



CANADIAN ASSOCIATION  
FOR COMMUNITY LIVING  
ASSOCIATION CANADIENNE POUR  
L'INTÉGRATION COMMUNAUTAIRE

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PEOPLE  
FIRST  
of CANADA



PERSONNES  
D'ABORD  
du CANADA

## **Recommendations for strengthening Bill C-81, An Act to ensure a barrier-free Canada**

**A joint submission by the Canadian Association for Community Living (CACL) & People First of Canada (PFC)**

**October 23, 2018**

### **Plain Language Summary**

CACL and PFC are pleased that the Government of Canada wants to make our country more accessible for people with disabilities. The proposed law has many new rules that are very positive. But we are suggesting some changes to make the law better, especially for people with an intellectual disability.

We support the recommendations made by other disability groups. We also recommend the following changes.

#### **Recommendation 1 – Make sure people with significant intellectual disabilities are heard**

- Make sure that all people with disabilities are represented in the consultations this law calls for. This means that people with significant intellectual disabilities will need their family members and others with lived experience of disability to be at the table. They can help interpret and share the voice of their loved ones.

#### **Recommendation 2 – Guard against ableism in the preamble**

- Make sure that the language used in the new law focuses on people having the support they need to have the life they want, no matter what their abilities are.

#### **Recommendation 3 – Make “meaningful access” a test of success**

- Make sure that the language used in the new law is inclusive so that people with a disability have access to all the same programs and services as other Canadians.

#### **Recommendation 4 – Address barriers to legal capacity**

- Section 5(e) should state “delivery of programs and services, and the exercise of legal capacity to access them.” One of the main barriers in accessing programs and services is that people with intellectual disabilities are denied the power to make and communicate their decisions with support.

#### **Recommendation 5 – Only ‘exempt’ those who remove barriers in other ways**

- Only let the government excuse (or give a pass to) groups from the law when they can prove they are removing barriers in other ways.

## **Introduction**

CACL and PFC join with the disability community in commending the Government of Canada for their commitment to introducing national accessibility legislation. This has the potential to significantly improve the lives of individuals with a disability. To help ensure this legislation results in a barrier-free Canada, we make the following recommendations to strengthen Bill C-81.

We wish to acknowledge our support for the recommendations proposed by other disability organizations, namely, ARCH Disability Law Centre, the Accessibility for Ontarians with Disabilities Act Alliance and the Federal Accessibility Legislation Alliance. Rather than replicate the recommendations of these partners, we have chosen to use this joint submission to focus on additional areas for improvement.

### **Recommendation 1 – Make sure people with significant intellectual disabilities are heard**

While Bill C-81 sets the groundwork for an accessible Canada, the standards are the tools that will determine whether new requirements for accessibility are appropriate and enforceable. We wish to stress the importance of having the voice of individuals with a disability and of people with lived experience of disability (ie. family members), as part of this process.

The Bill provides for establishing a Board of Directors to govern the work of the Canadian Accessibility Standards Development Organization (CASDO) and explicitly requires that “23(2) the majority of the directors are persons with disabilities; and...are representative of the diversity of Canadian society.”

We fully support the composition of CASDO’s Board and wish to highlight how crucial it is that representatives appropriately reflect the diversity of experience of people with disabilities. Failing to include individuals with intellectual and communication disabilities, including significant disabilities, will mean that the experience of people facing some of the most significant barriers will not be heard.

We recommend that this be expanded to include individuals with lived experience of disability, namely family members. For individuals with significant disabilities, the involvement of trusted and committed family members with personal knowledge of their experience is often crucial to ensuring that their voice is interpreted and communicated. Therefore, we propose that the following definition is added to Bill C-81:

*Lived Experience of Disability – means the experience of a person who, within the context of a caring personal relationship with a family member who has a disability, has unique insight from their long-term involvement. In some circumstances, an individual with lived experience of disability is required to share the voice of someone with a significant intellectual or cognitive disability who is not able to do so on their own.*

## **Recommendation 2 – Guard against ableism in the preamble**

We were pleased to see that the Bill is grounded in a human rights framework, including the United Nations Convention on the Rights of Persons with Disabilities (CRPD). The Preamble and principles (s.6(b)) include a modified passage taken directly from the *Canadian Human Rights Act* (CHRA):

*Whereas the Canadian Human Rights Act recognizes that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated without discrimination and, in particular, discrimination on the basis of disability;*

While it is positive to reference the CHRA, we are concerned that the language of “that they are able” could be interpreted as ableist. We recommend inclusion of the full passage from the CHRA which speaks more directly to the purpose of Bill C-81:

*All individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on...disability.*

## **Recommendation 3 – Make “meaningful access” a test of success**

Principle 6(d) states that “all persons must have meaningful options and be free to make their own choices, with support if they desire, regardless of their abilities or disabilities”. We recommend that “meaningful options” be replaced with the more inclusive language of “meaningful access”.

Bill C-81 establishes as a goal the enhancement of “full and equal participation of all persons, especially persons with disabilities, in society”. We suggest that *meaningful access* must be the focus to create a country where full and equal participation is a reality for the diverse range of individuals with a disability.

“Meaningful access” is now referenced in equality rights jurisprudence in Canada. As referenced in *Quebec (Attorney General) v. A*, 2013 SCC 5, [2013] 1 S.C.R. 61, “the purpose of the s.15 equality provision is to eliminate the exclusionary barriers faced by individuals...in gaining meaningful access to what is generally available”. By using the language of “meaningful access”, we commit to providing barrier-free access to inclusive options generally available to all Canadians.

## **Recommendation 4 – Address barriers to legal capacity**

Principle 6(c) establishes that “all persons must have barrier-free access to full and equal participation in society, regardless of their abilities or disabilities”. While removing barriers is the very foundation of this Bill, we wish to highlight that barriers take many

different forms. For individuals with an intellectual disability, barriers to legal capacity are substantial.

While Canadian adults are presumed competent and capable of decision-making, the lack of supports to exercise legal capacity, as required under Article 12 of the CRPD, has resulted in over 50,000 Canadians with a disability currently under guardianship. People are discriminated against in the enjoyment and exercise of the right to legal capacity, on the basis of mental disability.

For example, an individual with an intellectual disability who wishes to open a Registered Disability Savings Plan but is not deemed competent to enter into a contract with a financial institution, faces a barrier.

An individual wishing to access federally-regulated transportation services, but who is considered unable to enter into a contract, can be denied.

We, therefore, recommend the addition of the following principle to Bill C-81:

*In accordance with Article 12 of the Convention on the Rights of Persons with Disabilities [CRPD], persons with disabilities are entitled to exercise their legal capacity on an equal basis with others, with the supports that may be required for this purpose and in a manner that respects their rights, will and preferences.*

We also propose that the purpose of the Bill be amended to include:

*5 The purpose of this Act is to benefit all persons, especially persons with disabilities... particularly by the identification and removal of barriers, and the prevention of new barriers, in the following areas:  
(e) the delivery of programs and services; and the exercise of legal capacity to access them;*

In addition, principle 6(d) of the Bill establishes that “all persons must have meaningful options and be free to make their own choices, with support if they desire, regardless of their abilities or disabilities”. We applaud this affirmation of self-determination of individuals with a disability. At the same time, we suggest that this wording may be prohibitive those with a significant intellectual or communication disability.

The language of “with support if they desire”, creates a complication for those who may not be able to signal desire in a traditional way. This results in a barrier to service for these consumers, effectively removing their right of choice. Rather than using “support if

they desire”, we suggest updating the language to “support they may require”, which is consistent with Article 12 of the CRPD.

### **Recommendation 5 – Only ‘exempt’ those who remove barriers in other ways**

Bill C-81 grants the ability to exempt some entities from complying with accessibility requirements. To achieve a barrier-free Canada, all federally regulated entities must be

united in their commitment to accessibility. Recognizing that some organizations already have appropriate accessibility policies and practices in place, we do not suggest that exemptions be removed altogether. Rather, we propose that a threshold is established in which exemptions are only available to entities that can demonstrate that they are

fulfilling accessibility obligations equivalent to or greater than what would be required of them through these accessibility standards. Demonstrated actions should address removing existing barriers and/or preventing new barriers.

## **Summary**

### **Recommendation 1**

- Ensure that the voices of individuals with intellectual disabilities, including those with significant disabilities, are represented in the consultative process for developing standards. For this purpose, explicitly include those with lived experience of disability, including family members, who can represent the voice of persons with significant intellectual or cognitive disabilities.

### **Recommendation 2**

- Amend the preamble and principle 6(b) to state:  
*All individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on...disability.*

### **Recommendation 3**

- Replace the language of “meaningful options” in principle 6(d) with the more inclusive language of “meaningful access”.

### **Recommendation 4**

- In order to ensure removal of barriers to exercising legal capacity:
  - Add a principle acknowledging that people with a disability are entitled to exercise their legal capacity on an equal basis with others, with the supports that may be required and in a manner that respects their rights, will and preferences.
  - Amend s. 5(e) to state: “*the delivery of programs and services; and the exercise of legal capacity to access them*”
  - Modify principle 6(d) to state: “with the support they may require”,

### **Recommendation 5**

- Establish a threshold that makes exemptions available only to entities that can demonstrate that they are fulfilling accessibility obligations equal to or greater than what would be required of them through these accessibility standards.

*The Canadian Association for Community Living (CACL) is a national not-for-profit association with a long-standing history of defending the rights of and advocating for the interests of persons with intellectual disabilities.*

*People First of Canada (PFC) is the national voice for people who have been labelled with an intellectual disability. Our vision is a Canada that values diversity; and honors, respects, and includes all its citizens.*