



Canadian Union of Public Employees

Submission to the Standing Committee on
Human Resources, Skills and Social Development and the
Status of Persons with Disabilities on

Bill C-81 (Accessible Canada Act)

October 2018

CUPE

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The Canadian Union of Public Employees represents over 30,000 workers in transportation, airlines, communications and emergency services. Our total membership of over 665,000 includes workers in health care, child care, municipal services and other sectors where the federal government plays an important role.

CUPE supports the *Accessible Canada Act's* goal of “a Canada without barriers” as an important step towards disability justice. Our submission will address primarily employment barriers and the role of public services in accessibility.

Complaints

The complaints provisions are unevenly applied to unionized employees in the federal sector. The Bill allows for workers covered under the *Federal Public Service Labour Relations Act*, the *Public Service Employment Act*, the *Parliamentary Employment and Staff Relations Act* and the *RCMP Act* to take their complaints through the grievance process. However, it does not mention the *Canada Labour Code*, which covers workers in the private sector and broader public sector federally. Nor does it address the limitations in s.209(1) of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2. It must be made clear that all workers have recourse through the collective agreement grievance arbitration process.

The legislation should not obscure or impede workers' rights by creating parallel processes for one group of workers, those covered under the *Canada Labour Code*. Unionized workers are on the whole more familiar with their collective agreement than human rights legislation, and they have access to specialists who know arbitral and human rights jurisprudence developed over decades. The grievance process, including the right to appeal and review decisions, is robust and well-established. A worker may file a single grievance on multiple workplaces issues, including accessibility. This Bill positions federally-regulated workers differentially and complicates the dispute-resolution system, adding rather than removing disability barriers in employment.

Recommendation

- Clarify that labour arbitrators will have jurisdiction to apply the *Accessible Canada Act*.

Employment Equity

Bill C-81 duplicates some provisions in the *Employment Equity Act* (EEA) but is far inferior. The government should refer employment aspects of Bill C-81 to the EEA provisions and fix the shortcomings in the existing employment equity system.

The EEA addresses barriers in employment within the federal sector. Persons with disabilities are one of four designated groups covered by the EEA.

Both Bill C-81 and the EEA require federal employers to create plans to eliminate barriers in employment for persons with disabilities. However, Bill C-81 only mentions the EEA twice and fails to articulate how the two laws will work together. This overlap and paucity of information will create confusion for employers, workers and unions.

As another weakness, Bill C-81 excludes unions from accessibility plans in the workplace. Under the EEA, employers are required to consult and collaborate with bargaining agents in the “preparation, implementation and revision of the employer’s employment equity plan” (s. 15). Bill C-81 only requires employers to consult with persons with disabilities, not their bargaining agents, and limits the consultation to the stage of creating accessibility plans.

The provisions in the Bill regarding accessibility plans are vague, with inadequate requirements regarding content, scope or effectiveness. By contrast, the EEA stipulates what must be included in an employment equity plan (s 10).

To remove and prevent employment barriers for persons with disabilities, the federal government must clarify that the EEA governs this area and fix the long-standing problems in the existing system. Parliament has not carried out the five-year review required under the EEA since 2002. The Canadian Human Rights Commission has been unable to carry out proper audits under the EEA for lack of resources. In these and other ways, the employment equity framework requires urgent attention.

Recommendations

- Amend s 5(a) of Bill C-81 clarifying that accessibility in employment must be dealt with under the provisions of the Employment Equity Act and that all regulated entities are responsible for implementing employment equity for persons with disabilities. All other references to employment in the Bill should then be amended to reflect this change.
- Immediately begin the much-needed and overdue parliamentary review of the EEA and address shortcomings.
- Allocate sufficient resources to the Canadian Human Rights Commission to meet employment equity obligations.

Disability action plan

As we recommended in our submission during the consultation,¹ the federal government must develop a pan-Canadian disability action plan. Rights-based interventions work in tandem with solid disability supports, which include strong public services. Persons with disabilities rely on health care, social services, transportation, education, housing, water, income security and other systems that involve the federal government. When those services, programs and infrastructure are underfunded and privatized, people are hurt, as workers and clients. An anti-discrimination model like the Accessible Canada Act will not eliminate systemic inequalities on its own, and government actions elsewhere in fact exacerbate barriers.

Provincial and municipal governments play a major role in the lives of persons with disabilities; solutions to persistent barriers require action from all levels of government. CUPE members are in virtually all sectors of public work. We see first-hand the persistent barriers in those spheres, and we urge the federal government to make Bill C-81 part of a larger strategy.

As a result of colonization, Indigenous peoples in Canada are more likely to have a disability² and poorer social determinants of health.³ The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) requires effective measures be taken to improve social and economic conditions of Indigenous peoples.⁴

Women with disabilities also have distinct issues that require federal action. Women with disabilities remain twice as likely as their non-disabled counterparts to be the victim of violent crimes and sexual assaults.⁵ CUPE represents the majority of unionized workers in the violence against women (VAW) services sector, and we support the Disabled Women's Network of Canada (DAWN) proposals for action: funding, training, programs, and facilities.

Racialized, LGBTTQI and immigrant women, among other marginalized groups, face distinct barriers and forms of discrimination. Bill C-81 and the larger disability action plan must tackle these proactively and substantively, not as an afterthought or token consideration.

Over half of our members in the federal sector are flight attendants; 16,000 CUPE flight attendants are employed at ten Canadian airlines. Transportation privatization and deregulation, including the reduced ratio of flight attendants from 1 per 40 passengers to 1 per 50 passenger seats, have exacerbated barriers, discrimination, and safety risk for passengers with disabilities. Our 2017 submission documents privatization and deregulation trends and their impacts, and disability groups have provided additional examples.

Our earlier submission also identified barriers in the communications sector that can be traced to inadequate regulation and enforcement. Uneven regulation and voluntary compliance have led to a patchwork of captioning, audio description, equipment and other accessibility products and services. Given the weak track record of

telecommunications companies on eliminating barriers under non-binding policy, mandatory standards with deadlines, strict enforcement and fewer exemptions are necessary.

Another gap in Bill C-81 is the absence of a disability lens on policies, programs, laws and decision-making processes as a whole. To illustrate why this is needed, we present an issue CUPE has raised repeatedly with the government: the Canada Pension Plan (CPP) “disability drop out”. The CPP enhanced benefit enacted in December 2016 contained a penalty for persons with disabilities that remains in place, despite government claims. In *Bill C-26*, the disability drop out that was part of the CPP for 50 years was not applied to new benefits, penalizing workers for periods of disability. After pressure from disability groups, CUPE and the Canadian Labour Congress, Finance Ministers announced in December 2017 a new “drop in” provision for disability. However, this “drop in” provides significantly less benefit than the old “drop out”, and the federal government refuses to release its costings and projections. CUPE has filed access to information requests, to obtain this data.

Our 2017 submission identified gaps in pension coverage, Employment Insurance, Labour Market Agreements and other employment and income security programs. These shortcomings persist and require federal government action under the *Accessible Canada Act* and through additional measures.

Recommendations

- Apply a disability lens proactively on all policies, laws and other government decisions.
- Improve and enforce standards for closed captioning, access to technology and other programming and supports for persons with disabilities, evenly across all broadcasting and telecommunications platforms.
- Recognize intersectionality of multiple social locations and address the compounding marginalization of persons with disabilities who are Indigenous, racialized, women, LGBTTTQI and immigrants.
- Improve the Employment Insurance Program and Labour Market Agreements for Persons with Disabilities.
- Improve federal disability benefits, starting with CPP-Disability.

Other recommendations on Bill C-81

CUPE supports these recommendations submitted by disability organizations:

- Add dates and timelines for achieving accessibility and implementing requirements.
- In key provisions, change “may” to “shall”, to ensure that accessibility requirements are made and enforced.
- Remove exemptions from compliance with accessibility requirements.
- Include all facilities (not just goods and services), all technology (not just information technology), all federal spending (not just spending on procurement), and all activity that can be reached by Parliament and the federal government (not just the six areas now enumerated in section 5).
- Recognize ASL and LSQ as the official languages of Deaf people in Canada.
- Do more to address multiple and intersecting barriers.
- Mandate anti-oppression, cultural safety and accessibility training for all public service employees.
- Include a provision similar to s3 of the Accessibility for Ontarians with Disabilities Act which states: “Nothing in this Act or in the regulations diminishes in any way the legal obligations of the Government... or of any person or organization with respect to persons with disabilities that are imposed under any other Act or otherwise imposed by law.”

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Endnotes

¹ Canadian Union of Public Employees (2017) Submission to the Government of Canada Consultation on Accessibility Legislation. Available at: <https://cupe.ca/cupe-calls-expansive-disability-rights-legislation>

² Burlock, A (2017) Women with Disabilities. Available at: <https://www150.statcan.gc.ca/n1/pub/89-503-x/2015001/article/14695-eng.htm>

³ Quinlan, L (2018) Accessibility and Disability for Indigenous Women, Girls, and Gender Diverse People Informing the new Federal Accessibility Legislation. Available at: https://www.nwac.ca/wp-content/uploads/2018/05/Accessibility-Final-Report_1.pdf

⁴ United Nations Declaration on the Rights of Indigenous Peoples, Articles 21-22, p. 9 (March 2008). Available at: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

⁵ Cotter, A (2018) Violent victimization of women with disabilities, 2014. Available at: <https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2018001/article/54910-eng.pdf?st=4z4P5HKI>