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# Brief to the Parliament of Canada on Bill C-81, the Proposed Accessible Canada Act

October 20, 2018

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## Introduction:

I am a baby boomer with a severe lifelong disability: my medical diagnosis is Spinal Muscular Atrophy (SMA). I have lost the physical functioning in my arms and legs: similar to a quadriplegic. However, I have retained full physical and mental sensation. I can use my right hand to control my motorized chair, and operator a Bluetooth and infrared devices. My personal care and homemaking needs are provided by a live-in care provider. I require assistance with a full range of personal care and activities of daily living including dressing, grooming, bathroom routine, positioning, preparation, feeding and homemaking.

I was granted a medical retirement from Employment and Immigration Canada in 1992. While with the federal government I served as a Regional Employment Equity Consultant, Immigration Case Presenting Officer, and an Employment Counselor. I also have a history of working with local, provincial and national community-based organizations of persons living with a disability.

As is the case with many people living with a disability, my life is a continuing struggle to live and work independently in the community. The struggle is about overcoming barriers in getting an education, finding and keeping a job, staying healthy, going where I need to go, finding an affordable and accessible place to live, having friends, dealing with family, and getting help to get in and out of bed, go to the bathroom, and wash my face. I use the term struggle because that’s what it is, a struggle. A battle every day where you are planning, organizing, and accessing the support needed to overcome barriers and live on our own terms and in our own way: just like everyone else.

**“Will the proposed Canada Accessibility Act Bill C 81 help Canadians living with a disability overcome barriers to full and equal citizenship?”**

**In my opinion, Bill C 81 can and will help people like myself who are living with a disability in our struggle to overcome barriers and achieve full citizenship.**

## Acknowledgements

I wish to acknowledge the support and assistance of fellow Regina community activists Ken Tailor and Barb Dedi. I owe my understanding of Bill C 81 in large part to the noteworthy briefs prepared by the Accessibility for Ontarians with Disabilities Act Alliance (AODAA), and the Barrier-Free Manitoba. I am also grateful for the assistance of my local Member of Parliament for Regina Lewvan Erin Weir.

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## Comments and Recommendations: Definitions: Disability

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- The definition of disability used in the proposed Bill C 81 is broad and inclusive. It represents the interaction between a disability and a barrier.

- The AODAA (Accessibility for Ontarians with Disabilities Act Alliance) definition of disability is a long list of medical conditions and situations. Instead of being an instrument for inclusion this definition can serve to exclude individuals whose particular disability is not listed.

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“The impairment perspective considers disability a health problem or abnormality that is situated in an individual’s body or mind. This perspective is best expressed by the medical model which views disability in terms of disease, illness, abnormality and personal tragedy. The medical model assumes that disability is an intrinsic characteristic of individuals with disabilities. This assumption translates into practices that attempt to “fix” individuals’ abnormalities and defects, which are seen as strictly personal conditions.

Many criticize the medical model for its limitations i.e. the model ignores the role of the social and physical environment in the disabling process. Moreover, the model locates the defect in a person’s body or mind, and that person may be defined as defective, abnormal and by extension biologically or mentally inferior.” Pages 5-6, *Defining Disabilities: A Complex Issue* This report was prepared by the Office for Disability Issues, Human Resources Development Canada in cooperation with other federal departments.

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- The AODAA definition is inconsistent with disability as understood by the Canadian Charter on Rights and Freedoms and the Canadian Human Rights Act. The Charter and the Human Rights Act consider disability from an ecological perspective.

“… the ecological perspective rests on three distinct disability concepts: pathology (or abnormality), impairment and disability. However, it sees disability as resulting from the interaction of impairment, activity limitations and participation restrictions in a specific social or physical environment such as work, home or school. “(Page 6 ibid.)

- Variations of the ecological definition of a disability are referred to as a social or human rights model. The definition a disability as used in Bill C 81 is an ecological definition and is appropriate for the purposes of this Act.

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## Purpose of Bill C 81

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- As the AODAA brief states the term ‘progressive realization’ merely means some progress must be made over time. The AODAA suggests setting a deadline year for Canada to become accessible.

- The Bill sets out the weak goal of “the progressive realization… of a Canada without barriers.” The Bill is about the identification and removal of barriers, and the prevention of new barriers in the following areas: Employment; the built environment; information and communication technologies; the procurement of goods and services; the delivery of programs and services; transportation; and areas designated by regulation.

- ‘Progressive realization’ is in my estimation a wiggle word the effect of which is to avoid setting realistic and achievable goals. Governments have set specific goals covering a full spectrum of issues from going to the moon, reducing child poverty, and controlling inflation rates. It also needs to be acknowledged pursuing a barrier free environment is an ongoing process.

- The federal government can undertake a consultation with stakeholders on setting realistic and achievable accessibility goals. Stakeholders would include government, designated entities, and persons living with a disability.

- The consultation process with stakeholders should consider the UN Sustainability Development (SDG) Goals for 2030. According to the UN publications *Sustainability Development Goals* SDG “… are the blueprint to achieve a better and more sustainable future for all. They address the global challenges we face, including those related to poverty, inequality, climate, environmental degradation, prosperity, and peace and justice. (https://www.un.org/sustainabledevelopment/inequality/)

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## Who would have to comply?

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- Bill C 81 applies broadly to organizations under federal responsibility. They are called regulated entities. Regulated entities are Parliament including the Senate, the House of Commons, the government of Canada, Crown Corporations and agencies, federally regulated private sector, and the Canadian Forces and RCMP.

- The AODAA brief argues for the inclusion under the Act of virtually all organizations receiving federal funding. “… The bill [should apply] to any organization which is the recipient of federal money, through such things as payments for procurement, infrastructure, loans, grants, transfer payments, or any other kind of federal payment.” (Page 9 AODAA Brief to the Parliament of Canada on Bill C 81, The Proposed Accessible Canada Act, September 27, 2018)

- The AODAA approach to determining which organizations must comply with Bill C 81 is similar to the Employment Equity Federal Contractors Program (FCP).

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FCP applies to provincially regulated contractors that:

- Have a combined workforce in Canada of 100 or more permanent full-time and permanent part-time employees; and

- Have received an initial federal government goods and services contract valued at $1 million or more (including applicable taxes).

(Federal Contractors Program: <https://www.canada.ca/en/employment-socialdevelopment/programs/employment-equity/federal-contractor-program.html>)

- Organizations doing business with the Government of Canada should be subject to the provisions of Bill C 81. Caution should be exercised about the size of contractors. Requiring large corporations and mom-and-pop operations to undertake the same level and type activity is unproductive and inappropriate.

- Bill C 81 is silent on the inclusion of aboriginal organizations as regulated entities. The Bill should include provisions for consultation between the Federal Government, indigenous organizations, and indigenous persons living with a disability on accessibility.

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## Importance of the Canadian Human Rights Act (CHRA)

- Bill C 81 acknowledges the role of the CHRA in promoting equal opportunity and protecting persons living with disabilities from discrimination. The new bill does not diminish this role. The Canadian Charter of Rights and Freedoms is another means for protecting persons living with disabilities from discrimination.

- The role of Bill C 81 is the proactive identification, removal and prevention of barriers to the full and equal participation of persons living with disabilities in society. Bill C 81 is not concerned about making a determination of discrimination. The role of the Bill C 81 is to ensure designated entities undertake, record, and publish accessibility plans and progress reports necessary to create a barrier free Canada.

- It is important to reinforce the distinction between Bill C 81 barrier free accessibility Act and antidiscrimination legislation. Each has a different purpose and protocol which needs to be respected. The separation between accessibility and antidiscrimination should ensure new barriers are being created for persons living with a disability.

## Role and Responsibility of the Minister

- Under the proposed Bill C 81 the Minister of Sport and Persons with Disability has lead responsibility for accessibility. Responsibility is shared with the Ministers of Transport and the Canadian Transportation Agency (CTA), and the Canadian Radiotelevision and Telecommunications Commission (CRTC). I think it would be appropriate for the Ministers to come together and form a cabinet subcommittee of

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Ministers with responsibility on accessibility. The subcommittee could have a powerful voice in advocating accessibility for people living with a disability.

- The AODAA brief argues C 81 operations should be centralized under one Minister and the Chief Accessibility Officer. The Ontario group suggests the centralization of the function will achieve economies of scale and efficiency. Persons living with a disability would benefit from one-stop shop.

Although I have some sympathy with this analysis, I also believe each industry has its own unique work environment with its own issues and networks. No one single plan fits every organization. A barrier free recruitment plan designed to meet the human resource needs of a telecommunication designated entity may not work well for another designated entity in transportation. Each accessibility plans is developed as part of its own industrial sector. Both designated entities will require creativity and innovation to develop a barrier free recruitment plan.

## Creating Accessibility Standards

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- The primary work of the Canadian Accessibility Standards Development Organization (CASDO) is the development of accessibility standards in the areas of the built environment, accessible customer service, accessible information and communications, accessible transportation, and accessible employment. Specific time frames should be set for the completion of all accessibility standards.

- Standards in the area of the built environment should be developed in close cooperation and consultation with the National research Council (NRC). The NRC is responsible for the National Building Code. Provincial governments adopting the National Building Code including accessibility provisions, in whole or in part. Accessibility Standards need to be developed in close cooperation with the NRC. Consideration should be given to the integration of Accessibility Standards as part of the National Building Code.

- As recommended by AODAA, Accessibility Standards should be strong enough to meet the accessibility requirements of the Charter and the Canadian Human Rights Act.

- I support the analysis put forward to this Committee by the Barrier-Free Manitoba (BFM) with respect to the National Building Code:

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“The second area that we would like to highlight is the absence of any explicit reference to The National Building Code of Canada, either in Bill C-81 or in the AODA Alliance brief. The National Building Code of Canada is not only applicable in areas of federal jurisdiction. It also plays a profound role in shaping the building codes that are developed and adopted by each Canadian province. At both the federal and provincial levels, the building codes, and the current limited levels of accessibility provided for, result in costly and preventable

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barriers being perpetuated and newly created every day in built environments across the country.” (Page 2, Barrier-Free Manitoba, Submission to the Standing Committee, October 8, 2018)

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## Enforcing Accessibility Law

- The enforcement of accessibility law is shared by the Accessibility Commissioner, CRTC and CTA. Each organization is responsible for its own enforcement activities. The splintering of the enforcement activities makes each responsibility centre accountable for achieving results. Because of increased visibility designated entities should be more conscious of reporting results, and preparing realistic action plans.

- As recommended by the AODAA, accessibility standards should at least be strong enough to meet the accessibility requirements of the Charter and the Canadian Human Rights Act.

## Bill C 81 Complaint Process

- Initiating and carrying on with a formal complaint against government or any other large organization is a difficult process. For a person with a disability to go through a complaint process is especially difficult because we are socialized not to ‘rock the boat’, and not be the ‘bad patient’ always complaining and demanding. I went through a human rights complaint process that took over 5 years. It was a physically and emotionally demanding process. From my personal point of view fighting dragons is something done as a last resort.

The office of the Accessibility Commissioner as well as the CRTC, and CTA, should have the capacity to support persons initiating an accessibility complaint against a designated entity. The enforcement agency is not merely an objective bystander, it must be a cheerleader supporting the complainant. Helping the complainant even outs the odds in what is a David and Goliath struggle. Playing a supportive role helps ensure ‘good and well-founded cases go forward for adjudication’.

Mediation between parties to a complaint is a preferred option to a long drawn-out formal hearing process. Enforcement agencies should play a supportive role of claimants in mediation situations as well.

- Under the rubric, ‘justice must not only be done, but must also be seen to be done’, decisions of the Accessibility Commissioner and the other accessibility agencies must be free from political interference. Decisions must generally be deemed by the community as open and fair. Similar to other administrative law procedures such as human rights and immigration tribunals and hearings, the enforcement procedures of the various compliance review agencies, and the accessibility complaint process for the Act, must be independent of political interference or pressure.

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## Indigenous People

- Barrier-Free Manitoba (BFM) in their brief to this Committee recommend “The area that requires close attention is that lack of any provision in Bill C-81 to address the federal government’s constitutional, fiduciary and special responsibilities in relation to Indigenous People with disabilities ([AODAA] recommendations #83 in the detailed brief and #17 in the summary). I can only echo the sentiments and call for action on this file.

## Conclusion

Bill C 81 envisions the participation of persons living with disabilities and their organizations in the preparation of designated entities accessibility plans and progress reports, and the development of accessibility standards for a variety of industrial sectors. To participate effectively in these consultation activities many persons living with a disability will need for example support to learn and upgrade communication skills and abilities; network with each other about accessibility issues and inclusive responses and technologies; and support for each other. It is incumbent on government to provide the necessary resources to enhance the participation in the process of persons living with a disability.

Consideration should be given to developing a public awareness promotion campaign of the new act once it has been proclaimed. The message is the Accessibility Act is about ‘creating a barrier-free environment for all Canadians’; and a barrier-free environment helps ‘Canadian workers do their jobs’. Designated entities doing a good job in their industry should be congratulated and rewarded. We should make a fuss about organizations that do a good job.

I Hope the Parliamentary Committee will make those changes necessary to strengthen the Act, and ultimately approved it on a bipartisan basis. I am confident this Committee will make the Bill stronger and better able to serve the interests of all Canadians.

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