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Accessibility Legislation

# What does an **ACCESSIBLE CANADA** mean to you?



DISCUSSION GUIDE

**What does an accessible Canada mean to you?**

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**PDF**

Cat. No.: Em4-9/2016E-PDF

ISBN/ISSN: 978-0-660-05482-7

**ESDC**

Cat. No.: SSD-160-06-16

# Table of Contents

<b>Message from the Honourable Carla Qualtrough, Minister of Sport and Persons with Disabilities</b>	<b>1</b>
<b>1. Consultation Objectives</b>	<b>3</b>
<b>2. Attitudes and Awareness</b>	<b>4</b>
<b>3. Background and Context to the Development of Accessibility Legislation</b>	<b>4</b>
3.1. Canada's Constitutional Framework	4
3.2. Making Laws at the Federal Level	5
3.3. Existing Federal Law in Relation to Canadians with Disabilities	5
3.4. United Nations Convention on the Rights of Persons with Disabilities	6
3.5. Accessibility Laws in Other Jurisdictions	6
<b>4. Topics for Discussion on Accessibility Legislation</b>	<b>7</b>
4.1. What is the goal of the legislation?	7
4.2. What approach should the legislation take to improve accessibility and remove barriers?	7
4.3. Who should be covered by the legislation?	8
4.4. What accessibility issues and barriers should the legislation address?	9
4.5. How should compliance with the legislation be monitored and enforced?	10
4.6. How should organizations be supported to improve accessibility?	11
4.7. How will we know if the legislation is effective in improving accessibility and removing barriers?	11
<b>5. How to Reach Us</b>	<b>12</b>
<b>Privacy Notice Statement</b>	<b>13</b>



# Message from the Honourable Carla Qualtrough, Minister of Sport and Persons with Disabilities

In Canada we've made considerable progress in making our society more inclusive. We see this throughout our communities. But there is still work to do.

Canadians with disabilities continue to face barriers in their daily lives. Persistent gaps remain in areas such as employment, income and social inclusion.

As Minister of Sport and Persons with Disabilities, I have been asked to lead a consultation process that will inform the development of new accessibility legislation.

Canadians with disabilities, their families, and the organizations that represent them have been integral to many of the advancements Canada has made in accessibility. To draw on this knowledge and experience, as well as that of businesses, community organizations and government partners, the Government of Canada is conducting consultations to gather input on options for the new legislation.

We have a long road ahead, but this is a big step in helping to ensure our communities become more inclusive for all Canadians.

What does an accessible Canada mean to you? Please take the time to participate in our online consultation or attend one of our in-person public sessions.

Together, we will make history.



## 1. Consultation Objectives

Canadians, communities and workplaces benefit when everyone can participate equally in everyday life. There has been much progress in making our society more inclusive, but we can do better.

This is why the Government of Canada is committed to developing new accessibility legislation to promote equality of opportunity and increase the inclusion and participation of Canadians who have disabilities or functional limitations.

Many Canadians continue to face barriers that affect their ability to participate in daily activities that most people take for granted. These could include:

- physical and architectural barriers that impede the ability to move freely in the built environment, use public transportation, access information or use technology;
- attitudes, beliefs and misconceptions that some people may have about people with disabilities and what they can and cannot do; and
- outdated policies and practices that do not take into account the varying abilities and disabilities that people may have.

In developing this new legislation, the Government of Canada is consulting Canadians both in person and online.

The Government of Canada is seeking your ideas for this new legislation, including:

- feedback on the overall goal and approach;
- whom it should cover;
- what accessibility issues and barriers it should address;
- how it could be monitored and enforced;
- when or how often it should be reviewed;
- how and when to report to Canadians on its implementation; and
- how to more generally raise accessibility awareness and support organizations in improving accessibility.

## How to Participate

The purpose of this guide is to encourage and facilitate discussion. Questions are included throughout to solicit your views on what the legislation could look like.

There are several ways for you to get involved: attend one of the many in-person engagement sessions taking place in communities across the country, participate online, or provide your comments by email, phone, fax, TTY, ASL and LSQ video, or mail. Contact information is provided in the section entitled “How to Reach Us” at the end of this guide.

All of the feedback we receive will be incorporated into reports that will be made available online on the **consultation website** at [Canada.ca/Accessible-Canada](https://Canada.ca/Accessible-Canada) and in alternate formats, on request.

## 2. Attitudes and Awareness

We all have a role to play in improving accessibility. From individuals to community organizations, businesses to governments, there are actions we can take to build a more inclusive society.

Accessibility legislation is an important step. Experience shows, however, that no matter how well designed legal measures are, legislation on its own is only part of the answer. To achieve lasting change, accessibility has to become part of our everyday thinking.

To help do this, legislation would be complemented by various initiatives to raise awareness of the importance and benefits of accessibility and of what individual Canadians and organizations can do, in general, to improve accessibility and remove barriers.

Ultimately, the objective is for all of us to see accessibility differently—not as a series of boxes to check off to show we’ve done the minimum required, but as an integral part of everything we do.

### Questions for feedback

- How can the Government of Canada raise awareness of and change attitudes in relation to accessibility (in the short term and long term)?
- How can the Government of Canada show leadership in improving accessibility and removing barriers for Canadians with disabilities?
- Do you have examples of collaborative models that have led to the creation of shared expectations and sustained culture change within organizations in relation to accessibility?

## 3. Background and Context to the Development of Accessibility Legislation

### 3.1. Canada’s Constitutional Framework

In Canada, lawmaking power is divided between the Parliament of Canada and the provincial and territorial legislatures. The Parliament of Canada passes laws in areas under federal jurisdiction, such as banking, broadcasting and cross-border transportation. Provincial/territorial legislatures pass laws in areas such as education, social assistance and municipal government.

Accessibility legislation passed by Parliament would apply to organizations and areas under federal jurisdiction.

## 3.2. Making Laws at the Federal Level

Legislation has two main parts: An Act and regulations.

An Act is a law that has been passed by the Parliament of Canada. It is a legal statement that sets out goals in a particular area and provides authority to carry out certain activities. A draft act, called a bill, is introduced to Parliament and requires the approval of the House of Commons, the Senate and the Governor General of Canada to become law.

Regulations, which are sometimes referred to as delegated or subordinate legislation, set out the specific rules and procedures for carrying out the goals of an Act. Like Acts, they have binding legal effect. However, they are not made by Parliament, but by persons or bodies to whom Parliament has delegated the authority to make them, such as the Governor in Council (Cabinet), a Minister or an administrative agency. Authority to make regulations must be expressly delegated by an Act.

## 3.3. Existing Federal Law in Relation to Canadians with Disabilities

Canada has a number of laws in place that protect the human rights of Canadians with disabilities and promote income security and equal employment opportunities. These include, for example, the *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act* and the *Employment Equity Act*. As well, the Government of Canada has standards and regulations in a number of areas—including broadcasting, telecommunications and transportation—to improve accessibility and remove barriers for Canadians with disabilities.

In general, Canada's current legal approach to disability is focused on protecting the human rights of Canadians with disabilities and relies on individual complaints to address what can be larger, systemic issues. In our system, the onus is usually on the person who has experienced discrimination to then seek recourse. This process can be challenging for individuals and has been slow to address ongoing inequalities and lack of accessibility.

It is envisioned that, by taking a proactive and systemic approach to improving accessibility and removing barriers, legislation would complement the laws that already exist in Canada to protect the human rights of Canadians with disabilities and build on existing federal accessibility standards and regulations.

### 3.4. United Nations Convention on the Rights of Persons with Disabilities

Canada's ratification of the *Convention on the Rights of Persons with Disabilities* in March 2010 reaffirmed the Government of Canada's commitment to ensure greater accessibility and opportunities for persons with disabilities. The Convention covers a wide range of topics related to accessibility and inclusion. For example, Article 9 of the Convention calls on governments to take appropriate measures to ensure persons with disabilities have access, on an equal basis with others, to the physical environment, to transportation, to information and communications, and to other facilities and services open or provided to the public. Accessibility legislation will support the Government of Canada's ongoing implementation of the Convention.

### 3.5. Accessibility Laws in Other Jurisdictions

Various countries around the world have introduced accessibility legislation, including, for example, the United States (*Americans with Disabilities Act*; [ada.gov](http://ada.gov) (only available in English)) and Australia (*Disability Discrimination Act*; [humanrights.gov.au](http://humanrights.gov.au) (only available in English)). In Canada, Ontario (*Accessibility for Ontarians with Disabilities Act*; [Ontario.ca/page/accessibility](http://Ontario.ca/page/accessibility)), Manitoba (*Accessibility for Manitobans Act*; [accessibilitymb.ca](http://accessibilitymb.ca)) and Quebec (*Loi assurant l'exercice des droits des personnes handicapées en vue de leur intégration scolaire, professionnelle et sociale*; [ophq.gouv.qc.ca](http://ophq.gouv.qc.ca)) have introduced such legislation. Nova Scotia has announced its intention to do so, and British Columbia, as part of its Accessibility 2024 action plan, has said that it will consult on options for legislation in that province.

Each of these laws takes a different approach to improving accessibility—some, for example, take a regulatory approach, while others use less prescriptive performance goals—which reflects the unique circumstances of each jurisdiction. We can, however, still learn from the experiences of these other jurisdictions. For example, how were individuals and organizations engaged in the development of the laws, and what supports are provided to help organizations improve accessibility and remove barriers?

## **4. Topics for Discussion on Accessibility Legislation**

### **4.1. What is the goal of the legislation?**

The overall goal of the legislation is to increase the inclusion and participation of Canadians in society and promote equality of opportunity by improving accessibility and removing barriers in areas of federal jurisdiction.

#### **Questions for feedback**

- Do you have any input regarding this goal?
- How should the legislation define “accessibility” and/or “barrier”?

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

Research suggests that accessibility legislation in other jurisdictions has taken one of two broad approaches: 1) a prescriptive approach that sets out specific accessibility requirements in law or 2) an outcome-based approach that identifies desired outcomes and establishes a planning and reporting process that organizations are to follow to achieve those outcomes. These approaches aren't mutually exclusive, however, and aspects of one can be used in the other.

#### **Prescriptive Approach**

With a more prescriptive approach, the legislation could:

- provide authority for the Government of Canada to use regulations to establish detailed accessibility standards in areas of federal jurisdiction;
- describe the process or processes that the Government would use to develop the accessibility standards, as well as the areas or activities to which the standards would apply; and
- describe compliance measures that the Government would use to ensure the accessibility standards have been implemented appropriately.

## Outcome-Based Approach

With an outcome-based approach, the legislation could set accessibility objectives that organizations would then try to achieve. With this approach, the legislation could enable collaborative processes for organizations to, for example, develop, publish and implement accessibility plans that would set out specific goals and commitments, as well as strategies for meeting those goals. Compliance could be monitored through measures such as reporting requirements and periodic reviews.

### Questions for feedback

- Overall, which approach or approaches do you think would be best for accessibility legislation? Are there other approaches that you would suggest?
- If a prescriptive-type approach were to be taken, do you have any input on how standards could be developed?
- If an outcome-based approach were to be taken, do you have any input on how accessibility outcomes could be established?

## 4.3. Who should be covered by the legislation?

The legislation will outline the types of organizations to which it will apply. Within federal jurisdiction, the legislation could potentially apply to:

- Parliament of Canada
- Federal courts
- Departments, agencies and institutions of the Government of Canada
- Canadian Armed Forces
- Federal Crown corporations
- Royal Canadian Mounted Police
- Federally-regulated businesses and industries (e.g. banking, broadcasting, cross-border transportation)
- Other federal lands

### Questions for feedback

- Are there other organizations within federal jurisdiction that should be covered by the legislation?
- Are there organizations that should be exempt from the legislation?
- The legislation could potentially set out different requirements and timelines for different types and sizes of organizations. Do you have any comments or suggestions for this?

#### 4.4. What accessibility issues and barriers should the legislation address?

The legislation could specify the accessibility issues it will address, or describe a process for identifying these issues, or use some combination of the two.

For example, the legislation could state that it will improve accessibility and remove barriers in specific areas, such as:

- the built environment;
- program and service delivery;
- the procurement of goods and services;
- employment;
- transportation; and
- information and communications.

The legislation could also describe a process that the Government of Canada would follow to identify and prioritize areas for improving accessibility and removing barriers. Examples of potential mechanisms include:

- **Advisory Council**—the Government of Canada could create and support a permanent advisory committee comprised of Canadians with disabilities and other stakeholders.
- **Consultations**—the Government of Canada could consult periodically with Canadians with disabilities and other stakeholders.

#### Questions for feedback

- We have listed six areas where accessibility could be improved. Of these, which are the most important to you? Are there other areas that should be included?
- We have listed some potential mechanisms that the legislation could describe for the ongoing identification and prioritization of accessibility issues. What do you think of these mechanisms? Are there other mechanisms you would suggest?
- Canada has a number of laws in place to address human rights issues and improve accessibility. Do you have any comments on how the new accessibility legislation could interact with these existing laws? Should the legislation describe a process by which these laws would be reviewed and potentially revised?
- Should the legislation build on accessibility standards already developed by provincial/territorial governments and other countries?

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

The legislation would likely contain a section or sections that describe how compliance with the legislation would be monitored and enforced. The exact monitoring and enforcement mechanisms used would depend on the approach or approaches the legislation ultimately takes (i.e. prescriptive or outcome-based).

Potential monitoring mechanisms include:

- **Action plans**—the legislation could require organizations to submit action plans that would detail how they will improve accessibility and remove barriers for persons with disabilities.
- **Progress reports**—the legislation could require organizations to periodically submit progress reports that would detail their progress in improving accessibility and removing barriers.
- **Reviews and audits**—the legislation could detail how action plans and progress reports could be verified through reviews, audits and/or inspections.
- **Complaints mechanisms**—the legislation could detail how Canadians could submit complaints concerning an organization that may not be meeting its obligations under the legislation.

The legislation could also describe mechanisms to address issues of non-compliance. These enforcement mechanisms could include, for example:

- An informal or formal mediation process to address compliance issues;
- Public reporting of organizations that are non-compliant;
- Orders that detail an organization's areas of non-compliance and give a timeframe for the organization to become compliant; and/or
- Monetary penalties.

### Questions for feedback

- What monitoring mechanisms do you think should be considered for the legislation (including ones not listed here)?
- What enforcement mechanisms do you think should be considered for the legislation (including ones not listed here)?

## 4.6. How should organizations be supported to improve accessibility?

The legislation could include or be accompanied by programs or supports to help and encourage organizations to improve accessibility and remove barriers.

Some potential programs or supports include:

- Measures that encourage, support and recognize organizations that show accessibility leadership. This could include, for example, reduced reporting requirements, public recognition and promotion, or monetary incentives;
- The creation of a Centre of Expertise on Accessibility and Barrier Removal to provide information and tools to help organizations improve accessibility and remove barriers; and/or
- Financial support for conducting and sharing research and best practices on accessibility and barrier removal.

### Questions for feedback

- Do you have suggestions for how the Government could help organizations to improve accessibility and remove barriers?
- Do you have suggestions for how the Government could encourage, support and recognize organizations that show accessibility leadership?

## 4.7. How will we know if the legislation is effective in improving accessibility and removing barriers?

The legislation could include a section or sections that detail when and how the Government of Canada would report on the implementation and effectiveness of the legislation, and when and how the legislation itself would be reviewed.

### Questions for feedback

- In relation to the implementation and effectiveness of the legislation, how often would you want the Government of Canada to report to Canadians?
- What kinds of things should this report look at?
- How often should the legislation be reviewed?
- Are there specific considerations for how any such review should be conducted?

## 5. How to Reach Us

The best way to find out more information or to submit your comments is through the consultation website: [www.Canada.ca/Accessible-Canada](http://www.Canada.ca/Accessible-Canada)

### You can also contact us by:

Email: [accessible-canada@hrsdc.gc.ca](mailto:accessible-canada@hrsdc.gc.ca)

Phone: 1-844-836-8126

TTY: 819-934-6649

Fax: 819-953-4797

### Or by mail at the following address:

Consultation – Accessibility Legislation  
c/o Office for Disability Issues  
Employment and Social Development Canada  
105, rue Hôtel de ville, 1<sup>st</sup> floor, Bag 62  
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Prior to submitting comments by mail, email, video, audio or fax, or before calling if you are choosing to participate by telephone, please make sure to review the Privacy Notice Statement at the end of this discussion guide. By submitting your comments, you are consenting to participation in this consultation. You are also consenting to, and acknowledging that, you have reviewed, understood, and agree to the Privacy Notice Statement.

ESDC may choose to publicly reference an individual's comments. If you would like your name associated with your comments, please indicate in your submission that you consent to your name being associated with your comments, and include how you would like your name to appear.

# Privacy Notice Statement

Participation in this consultation is voluntary, and acceptance or refusal to participate will in no way affect any relationship with Employment and Social Development Canada (ESDC) or the Government of Canada.

Information provided to ESDC related to this consultation can be subject to access to information and privacy requests and will be administered in accordance with the *Access to Information Act* and *Privacy Act*.

The information is collected under the authority of the *Department of Employment and Social Development Act* (DESDA) for the 2016–2017 Accessibility Legislation Consultation. It may be used by ESDC, including the Office for Disability Issues, other Government of Canada departments, or other levels of government, for policy analysis and research; however, these uses and/or disclosures of your personal information will never result in an administrative decision being made about you.

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You have the right to file a complaint with the Privacy Commissioner of Canada regarding the institution's handling of your personal information.

To obtain information related to this consultation, a request may be submitted in writing to ESDC pursuant to the *Access to Information Act*. When making a request, reference should be made to the name of this discussion paper.