



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

Submission
by the
Public Service Alliance of Canada
to the
Standing Senate Committee on Social Affairs,
Science and Technology
on Bill C-81 (*Accessible Canada Act*)

April 1, 2019



The Public Service Alliance of Canada (PSAC) supports the *Accessible Canada Act's* (Bill C-81), goal of “a Canada without barriers”. Persons with disabilities must 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: Overlap with employment equity

Bill C-81 seeks to address accessibility and the removal of barriers in a number of areas, including employment (s 5). The current 20-year-old *Employment Equity Act* (EEA) covers four designated groups, one being persons with disabilities, as well as the removal of barriers in employment.

Both Bill C-81 and the EEA require federal employers to create plans to eliminate barriers 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 eliminate those barriers (s 10).

PSAC’s concern is that there is overlap between the two pieces of legislation, but no indication or direction as to what this will mean in practical terms for employees with disabilities, employers, and unions.

In fact, despite the overlap, Bill C-81 only mentions the EEA twice and makes no reference to how the two pieces of legislation will work concurrently. This overlap and lack of clarity will create confusion for employers, employees with disabilities, and unions. In order to comply with both pieces of legislation, employers will have to create two plans to address the same barriers. However, there is no solution put in place to address conflicts that may arise with the two plans. Furthermore, there is no indication as to which plan would override the other and whether both plans would be administered by different individuals or the same individual.

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 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.

While the EEA is imperfect and out of date, it does provide an established framework that employers and unions have been working under for many years. Rather than "reinvent the wheel", we believe it would be more effective for all parties to continue to improve upon the work done under employment equity and begin with the long overdue review of the EEA.

Consultation with unions

Another area of concern with Bill C-81 is the failure to reference the role of unions. Unions are an important stakeholder in the workplace and are legally bound to represent their members in matters of employment. This representation includes advocating for accessibility and the removal of barriers in the workplace for our members with disabilities.

Currently, unions like PSAC are directly involved in employment equity planning in federal workplaces. 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 does not have the same requirement: it only requires employers to consult with "persons with disabilities" when creating accessibility plans.

In most cases, employees in the federal sector are represented by unions. That means that employers must involve unions when discussing workplace conditions, including accessibility for its employees with disabilities.

Bargaining agents should be involved in the preparation and implementation of accessibility plans (at least the provisions dealing with "employment"), as they are currently in employment equity plans.

Accessibility plans

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), including what measures will be taken to remove barriers and a timeline for action.

The specificity required under the EEA is another reason why the EEA provisions should govern accessibility in employment.

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. In fact, it 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 a worsening of 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.

Furthermore, with the federal government's accession to the Optional Protocol of the UN Convention on the Rights of Persons with Disabilities (CRPD) and the naming of the Canadian Human Rights Commission as the domestic monitoring body for CRPD implementation, Canada has an obligation and has made a commitment to ensure that people with disabilities have full enjoyment of their human rights, as asserted in the CRPD, which was ratified in 2010.

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, the absence of an accessibility plan in an organization, would be a contravention of the Act since the lack of a plan would result in the persistence of barriers.

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 provides 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.

RECOMMENDATIONS

In consideration of the parliamentary schedule, PSAC does not wish to impede passage of this bill as we support the goals of the legislation.

Below are the recommendations that PSAC presented to the House of Commons. We encourage the Senate to take these into consideration when amendments or reviews of this Act or similar legislation are brought forward in the future.

1. Amend s 5(a) of *The Accessible Canada Act* to clarify that accessibility in employment must be kept 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 follow suit.

Alternatively, the following changes could be applied to ensure that accessibility in employment is dealt with adequately under the *Accessible Canada Act*.

- Amend the accessibility plan provisions in *The Accessible Canada Act* to include specific measures that must be taken to eliminate barriers, include clear deadlines for implementing the plan, define a process for evaluating and reviewing it, and require regular audits/inspections by the Accessibility Commissioner to ensure the plans are consistent with the legislation.
 - 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. Further 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.
2. Add a provision to *the Accessible Canada Act* to address the roles and responsibilities of Treasury Board, including ensuring an accessible and inclusive public service, and providing an annual, public progress report to the Accessibility Commissioner.
 3. Add a provision to the *Accessible Canada Act* to address the roles and responsibilities 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).
 4. Add a provision requiring departments and agencies in the core public service to report directly to Treasury Board annually in providing employment that is more accessible and free of barriers to employees with disabilities.
 5. 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 Commission are responsible for those issues and cannot delegate that responsibility.
 6. Include provisions in the *Accessible Canada Act* on the duty to accommodate, requiring Treasury Board to set up a central accommodation fund for the public service.
 7. Include a requirement that all federal government policies be reviewed to examine and eliminate any barriers to persons with disabilities.
 8. Amend section 94(1) of the *Accessible Canada Act* 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)..."
 9. 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*, providing them with access to the grievance and arbitration process.