfoundland *Accessibility Act* at s 6.

¹⁵⁹ Newfoundland *Accessibility Act* at s 9.

¹⁶⁰ Provincial Government Establishes Accessibility Standards Advisory Board under the Accessibility Act (5 July 2022), online: Government of Newfoundland & Labrador <<https://www.gov.nl.ca/releases/2022/cssd/0705n04/>>.

¹⁶¹ Newfoundland *Accessibility Act* at s 15(2).

compliance with the *Act* or regulations.”¹⁶² If a contravention is found, inspectors can order individuals, organizations or public bodies to remedy the situation.¹⁶³ In addition, monetary penalties can be issued for failure to comply with the order.¹⁶⁴

vii. Saskatchewan

i. Human Rights Code

The Saskatchewan *Human Rights Code*, which came into force in 2018, is designed to protect individuals from discrimination and harassment in various aspects of public life. Its purpose, as outlined in section 3, is to recognize the inherent dignity and equal rights of all individuals while fostering a climate of understanding and respect.

The *Code* prohibits discrimination based on protected characteristics such as disability.¹⁶⁵ It applies to areas including employment, housing, education, public services, and contracts.¹⁶⁶ Under section 25, employers, landlords, and service providers have a duty to accommodate individuals with disabilities and other protected characteristics unless doing so would cause undue hardship.

Complaints of discrimination are investigated by the Saskatchewan Human Rights Commission. If unresolved, they may be heard by the Court of King's Bench, which has the authority to order remedies such as compensation, reinstatement, or policy changes.¹⁶⁷

¹⁶² Newfoundland *Accessibility Act* at s 25.

¹⁶³ Newfoundland *Accessibility Act* at s 26.

¹⁶⁴ Newfoundland *Accessibility Act* at s 29.

¹⁶⁵ *The Saskatchewan Human Rights Code* at s 2.

¹⁶⁶ *The Saskatchewan Human Rights Code* at ss 11-19.

¹⁶⁷ *The Saskatchewan Human Rights Code* at ss 27-32.

ii. Accessible Saskatchewan Act

The *Accessible Saskatchewan Act*¹⁶⁸, which came into force in 2023, aims to make Saskatchewan more inclusive by removing barriers that prevent persons with disabilities from fully participating in their communities. The *Act* defines “disability” broadly, recognizing physical, mental, intellectual, cognitive, learning, communication, and sensory impairments, as well as functional limitations that may be permanent, temporary, or episodic.¹⁶⁹

The *Act* introduces new rules for government and organizations to improve accessibility and mandates the Minister of Social Services to promote accessibility through public awareness initiatives.¹⁷⁰ Section 2-2(1) requires the Government of Saskatchewan, public sector bodies, and any other designated entities to develop accessibility plans.

These plans must outline “the actions an organization will take to remove and prevent accessibility barriers for persons who interact with their organization.”¹⁷¹ The plans are designed to ensure that all people, especially those with disabilities, can fully participate in all aspects of public and private life.

The *Accessible Saskatchewan Regulations*¹⁷² outline the public sector bodies required to develop an accessibility plan under the *Act*. Organizations specified in the regulations must complete their initial accessibility plan by December 3, 2025. Afterward, they are required to review and update the plan at least once every three years.

Section 3-1 of the *Act* establishes the Saskatchewan Accessibility Office which is responsible for various functions, including public education, raising awareness, and monitoring

¹⁶⁸ *Accessible Saskatchewan Act*, SS 2023, c 19.

¹⁶⁹ *Accessible Saskatchewan Act* at s 1-2.

¹⁷⁰ *Accessible Saskatchewan Act* at s 1-6(1).

¹⁷¹ The Accessible Saskatchewan Regulations, online: Government of Saskatchewan <<https://accessiblesk.saskatchewan.ca/the-accessible-saskatchewan-regulations>>.

¹⁷² *Accessible Saskatchewan Regulations*, Sask Reg 108/2023.

compliance and enforcement.¹⁷³ The Accessibility Advisory Committee, appointed by the Minister, will provide advice on matters related to the administration of the *Act* and the regulations.¹⁷⁴ The regulations may cover a range of areas, including:

- (a) the built environment;
- (b) information and communications;
- (c) employment;
- (d) transportation;
- (e) service animals;
- (f) procurement;
- (g) service delivery; and
- (h) any other prescribed activities or undertakings.¹⁷⁵

In developing the accessibility standards, the Committee is required to consult with persons with disabilities, disability organizations, affected stakeholders, and the public.¹⁷⁶

VI. Accessibility and Disability Services in Alberta

Alberta's legislative framework for accessibility and disability services includes a range of statutes and regulations. These cover broad areas such as safety codes, as well as more specific legislation addressing needs like service dogs and income support.¹⁷⁷ In addition, Alberta has different programs that provide funding to individuals with disabilities.

A. Alberta Human Rights Act

The preamble of the *Alberta Human Rights Act* states:

¹⁷³ *Accessible Saskatchewan Act* at s 3-3.

¹⁷⁴ *Accessible Saskatchewan Act* at s 4-1.

¹⁷⁵ *Accessible Saskatchewan Act* at s 5-1(2).

¹⁷⁶ *Accessible Saskatchewan Act* at s 5-4.

¹⁷⁷ Linda McKay-Panos, "Accessibility Legislation Across Canada: The current situation" (7 July 2021), online: ACLRC <<https://www.aclrc.com/blog/2021-7-7-accessibility-legislation-across-canada-the-current-situation/?highlight=Linda%20McKay-Panos%2C%20Accessibility%20Legislation%20Across%20Canada%3A%20The%20current%20situation%20>>.

All persons are equal in dignity, rights and responsibilities without regard to race, religious beliefs, colour, gender, gender identity, gender expression, physical disability, mental disability, age, etc...

This *Act* prohibits discrimination based on physical and mental disabilities. It prohibits discrimination in the following areas: publications and notices; goods, services, accommodation or facilities customarily available to the public; tenancy; employment practices, employment applications or advertisements, membership in trade unions, employers' organizations or occupational associations.¹⁷⁸

Under the *Act*, physical disability is defined as

any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness. This includes, but is not limited to, epilepsy; paralysis; amputation; lack of physical coordination; visual, hearing and speech impediments; and physical reliance on a guide dog, service dog, or wheelchair or other remedial appliance or device.¹⁷⁹

Also, under the *Act*, mental disability is defined as “any mental disorder, developmental disorder or learning disorder, regardless of the cause or duration of the disorder”.¹⁸⁰

In Alberta, employers, landlords, tenants and service providers are required to accommodate people with disabilities to the point of undue hardship. This may include modifications to buildings, such as installing ramps to improve wheelchair accessibility, or making workplace adjustments, such as redistributing tasks that an employee with a disability is unable to perform.¹⁸¹

¹⁷⁸ *Alberta Human Rights Act* at ss 3-9.

¹⁷⁹ *Alberta Human Rights Act* at s 44 (1)(l).

¹⁸⁰ *Alberta Human Rights Act* at ss 44 (1)(h).

¹⁸¹ Mental or physical disabilities and discrimination, online: Alberta Human Rights Commission <<https://albertahumanrights.ab.ca/media/q1cbyfkd/mental-or-physical-disabilities-and-discrimination.pdf>>.

B. *Service Dogs Act*

The *Service Dogs Act*¹⁸² is an addition to the *Blind Persons' Rights Act*.¹⁸³ Its purpose is to grant individuals with disabilities who use qualified service dogs the right of access to all public places in Alberta.

The *Service Dogs Act* allows individuals with disabilities to have their service dog accompany them in any public place where the public is permitted. This includes restaurants, bars, taxis, hospitals, hotels, schools, planes, theatres, recreation centres, etc.

Section 3 of the *Service Dogs Act* reads:

- (1) No person, directly or indirectly, alone or with another, by himself or herself or by the interposition of another, shall
 - (a) deny to any person the accommodation, services or facilities available in any place to which the public is customarily admitted, or
 - (b) discriminate against any person with respect to the accommodation, services or facilities available in any place to which the public is customarily admitted or the charges for the use of them, for the reason that the person is a disabled person accompanied by a service dog or a certified dog-trainer accompanied by a dog in training.
- (2) No person, directly or indirectly, alone or with another, by himself or herself or by the interposition of another, shall
 - (a) deny to any person occupancy of any self-contained dwelling unit, or
 - (b) discriminate against any person with respect to any term or condition of occupancy of any self-contained dwelling unit, for the reason that the person is a disabled person keeping or customarily accompanied by a service dog.

The *Service Dogs Act* also imposes fines of up to \$3000 for violations.¹⁸⁴

¹⁸² *Service Dogs Act*, SA 2007, c S-7.5.

¹⁸³ *Blind Persons' Rights Act*, RSA 2000, c B-3.

¹⁸⁴ *Service Dogs Act* at s 6(1).

C. *Safety Codes Act*

The Alberta *Safety Codes Act*¹⁸⁵ governs safety standards across various industries and infrastructure in Alberta. It establishes the legal framework for the development, enforcement, and administration of safety codes and regulations.

Section 1(3) reads:

This *Act* is to be interpreted in a manner consistent with the principles of barrier-free design and access to allow persons with physical and sensory disabilities to more easily and safely access and use buildings, facilities and services to which this *Act* applies.

The *Safety Codes Act* establishes codes, standards, and administrative processes in the following areas:

- (a) buildings,
- (b) electrical systems,
- (c) elevating devices,
- (d) gas systems,
- (e) plumbing systems,
- (f) pressure equipment, and
- (g) private sewage disposal systems.¹⁸⁶

The *Safety Codes Act* requires barrier-free design of new buildings and premises. However, it does not apply to older buildings which may still present accessibility challenges for persons with disabilities. Common obstacles for persons with a physical disability can include:

the absence of a ramp to the building entrance, entrances that are too narrow, doors that are hard to open, counters that are too high, seating that does not

¹⁸⁵ *Safety Codes Act*, RSA 2000, c S-1.

¹⁸⁶ *Safety Codes Act* at s 2(1).

include room for a wheelchair, and washrooms that are located at the end of poorly lit, narrow hallways at the back of the premises.¹⁸⁷

While the Alberta *Safety Codes Act* may not require businesses to make their premises wheelchair accessible, they may still have obligations under human rights law. For instance, a hotel built before ramped entrances were mandated must still provide wheelchair access unless it can prove that doing so would cause undue hardship.¹⁸⁸

D. *Assured Income for the Severely Handicapped Act*

The *Assured Income for the Severely Handicapped Act*¹⁸⁹ (*AISH*) assists adult Albertans with a permanent disability who are unable to work.

AISH provides support for people with mental or physical disabilities. To be eligible, applicants must meet medical and financial criteria. Medically, applicants must have a condition “that is likely to be permanent” and significantly limits their ability to earn a living. Financial eligibility is determined by assessing the income and assets of both the individual and their spouse or partner.¹⁹⁰ For those who qualify, *AISH* provides “a monthly living allowance, a monthly child benefit, health benefits and approved personal benefits.”¹⁹¹

¹⁸⁷ Human Rights in the Hospitality Industry, Human Rights Guide, online: Alberta Human Rights Commission < <https://albertahumanrights.ab.ca/media/pcqjpxhf/human-rights-in-the-hospitality-industry.pdf> > at 6 [Human Rights in the Hospitality Industry].

¹⁸⁸ Human Rights in the Hospitality Industry at 6.

¹⁸⁹ *Assured Income for the Severely Handicapped Act*, SA 2006, c A-45.1.

¹⁹⁰ Your guide to *AISH*, online: Government of Alberta <<https://open.alberta.ca/dataset/928e010e-6b26-46af-a8e2-8c938e5f1b10/resource/09d7784d-8b84-46a9-ba72-66dbdc50330c/download/your-guide-to-aish-2024-04.pdf>> at 8.

¹⁹¹ Alberta’s new Act to Strengthen Financial Security for Persons with Disabilities, online: Miller Thomson < <https://www.millerthomson.com/en/insights/private-client/albertas-new-act-to-strengthen-financial-security-for-persons-with-disabilities/> >.

E. Disability Related Employment Supports (DRES)

Disability Related Employment Supports and Services (DRES)¹⁹² provides funding to help Albertans with disabilities overcome barriers to education or employment. To be eligible, individuals must meet certain conditions.¹⁹³

DRES is available in three categories: job search supports, workplace supports and educational supports. These supports can include services such as sign language interpreters, software rentals, worksite modifications, tutors, notetakers, readers and student assistants.¹⁹⁴

F. Residential Access Modification Program (RAMP)

In Alberta, financial aid is provided for additional expenses related to disabilities such as income support or post-secondary grants for students with disabilities. Some grants are available under the Residential Access Modification Program (RAMP)¹⁹⁵ which provides funding to make the home of individuals with physical disabilities - such as those using a wheelchair or walker - more accessible. Recipients need to be eligible as the grant amount is limited. The RAMP does not have an appeal process.¹⁹⁶

¹⁹² Disability Related Employment Supports (DRES) fact sheet (1 November 2016), online: Government of Alberta < <https://open.alberta.ca/dataset/fc934473-b9db-47b4-8823-9c41466c51a8/resource/58d33ede-de57-4803-aa2a-974c230cce36/download/dres-factsheet.pdf> > [DRES Fact Sheet].

¹⁹³ Disability Related Employment Supports, online: Government of Alberta < <https://www.alberta.ca/disability-related-employment-supports.aspx> >.

¹⁹⁴ DRES Fact Sheet.

¹⁹⁵ Residential Access Modification Program (RAMP) : guidelines and criteria (1 December 2019), online: Government of Alberta < <https://open.alberta.ca/dataset/ba503d7a-b709-4579-8301-78133acd52df/resource/1407bbff-d9a7-47ad-94b4-f7579a40ff1e/download/css-residential-access-modification-program-guidelines-and-criteria-2019-12.pdf> >.

¹⁹⁶ Residential Access Modification Program (RAMP), online: Government of Alberta < <https://www.alberta.ca/residential-access-modification-program.aspx> >.

Despite the existing laws and programs mentioned above, Alberta must still follow the lead of other provinces by enacting accessibility legislation to ensure that individuals with disabilities can fully participate in their community.

VII. The Importance of Accessibility Legislation in Alberta

According to Statistics Canada, approximately 906,100 people aged 15 and over in Alberta had a disability in 2022.¹⁹⁷ Of this population, over 40% has a severe or very severe disability.¹⁹⁸

These figures highlight the urgent need for accessibility legislation in Alberta to eliminate barriers that limit the daily lives and community participation of people with disabilities.

There are several important reasons why it is important to guarantee access to people with disabilities. Some of these reasons include:

- Failing to ensure accessibility wastes talent and energy. Many people with disabilities are competent at important jobs and may do remarkable work. Denying people access to employment, education, or services is not only unfair; it wastes human resources and makes society poorer.
- It makes good business and economic sense. For commercial operations of any kind, accessibility means that people with disabilities can become customers, increasing sales volume and profits.
- People with disabilities add diversity to the community, and that diversity enriches the community. If they can integrate into the community, they will have the opportunity to make more friends, and more people will have the opportunity to know them.
- Access for people with disabilities improves access for everyone. Making public spaces and facilities physically accessible for people with disabilities also makes them more accessible for people who may not have disabilities, including

¹⁹⁷ Table 13-10-0375-01: Persons with Disabilities, by Disability Type, Age Group and Sex, (2022), online: Statistics Canada <<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1310037501&pickMembers%5B0%5D=1.12&pickMembers%5B1%5D=2.1&pickMembers%5B2%5D=3.1&cubeTimeFrame.startYear=2022&cubeTimeFrame.endYear=2022&referencePeriods=20220101%2C20220101>> [Statistics Canada Disability Type].

¹⁹⁸ Statistics Canada Disability Type.

families with baby strollers, skateboarders, and bicycle riders. Making ramps a built-in feature of the environment benefits everyone.¹⁹⁹

With the enactment of the *ACA*, facilities and services in Alberta that fall under federal jurisdiction must comply with the *ACA*'s accessibility standards. However, those governed by provincial authority and the private sector are not required to do the same. While the Alberta *Human Rights Act* prohibits discrimination against people with disabilities, it only addresses individual complaints and does not tackle systemic barriers to accessibility. As a result, gaps in protection and accommodation for Albertans with disabilities remain, underscoring the need for additional provincial legislation to complement the *ACA*.

An accessibility act in Alberta should complement existing laws and regulations in the province, while extending beyond their current protections. Ensuring Alberta is fully accessible and inclusive is essential for enabling people with disabilities to participate in and contribute to their communities without facing barriers.

It is also worth noting that various organizations, particularly the Alberta Ability Network, have been advocating for the introduction of provincial accessibility legislation.²⁰⁰

¹⁹⁹ Community Tool Box.

²⁰⁰ Linda McKay-Panos.

VIII. Recommendations

The Government of Alberta should consider the following when developing accessibility legislation:

1. The purpose of the legislation should be to prevent and remove barriers faced by persons with disabilities, ensuring that they can fully participate in all aspects of everyday life.
2. The legislation should focus on preventing and removing barriers in areas that fall under the province's jurisdiction.
3. Similar to other provinces, the legislation should aim to eliminate barriers in key areas such as customer service and access to goods and services, employment, the built environment, information and communication, and transportation. It should also extend to education and healthcare.
4. The Government of Alberta should engage with people with disabilities, advocacy groups and community stakeholders before enacting the legislation to ensure it reflects the needs and perspectives of those affected.
5. The Government of Alberta should align the legislation with the Convention on the Rights of Persons with Disabilities (CRPD), the Accessibility Canada Act (ACA), and accessibility legislation in other provinces.
6. The legislation should require the Government of Alberta to create mandatory and enforceable accessibility standards that allow Alberta to become fully accessible.
7. Given the diverse experiences and needs of people with disabilities, the legislation should be designed to promote greater diversity and inclusion.
8. The legislation should clearly define who it applies to and incorporate a process for public feedback to ensure transparency and broad participation.

9. The legislation should include robust compliance and enforcement mechanisms to ensure organizations and businesses adhere to accessibility standards.
10. The legislation should set clear timelines for organizations and businesses to implement its provisions, ensuring that progress is made in a timely manner.

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