

CUPE·SCFP

Submission

by the

**Canadian Union of Public Employees
(CUPE)**

to the

**Government of Canada
Consultation on Accessibility Legislation**

February 24, 2017

About CUPE: The Canadian Union of Public Employees (CUPE) is Canada's largest union, representing 643,000 workers across Canada, in a wide range of occupations and sectors. Eighteen thousand of those members are in federally regulated industries, in the airlines, transportation and communications sectors.

Summary of Recommendations

CUPE recommends that the federal government:

1. Protect and expand quality public services, to prevent disabling environments for workers and eliminate the many barriers to services for persons with disabilities.
2. Reinstate employment equity regulation to its previous standard, and fix gaps in the employment equity system.
3. Improve the Employment Insurance Program and Labour Market Agreements for Persons with Disabilities.
4. Improve federal disability benefits, starting with CPP-Disability.
5. Add the disability drop-out provision to the expanded Canada Pension Plan benefit.
6. Increase the OAS and GIS.
7. Reinstate the 1:40 staff to passenger standard on airplanes, and implement the recommendations from the Council of Canadians with Disabilities to the Emerson Review.
8. 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.
9. Maintain accountability to equity-seeking groups in the reinstated Court Challenges Program, increase its budget and scope, and reaffirm its mandate to protect and advance substantive equality and access to justice for historically disadvantaged groups and official language minority communities.
10. Provide core funding to disability advocacy organizations.

Introduction

We welcome the federal government's promise to remove accessibility and inclusion barriers faced by persons with disabilities, and we urge the government to be ambitious. CUPE has participated in the public consultation sessions in several cities, and we lay out our recommendations in this submission. Proactive disability rights regulation in Canada is long overdue. It needs to be a robust regime of comprehensive, resourced and enforced standards that cover all social, political and economic spheres.

Our comments are based on direct experience as disability advocates and as workers serving persons with disabilities. CUPE represents workers in health care, education, municipalities, libraries, universities, social services, public utilities, transportation, emergency services, telecommunications and airlines. We are frontline workers; we provide services and supports to persons with disabilities. Persistent systemic barriers

affect us as workers with disabilities and as providers of services and supports for persons with disabilities.

CUPE has long advocated for disability rights in the workplace and broader society, and we've made changes in our own organization, to make the union more accessible and inclusive for persons with disabilities.¹ CUPE is a leader on workplace accommodations, in terms of education, legal action and negotiation of individual accommodations. We provide representation in cases dealing with discrimination, harassment, mental health, extended health benefits, short and long term disability, workers' compensation, pensions and other issues of concern to members with disabilities. We monitor and remove accessibility barriers in our events and communications, with the help of our National Persons with Disabilities Committee. This committee is comprised of CUPE members with disabilities from across Canada who deliver public services in a wide range of sectors, are leaders on disability rights, and advise our National Executive Board on decisions. Beyond our workplaces and organization, we work with the disability community to challenge ableism, discrimination and lack of accommodation in education, health care, social services, communications, transportation, pensions and other areas.

Federal regulation on disability rights should be broad in scope, proactive rather than solely complaints-driven, and have strong oversight, enforcement and resources. The standards and measures should be clear, significant and compulsory. They should address systemic barriers to access and inclusion and be backed with the resources and enforcement mechanisms to actually transform those systems.

The regulatory regime arising out of this consultation should be part of a larger action plan that would fully implement the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and build on what other jurisdictions have done. Canada has lagged other countries on disability legislation - a disappointment given the Canadian disability community was instrumental in achieving the CRPD and Canada was an early signatory. CUPE welcomes the federal government's recent commitment to the CRPD optional protocol, and we urge you to adopt the protocol without further delay.

The federal government should pursue a pan-Canadian disability action plan, in addition to federal legislation. Provincial and municipal governments play a major role in the lives of persons with disabilities; many of the solutions to persistent barriers require action from all levels of government. Public transit, education, housing, criminal justice - these are just some of the many areas where joint action is needed to eliminate discrimination and the barriers that persons with disabilities face in every aspect of life. CUPE members are in virtually all sectors of public work, providing services and supports to persons with disabilities. We see first-hand the persistent barriers in those spheres, and we urge the federal government to make this federal legislation part of a larger strategy.

In terms of the immediate step of accessibility and inclusion legislation, disability rights organizations² are recommending what that legislation should cover and how it should be implemented. CUPE supports their call for comprehensive regulation with the funding and systems to enforce it. In our submission, we will focus on areas where CUPE members have direct experience and involvement.

Quality Public Services

Persons with disabilities rely on quality public health care, social services, transportation, education, housing, water and other programs and services that involve the federal government. When those services are underfunded and privatized, people are hurt and injured, as workers and clients. Persons with disabilities are among the marginalized groups most affected.

CUPE has been a leading advocate for quality public services and equity since our inception over 50 years ago. We represent home support workers, affordable housing and shelter workers, education assistants, early childhood educators, workers in group homes, day programs and other social services agencies, and workers in libraries, community centres and other municipal facilities - some of the major public services used by persons with disabilities. In our recent submission to the federal government on poverty reduction strategies,³ these recommendations on social programs are among the most salient to disability rights:

- Programs to assist marginalized Canadians should remain publicly funded and publicly delivered and should not become a vehicle for private profit. All social infrastructure and physical infrastructure projects should be publicly owned and operated.
- In cooperation with the provinces and territories, the federal government should create a universal, public and non-profit, high quality, affordable childcare program.
- The federal government should ensure all Indigenous peoples have access to safe and adequate housing and water and wastewater systems.
- The federal government should implement the recommendations of the Truth and Reconciliation Commission, in cooperation with Indigenous peoples, provinces, territories, and municipal governments.
- The federal government should invest in post-secondary education to make it more accessible.
- The federal government should create a single-payer, universal, national drug program; create a continuing care strategy and recognize the right to home care, long-term care and palliative care; invest in community health centres, and bring oral health under the *Canada Health Act*.

Our submission on poverty reduction strategies lays out how these and other federal actions would benefit marginalized groups, including persons with disabilities. Disability advocates like the Council of Canadians with Disabilities have long called for more federal investment, legislated standards and accommodations in these and other public goods and services, including housing, social services and transportation. Accessibility and inclusion require going “beyond ramps”;⁴ persons with disabilities are among the most marginalized in Canada, and quality public services like health care, disability supports and education are critical to economic, social and political justice.

On the flip side, funding shortfalls and privatization of social programs have increased barriers and exclusion of persons with disabilities. On the importance of keeping

programs and infrastructure public, research has shown the negative impacts of privatization on persons with disabilities.⁵ There is also a body of literature on the impacts of increasing employment precarity on marginalized women in the public sector, as workers and service users.⁶ Government austerity programs, privatization and public sector restructuring actually create mental injuries and disability, adding another dimension.⁷

Federal accessibility and inclusion policy should be informed by the experiences in Canada and the United States, where accessibility laws have failed to address systemic inequalities. Rights-based interventions only work to achieve inclusion when they are implemented alongside a strong network of disability supports, which includes strong public services.

The *Accessibility for Ontarians with Disabilities Act* (AODA) has fallen short in its goals to identify, remove, and prevent barriers for persons with disabilities. The most recent independent assessment of the AODA highlights serious barriers including ambiguity with respect to the very concept of accessibility and how it is measured, barriers that persist in the daily lives of persons with disabilities despite this legislation, concerns with its slow rate of progress, and barriers in key areas like transportation.⁸ At the same time as the AODA has been implemented, the Ontario government has cut and privatized services for persons with disabilities.⁹

The British Columbia government has undertaken Accessibility 2024, a ten-year plan to increase accessibility and the inclusion of persons with disabilities. Similar to the experience elsewhere, the province appears to be treating accessibility and inclusion separate from the material realities persons with disabilities face. For example, a stated commitment to only increase disability benefit rates in accordance with the province's fiscal situation¹⁰ ignores the reality that benefit rates have failed to keep pace with the cost of living. Additionally, the 2016 fee hike for accessible transportation almost entirely cancelled out the disability benefit increase that same year.

In the United States, the *Americans with Disabilities Act* (ADA) has not addressed many of the systemic barriers for persons with disabilities. Even in times of economic growth there has been little progress in employment for persons with disabilities.¹¹ Government underfunding and private sector involvement in education, health care, transportation and other services have entrenched systemic inequalities, illustrating the limits of an antidiscrimination model like the ADA.

In addition to going beyond narrow accessibility rights, federal action on disability must address the compounding marginalization of persons with disabilities who are Indigenous, racialized, women, LGBTTI and immigrants. Advocates from those communities are, in this consultation and other spaces, identifying changes the federal government needs to make in order to address intersecting systems of oppression. In this submission, we want to underscore two areas where CUPE has been a vocal ally: Indigenous rights and challenging gender-based violence.

Access to quality public services is particularly important for Indigenous peoples, who are twice as likely to have a disability than other people in Canada.¹² As a result of the historical and ongoing harmful effects of colonialism, Indigenous peoples in Canada are persistently behind in virtually all indicators of well-being. They are more likely to have

inadequate housing, be without safe drinking water or reliable wastewater systems, and have less access to health care, educational and social services.¹³

Indigenous peoples have the right to the improvement of their social and economic conditions, as recognized by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The Declaration requires effective measures be taken to improve social and economic conditions of Indigenous peoples, with particular attention paid to the rights and special needs of persons with disabilities.¹⁴

The federal government must fully adopt and implement UNDRIP into Canadian law, as recommended by the Truth and Reconciliation Commission.¹⁵ This would require the federal government to work in partnership with Indigenous governments on a nation-to-nation basis to provide adequate and stable funding for public services and ensure federal accessibility legislation acknowledges the rights and special needs of Indigenous persons with disabilities.

In addition to advocating for Indigenous rights, CUPE has been an ally to women with disabilities calling for federal action on gender-based violence. CUPE represents the majority of unionized workers in the violence against women (VAW) services sector, and we have long fought gender-based violence in all spheres of life.¹⁶ We backed the call for the federal government to implement the “Blueprint for a National Action Plan on Violence Against Women”,¹⁷ and we support the Disabled Women’s Network of Canada (DAWN) proposals for action on violence against women with disabilities. DAWN members, as survivors and advocates, and CUPE members, as service providers and advocates, have raised concerns about women with disabilities not having access to shelters, transition houses and other services. CUPE was happy to see the federal government increase funding for the VAW sector, and more is needed, including dedicated funding for training, programs and facilities that make VAW services accessible to women with disabilities.

In developing a federal regulatory regime of disability rights and the resources and systems to back it up, the federal government should follow the advice of disability activists in the women’s, anti-racism, queer and other social movements, to ensure that intersections of systemic oppression are fully addressed.

Employment and Income

Persons with disabilities experience more unemployment, underemployment and poverty than people without disabilities, and government regulation, services and programs play an important role in bridging that gap.

Over 400,000 working age adults in Canada with physical or mental disabilities are currently unemployed, despite being willing and able to participate in the paid labour force.¹⁸ The employment rate for working-aged persons with disabilities is 49% compared to 79% for their non-disabled peers,¹⁹ though rates differ markedly according to the type and severity of the disability. Those who work typically earn low or modest wages in precarious jobs. Workplace accommodations are insufficient; 42.3% of employed persons with disabilities and 58.6% of persons with disabilities looking for work report a need for workplace accommodation.²⁰ 72.6% of potential workers with disabilities who were not part of the labour force experienced barriers related to looking

for work, including accessibility barriers, fear of losing supports, and lack of transportation.²¹

Poverty remains a significant barrier for persons with disabilities, in Canada even more so than other OECD countries. In 2010, the self-reported median income for persons with disabilities in Canada aged 15 to 64 years was just over \$20,000, compared to \$30,000 for persons without disability.²² Of those who are working-aged, persons with disabilities are two times more likely to live below the poverty line than persons without disability,²³ and the poverty line does not include disability-related costs, including aids for mobility, services or medication. Canada had the fifth worst ranking out of 30 countries in an OECD analysis of poverty among persons with disabilities.²⁴

Persons with disabilities who are marginalized by multiple systems of oppression experience more poverty. Women with disabilities have higher rates of lower income than men with disabilities or women and men without disabilities. More than twice as many women with disabilities who live on low income are single parents. Poverty is significantly higher among Indigenous persons with disabilities, rising to 38 percent, double the rate for non-Indigenous persons with disabilities.²⁵

Employment Equity

Employment equity is a key policy measure for overcoming employment discrimination and lack of workplace accommodations. Unions and the disability community have long advocated for federal regulation and supports for employment access and inclusion. The Canadian government has obligations to address employment obstacles under the Convention on the Rights of Persons with Disabilities.

The *Employment Equity Act*, passed in 1985, requires federal sector employers to proactively implement processes and plans to increase the representation and retention of four designated groups that have been historically exploited and have been screened out of opportunities in hiring and promotion: persons with disabilities, women, Aboriginal people and visible minorities.¹ The *Employment Equity Act* covers federally-regulated industries, Crown corporations and other federal organizations with 100 or more employees. The Federal Contractors Program covers provincially regulated employers that have 100 or more employees and a federal government contract of \$1 million or more. Eighteen thousand CUPE members work in the federally-regulated sectors of airlines, transportation and communications, and 68,000 CUPE members work in universities and colleges, many of which fall under the Federal Contractors Program (FCP).

The 2001 review of the *Employment Equity Act* found that persons with disabilities had “experienced the least progress under the *Act* with very small advances in representation, recruitment, and promotion between 1995 and 2000”.²⁶ Persons with disabilities continue to be employed at levels below their availability. In 2014-15, the workforce availability for persons with disabilities was 4.4%, but they were hired at the rate of 3.5%.²⁷ When they are employed, they tend to be clustered in non-executive, non-managerial and entry-level positions.²⁸ Additionally, persons with disabilities have been leaving the public service at a rate five times higher than their hiring.²⁹ The modest growth in persons with disabilities in recent employment equity statistics in the federal

¹ “Aboriginal people” and “visible minorities” are the terms used in the *Act*.

public service remains insufficient, and it likely reflects an aging workforce more than the elimination of barriers in hiring and retention.³⁰

Weak accountability and enforcement mechanisms means that the *Employment Equity Act* lacks teeth. This has been compounded by the Conservative government's gutting of the Federal Contractors Program (FCP) in 2012.

- Now only companies with over 100 employees and seeking contracts worth more than \$1 million must have employment equity policies and programs in place; the previous threshold was \$200,000.
- The Minister of Labour sets the standards for compliance, whereas previous to the changes made in 2012, standards under the FCP had to be equivalent to those in the *Employment Equity Act*. Companies still have to set goals and collect information, but they have fewer reporting and compliance obligations.
- Staff administering the FCP were reduced, with fewer staff in Ottawa and all regional positions cut.

As of June 2016, 13 post-secondary institutions (nine universities and four colleges) were covered by the FCP. This is a significant drop from more than 50 that were covered under the FCP prior to the deregulation in 2012³¹.

Employment equity must go beyond hiring targets in order to address the systemic gaps that lead to the exclusion of persons with disabilities. As disability scholar Deborah Stienstra explained:

"The goal of employment equity is to identify the individual who may be disadvantaged and provide them with a remedy, by targeted hiring, to address their disadvantage. The focus is on the differences among peoples' bodies, not on the environments that may create differences. Many workers believe the environments they work in disable them because environments do not accommodate their needs and also create them as the exception or the "abnormal" person."³²

CUPE recommends that the federal government immediately review the *Employment Equity Act* and Federal Contractors Program and fix deficiencies, starting with these actions:

- Reinstatement of the \$200,000 government contract threshold and mandatory compliance standards equivalent to those in the *Employment Equity Act*, for the Federal Contractors Program.
- Establish measurable goals and clear guidelines for employers in the *Act* and the FCP.
- Reinstatement of staff that monitor and enforce the legislation and program.
- Explore the compounded impacts experienced by people who fall within more than one designated group.
- Provide disaggregated data by race/ethnicity for people who fall within the visible minority category.

Employment Insurance

Pre-employment initiatives such as education and training, workplace accommodations, and flexible work are all critical to ensuring that persons with disabilities have access to employment. CUPE supports the Canadian Labour Congress recommendations to the federal government on disability-related labour market measures:³³

- Increase funding to labour market transfer agreements.
- Expand the role of Labour Market Agreements for Persons with Disabilities in encouraging employers to hire and retain persons with disabilities.
- Address the unique needs of persons with disabilities in regulating flexible work arrangements.

Canada continues to fall further behind OECD counterparts when it comes to public spending on active labour market measures for persons with disabilities.³⁴ Federal transfers to the provinces under Labour Market Agreements for Persons with Disabilities (LMAPDs) play an important role in helping persons with disabilities obtain job skills, and the federal government should invest more in this area. LMAPDs should also play a bigger role in educating employers on ableism, discrimination and the need for modified hours, assistive devices and other common workplace accommodations.

This government has promised to amend the *Canada Labour Code* to allow workers in federally regulated sectors to formally request flexible work arrangements from their employers. This change is needed but is only as a starting point, and the government should take into account the unique needs of persons with disabilities.

Persons with disabilities experience more work interruptions and are more likely to be in precarious jobs than people without disabilities, making it harder to get Employment Insurance benefits. Precariously employed workers have difficulty qualifying for Employment Insurance and collect fewer benefits, even though they need the support more than stably employed workers. The federal government should make improvements to Employment Insurance, including:³⁵

- Increasing benefit rates, reducing qualifying hours, and extending the length of claims.
- Permanently removing all stigmatizing and punitive designation for workers.
- Ensuring labour market training is meaningful, leads to well-paid work, and is available and accessible to all Canadians.

Quality public services and disability supports beyond training and EI are needed for persons with disabilities to fully participate in the labour force. Public services like education, healthcare, social services and transportation are critical to persons with disabilities overcoming discrimination and systemic barriers to employment.³⁶ As noted earlier in this submission, the federal government has unmet obligations in this area.

Pensions

Persons with disabilities are more likely to live in poverty and rely on public pensions than persons without disabilities. Non-employment income, including pensions, is the lone source of income for 37% of Canadians with disabilities aged 15 and 64.³⁷ Public income protection is especially important given 40% of workers have no private disability insurance, and this rate is expected to increase with the greater prevalence of precarious employment.³⁸ CUPE welcomes improvements the current federal government has made to the Canada Pension Plan (CPP), Old Age Security (OAS) and the Guaranteed Income Supplement (GIS). At the same time, we have identified areas where more needs to be done.

a. Canada Pension Plan Disability Benefits

Persons with disabilities face huge barriers to accessing Canada Pension Plan Disability (CPPD) benefits. The CPPD is the largest long-term disability insurance program in Canada and is funded through worker and employer contributions. Narrow eligibility criteria and a cumbersome application and appeals process put it out of reach for most workers with disabilities. Those who do collect face poverty-level income.

CPPD presents multiple barriers to applicants.³⁹ The 2015 evaluation of the CPPD described a lengthy and complex process in which the application itself can take months to complete.⁴⁰ Applicants must fill out eight forms totaling 42 pages, and in contrast to other programs, CPPD remains largely paper based (which can create accessibility barriers). The eligibility criteria, including “severe and prolonged” disability, is stricter than comparable criteria in most other OECD countries, and the rejection rate of claims is also high by international standards.⁴¹ Changes made in 2013 to the tribunal and appeal process have resulted in significant backlogs and complexities that have exacerbated problems, including financial hardship, for many applicants.

The Auditor General of Canada reported in February 2015⁴² that:

- 57% of those who applied for CPPD (39,707 Canadians) were denied.
- 65% of those individuals were denied again when they applied for reconsideration.
- 10,871 people were stuck in the appeals process as of December 31, 2014, and there is a growing backlog under the Social Security Tribunal (SST) established in 2013.
- Canadians with appeals are waiting on average almost 2.5 years to get a decision.
- Only 7% of terminally ill applicants had a decision within 48 hours in 2015, a drop from 11% in 2013.

For those who do manage to collect CPPD benefits, the payments are far too low. CPPD consists of a basic monthly amount of \$471.43 plus an amount based on the recipient’s CPP contributions during their working years. For 2017 the average monthly benefit is \$938.31.⁴³ In 2011, the last CPPD evaluation found that on average, CPPD benefits made up half of a recipient’s income and, for 12% of recipients, their entire income.

Canada lags peer countries in terms of federal disability benefits. An OECD 13-country comparison found Canada ranks near the bottom in terms of both coverage and benefit levels, in spite of having comparable (high) unemployment rates and relatively high poverty rates for persons with disabilities.⁴⁴

b. *Provide the disability drop out for expanded CPP benefits*

The CPP enhanced benefit enacted in December 2016 contains a penalty for persons with disabilities that must be removed. In *Bill C-26*, the “disability drop out” that has been part of the CPP for 50 years was not applied to new benefits. CUPE and the Canadian Labour Congress flagged this serious omission,⁴⁵ and the federal NDP proposed amendments, but the Liberal government passed the law unchanged.

The drop out provision ensures that persons with disabilities are not penalized for time they are unable to work due to their disabilities and collecting CPP Disability benefits. Canada Pension Plan (CPP) benefits are based on average earnings over a person’s working life. Periods of low or zero earnings reduce the CPP benefits. The disability drop out provision allows a person to exclude months when they were out of the workforce and receiving CPP disability benefits, in the calculation of their CPP retirement benefits. With the recent changes, the drop out will remain for the existing CPP benefit, but not the enhanced portion. As such, those experiencing episodic or progressive disabilities may face additional barriers resulting in greater economic disparity between persons with disabilities and their nondisabled counterparts, including a potential double reduction for women with disabilities who experience drop out periods for both disability and caregiving.⁴⁶

CUPE is very concerned that this government added a barrier at the very time it promised to eliminate barriers to persons with disabilities. This experience demonstrates the need for equity impact analysis in advance, to examine and evaluate all laws and policies at the federal level to minimize, if not eliminate, the adverse impact of such laws and policies on persons with disabilities and other equity-seeking groups. To fix the problem now, the Liberal government must work with the provinces to include the drop out provision in the enhanced CPP benefit.

c. *Increase OAS and GIS*

Old Age Security and the Guaranteed Income Supplement should be increased to ensure that no Canadian senior lives in poverty.⁴⁷ The prevalence of disability increases with age and in 2012 33.2% of Canadians aged 65 or older reported having a disability.⁴⁸ The increase in GIS benefits will lift only 85,000 seniors living alone out of poverty. This improvement will thus leave more than 600,000 seniors below the poverty threshold. CUPE believes that OAS and GIS benefits should be increased by an amount sufficient to reach the after-tax Low Income Measure, thus lifting all seniors who qualify for these two programs out of poverty.

OAS and GIS should be indexed to income rather than to inflation. In addition to the limited impact of a small increase to the GIS, we should not forget that these effects will diminish over time. OAS and GIS are indexed to inflation, while measurements of poverty increase in relation to growth in incomes. From 1984 to 2011, the median income of

elderly individuals increased by 45%, while income from OAS and GIS rose 15%. OAS and GIS should be indexed at the same pace as the poverty threshold.

The claw back rate for the Guaranteed Income Supplement should be reduced in equal measure to the recent expansion of Canada Pension Plan benefits.

Regulation of the airline and communication sectors

In this section, we will focus on accessibility barriers identified by our members in the transportation and communication sectors. The majority of our members in federally regulated workplaces, roughly 18,000 workers, are employed in these two sectors. The unemployment and underemployment of persons with disabilities, described above, are serious concerns, and the federal government has unmet obligations under federal laws and the CRPD. Below, we identify additional concerns for persons with disabilities in these two sectors.

Airlines

CUPE represents federally regulated workers in marine, transit, and commercial aviation. The largest of these groups is approximately 9,000 flight attendants, or cabin crew. CUPE is the leading union for flight attendants in Canada, and has a long and distinguished record of improving safety conditions for passengers and cabin crew through both collective bargaining and legislative work.

Flight attendant ratios (number of flight attendants required for number of passengers) and training are governed by regulations and standards set out in the Canadian Aviation Regulations (CARs) and enforced by Transport Canada. Both are directly related to the flight attendant's ability to ensure accessibility and mitigate risks to passengers with disabilities. For example, though flight attendant training may be delivered by either airline carriers or external educators, a pre-set curriculum must include detailed safety procedures, how to handle a variety of medical emergencies, and identifying and assisting passengers with "special needs" including persons with disabilities.⁴⁹

Added instructions can be found in Transport Canada Advisory Circular (AC) No. 700-014 which sets out Passenger Seating Requirements and Accessible Air Transportation. The circular advises airlines operators, among other things, to ensure that the number of persons with a disability on a flight must not exceed a number that would impede a flight attendant's ability to perform all required safety duties, including an emergency evacuation. And while operators are required to mitigate risks, the circular makes clear that flight attendants "may not be available to provide individual assistance during an emergency [and that] a flight attendant's primary duty in an evacuation is to open the emergency exit door(s), direct passengers to the exits using oral shouted commands, and manage the evacuation flow."⁵⁰ In other words, persons with disabilities should not expect to receive added assistance, over and above those offered to other passengers. It is also important to note that, though more detailed, an advisory circular is not mandatory, and is intended to be a guideline rather than a regulation for airline operators.

The *Canada Transportation Act* has a far more explicit mandate to ensure accessible transportation than the above. The *Act* has the legislative authority to remove obstacles

to travel for passengers with disabilities, design and modify signage, require training of staff in transportation facilities and on carriers, ensure the communication of information to persons with disabilities, and set terms and conditions of carriage for persons with disabilities (i.e. rates and fares). The Canadian Transportation Agency (CTA) “may also resolve accessibility complaints impose corrective measures, and reimburse expenses for undue obstacles”.⁵¹ However, unlike the Canadian Human Rights Tribunal, the CTA cannot compensate persons with disability for pain and suffering.

A 2015 review of the *Canada Transportation Act* by former Conservative Cabinet Minister David Emerson includes extensive recommendations for improvements to accessibility.⁵² Echoing the Council of Canadians with Disabilities (CCD) claim that “Canada is no longer a world leader in accessible transportation,”⁵³ the report states that Canada lags well behind the United States and the European Union in “accessibility protections and standards in legislation.”⁵⁴ The report makes several key recommendations, including greater harmonization with superior foreign regulations; a definition that is consistent with the World Health Organization determinants of disability (impairment, activity limitations, and participation restrictions); exclusive jurisdiction by the CTA over disability related complaint cases, including the right to award pain and suffering; greater authority to address systemic issues; and a “Score Card” or report every three years on accessibility practices and compliance.

CUPE supports the emphasis placed on access and accessibility in the Emerson report, and shares the view of the CCD that any proposed regulatory changes must be made with the full participation of the disability community. However, there are deeply contradictory aspects within the Emerson Report, as well as recent regulatory changes to the CARS flight attendant ratio.

As critics including CUPE and the Canadian Labour Congress have stated, the Emerson Report reads as a corporate blueprint for transportation privatization and deregulation, which threaten to set back accessibility and safety. The recommended sale of airports to private investors will almost certainly increase fees to passengers and reduce services, including to persons with disability. Contract flipping of staff who assist passengers with mobility issues causes higher turnover, undermining continuity, experience and quality of service. Another concern is increased limits to foreign ownership of Canadian airlines, which will pave the way for “ultra- low cost carriers” (ULCCs). Such carriers operate according to a business model based on drastically increased ancillary fees, higher density aircraft, and fewer on board services. Based on the past five decades of privatization and deregulation in the airline industry, increased airline competition in Canada – both in the form of ULCCs and greater access for foreign carriers – have not led to lower fares and greater consumer choice and service. Instead, intense competitive pressure has forced legacy airlines world-wide into bankruptcy, forced mergers, and degraded safety and services. In sum, while the Emerson Report purports to strengthen access and accessibility, it pays virtually no attention to the safety-related impact of its recommendations for passengers.

The reduction in cabin crew is one of the biggest setbacks, for workers and passengers. Reacting to industry pressure, in 2015 Transport Canada reduced the ratio of flight attendants from 1 per 40 passengers to 1 per 50 passenger seats. This has reduced many cabin crews by at least one flight attendant. The problem is further exacerbated by another 2015 regulation requiring a flight attendant to enter the flight deck when a pilot

exits to use a lavatory. This means one of two required flight attendants is left to attend the entire cabin on a 97-seat Embraer 190 aircraft, commonly used for short-haul flights within the Montreal-Toronto-Ottawa corridor. In such a scenario, a passenger experiencing a medical emergency would be attended by the single flight attendant, leaving the cabin completely unattended. The risks associated with larger, wide-bodied aircraft in which flight attendants are now responsible for two aisles to open a pair of exit doors are even greater.

Despite a deeply flawed and publicly suppressed risk assessment as well as the admission that 1:50 does not provide an “equivalent” level of safety to 1:40, Transport Canada has placed corporate profit over passenger and cabin crew safety. Cabin crew are crucial to routine and emergency safety functions. Flight attendants brief passengers on safety procedures, ensure the cabin is safely prepared for flight, check galleys and lavatories for fires or other hazards, and perform a myriad of other standard operating procedures to ensure passenger safety. Non-routine safety measures include respond to serious and even life-threatening on board medical emergencies, on board fires, sudden decompression and turbulence, and unruly or disruptive passengers. However, no act is more important than emergency evacuations, with flight attendants expected to direct passengers safely out of aircraft exits in under 90 seconds. Flight attendants are widely acknowledged to be a key factor in the safe evacuation of aircraft, such as Air France 358 which crashed landed at Toronto Pearson airport in 2005. 309 passengers and crew were evacuated minutes before the aircraft became a fireball. Flight attendants also played a crucial role protecting passengers from opening unsafe exits following the 2009 emergency ditching of US Airways Flight 1549 in the Hudson River. Though rare, emergency landings can be catastrophic, and adequate cabin crew are integral to saving lives.

CUPE flight attendants report a deterioration of routine safety procedures due to understaffing, fee increases and increased pressure for on time departures. Increased baggage fees have led to many more passengers bringing luggage on board, causing potentially unsafe congestion in the aisles. Narrower seats with reduced pitch to increase density also introduced new barriers to persons with disabilities. CUPE flight attendants report that on some flights, passengers emplaning from wheelchairs can number in the dozens. On all flights, safe emergency evacuation is a huge concern. Deregulation and privatization have exacerbated barriers, discrimination and safety risks for persons with disabilities.

Disappointingly, Transport Canada admits that “the disability community was last consulted on the flight attendant ratio in 2006 ... and expressed strong opposition to the 1:50 passenger seat ratio.”⁵⁵

Despite promising rhetoric in the Emerson report on access and accessibility, the actions of the Canadian Transportation Agency and Transport Canada bely a genuine commitment to mitigating the risks to Canadian passengers with disabilities.

CUPE recommends that the federal government:

- Implement the recommendations from the Council of Canadians with Disabilities in their submission to the Emerson Review.⁵⁶

- Reinstatement of the 1:40 ratio to advance safety, accessibility and inclusion for passengers with disabilities.

Communications

CUPE represents about 100 workers who produce French closed captioning for persons who are deaf or hearing impaired. In the communications sector as a whole, CUPE represents more than 5,000 members in the telecommunications industry, more than a thousand in television and a few hundred in the print media in Quebec.

In a submission to the CRTC and at other opportunities, CUPE has called for a high quality standard for closed captioning as a condition of license for broadcasters.⁵⁷ For our members, providing quality captioning is a priority. This should be part of any future accessibility legislation.

The Canadian Association of the Deaf has long fought for closed captioning, and it rightly argues that the audience extends beyond the Deaf community.

“The potential captioning audience is not limited to the 340,000 Deaf people in this country. There are 3.15 million hard of hearing Canadians who may also benefit from captioning. Captioning has been proven to improve the reading and writing of people who have low literacy skills: there are 6.5 million functionally illiterate Canadians. Children learn language through the kind of exposure provided by captions. Immigrants who know neither English nor French can utilize captioning to assist them in learning one or the other language. Anyone who knows one of Canada’s official languages and wishes to learn or improve skills in the other language can use captioning to this end. A conservative estimate would be that over 10 million Canadians — more than one-third of the total population — can benefit from captioning.⁵⁸”

The *Broadcasting Act* states that "programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose."⁵⁹ In accordance with this legal provision, the Canadian Radio-television and Telecommunications Commission (CRTC) requires that 100% of programs on public or private television be captioned⁶⁰ so that deaf and hearing-impaired persons can access them. However, community television programs do not have to be subtitled. The CRTC also requires broadcasters meet quality standards for closed captioning:⁶¹ 95% accuracy in English-language captioning and 85% in French-language captioning, recognizing different circumstances of the two markets.

The CRTC requires each licence holder to file with the Commission, once a year, "... a report relating to the provision of closed captioning when distributed on non-linear online platforms operated by the licensee⁶²... ". However, there is no obligation to provide programming accessible to persons with disabilities on the Internet.

The CRTC also requires accessibility measures for people who are blind or vision impaired, such as the audio description of "...all the key elements of Canadian information programs, including news programming"⁶³ and described video for a certain number of hours of programming per week for traditional and specialty television.⁶⁴ Cable companies also have a regulatory obligation to provide the necessary decoding equipment, software or other technology.⁶⁵

Most of these accessibility measures are already in place, while others will be required of broadcasters upon licence renewal.

Without CRTC regulations based on section 3 (1) (p) of the *Broadcasting Act*, persons with disabilities would not have access to Canadian television programming. The government must ensure that this provision is maintained - even if the *Act* is amended in the wake of the Minister of Canadian Heritage's consultations on Canadian content in a digital world.⁶⁶

The difficult financial situation of some Canadian broadcasters, and unfair competition from over-the-top services that affects the entire regulated industry, threatens accessibility services and hinders their improvement. All broadcasters should be held to the same standard of accessibility, and that standard should be improved.

CUPE submits that the federal government should extend the accessibility guarantees of article 3(1)(p) of the *Broadcasting Act* to broadcasting activities and government communications on the Internet, as well as to online newspapers that are not regulated. Thus, captioning and other accessibility services, such as audio description of texts, would be offered on a consistent basis.

The *Telecommunications Act* should also be amended to ensure access to telecommunication services and equipment adapted for persons with disabilities. This law, which governs telecommunications companies (wireline and wireless telephone providers, Internet service providers), currently does not contain any specific provisions on accessibility. Nevertheless, the CRTC is asking the industry for various adaptations (Internet protocol relay service, video relay service, adapted handsets, alternative formats, etc.)⁶⁷ "where market forces cannot be relied upon to achieve the telecommunications policy objectives. In this regard the Commission considers that persons with disabilities generally are not able to influence the market sufficiently to obtain accessible telecommunications products and services."⁶⁸

However, this exercise requires the Commission to consider several pieces of legislation: instructions received from the government, the *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act* and the provisions of the *Telecommunications Act*, in particular subsection 27(2), which prohibits any unjust discrimination « ...in relation to the provision of a telecommunications service or the charging of a rate for it ... »⁶⁹

The CRTC also links its accessibility guidelines to the fact that they contribute to the achievement of some of the objectives of the Canadian Telecommunications Policy contained in the *Act*⁷⁰ which the CRTC has the mission to fulfill. These objectives are:

- (a) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;
- (b) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

(c) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;

[...]

(g) to stimulate research and development in Canada in the field of telecommunications and to encourage innovation in the provision of telecommunications services;

(h) to respond to the economic and social requirements of users of telecommunications services;⁷¹

The CRTC is making efforts to ensure that accessible telecommunications services for persons with disabilities are available, but it confronts competing objectives⁷² and relies on voluntary compliance. If the telecommunications companies do not cooperate, the CRTC is unable to enforce its accessibility objectives since they are contained in a regulatory policy (non-binding⁷³), and not in a regulation deriving from the *Act*, which is silent on this point. As the organization Citizens With Disabilities Ontario stated in its submission last November, CRTC mandatory standards are necessary; telecommunications companies do not have a good record of eliminating barriers on a voluntary basis.⁷⁴

Any future accessibility law or amendment to the *Telecommunications Act* should resolve these deficiencies in order to ensure access to adapted telecommunications services and equipment. In the meantime, the government must ensure that the existing provisions of the *Telecommunications Act* are maintained in any action on consultations regarding content in a digital world.⁷⁵

CUPE calls on the federal government to:

- 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.

Consumer-Based Advocacy

Federal accessibility legislation needs to be part of a system that holds the federal government accountable to persons with disabilities and equips the community to access justice and human rights. Disability rights advocates need the capacity to monitor disability rights, identify gaps and advocate for change. Two of the numerous mechanisms for this are the Court Challenges Program and core funding for disability rights organizations.

CUPE welcomes the Liberal government's reinstatement of Court Challenges Program (CCP) but is concerned about the loss of community accountability and clear substantive equality mandate. The CCP provides financial assistance for important test cases that advance language and equality rights guaranteed under the *Canadian Charter of Rights and Freedoms*.⁷⁶ CUPE has experience with the Court Challenges Program and fought its cancellation. It was under the Court Challenges Program that CUPE successfully argued for equal rights for same-sex partners in pension plans and pension benefits. CCP supported CUPE and a coalition of 13 organizations that intervened before the Supreme Court of Canada in the *Rosenberg* case. An evaluation showed that CCP assistance was critical to the success of that coalition work and enabling the participation

and inclusion of parties whose voices and perspectives would otherwise not have been heard by the Court.⁷⁷ When the CCP was cut in 2006, CUPE campaigned publicly, organized political action, and worked closely with human rights groups all in an effort to overturn the decision.

CUPE echoes the Council of Canadians with Disabilities recommendations⁷⁸ that the federal government:

- Maintain accountability to equity-seeking groups in CCP governance and decision-making.
- Increase CCP funding and expand the program's mandate include funding for: community engagement throughout the litigation process, a larger scope of eligible expenses, claims at provincial and territorial levels,⁷⁹ and Indigenous claims.

CUPE also supports the recommendation of the Council of Canadians with Disabilities and the National Association of Women and the Law that the federal government reaffirm that the mandate of the reinstated CCP is to protect and advance substantive equality and access to justice for historically disadvantaged groups and official-language minority communities.

The disability community in Canada has a history of advocating for strong federal leadership where disability issues are concerned.⁸⁰ In addition to funding through the CCP, disability rights organizations require strong federal leadership and support which includes the availability of core funding to carry out their education, community development and advocacy work beyond the justice system.

Many of the most significant advances in disability rights and policy have come from the work of advocates and the disability rights groups that support their efforts nationally; to name a few, the Convention on the Rights of Persons with Disabilities, inclusion of disability in the *Canadian Charter of Rights and Freedoms* and inclusive education. Yet, despite their important role where disability advocacy and the development of disability policy are concerned, funding shifts have led to a climate that has made this work, as well as their active support for government efforts where inclusion is concerned, more difficult. This has been especially true for consumer-run organizations. For example, a shift towards short-term and project-based funding, coupled with increased competition with the private sector for government funds, has resulted in decreasing capacity among many of Canada's most prominent disability-rights and consumer-led organizations. CUPE encourages the government to strengthen funding for disability rights and acknowledge the expertise of those with lived experience when making funding and partnership commitments, to foster collaborative efforts to advance the inclusion of persons with disabilities in Canada.

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