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The Annotated Accessible Canada Act - Excerpt

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LAW, DISABILITY
AND
SOCIAL CHANGE

Accessibility



THE ANNOTATED ACCESSIBLE CANADA ACT *AN EXCERPT*

Authors

Laverne Jacobs, Martin Anderson, Rachel Rohr & Tom Perry

The Annotated Accessible Canada Act (S.C. 2019, c. 10)

Laverne Jacobs, Martin Anderson, Rachel Rohr and Tom Perry

The Law Disability and Social Change Project

<https://lawdisabilitysocialchange.com/>

This document is available in MS Word via the Law, Disability & Social Change website.



The Law, Disability & Social Change Project

The Law, Disability & Social Change (LDSC) Project team conducts research into current legal and policy issues to help empower people with disabilities to fully achieve their rights and, more generally, to foster and develop inclusive communities. The Project aims to further the motto “nothing about us without us”. The LDSC Project team undertakes a variety of projects that feed grounded research and theory into policy development and legal decision-making. Current projects include research on accessibility legislation, consent and capacity, transportation inequality, legal aid, general disability discrimination and more. Additional information about the LDSC Project may be found at <https://lawdisabilitysocialchange.com/about/>

This is a reprinted and annotated version of the *Accessible Canada Act* put together by the Law Disability and Social Change Project for educational and information purposes only. The information provided in this document does not, and is not intended to, constitute legal advice.

The views expressed in this publication are those of the authors, and, in particular, do not represent the views or the positions of the Department of Justice Canada, or those of the Government of Canada.

This resource is current to October 1, 2020.

This document contains links to other third-party websites. Such links are only for the convenience of the reader.

All readers of this document should contact legal counsel to obtain advice with respect to any specific legal matters that they may be facing. No reader should act or refrain from acting on the basis of information contained in this document without first seeking legal advice from counsel in the relevant jurisdiction. Nothing in this document constitutes legal advice or gives rise to a solicitor/client relationship. Specialist legal advice should be taken in relation to specific circumstances.

If you find that you cannot afford legal services you may consider contacting your provincial legal aid organization and/or a legal clinic specializing in disability law issues serving your area. Information on legal aid in your province or territory can be found [here](#).

Acknowledgements

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Dedication

I wish to dedicate my contribution to this publication to my parents Dora and Colin Anderson and to my wife Marie Murphy. *Sin el amor y el apoyo de mis padres, no podria haber logrado todo lo que hice en mi vida – los que conocen a mi personalmente saben las razones.* Sharing my life with Marie every day makes all that I have accomplished worthwhile – those who know her know why.
– Martin Anderson



Windsor Law

University of Windsor

The Authors

Laverne Jacobs

[Laverne Jacobs](#) is a law professor at the University of Windsor, Faculty of Law (Canada), the founding Director of the [Law, Disability & Social Change Project](#) and Co-Director of the Disability Rights Working Group of the Berkeley Law Center for Comparative Equality & Antidiscrimination Law. She researches, writes, and teaches in the areas of people with disability and equality, accessibility legislation, government process, administrative law and justice, and human rights/antidiscrimination law.

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Rachel Rohr

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Tom Perry holds a BA from the University of Toronto and is currently finishing a law degree (JD '22) at the University of Windsor, Faculty of Law. He is currently a Student Researcher with the Law, Disability & Social Change Project.

Introduction to the *Accessible Canada Act*

The *Act to ensure a barrier-free Canada*, S.C. 2019, c. 10, which is commonly known as the *Accessible Canada Act* (ACA) came into force on July 11, 2019. It is Canada's first piece of federal legislation focusing on accessibility for persons with disabilities.

As a piece of federal legislation, the ACA regulates accessibility for those sectors of the economy that fall under federal jurisdiction pursuant to s. 91 of the *Constitution Act, 1867*. This includes federal works and undertakings, businesses and organizations such as banks, airlines, railways, marine and other interprovincial transportation carriers, the Canadian Forces, parliamentary entities such as the Senate and the House of Commons, and most Crown corporations such as Canada Post. The underlying philosophy of the Act is to remove existing disabling barriers and to prevent the creation of new barriers for people with disabilities within the federal sphere. The Act provides a structure for the creation of accessibility standards through regulations. These standards would then apply to the regulated entities that are subject to the Act. The ACA also sets up an elaborate and innovative system of compliance and enforcement which requires regulated entities to create accessibility plans, provide feedback processes to hear about barriers encountered by their users, and to implement steps to address and remove these barriers. Compliance and enforcement of the ACA are led by the Accessibility Commissioner, which is a unique office that does not exist in any of the provinces that have created accessibility legislation to date. The ACA aims to achieve a "Canada without barriers" by January 1, 2040.

However, the Act itself has a number of exemptions which lead to a patchwork approach to its application across federally regulated entities. These exemptions appear most explicitly with respect to transportation, telecommunications and broadcasting. For example, as regards transportation, the Canadian Transportation Agency, on approval of the Governor in Council (Cabinet), may make regulations regarding accessibility plans and the process of feedback by users regarding disabling barriers (s. 63). The standards would therefore be made by the Canadian Transportation Agency instead of through the process designed in the ACA for the development of standards by the Canadian Accessibility Standards Development Organization (CASDO), and the establishment of those standards into regulations by Cabinet.

The *Accessible Canada Act* has twelve parts. In this book, we cover the most significant parts of the Act from the perspective of members of the public who may use it: people with disabilities, advocates and lawyers, as well as disability rights researchers and scholars— that is, this resource discusses the ACA from the beginning of the statute up to and including Part 9. [A brief summary of each Part of the entire ACA may be found on the Department of Justice website.](#)

In 2017, Statistics Canada reported that 22% of the population of Canada aged 15 years or older identify as people with disabilities. With a population in Canada of approximately 38 million, those with disabilities comprise over 7 million people.

We hope that this resource will help interested individuals, especially people with disabilities in Canada, to unravel, interpret and examine the implications of the *Accessible Canada Act*, and to know their rights within it.

Accessible Canada Act

S.C. 2019, c. 10

Assented to 2019-06-21

An Act to ensure a barrier-free Canada

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Beginning of Excerpt

PART 2

Canadian Accessibility Standards Development Organization

Establishment

Canadian Accessibility Standards Development Organization

- **17 (1)** A corporation is established to be known as the Canadian Accessibility Standards Development Organization.
- **Agent of Her Majesty**
(2) The Standards Organization is an agent of Her Majesty in right of Canada.
- **Head office**
(3) The head office of the Standards Organization is to be at a place in Canada that is designated by the Governor in Council.

Annotation

The Canadian Accessibility Standards Development Organization (aka CASDO or Accessibility Standards Canada) is an agent of the government and is the first federal organization led mainly by many people with disabilities and the first of its kind in Canada. While there is no obligation for the organization to be led or run by persons with disabilities (a common criticism of the Act), under the current leadership, the committee and board members are made up of persons with disabilities who direct the initiatives of the organization.

Reproduction of Act continues below

Mandate

Mandate

- **18** The Standards Organization's mandate is to contribute to the realization of a Canada without barriers, on or before January 1, 2040, through, among other things,
 - **(a)** the development and revision of accessibility standards;
 - **(b)** the recommendation of accessibility standards to the Minister;
 - **(c)** the provision of information, products and services in relation to the accessibility standards that it has developed or revised;

- **(d)** the promotion, support and conduct of research into the identification and removal of barriers and the prevention of new barriers; and
- **(e)** the dissemination of information, including information about best practices, in relation to the identification and removal of barriers and the prevention of new barriers.

Annotation

Overall, the Organization is responsible for developing and reviewing accessibility standards, promoting research on barrier identification, prevention and removal, and sharing information related to accessibility. They will do this through research, committee work and engagement with the community to better organize strategies to ensure the Act is meeting its goals on time. To read the Minister's mandate letter to the Organization, click [here](#).

While CASDO is empowered to develop accessibility standards, it can only "recommend" a standard for the Minister's consideration. In this way, the CASDO is different from the Canadian Transportation Agency and/or the CTCRC which have regulation-making power as set out by their own legislation and the authority to prescribe accessibility standards for organizations within their jurisdiction. CASDO can only recommend a standard for the Minister to consider and decide whether or not to adopt.

The publication of best practices under s. 18(e) will not only help identify how certain barriers might best be removed, it may also guide what could be required of a regulated entity when removing such a barrier.

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Powers

Powers

- **19** The Standards Organization, in carrying out its mandate, may
 - **(a)** enter into contracts, agreements or other arrangements with any person or entity, including any government, in the name of Her Majesty in right of Canada or in its own name;
 - **(b)** make grants and contributions;
 - **(c)** establish and register its own marks under the Trade-marks Act and authorize and regulate their use subject to that Act;
 - **(d)** license, sell or otherwise make available any patent, copyright, industrial design, trade-mark or other similar property right that it holds, controls or administers;
 - **(e)** charge a fee for any accessibility standard that it develops or revises and any information, product or service that it provides under this Act;

- **(f)** spend any money that it receives through its activities, in the fiscal year in which the money is received or in the subsequent fiscal year;
- **(g)** acquire any money, securities or other personal or movable property by gift or bequest and expend, administer or dispose of the property subject to the terms, if any, on which the gift or bequest was made; and
- **(h)** undertake any other activities that it considers conducive to the furtherance of its mandate and the exercise of its powers.

Annotation

CASDO is afforded a broad authority to conduct activities in carrying out its mandate.

Subsection (a) and (b) of section 19 permit CASDO to operate as both a commercial enterprise and a government agency. Subsections (c) to (e) imagines that CASDO can commercialize the products that it produces. This authority raises the opportunity that CASDO may raise funds for its own initiatives. Subsection (h) is a broad grant of authority outside of the other powers it has received.

*Reproduction of Act continues below *

Other powers

20 The Standards Organization may develop accessibility standards for — or provide any information, product or service related to accessibility standards to — any person or entity, including any government in Canada or elsewhere.

Annotation

It is important to remember that CASDO is a technical organization, and not one of advocacy. The authority to provide information, products or services to any person or entity within or outside of Canada may position CASDO to become a leader in setting accessibility standards for jurisdictions both within and outside of Canada. The organization has a mission statement, policies and Action plans. Currently, the organization will first focus on some important areas for understanding and change: emergency egress, employment, outdoor spaces and plain language. To read more about the organizations departmental plan click [here](#).

While the CASDO is empowered to develop accessibility standards, it can only “recommend” a standard for the Minister’s consideration. In this way, the CASDO is different from the Canadian Transportation Agency and/or the CTRC which have their own regulation-making power as set out by their own legislation and the authority to prescribe an accessibility standard for organizations within its jurisdiction. CASDO can only recommend a standard for the Minister to consider whether to adopt.

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Minister

Ministerial directions

- **21 (1)** The Minister may issue general directions to the Standards Organization respecting the carrying out of its mandate.
- **Non-application of Statutory Instruments Act**
(2) The Statutory Instruments Act does not apply to directions issued under subsection (1).

Annotation

The Minister has significant oversight for the organization; the power to issue general directions allows the Minister to steer what CASDO might do, when and about what. Furthermore, a report must be submitted to the Minister and then the Minister must submit that report to Parliament (see section 36 below).

However, this was cause for some concern for those who wished to see CASDO be entirely independent from the government. Some critics ask this section be removed entirely.

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Board of Directors

Establishment and composition

22 The Standards Organization is to have a board of directors consisting of not more than 11 directors, including a Chair and a Vice-Chair.

Appointment and tenure

- **23 (1)** The directors are to be appointed by the Governor in Council to hold office on a part-time basis and during pleasure for a term of not more than four years that will ensure, to the extent possible, the end in any one year of the terms of office of not more than one half of the directors.
- **Appointment considerations**
(2) The appointment of directors is to be made having regard to the following considerations:
 - **(a)** that at all times, as far as possible, the majority of the directors are persons with disabilities;
 - **(b)** the importance of having directors that are representative of the diversity of Canadian society; and
 - **(c)** the importance of having directors that are representative of the diversity of disabilities faced by Canadians.
- **Persons not eligible for appointment**
(3) A person is not eligible to be appointed or to continue as a director if the person
 - **(a)** is not a Canadian citizen or a permanent resident within the meaning of subsection 2(1) of the Immigration and Refugee Protection Act;
 - **(b)** is a member of the Senate or House of Commons or a member of a provincial or territorial legislature; or

- (c) is employed on a full-time basis in the federal public administration or the public service of a province or territory.
- **Reappointment**
(4) A director is eligible for reappointment in the same or another capacity.

Annotation

In October and November, 2018, the Human Resources, Skills and Social Development and the Status of Persons with Disabilities Standing Committee (HUMA) of the House of Commons debated the composition and role of the CASDO board at some length. The Committee emphasized that participation of people with disabilities was essential and should comprise a majority of the board. The Board of CASDO has, written into its bylaws, an annual public meeting set to commence in the 2020-2021 year.

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Remuneration and expenses

24 A director is to be paid the remuneration that is fixed by the Governor in Council and is entitled to be paid reasonable travel and living expenses incurred while absent from their ordinary place of residence in the course of performing their duties under this Act.

Benefits

25 A director is deemed to be an employee for the purposes of the Government Employees Compensation Act and employed in the federal public administration for the purposes of regulations made under section 9 of the Aeronautics Act.

Role of board of directors

- **26** The board of directors is responsible for
 - (a) setting the strategic direction for the Standards Organization;
 - (b) supervising and managing the Standards Organization's activities and affairs; and
 - (c) advising the Chief Executive Officer on matters relating to the Standards Organization's mandate.

By-laws

- **27 (1)** The board of directors may make by-laws respecting the carrying out of its Activities and the conduct of its affairs.
- **Copy to Minister**
(2) The board of directors must send a copy of every by-law to the Minister.

Advisory and other committees

28 The board of directors may, in accordance with the by-laws, appoint advisory or other committees.

Chair

Role of Chair

- **29 (1)** The Chair presides over meetings of the board of directors and performs any other duties that are assigned by the board.
- **Absence or incapacity of Chair**
(2) In the event of the absence or incapacity of the Chair, or a vacancy in that office, the Vice-Chair acts as Chair.
- **Absence or incapacity of Chair and Vice-Chair**
(3) In the event of the absence or incapacity of the Chair and the Vice-Chair or a vacancy in both those offices, the Minister may authorize another director to act as Chair, but no director so authorized has authority to act for a term of more than 90 days without the Governor in Council's approval.

Chief Executive Officer

Appointment

- **30 (1)** The Chief Executive Officer of the Standards Organization is to be appointed by the Governor in Council to hold office on a full-time basis during pleasure for a term of up to five years.
- **Reappointment**
(2) The Chief Executive Officer is eligible for reappointment.
- **Remuneration and expenses**
(3) The Chief Executive Officer is to be paid the remuneration that is fixed by the Governor in Council and is entitled to be paid reasonable travel and living expenses incurred while absent from his or her ordinary place of work in the course of performing his or her duties under this Act.
- **Benefits**
(4) The Chief Executive Officer is deemed to be employed in the public service for the purposes of the Public Service Superannuation Act, an employee for the purposes of the Government Employees Compensation Act and employed in the federal public administration for the purposes of regulations made under section 9 of the Aeronautics Act.

Role of Chief Executive Officer

- **31 (1)** The Chief Executive Officer is responsible for the Standards Organization's day-to-day operations.
- **Rank of deputy head**
(2) The Chief Executive Officer has the rank and the powers of a deputy head of a department.
- **Absence or incapacity of Chief Executive Officer**
(3) In the event of the absence or incapacity of the Chief Executive Officer, or a vacancy in that office, the Minister may authorize any person to act as Chief Executive Officer, but no person so authorized has authority to act for a term of more than 90 days without the Governor in Council's approval.

Committees

- **32 (1)** The Chief Executive Officer may establish committees to assist in the development and revision of accessibility standards.
- **Public notice**
(2) As soon as feasible after establishing a committee, the Chief Executive Officer must make the committee's terms of reference and the names of its members available to the public.

Human Resources

Officers and employees

33 Officers and employees necessary for the proper conduct of the work of the Standards Organization are to be appointed in accordance with the Public Service Employment Act.

General

Recommended standards to be made public

34 The Standards Organization must make available to the public every accessibility standard that it recommends to the Minister under paragraph 18(b).

Annotation

The requirement to make recommended accessibility standards public could be of particular interest and use to advocacy groups. While CASDO cannot itself prescribe an accessibility standard, their work will inform it. Should the Minister not employ their recommendations, or otherwise, knowledge of the content and rationale for a recommended standard could be an important piece of information. The extent to which an accessibility standard adopted by the Minister differs from what the CASDO recommends could be useful in challenging the sufficiency and propriety of the accessibility standard that the Minister adopts. To date, there have been no published recommendations, however, you can keep track of the Organization's work [here](#). Section 9(5) of the AODA also includes a similar provision to make reports public.

*Reproduction of Act continues below *

Inventions

35 Despite section 9 of the Public Servants Inventions Act, the administration and control of any invention made by an employee of the Standards Organization and vested in Her Majesty by that Act, and any patent issued with respect to the invention, are vested in the Standards Organization.

Annual Report

Duty to submit

- **36 (1)** The Standards Organization must, within three months after the end of each fiscal year, submit a report on its activities in that fiscal year to the Minister.
- **Tabling**
(2) The Minister must cause the report to be laid before each House of Parliament on any of the first 15 days on which that House is sitting after the report is received by the Minister.

Annotation

The annual report requirement outlined in this section permits the Minister and Parliament to know what the CASDO has been doing. The annual report requirement is another way that the Minister can be accountable to Parliament for the work of CASDO.

*Reproduction of Act continues below *

PART 3

Accessibility Commissioner

Provision of information or advice

37 The Accessibility Commissioner may provide information or advice to the Minister in respect of issues arising from the administration and enforcement of this Act.

Annotation

The Accessibility Commissioner is a member of the Canadian Human Rights Commission who will be appointed under subsection 26(1) of the Canadian Human Rights Act. The Accessibility Commissioner is responsible for the enforcement of the Act but The Canadian Radio-television and Telecommunications Commission and the Canadian Transportation Agency also have powers to enforce the Act in certain areas.

End of Excerpt