



Public Service Alliance of Canada  
Alliance de la Fonction publique du Canada

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Submission  
by the  
Public Service Alliance of Canada  
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 18, 2018

The Public Service Alliance of Canada (PSAC) supports the Accessible Canada Act's, goal of "a Canada without barriers", strongly believing that persons with disabilities should be able to fully and equitably participate in all aspects of Canadian society.

PSAC represents 180,000 workers across Canada including thousands of federal public sector workers in government departments and agencies, crown corporations, museums, workers in the federal transportation sector at airports and port authorities, and others.

As a bargaining agent, our submission will focus on accessibility in employment and the impact on employees with disabilities in the federal sector.

### **Accessibility in employment**

The current 20-year-old *Employment Equity Act* (EEA) covers four designated groups, one being persons with disabilities, and addresses barriers in employment for the federal sector.

Both Bill C-81 and the EEA require federal employers to create plans to eliminate barriers in employment for persons with disabilities. Part 4 of Bill C-81 requires organizations to develop accessibility plans "respecting [their] policies, programs, practices, and services in relation to the identification and removal of barriers and the prevention of new barriers" in employment and other areas. The EEA requires employers to "identify and eliminate employment barriers against persons in designated groups [including persons with disabilities] that result from the employer's employment systems, policies and practices" (s 5). They must do this by creating employment equity plans which must include measures to be taken eliminate those barriers (s 10).

While the EEA is imperfect, it does provide an established framework that employers and unions have been working under for many years.

In our view, it would be preferable to improve the EEA and refer the employment aspects of Bill C-81 to the EEA provisions, rather than to create new legislative provisions duplicating the same area. It is an appropriate time to do so as the EE Act's five-year parliamentary review clause has not been actioned since 2002.

Although there is overlap, Bill C-81 only mentions the EEA twice and makes no reference to how the two pieces of legislation will work together. This overlap and lack of clarity will create confusion for employers, employees with disabilities, and unions. Employers, to comply with both pieces of legislation, would have to create two plans which, at least in part, do the same thing. What if the two plans conflict? Will one plan override the other? Should the same persons in each organization be responsible for both plans?

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). C-81 only requires employers to consult with persons with

disabilities when creating accessibility plans. However, in most cases, those employees would be represented by bargaining agents. Bargaining agents would be involved in the preparation and implementation of employment equity plans but not accessibility plans, covering the workplace.

The provisions in the Bill regarding accessibility plans are vague and do not require the plans to be good plans, nor do they specify what those plans should include. Conversely, the EEA stipulates what must be included in an employment equity plan very specifically (s 10). Our concern is that employment equity would be “watered down” because of this new legislation.

### **The federal government’s role as an employer**

The government’s own consultation report, entitled “[Creating new federal accessibility legislation: What we learned](#)”, acknowledges the important role of the federal government as an employer. One of the key messages heard during the consultation was that “the government of Canada should be a **leader in accessibility**”, in several areas, including “hiring and supporting employees with disabilities.”

C-81 does not address these areas at all, does not mention the role of the Treasury Board as the employer for the federal public service, nor does it mention the role of the Public Service Commission, which oversees federal public service staffing.

Conversely, the EEA specifically references the responsibilities of Treasury Board and the Public Service Commission in s 4(4), as well as in several other sections in the Act.

Another important aspect to accessibility in employment is the duty to accommodate in the workplace. Even with the protection of the *Canadian Human Rights Act*, public service workers continue to be routinely denied accommodation in the workplace. A current policy related to employees on long-term sick leave – the Treasury Board Directive on Leave and Special Working Arrangements – continues to have the effect of discriminating against many employees with disabilities by effectively forcing them to retire from the public service after two years.

Accommodation-related grievances and human rights complaints can often take years before they are resolved, further compounding the issues faced by people who are seeking timely accommodation and worsening their condition.

The Joint Union/Management Task Force on Diversity and Inclusion’s [final report](#) notes that two of the top barriers to achieving diversity and inclusion in the workplace indicated by employees were “staffing and recruitment policies and practices”, and “the level of workplace accommodation and accessibility”. The Public Service Employee Survey results also consistently show that persons with disabilities face high rates of discrimination at work.

The Task Force recommended that a centralized, systematic approach be developed for accessibility and accommodations, including centralized funding for

accommodations. Currently, the responsibilities are devolved from the central agencies to departments, resulting in a patch work and an inconsistent application and understanding of the employer's duty to accommodate.

## **Complaints**

The Bill provides that individuals can file complaints regarding a contravention of the Regulations (s 94(1)), but there is no ability to file a complaint about a violation of the Act. This unfairly limits the substance of complaints. Individuals must be able to file complaints regarding a violation of the Act itself. For example, if an organization does not have an accessibility plan, that would contravene the Act and individuals should be able to file a complaint on that issue, since the absence of an accessibility plan would mean that barriers will persist.

The complaints provisions are also 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 do the same for workers in the broader public sector or the private sector, who are covered under the *Canada Labour Code*.

The legislation should not create a burden on complainants by creating parallel processes to those available through the grievance procedures guaranteed in their collective agreements. Workers who have recourse through a collective agreement should be permitted to have their complaints heard through the grievance process, and the arbitrators should have the power to interpret and apply the *Accessible Canada Act*.

The grievance process has embedded within it the right to appeal and review decisions. It is a robust process that already has the buy-in of unionized workers. Most importantly, it would allow a worker to file a grievance that addresses multiple workplace issues, including accessibility, without the requirement of pursuing multiple parallel complaint processes.

## **Sufficient Resources**

To ensure that this Bill is implemented adequately, the government needs to allocate sufficient budgetary resources to the organizations it creates as well as to the Canadian Human Rights Commission (CHRC). Over the past several years, PSAC has noted that the CHRC has not been properly funded to ensure that it can achieve its mandate. For example, there are not enough staff resources to do thorough audits under the *Employment Equity Act*.

## 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.
- Begin immediately the much-needed and overdue parliamentary review of the EEA, to ensure that it adequately addresses barriers for all equity groups, including persons with disabilities.

Should Parliament reject our proposal to refer accessibility in employment to the EEA provisions, we alternatively propose a number of changes to ensure that accessibility in employment is dealt with adequately under this Bill.

- Amend the accessibility plans provisions in Bill C-81 to specify what should be included in an accessibility plan, clear deadlines for implementing it, and clear measures for evaluating and reviewing it.
  - Amend all provisions relating to consultation with persons with disabilities to include bargaining agents, where one or more bargaining agents represents employees in the workplace covered by an accessibility plan and amend those provisions to state that consultation regarding the employment aspect of the accessibility plan must be in accordance with s 15 of the EEA.
  - Strengthen the provisions on accessibility plans to include specific measures that must be taken to eliminate barriers, specific deadlines for implementing the plans, and regular audits/inspections by the Accessibility Commissioner to ensure the plans are consistent with the legislation.
  - Include a provision similar to s 3 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.”
- Add a provision to C-81 to address the responsibilities and role of Treasury Board, including responsibility for ensuring an accessible and inclusive public service, and providing an annual, public, progress reporting to the Accessibility Commissioner.
  - Add a provision to the Bill to address the responsibilities and role of the Public Service Commission (PSC) to ensure staffing in the public service is accessible and free of barriers, and to report annually and publicly to the Accessibility Commissioner on progress made in identifying and eliminating staffing barriers to persons with disabilities (current employees and potential hires).
  - Add a provision requiring departments and agencies in the core public service to report directly to Treasury Board annually regarding their progress on making

employment within their organization more accessible and free of barriers to employees with disabilities.

- Include consequential amendments to the *Financial Administration Act* and the *Public Service Employment Act* to centralize disability-related issues and accessibility in the public service, ensuring Treasury Board and the Public Service are responsible for those issues and cannot delegate that responsibility.
- Include provisions in the Bill on the duty to accommodate, requiring Treasury Board to set up a central accommodation fund for the public service.
- Include a requirement that all federal government policies be reviewed to examine and eliminate any barriers to persons with disabilities.
- Amend section 94(1) of the Bill to state a complaint may be filed in relation to "... a contravention by a regulated entity of any provision of *this Act* or any regulations made under subsection 117(1)..."
- Add an additional exception, similar to those in sections 94(2),(3), and (4), that applies to all unionized workers under the *Canada Labour Code*, ensuring that these workers can go through the grievance and arbitration process.
- Allocate adequate funds to the Accessibility Commissioner, the Canadian Accessibility Standards Development Organization, and the Canadian Human Right Commission to ensure that these organizations can fulfill their mandates.

PSAC supports the recommendations of a number of disability organizations<sup>i</sup>, including:

- Add a deadline for achieving accessibility similar to the *Accessibility for Ontarians with Disabilities Act*. C-81 does not have one.
- Include a review of all federal government policies and federal laws to ensure any barriers are removed.
- Require organizations contracting with the government to be accessible and require that no public money can be used to create or perpetuate barriers against people with disabilities, e.g. money spent on procurement, infrastructure, grants, loans or transfer payments.
- Recognize intersectionality of different identities. For example, women with disabilities, racialized people with disabilities, and Indigenous people with disabilities all have different needs and different realities.
- Mandate training on accessibility for all public service employees.

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<sup>i</sup> Such as the AODA Alliance [brief](#) dated September 27, 2018