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LAW, DISABILITY  
AND  
SOCIAL CHANGE

# THE ANNOTATED ACCESSIBLE CANADA ACT

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**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 & 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 & Social Change Project for educational and informational purposes only. The information provided in this document does not, and is not intended to, constitute legal advice.**

**While we have provided examples of possible litigation throughout this annotated statute, the examples are based on our opinions only. The *Accessible Canada Act* (ACA) has been in effect only since 2019 and it is necessary to wait for it to be interpreted and applied in order to have actual cases from which to draw guiding legal principles.**

**More generally, 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 December 31, 2020.**

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

**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

Thank you to our families for their constant support and encouragement.

Many thanks to Windsor Law for its generous support of this project. Thank you especially to Nadia Shivratan, Rachelle Prince, Dylan Margerison and Meris Bray for their timely and thorough assistance with this project.

## 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



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## 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 section 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 with respect to disabling barriers (section 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 12 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 and older identify as people with disabilities. With a population in Canada of approximately 38 million, those with disabilities comprise more than seven 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

Table of Contents (with page numbers)

	<b>1</b>
<b><i>The Annotated Accessible Canada Act (S.C. 2019, c. 10)</i></b>	<b>2</b>
<b><i>The Law, Disability &amp; Social Change Project</i></b>	<b>3</b>
<b>Acknowledgements</b>	<b>4</b>
<b>Dedication</b>	<b>4</b>
<b>The Authors</b>	<b>5</b>
<b>Introduction to the <i>Accessible Canada Act</i></b>	<b>6</b>
<b>Preamble</b>	<b>10</b>
<b>Short title</b>	<b>12</b>
<b>Interpretation</b>	<b>12</b>
<b>Definitions</b>	<b>14</b>
<b>Her Majesty</b>	<b>21</b>
Binding on Her Majesty	21
<b>Designation</b>	<b>21</b>
Designation of Minister	21
<b>Purpose of Act</b>	<b>22</b>
Purpose	22
<b>Principles</b>	<b>24</b>
<b>Application</b>	<b>26</b>
<b>Non-application</b>	<b>27</b>
<b>Canadian Forces</b>	<b>28</b>
<b>Royal Canadian Mounted Police</b>	<b>28</b>
<b>PART 1</b>	<b>28</b>
<b>Minister's Powers, Duties and Functions</b>	<b>28</b>
<b>PART 2</b>	<b>31</b>
<b>Canadian Accessibility Standards Development Organization</b>	<b>31</b>
Establishment	31
Mandate	32
Powers	32



Minister	34
Board of Directors	34
Chair	36
Chief Executive Officer	36
Human Resources	37
General	37
Annual Report	38
<b>PART 3</b>	<b>38</b>
<b>Accessibility Commissioner</b>	<b>38</b>
<b>PART 4</b>	<b>45</b>
<b>Duties of Regulated Entities</b>	<b>45</b>
Regulated Entities That Carry On Broadcasting Undertakings	50
<b>Accessibility Plans — Requirements Under the <i>Broadcasting Act</i></b>	50
<b>Feedback</b>	51
<b>Progress Reports</b>	52
<b>Regulations</b>	52
<b>Exemptions</b>	53
<b>Accessibility Plans — Regulations Under This Act</b>	53
<b>Feedback</b>	54
<b>Progress Reports</b>	55
<b>Exemptions</b>	55
Regulated Entities That Are Canadian Carriers or Telecommunications Service Providers	57
<b>Accessibility Plans — Requirements Under the <i>Telecommunications Act</i></b>	61
<b>Feedback</b>	62
<b>Progress Reports</b>	62
<b>Regulations</b>	63
<b>Exemptions</b>	64
<b>Accessibility Plans — Regulations Under This Act</b>	64
<b>Feedback</b>	65
<b>Progress Reports</b>	65
<b>Exemptions</b>	66
Regulated Entities in the Transportation Network	69
<b>Accessibility Plans — Regulations Under the <i>Canada Transportation Act</i></b>	69
<b>Feedback</b>	70
<b>Progress Reports</b>	70
<b>Regulations</b>	71
<b>Exemptions</b>	71
<b>Accessibility Plans — Regulations Under This Act</b>	72
<b>Feedback</b>	73
<b>Progress Reports</b>	73
<b>Exemptions</b>	74
Other Regulated Entities	78
<b>Accessibility Plans — Regulations Under This Act</b>	78
<b>Feedback</b>	79
<b>Progress Reports</b>	79
<b>Exemptions</b>	80
<b>PART 5</b>	<b>81</b>
<b>Administration and Enforcement</b>	<b>81</b>
Inspections	81

Production Order	84
Compliance Order	85
Administrative Monetary Penalties	87
<b>PART 6</b>	<b>94</b>
<b>Remedies</b>	<b>94</b>
Filing of Complaint	94
Investigation	97
General	111
<b>PART 7</b>	<b>112</b>
<b>Chief Accessibility Officer</b>	<b>112</b>
Appointment	112
Remuneration and Expenses	114
Duties and Functions	115
<b>PART 8</b>	<b>119</b>
<b>General</b>	<b>119</b>
Regulations	119
Miscellaneous	123
National AccessAbility Week	126
<b>PART 9</b>	<b>127</b>
<b>Parliamentary Entities</b>	<b>127</b>
Definition and Application	127
Parliamentary Powers, Privileges and Immunities	128
Application	128
Notification of Speakers	131
<b>CURRENT EVENT — COVID-19</b>	<b>134</b>
<b>FINAL COMMENTARY</b>	<b>134</b>

## Preamble

Whereas the *Canadian Charter of Rights and Freedoms* guarantees the right to the equal protection and equal benefit of the law without discrimination and, in particular, discrimination on the basis of disability;

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;

Whereas a proactive and systemic approach for identifying, removing and preventing barriers to accessibility without delay complements the rights of persons with disabilities under the *Canadian Human Rights Act*;

Whereas Canada is a State Party to the United Nations Convention on the Rights of Persons with Disabilities and Canada has agreed to take appropriate measures respecting accessibility and to develop and monitor minimum accessibility standards;

Whereas barriers to accessibility can impact all persons in Canada, in particular those with disabilities and their families, and can prevent persons with disabilities from achieving their full and equal participation in society;

And whereas Parliament considers that it is essential to ensure the economic, social and civic participation of all persons in Canada, regardless of their disabilities, and to allow them to fully exercise their rights and responsibilities in a barrier-free Canada;

\*Annotation\*

***The inclusion of a preamble is to explain the purpose and objective of the Act. It should be read as part of the entire Act (see [Interpretation Act, s 13](#)). The Preamble in the Accessible Canada Act outlines Canada's commitments to equality for persons with disabilities. In Canada, one in five Canadians, over the age of 15, have a disability. In furtherance of Canada's commitment to equality, the Act sets out to remove barriers faced by persons with disabilities in matters coming within federal jurisdiction in Canada and to maintain commitments that the country has made under the [United Nations Convention on the Rights of Persons with Disabilities](#). The Act also seeks to reinforce the [Canadian Charter of Rights and Freedoms](#) and statutory human rights laws that have already been enacted federally, such as the [Canadian Human Rights Act](#). All of these enactments and commitments work together to ensure equality; however, this relationship can be confusing. The ways in which the Accessible Canada Act fits in will become clearer with time as more cases are decided. In the meantime, it is important to note that the Charter of Rights and Freedoms (section 7 (the right to life, liberty and security of the person) and section 15 (the right to equal protection and benefit under the law without discrimination)) may assist persons with disabilities in Canada depending on the circumstances. The [Canadian Human Rights Act](#) established the [Canadian Human Rights Tribunal](#) for deciding complaints under the Act, as well as the [Human Rights Commission](#), which works to enforce the Act and aims to prevent discrimination. Other provinces also have their own Human Rights legislation and tribunals. It may be confusing to know initially where to complain, but the Commission has [helpful guides](#) to ensure your complaint will be heard in the proper forum.***

***The Accessible Canada Act only applies to matters that the federal government oversees (e.g., transportation between the provinces and with other countries, radio***

*and television, voting and the military are some examples). The Act requires that regulated entities within Canada's federal jurisdiction remove barriers (e.g., physical, architectural, technological barriers and barriers caused by ableist attitudes (section 5)) facing persons with disabilities in order to improve accessibility in Canada.*

*To decide whether the Act applies, one would at least need to know whether a barrier has arisen within the federal sphere, and whether there is another avenue of recourse with respect to that barrier that the Act has deemed more appropriate to use to address it. (For example, if the matter relates to a transportation barrier, the Canadian Transportation Agency's complaint process will likely need to be followed; if the barrier arises in the telecommunications sphere, the Canadian Radio-television and Telecommunications Commission (CRTC) may govern any investigations (see Part 8 of the ACA, sections 117-121)). As the Act allows for regulatory entities such as the CRTC and the Canada Transportation Agency that have created their own regulations and processes to address barriers arising in their areas of jurisdiction, several different complaint mechanisms will exist at the federal level for people with disabilities who confront barriers. This may cause confusion among members of the public who want to make complaints.*

*Specifics about the many moving parts in the Act will be discussed more fully as we move through the Act section-by-section.*

*Judicial understanding of the meaning a statute's words is achieved through the process of statutory interpretation. There are primary and secondary rules of statutory interpretation. The primary rule is found in Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 SCR 27 where the Supreme Court of Canada said that "[t]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament." The principles enunciated in the federal Interpretation Act should also be consulted when applying the primary rule. Secondary rules apply when the primary rule of statutory interpretation produces two or more plausible interpretations of a provision and the decision-maker has to select what interpretation to use.*

*The Preamble is further discussed in the Committee debates. Minister Carla Qualtrough (Minister of Public Services and Procurement and Accessibility, Lib.) explained in the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities on October 2, 2018:*

*"We came to the conclusion that policies and practices currently in place simply do not adequately take into account the barriers faced by Canadians with disabilities in their day-to-day lives. Canadians with disabilities do not want to be treated as a burden, but as full, equal members of society. They should have the same rights and the same opportunities as everyone else, and accessibility is about addressing the barriers created by society that prevent people with disabilities from enjoying their human rights on an equal basis with others.*

*Bill C-81 will lead to the establishment of accessibility standards in the areas of employment, the built environment, information and communication technologies, the delivery of programs and services and transportation. It will apply to Parliament, the Government of Canada, crown corporations and*

***federally regulated entities, including organizations in the transportation, telecommunications, broadcasting and banking sectors.”***

\*Reproduction of Act continues below\*

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

**Short title**

**1** This Act may be cited as the *Accessible Canada Act*.

\*Annotation\*

***The short title of an Act is the most common title used to refer to the Act.***

\*Reproduction of Act continues below \*

**Interpretation**

\*Annotation\*

**Overview of decision-makers under the *Accessible Canada Act* and their jurisdiction**

***The following is a simple text information chart organized into two columns, reading left to right. In the left-hand column is the title of the “decision-maker” followed by a brief description of their “powers and responsibilities” in the right-hand column. This chart provides a quick overview of the key decision-makers within and governed by the ACA. More information is provided on these decision-makers and their roles throughout the document.***

<b><i>Decision-Maker</i></b>	<b><i>Powers and Responsibilities</i></b>
<b><i>The Minister</i></b>	<p><b><i>The Minister is responsible for the realization of a Canada without barriers on or before January 1, 2040.</i></b></p> <p><b><i>The Minister can provide information, advice and assistance relating to accessibility and can promote, support and conduct research into identifying, removing and preventing new barriers.</i></b></p>

<b>Decision-Maker</b>	<b>Powers and Responsibilities</b>
<b>Accessibility Commissioner</b>	<i>The Accessibility Commissioner is responsible for making sure federal organizations and services comply with the Accessible Canada Act. The Accessibility Commissioner is one of the entities under the ACA to which complaints might be made. The Accessibility Commissioner is a Commissioner of the Canadian Human Rights Commission, established under section 26(1) of the <a href="#">Canadian Human Rights Act</a>.</i>
<b>Chief Accessibility Officer (CAO)</b>	<i>The mandate of the Chief Accessibility Officer is to act as a special advisor to the Minister on systemic and emerging accessibility issues. The Chief Accessibility Officer will provide advice, assistance and an annual report to the Minister. The Chief Accessibility Officer may be established under section 111 of the ACA.</i>
<b>Canadian Accessibility Standards Development Organization (CASDO)</b>	<i>The Canadian Accessibility Standards Development Organization was created to contribute to the realization of a Canada without barriers through the development and revision of accessibility standards, the promotion of the removal of barriers and the prevention of new barriers. The CASDO will recommend accessibility standards that will apply to most organizations.</i>
<b>Canadian Radio-television and Telecommunications Commission (CRTC)</b>	<i>The Canadian Radio-television and Telecommunications Commission will make accessibility standards for telecommunications. The CRTC is one of the entities under the ACA to which complaints might be made on matters including broadcasting, telecommunications and internet services.</i>
<b>Canadian Transportation Agency (CTA)</b>	<i>The Canadian Transportation Agency will make accessibility standards for federal transportation entities. The CTA is one of the entities under the ACA to which complaints might be made for barriers arising in air, rail and marine transportation in Canada.</i>
<b>Federal Public Sector Labour Relations and Employment Board (FPSLREB)</b>	<i>The Federal Public Sector Labour Relations and Employment Board will receive accessibility related grievances from federal employees, including members of the RCMP.</i>

<i>Decision-Maker</i>	<i>Powers and Responsibilities</i>
<i>Canadian Human Rights Tribunal (CHRT)</i>	<i>The Canadian Human Rights Tribunal will hear appeals by complainants and regulated entities who are directly affected by a substantiated complaint. It will also hear appeals by complainants and regulated entities regarding dismissed complaints.</i>

*The Accessibility Commissioner, CRTC, CTA and FPSLREB must work collaboratively to put in place mechanisms for the efficient and expeditious referral to the appropriate authority of accessibility-related complaints, applications and grievances.*

\*Reproduction of Act continues below \*

## Definitions

2 The following definitions apply in this Act.

**Accessibility Commissioner** means the member of the Canadian Human Rights Commission that is appointed under subsection 26(1) of the *Canadian Human Rights Act* and that is referred to in that Act as the “Accessibility Commissioner”. (*commissaire à l’accessibilité*)

\*Annotation\*

*The Act introduced the position of the Accessibility Commissioner and amended section 26(1) of the Canadian Human Rights Act via section 148 of the Act. The Accessibility Commissioner position was created to monitor the administration, compliance and enforcement of the Act. The Commissioner will have the power to choose to conduct investigations for all complaints filed before them, if applicable. The jurisdiction and authority of the Accessibility Commissioner is explained at Part 3 of this Act, and its related annotations.*

\*Reproduction of Act continues below \*

**barrier** means anything — including anything physical, architectural, technological or attitudinal, anything that is based on information or communications or anything that is the result of a policy or a practice — that hinders the full and equal participation in society of persons with an impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment or a functional limitation. (*obstacle*)

\*Annotation\*

*The Act defines a barrier quite broadly. The Act provides examples of barriers, but also notes that a barrier is “anything . . . that hinders the full and equal participation in society of persons with an impairment” allowing for the recognition of other obstacles as a “barrier” as well. Many other Canadian accessibility statutes, including The*

[Accessibility for Manitobans Act](#) and the [Accessibility for Ontarians with Disabilities Act](#) similarly define “barriers”.

[The Accessibility for Manitobans Act](#) defines “barrier” under section 3(1) with examples under section 3(2):

*“For a person who has a physical, mental, intellectual or sensory disability, a barrier is anything that interacts with that disability in a way that may hinder the person's full and effective participation in society on an equal basis.*

**Examples of barriers**

3(2)

...

*(a) a physical barrier;*

*(b) an architectural barrier;*

*(c) an information or communications barrier;*

*(d) an attitudinal barrier;*

*(e) a technological barrier;*

*(f) a barrier established or perpetuated by an enactment, a policy or a practice.”*

[The Accessibility for Ontarians with Disabilities Act](#) defines “barrier” as:

*“anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice;”*

*Furthermore, the definition of “barrier” is a central tenet of the federal ACA as the Act sets out to remove all barriers for persons with disabilities. However, what these barriers are and how they hinder full and equal participation are not entirely clear — this uncertainty or possible ambiguity might be the subject of debate or future litigation. If one were to engage in litigation on this issue, given the phrasing of the Act, it follows that one may need to prove a barrier exists as well as explain how it hinders access. Thus, what the said barrier is or what qualifies as such will be important to any future legal action on this issue.*

*The definition of barrier was further described in the Committee debates. Minister Carla Qualtrough (Minister of Public Services and Procurement and Accessibility, Lib.) explained in the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities on October 2, 2018:*



***“The definitions of ‘barrier’ and ‘disability’ put forth in Bill C-81 draw upon the UN Convention on the Rights of Persons with Disabilities. They are broad and inclusive, supporting the greatest number of Canadians. The bill is meant to inspire and drive a deep cultural transformation. Part of that transformation is changing the way we talk about accessibility and disability. It is also about changing existing government structures and systems and creating new ones. It is about putting these aspirations into actions.”***

\*Reproduction of Act continues below \*

**broadcasting undertaking** has the same meaning as in subsection 2(1) of the *Broadcasting Act*. (*entreprise de radiodiffusion*)

\*Annotation\*

***The [Broadcasting Act](#) defines “broadcasting undertaking” to include: “a distribution undertaking, a programming undertaking and a network”. This describes who will be affected by the Act and includes radio and television distribution, programming and networks.***

\*Reproduction of Act continues below \*

**Canadian carrier** has the same meaning as in subsection 2(1) of the *Telecommunications Act*. (*entreprise canadienne*)

\*Annotation\*

***The [Telecommunications Act](#) defines Canadian carrier as: “a telecommunications common carrier that is subject to the legislative authority of Parliament”. This includes entities like cellphone companies. This describes who will be affected by the Act.***

\*Reproduction of Act continues below \*

**disability** means any impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment — or a functional limitation — whether permanent, temporary or episodic in nature, or evident or not, that, in interaction with a barrier, hinders a person’s full and equal participation in society. (*handicap*)

\*Annotation\*

***The ACA definition is very broad and explicitly includes many kinds of disability such as physical, sensory, intellectual, permanent and episodic, mental health issues. However, a disability is defined as an impairment in interaction with a barrier. To constitute a disability, this interaction must hinder a person’s full and equal participation in society. The ACA’s definition is consistent with how disability has been interpreted through some disability-related legislation both internationally and in Canada. Here are a few examples:***

**Convention on the Rights of Persons with Disabilities (CRPD):** The CRPD defines “disability” as:

*“. . . those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”*

**Canadian Charter of Rights and Freedoms:** The Charter lists “disability” in section 15(1) and includes mental and physical disabilities as a ground for discrimination. The Supreme Court of Canada also found that, under the Charter, that disability should be interpreted broadly. As seen in *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)* (the *Mercier case*), the Supreme Court of Canada has defined disability (or “handicap” in this case) as “. . . the result of a physical limitation, an ailment, a social construct, a perceived limitation or a combination of all of these factors. Indeed, it is the combined effect of all these circumstances that determines whether the individual has a ‘handicap’ for the purposes of the Charter” (2000 SCC 27 at para. 79).

**Canadian Human Rights Act (CHRA):** Section 25 of the CHRA definition includes generally physical and mental disability, including addiction to drugs or alcohol. In the case of *Desormeaux v. Ottawa (City)*, 2005 FCA 311, the Court found that “disability in a legal sense consists of a physical or mental impairment, which results in a functional limitation or is associated with a perception of impairment”.

**Accessibility for Ontarians with Disabilities Act (AODA):** The AODA defines disability with more specific criteria and examples, which include physical disabilities caused by illness, bodily injury or birth defect, mental disability including learning or developmental disabilities as well. The case of *Chen v. Ingenierie Electro-Optique Exfo*, 2009 HRTO 1641, followed the *Mercier case* noted above, and found that the definition of disability was broad and even “extends to the actual or perceived possibility that an individual has or may develop a disability in the future”.

**Alberta Human Rights Act:** Section 44(1)(l) of this Act defines both mental and physical disability as grounds for discrimination. The recent case of *Sutherland v. Apollo Sunrooms Inc.*, 2018 AHRC 13, also outlined that the definition of physical disability laid out in the Act was remedial in nature and should be interpreted broadly.

**British Columbia Human Rights Code:** While this Code does not set out an explicit definition for disability, it is listed under section 7 as a ground for discrimination. Out of this province, the Supreme Court of Canada set out an important three-part test, widely used for human rights cases across the country to show discrimination. The case of *Moore v. British Columbia (Ministry of Education)*, 2012 SCC 61 at para. 33 set out the test:

*“to demonstrate prima facie discrimination, complainants are required to show that they have a characteristic protected from discrimination under the Code; that they experienced an adverse impact with respect to the service; and that the protected characteristic was a factor in the adverse impact. Once a prima facie case has been established, the burden shifts to the respondent to justify the conduct or practice, within the framework of the exemptions available under*

*human rights statutes. If it cannot be justified, discrimination will be found to occur.”*

**The Accessibility for Manitobans Act** does not actually include a definition of “disability”. However, **The Accessibility for Manitobans Act** defines “barrier” under **section 3(1)** in relation to a “person who has a physical, mental, intellectual or sensory disability”.

**Manitoba Human Rights Code: Section 9(2)(l)** protects against discrimination based on disability focusing on employment and social programs. The Code does not define disability; however, the Commission and the Courts in Manitoba utilize the test set out in case of **Moore** (noted above) to make a finding of discrimination based on disability as well.

**New Brunswick Human Rights Act: Section 2** includes definitions for both mental disability and physical disability. Interestingly, the case of **Ambulance New Brunswick and CUPE, Local 4848 (Saunders), Re, 2013 CarswellNB 379, [2013] N.B.L.A.A. No. 7, 115 C.L.A.S. 357** (free hyperlink not available) set out that even a perception of certain characteristics can give rise to discrimination on the basis of disability (see para. 70 of this case).

**Newfoundland Human Rights Act: Section 2 of this Act** defines disability to mean one or more of the following conditions: a degree of physical disability; a condition of mental impairment or a mental disability; a learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or language; and a mental disorder. Like other provinces, the complainant bears the onus of proving their disability. The case of **Human Rights Commission (Critch) v. Newfoundland and Labrador, 263 Nfld & P.E.I.R. 60** stated that to establish disability “a degree of severity and permanence and must impair their ability to carry on with their work”. Also, of note, this province uniquely includes disfigurement, in addition to disability, as grounds for discrimination.

**Nova Scotia Human Rights Act: Section 3 of this Act** defines both mental disability and physical disability whether an actual or perceived disability as a means for discrimination. The full definition states:

*“‘physical disability or mental disability’ means an actual or perceived (i) loss or abnormality of psychological, physiological or anatomical structure or function, (ii) restriction or lack of ability to perform an activity, (iii) physical disability, infirmity, malformation or disfigurement, including, but not limited to, epilepsy and any degree of paralysis, amputation, lack of physical co-ordination, deafness, hardness of hearing or hearing impediment, blindness or visual impediment, speech impairment or impediment or reliance on a service dog as defined in the Service Dog Act, a guide dog, a wheelchair or a remedial appliance or device, (iv) learning disability or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language, (v)*

*condition of being mentally impaired, (vi) mental disorder, or (vii) dependency on drugs or alcohol;”*

**Nova Scotia Accessibility Act: This Act defines disability as follows:**

*“‘disability’ includes a physical, mental, intellectual, learning or sensory impairment, including an episodic disability, that, in interaction with a barrier, hinders an individual’s full and effective participation in society.”*

**Saskatchewan Human Rights Code: This Act, at section 2, includes a detailed list of what qualifies as a disability. The list is as follows:**

*“(a) any degree of physical disability, infirmity, malformation or disfigurement, including: (i) epilepsy; (ii) any degree of paralysis; (iii) amputation; (iv) lack of physical coordination; (v) blindness or visual impediment; (vi) deafness or hearing impediment; (vii) muteness or speech impediment; or (viii) physical reliance on a service animal, wheelchair or other remedial appliance or device; or (b) any of the following disabilities: (i) an intellectual disability or impairment; (ii) a learning disability, or a dysfunction in one or more of the processes involved in the comprehension or use of symbols or spoken language; (iii) a mental disorder;”*

***Overall, every province has some form of Code or Act that prohibits discrimination on the basis of disability, some of which specifically define the term or note what “disability” includes. While each province tackles the issue differently, most provinces maintain a broad interpretation of disability.***

***Given the various definitions of disability, it is reasonable to presume that there may be some future litigation to deal with this uncertainty. Litigation may be centred on whether a person’s condition(s) or challenge(s) qualify as a disability under the Accessible Canada Act. The recognition of those condition(s) or challenge(s) as a disability will trigger the duty to remove any resulting barrier.***

***The definition of disability was discussed by Minister Carla Qualtrough at the Standing Committee on October 2, 2018:***

*“What is important in our review at the Canadian Human Rights Commission is that every person who suffers from a disability find themselves in the Act. This is an important principle, and it’s consistent with human rights law, including the decision of the Supreme Court of Canada, which has generally given a broad and liberal approach to the definition of “disability”.*

**Minister** means the member of the Queen's Privy Council for Canada designated under section 4. (*ministre*)

\*Annotation\*

See below, [section 4](#), for more detailed information on the Minister.

\*Reproduction of Act continues below \*

**personal information** has the same meaning as in section 3 of the *Privacy Act*. (*renseignements personnels*)

\*Annotation\*

*This refers to the long form definition found in the Privacy Act. It includes any information whether or not it is immediately identifiable or may be used to identify the individual. Under section 8 of the Privacy Act, government institutions cannot, subject to certain exceptions, disclose personal information without the consent of the person to whom it pertains. Disability related information may come within the scope of "personal information". For example, this might include the person's name, whether or not they have a disability, the type of disability they have, the nature and severity of that disability, and what the person may require in order to accommodate the disability.*

\*Reproduction of Act continues below \*

**regulated entity** means an entity or person referred to in [subsection 7\(1\)](#). (*entité réglementée*)

\*Annotation\*

*These entities are federally regulated and speak to the nature of the statute to the extent that it governs federally regulated entities. For more information on what qualifies as a regulated entity, see the commentary under [section 7\(1\)](#).*

\*Reproduction of Act continues below \*

**Standards Organization** means the Canadian Accessibility Standards Development Organization established under [subsection 17\(1\)](#). (*organisation de normalisation*)

\*Annotation\*

*This Organization was established through the Act to contribute to the realization of an accessible Canada by 2040. Please see [section 17\(1\)](#). More information will follow in that [section below](#).*

\*Reproduction of Act continues below \*

**telecommunications service provider** has the same meaning as in subsection 2(1) of the *Telecommunications Act*. (*fournisseur de services de télécommunication*)

\*Annotation\*

**In the [Telecommunications Act](#), this is defined as: “a person who provides basic telecommunications services, including by exempt transmission apparatus”.**

\*Reproduction of Act continues below \*

Her Majesty  
Binding on Her Majesty

**3** This Act is binding on Her Majesty in right of Canada.

\*Annotation\*

***Her Majesty in right of Canada is sometimes referred to in law as “the Crown”, and as such, the government and its agents are sometimes referred to as “the Crown” generally. The Crown can be defined as all entities and organizations of (in this case) the federal government. When a provincial legislature speaks of the Crown, it speaks of all entities and organs of the provincial government. Section 17 of the federal [Interpretation Act](#) indicates that Parliament can elect to include or exempt the Crown from falling within the confines of the laws set out by the Act. There is a presumption that the Crown is not bound by legislation unless Parliament or the provincial legislature expressly states that the Crown is bound by the Act. The scope of the meaning of “the Crown” under the Accessible Canada Act will be informed by the entities and organs by the federal government enumerated in section 7(1)(a) through (d) of the Accessible Canada Act.***

\*Reproduction of Act continues below \*

Designation  
Designation of Minister

**4** The Governor in Council may, by order, designate a member of the Queen’s Privy Council for Canada as the Minister for the purposes of this Act.

\*Annotation\*

***The current Minister appointed is the Minister of Employment, Workforce Development and Disability Inclusion, The Honourable Carla Qualtrough. (Read her mandate letter [here](#).) The Minister is to work to ensure the timely implementation of the Act, working with various other Ministers, and will support the Canadian Accessibility Standards Development Organization. More about the Minister and the duties, appointment, etc. will be touched on in [section 21 of this Act below](#).***

\*Reproduction of Act continues below \*

Purpose of Act

Purpose

- **5** The purpose of this Act is to benefit all persons, especially persons with disabilities, through the realization, within the purview of matters coming within the legislative authority of Parliament, of a Canada without barriers, on or before January 1, 2040, particularly by the identification and removal of barriers, and the prevention of new barriers, in the following areas:
  - (a) employment;
  - (b) the built environment;
  - (c) information and communication technologies;
  - (c.1) communication, other than information and communication technologies;
  - (d) the procurement of goods, services and facilities;
  - (e) the design and delivery of programs and services;
  - (f) transportation; and
  - (g) areas designated under regulations made under paragraph 117(1)(b).

\*Annotation\*

*The purpose portion of the Act will inform how the Act and its sections will be interpreted. This portion of the Act outlines all sectors that the Act can touch — namely federally controlled entities (note: the Constitution outlines which entities are federally regulated versus provincially regulated). The wording used in this section of the Act shifts the legislative narrative in Canada from a “duty to accommodate” to a duty to actively remove all barriers and refrain from creating new ones. The duty to accommodate places an onus on the person responsible for accommodation. This means that accommodation must be provided unless doing so would meet the standard of undue hardship. The duty arises as a response to an inaccessible environment (a useful summary on what the duty to accommodate includes can be found [here](#); the case of Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ), 2008 SCC 43, at [paras. 14 to 15](#), also outlines the Supreme Court of Canada’s position on a duty to accommodate). The Act creates a duty to actively remove all barriers and refrain from creating new ones — not just to make individual accommodations under the duty to accommodate. This may drastically shape the way in which accommodations are viewed and change how people with disabilities can expect to participate in society. January 1, 2040 is the date listed by which Canada is to have removed all barriers and prevented future barriers — effectively realizing the intentions of the Act. However, the phrase “on or before” creates additional questions such as how quickly a barrier can be removed and whether it should be removed at the earliest opportunity. There has been no case law on this kind of question to date. It is still to be determined how these types of issues may be litigated through the processes provided by the Accessible Canada Act. It is possible that these decisions may have an impact on the timing of barrier removal.*

*A helpful discussion on Purpose Statements can be found in Ruth Sullivan, Sullivan on the Construction of Statutes, 6th Edition. For example, [Sullivan](#) describes purpose statements as non-descriptive but interpretive in nature. Moreover, they do not create legally binding rights or obligations citing Greater Vancouver Regional District v. British Columbia. Overall, Sullivan suggests that these statements give context to the entire Act.*

*Section 5(c.1) was amended to clarify the meaning of communication as “other than information and communication technology”. The reason for adding the language was explained at the November 7, 2018 meeting of the House of Commons Standing*

**Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) as encapsulated by Robert Morrissey:**

***“[M]any members of the disability community came to the committee and identified accessibility and communication as a priority for their community. These amendments will strengthen the bill in those areas and deal with the concerns that were addressed to this committee during the testimony stage.”***

\*Reproduction of Act continues below \*

- **Clarification**

**5.1 (1)** The area of communication referred to in paragraph 5(c.1)

- **(a)** includes the use of American Sign Language, Quebec Sign Language and Indigenous sign languages; and
- **(b)** does not include broadcasting as defined in subsection 2(1) of the *Broadcasting Act* or telecommunications as defined in subsection 2(1) of the *Telecommunications Act*.

- **Recognition of sign languages**

**(2)** American Sign Language, Quebec Sign Language and Indigenous sign languages are recognized as the primary languages for communication by deaf persons in Canada.

\*Annotation\*

***To date, American Sign Language (also known as ASL) and Quebec Sign Language (also known as QSL) have not been formally recognized in Canada. Relevant to this subject is [Bill C-91, the Indigenous Languages Act](#), which received Royal Assent in June 2019, and which does recognize Indigenous sign languages. This Act is referred to by advocates as a model through which ASL and QSL can be formally recognized in Canada (see Kristin Snodden and Erin Wilkinsons’s blog post about their work relating to this subject [here](#) for more information).***

***However, this express kind of inclusion entrenched in the Act might reflect a recognition of ASL and QSL as well as a broad definition of Indigenous sign languages (for an interesting read on Indigenous sign languages see [this summary](#)), which would lead to an expectation to receive services in these languages. This expectation could in some cases support a claim of a right to receive services in ASL or QSL. For instance, section 14 of the Charter ensures that any party who doesn’t speak the language of a proceeding is entitled to an interpreter. For persons who use one of these three forms of sign language, section 14 may require that any interpretation be on those languages. In cases like [Eldridge v. British Columbia \(Attorney General\)](#), the court found that where a government undertakes to provide a service, it must provide the service in a manner that will ensure groups are not disadvantaged. In [Eldridge](#), for example, the Supreme Court of Canada required health authorities to provide sign language interpretation when persons who use sign access publicly funded healthcare services in order to ensure that they receive the equal benefit of those services as others.***

\*Reproduction of Act continues below \*



## Interpretation

**5.2** Nothing in this Act, including its purpose of the realization of a Canada without barriers, should be construed as requiring or authorizing any delay in the removal of barriers or the implementation of measures to prevent new barriers as soon as is reasonably possible.

\*Annotation\*

***While the goal is of a Canada without barriers by 2040, there should be no delay in removing barriers that can be removed quickly and easily or making efforts to avoid creating new barriers.***

***There may be litigation as to when a barrier ought to be removed. The timing of the removal of a barrier may depend on the nature of the barrier, the options for removing the barrier, the relative effectiveness of such options, and the time that might be required to implement those respective options. Guidance about the timeframes for removing barriers will be developed as cases proceed in various fora.***

\*Reproduction of Act continues below \*

## Principles

- **6** This Act is to be carried out in recognition of, and in accordance with, the following principles:
  - **(a)** all persons must be treated with dignity regardless of their disabilities;
  - **(b)** all persons must have the same opportunity to make for themselves the lives that they are able and wish to have regardless of their disabilities;
  - **(c)** all persons must have barrier-free access to full and equal participation in society, regardless of their disabilities;
  - **(d)** all persons must have meaningful options and be free to make their own choices, with support if they desire, regardless of their disabilities;
  - **(e)** laws, policies, programs, services and structures must take into account the disabilities of persons, the different ways that persons interact with their environments and the multiple and intersecting forms of marginalization and discrimination faced by persons;
  - **(f)** persons with disabilities must be involved in the development and design of laws, policies, programs, services and structures; and
  - **(g)** the development and revision of accessibility standards and the making of regulations must be done with the objective of achieving the highest level of accessibility for persons with disabilities.

\*Annotation\*

***This section sets out the principles that guide the Act and which should be considered in the application and interpretation of the Act. Overall, these values promote active inclusion of people with disabilities for equal participation in society. The principles also acknowledge the intersectional, or many other ways, a person with a disability may be disadvantaged in society. For instance, a disability may have an impact on the disadvantages arising from one's race, gender or sexual orientation and vice versa. Finally, the principles ensure that all people with disabilities will be included in the development of policies, laws or programs to ensure compliance with this Act. This addition speaks to the recent shift in political culture: involving citizens in the development of the governing regulations in order to better serve the people they seek***

*to protect (for more about this shift see this [open access article](#)). The principles of the Act are to achieve the “highest level of accessibility”. While these are noble purposes, it is yet to be seen how this will work functionally as governing bodies and regulated entities are called upon to meet the principles and purpose (section 5 above) of the Act.*

*Accessibility legislation has been noted to contain both philosophical goals and social goals. “Philosophical goals” refer to the foundational aspirations of the statute such as protecting equality, dignity, social integration and the independence of persons with disabilities. All of these aspirations are reflected in this section of the ACA. The “social goals” of the statute are the explicit and implicit guiding principles laid out for achieving its philosophical goals. The ACA’s social goals may also be found in section 6. For example, section 6 indicates that laws, policies and programs must recognize the different ways that people interact with their environment and that people with disabilities must play a role in the development of laws. For more information on the concept of philosophical and social goals that underlie accessibility legislation, please see this [open access article](#).*

*Many of the principles listed in section 6 are in compliance with other legislation, working groups and conventions of which Canada is a part. For example, Canada signed on to the [United Nations Convention on the Rights of Persons with a Disability](#) in December 2006. The Convention sets out many objectives, some of which Canada already subscribed to, and others, like Article 9 (which calls for removal of barriers), which are strengthened and undertaken by this Act.*

*This portion of the Act also endeavours to move away from a medical model of disability toward the social model of disability. The medical model is a view that a disability is a personal medical problem and the social model is a belief that disability is a status imposed by society due to the barriers that society has designed which prevent a person a person with an impairment from participating fully in society (for a good summary of the two models see this [open access article](#)).*

*The principles also acknowledge the inherent intersectional nature of persons with disabilities. DisAbleD Women’s Network (DAWN) commented on the advocacy that led to this language at section 6(e), which acknowledges the different barriers and issues faced by persons with disabilities, beyond their disability. Intersectionality is commonly defined as social categories (e.g., race, disability, gender, etc.), which creates overlapping disadvantages. People with disabilities often face various types of social challenges that must be addressed in a comprehensive nature. To read more on intersectionality and people with disabilities, see this [helpful report](#) from the Canadian Centre for Disability Studies.*

*Intersectionality is an important aspect to consider when discussing inclusion. It is interesting to note the limitations of the Accessible Canada Act — it calls for the elimination (or prevention) of barriers arising on account of disability only. It does not require the elimination of barriers that result in whole or in part from how a disability may intersect with other social categories. To the extent that a barrier arises from the intersection of disability and another social category, the person facing such barrier may need to seek redress under another statute (the [CHRA](#) or the [Charter](#), depending on whether the barrier arises in a private or governmental context).*

*While people with disabilities face many more challenges than listed, these are just some examples of how the principles of the Act encapsulate a vision for a more inclusive Canada.*

**The principles of the Act were discussed by Minister Carla Qualtrough at the HUMA Standing Committee on September 9, 2018:**

***“Time and again, Canadians with disabilities told us the same thing: ‘We are not an afterthought. We are citizens deserving of the same rights and having the same responsibilities as other citizens. We are capable and valuable members of society. We do not want to be looked at as people who need accommodation, and we do not want to be treated like some sort of burden.’ By bringing a unique knowledge and extensive network to the table, the Government of Canada was able to get an even better understanding of what the disability community wants its Canada to look like. With its clear message as the backdrop, there are five principles recognized in Bill C-81. It is upon these principles that the bill is based, and it is these principles that would serve to guide future interpretations. First, all persons must be treated with dignity, regardless of their abilities or disabilities. Second, all persons must have the same opportunity to make for themselves the lives they are able and wish to have. Third, all persons must have barrier-free access to full and equal participation in society. Fourth, all persons must have meaningful options and be free to make their own choices, with support if they desire. Finally, laws, policies, programs, services and structures must take into account the abilities and disabilities of persons and the different ways that persons interact with the environment. Persons with disabilities must be involved in the development and the design.”***

\*Reproduction of Act continues below\*

#### Application

- **7 (1)** This Act applies to the following entities and persons:
  - **(a)** each entity named or set out in any of Schedules I to V to the *Financial Administration Act*;
  - **(b)** each Crown corporation, as defined in subsection 83(1) of the *Financial Administration Act* that is not referred to in Schedule III to that Act;
  - **(c)** every portion of the federal public administration that is designated under subsection (3);
  - **(d)** the Canadian Forces;
  - **(e)** any person, partnership or unincorporated organization that operates a work or carries on an undertaking or business that is within the legislative authority of Parliament, other than a work, undertaking or business of a local or private nature in Yukon, the Northwest Territories or Nunavut; and
  - **(f)** any entity or person — including a trustee, executor, administrator, liquidator of the succession, guardian, curator or tutor — that Acts in the name of, or for the benefit of, any entity or person in the operation of a work or carrying on of an undertaking or business that is within the legislative authority of Parliament, other

than a work, undertaking or business of a local or private nature in Yukon, the Northwest Territories or Nunavut.

- **Parliamentary entities**

(2) This Act also applies, to the extent provided for in Part 9, to the entities referred to in the definition of parliamentary entity in section 134.

- **Designation**

(3) For the purposes of paragraph (1)(c), the Governor in Council may, by order, designate any portion of the federal public administration that is not named or set out in any of Schedules I to V to the *Financial Administration Act*.

\*Annotation\*

***Overall, this provision is important as it outlines which entities have responsibility for identifying and then eliminating the barriers that persons with disabilities face.***

***The ACA is federal legislation and thus applies only to federally regulated bodies. Practically this includes: accessibility of federal buildings; travelling or communicating on trains or planes; accessing telecommunication company services; working for the Government of Canada, banks, mining companies, railways, airlines, trucking companies, and other federally regulated industries or companies; properly accessing federal services like the Canada Pension Plan, the Canada Revenue Agency, the Canadian Human Rights Tribunal and more; and using information and communication technologies, like television, radio and the internet.***

***Lawyers and others may find it interesting to note that litigation could arise as to whether a “private operation” acting in the federally regulated sphere falls within the confines of section 7(1)(e) and (f).***

***The exceptions to this broad federal inclusion are outlined below at section 8.***

\*Reproduction of Act continues below \*

Non-application

**8** Nothing in this Act applies to the Yukon Government, the Government of the Northwest Territories or the Government of Nunavut or a corporation established to perform any function or duty on behalf of any of those Governments.

\*Annotation\*

***For a brief history of the territories see [here](#). The territories are not part of the Constitution and are not protected under it — they are given their powers by the federal government. Due to the devolution of powers to the territorial legislative assemblies, they make laws over matters within their devolved jurisdiction, including matters of human rights and accessibility. This is the reason behind their exemption from the Act.***

***Each territory has its own human rights complaints process. For Nunavut click [here](#). For the Yukon click [here](#). For the Northwest Territories click [here](#).***

\*Reproduction of Act continues below \*

## Canadian Forces

**9** Nothing in this Act is to be construed as affecting the principle of universality of service under which members of the Canadian Forces must at all times and under any circumstances perform any functions that they may be required to perform.

\*Annotation\*

*The concept underlined in this section, the principle of universality of service, demands that all members of the Canadian Forces must be able to perform basic military duties — no matter their usual job in the Canadian Forces. This means even if one were a cook or administrative assistant, they would still be required to be able to perform the basic duties of a soldier. The case of Canada (Attorney General) v. Patricia Hebert outlines this principle. Universality of service was also addressed in the 2015 case of Chua v. Canada (Attorney General). Whether the principle of universality of service itself could give rise to a barrier, especially as it applies to non-combat or non-physically demanding roles, is an important question for debate. There could be litigation about whether a person in the Canadian Forces serving in a non-combat role faces a barrier and/or discrimination by being held to the standards of the principle of universality for duties that they may never have to perform.*

\*Reproduction of Act continues below \*

## Royal Canadian Mounted Police

**10** Nothing in this Act is to be construed as affecting the principle that certain physical and other qualifications are necessary for appointment under the *Royal Canadian Mounted Police Act* or to prevent the establishment of requirements that are necessary to carry out functions and duties within the Royal Canadian Mounted Police.

\*Annotation\*

*Similar to the Canadian Forces, the Royal Canadian Mounted Police (RCMP) also has standards that must be met to become a member. Section 9.1 of the Royal Canadian Mounted Police Act is the authority for this — thus explaining the exception contained at section 10:*

*There may be future litigation about whether a person in the RCMP serving in a role where those physical requirements are not relevant faces a barrier and/or discrimination by being held to those standards for a function that they may never have to perform.*

\*Reproduction of Act continues below \*

## PART 1

# Minister's Powers, Duties and Functions

## Mandate

- **11 (1)** The Minister's mandate is the realization of a Canada without barriers on or before January 1, 2040.

- **Powers**

- (2) In carrying out his or her mandate, the Minister may, among other things,
- (a) provide information, advice and assistance in relation to matters relating to accessibility; and
  - (b) promote, support and conduct research into the identification and removal of barriers and the prevention of new barriers.

\*Annotation\*

***The Minister was appointed by the Order Designating the Minister of Employment and Social Development, a member of the Queen’s Privy Council for Canada, as the Minister for the purposes of that Act. Currently, the Minister of Employment and Social Development is the Honourable Carla Qualtrough. Overall, the Minister will be responsible for overseeing and ensuring the Act meets its goals by 2040. However, this deadline does not preclude removing barriers before this final deadline. This type of oversight will ensure accountability.***

***Given the ambitious mandate and the fact there is no “one-size-fits-all” approach to accommodation contemplated in the Act, these issues may result in litigation. For example, litigation may arise as to when a barrier ought to be removed. The timing of the removal of a barrier may depend on the nature of the barrier, the options for removing the barrier, the relative effectiveness of such options, and the time that might be required to implement those respective options. Guidance about the timeframes for removing barriers will be developed as cases proceed before various fora.***

***One of the most significant criticisms of the ACA during the Committee review process at the time of the Act’s passage through the House of Commons was that section 4 of the ACA uses the word “may” when referring to an appointment of the Minister. Many felt that the word “may”, being permissive, was not strong enough and should have been redrafted to include “shall” in its place, making the appointment mandatory (see section 11 of the Interpretation Act for the difference meant by “may” and “shall” in legislation). However, as noted, the government did make an order for the appointment of the Minister. (See definition of “Minister” in section 4 above.)***

***Finally, one should note that the use of the phrase “among other things”, renders the Minister’s authority fairly open-ended. This kind of ambiguity leaves the Act open to interpretation and, as we have seen earlier in various sections, this may give rise to future litigation on issues related to the Minister’s authority to exercise and enforce the ACA mandates. See the rest of Part 1 of the ACA, as well as Parts 3-7 of the ACA for more information regarding the administration and enforcement of the Act.***

***The operative word “may” appears several times below, throughout the defining and setting out of the Minister’s powers and duties. During consultation there was a big push, which was ultimately rejected, to change these operatives to “shall” to ensure action was mandatory. There is nothing mandatory laid out in the Minister’s duties, powers or functions or beyond. However, the current Minister, herself a person with a disability, is hopeful this Act will be a “game changer”.***

\*Reproduction of Act continues below \*

### Minister's powers, duties and functions

**12** The Minister's powers, duties and functions extend to and include all matters relating to accessibility over which Parliament has jurisdiction and that are not by law assigned to any other Minister or to any department, board or agency of the Government of Canada.

\*Annotation\*

***The Minister oversees all parts of the Act except for those outlined under Part 4 and Part 5 of this Act. Ensuring the accessibility of transportation in Canada is assigned by the Canada Transportation Act to the Minister of Transport and the Canadian Transportation Agency. In addition, accessibility within telecommunications and broadcasting has been assigned to the Canadian Radio-television and Telecommunications Commission CRTC.***

\*Reproduction of Act continues below \*

### Policies, programs and projects

**13** The Minister may initiate, recommend, implement and promote policies, programs and projects in relation to matters relating to accessibility.

### Grants and contributions

**14** The Minister may make grants and contributions in support of the Minister's programs and projects in relation to matters relating to accessibility.

\*Annotation\*

***This section empowers the Minister to fund or support efforts that enhance accessibility, within or outside of the federal government.***

\*Reproduction of Act continues below \*

### Information

**15** Subject to the Statistics Act, the Minister may collect, analyse, interpret, publish and distribute information in relation to matters relating to accessibility.

\*Annotation\*

***This provision is important because it helps to identify where access issues may arise, who it affects and where it affects them. The use of data could also help identify barriers that should be removed.***

***The collection and analysis of data on accessibility topics is also of broad importance because a lack of data contributes to the invisibility of persons with disabilities in official statistics.***

\*Reproduction of Act continues below \*

## Coordination with provincial and territorial authorities

**16** The Minister must make every reasonable effort to collaborate with provincial or territorial authorities with a view to coordinating efforts in relation to matters relating to accessibility.

\*Annotation\*

*The obligation to collaborate with the provinces and territories recognizes that a barrier may exist in both the federal and provincial spheres or overlap across federal and provincial jurisdictions. For example, an individual in a shopping mall could face different accessibility standards in the bank of the shopping mall (federal jurisdiction) than in the main corridors of the shopping mall (provincial jurisdiction). The unwritten constitutional principle of federalism asserts that governmental authority is divided between the federal and provincial governments according to sections 91 and 92 of the Constitution Act, 1867. For an explanation of the unwritten constitutional principles of federalism, please see [Reference re Secession of Quebec, 1998 CanLII 793 \(SCC\), \[1998\] 2 SCR 217](#). These sometimes overlapping spheres of authority require different levels of government to respect the limits of their jurisdiction.*

\*Reproduction of Act continues below \*

## 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 (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.***

***While CASDO is empowered to develop accessibility standards, it can only “recommend” a standard for the Minister’s consideration. In this way, CASDO is different from the Canadian Transportation Agency and/or the CRTC 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 section 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.***

\*Reproduction of Act continues below \*

# 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.***

***Subsections (a) and (b) of section 19 permit CASDO to operate as both a commercial enterprise and a government agency. Subsections (c) to (e) imagine 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. However, 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 Organization’s departmental plan click [here](#).***

***While CASDO is empowered to develop accessibility standards, it can only “recommend” a standard for the Minister’s consideration. In this way, CASDO is***

*different from the Canadian Transportation Agency and/or the CRTC, 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.*

\*Reproduction of Act continues below \*

## 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 they may do it and what issues they may focus on, etc. 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.*

\*Reproduction of Act continues below \*

## 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 CASDO board has, written into its by-laws, an annual public meeting set to commence in the 2020-2021 year.***

\*Reproduction of Act continues below \*

### **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.

\*Annotation\*

*You may read [the Minister's mandate letter to the Chair of the Board of Directors of CASDO here](#).*

\*Reproduction of Act continues below \*

## 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, 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 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 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 section 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.***

***Section 37 provides the Accessibility Commissioner with a wide scope of authority to provide information or advice to the Minister. While the Accessibility Commissioner can provide advice, the ACA does not oblige the Minister to accept it or to act on the information that the Accessibility Commissioner provides.***

***Meeting 112 — October 2, 2018 — The Honourable Carla Qualtrough (Minister of Public Services and Procurement and Accessibility):***

***“The accessibility commissioner serves two roles. The first is proactive compliance or enforcement, and the second is dealing with complaints. From a proactive perspective, the accessibility commissioner has that power to go in and ensure that a regulated entity is caring about what's needed to live up to the regulation.”***

***Erik Laplame, Senior Policy Analyst, Accessibility Secretariat, stated:***

***“As I mentioned, there are the three main enforcement bodies under the bill: the accessibility commissioner, the Canadian Transportation Agency and the CRTC. In terms of the proposed [A]ccessible Canada [A]ct itself, the main body set out there is the accessibility commissioner. The Canadian Transportation Agency has a broadened mandate and increased powers and responsibilities through amendments that are proposed to the Canada Transportation Act. The accessibility commissioner would have a broad range of powers. These are set out in terms of inspections, production orders—a paper-based audit that could request documents—compliance orders to stop an activity and notices of violation. These can be a warning: Something is not good and you're getting a warning, but it should be fixed. It can also be a notice of violation that has an administrative monetary penalty associated with it.”***

***These mechanisms are part of what is called “proactive compliance enforcement” in which the Accessibility Commissioner proactively goes out, ensures and verifies compliance with regulatory requirements. There's also a remedies process available to individuals. Individuals who have experienced harm as a result of the contravention of regulated standards would be able to file a complaint with the accessibility commissioner, and then the commissioner would potentially launch an investigation. If the complaint is substantiated, then the commissioner has a wide variety of remedies available that they could order. They include compensation for pain and suffering,***



*amounts for lost wages, and additional amounts if a practice was the result of a willful or reckless practice. There are some maximum amounts set out in the legislation for pain and suffering compensation and for willful and reckless practice, but there are also provisions to ensure that these amounts change over time to account for inflation. There is this proactive side and there is the reactive side to help remedy individual situations of harm.*

*On the concept of proactive and reactive regulatory enforcement within the context of disability, human rights and accessibility legislation in Canada, please see [this open access article](#).*

\*Reproduction of Act continues below \*

### Special report

- **38 (1)** The Accessibility Commissioner may report in writing to the Minister in respect of issues arising from the administration and enforcement of this Act.
- **Publication**  
**(2)** The Accessibility Commissioner may, after the sixtieth day after the day on which it was provided, publish any report that he or she provided to the Minister.

\*Annotation\*

*Accessibility statutes in Canada usually have provisions for annual reports on administration and enforcement but special reports are less common. In Ontario, section 38 provides a discretionary power to report to the Minister. By contrast, section 39 requires the Accessibility Commissioner to submit an annual report. The decision to make a section 38 report may depend on such factors as the nature of the issue that is the subject of the Accessibility Commissioner's concerns, how pressing or significant the barrier is, the number of persons and types of disabilities the barrier affects, and/or what needs to be done to remove the barrier. The creation of a special report and its later publication can serve as an indicator from the Accessibility Commissioner to the Minister that a significant issue exists which should be addressed.*

*The Accessibility Commissioner's power to publish a special report after 60 days could be useful for advocacy organizations. When special reports are published, the public will be able to see what issues concern the Accessibility Commissioner and what the Accessibility Commissioner believes should be done to address it. Because the authority to publish a special report is discretionary, the Accessibility Commissioner may need to balance several competing factors in reaching a decision about whether to release the report. For example, the Accessibility Commissioner may need to balance the pressing nature of the report against the sensitivity of the subject matter, privacy interests, etc. in deciding whether to publish it.*

\*Reproduction of Act continues below \*

## Annual report

- **39 (1)** The Accessibility Commissioner must, within three months after the end of each fiscal year, submit a report on his or her activities under this Act during that year to the Minister and provide the Minister of Justice with a copy of the report.
- **Contents**
  - (2)** The report must include
    - **(a)** information about the following in respect of the fiscal year, including their number:
      - **(i)** inspections conducted under section 73,
      - **(ii)** orders made under section 74,
      - **(iii)** orders made under section 75,
      - **(iv)** notices of violation issued under section 79, and
      - **(v)** complaints filed under subsection 94(1);
    - **(b)** the Accessibility Commissioner's observations about whether the information referred to in paragraph (a) discloses any systemic or emerging accessibility issues; and
    - **(c)** information prescribed in regulations made under subsection 117(1).
- **Tabling**
  - (3)** 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\*

***Annual reports are valuable because they can inform Parliament and the public of what the Accessibility Commissioner has been doing and where they have been focusing their attention.***

***Annual reports are a universal requirement of accessibility legislation and can be found in, the [Accessibility for Ontarians with Disabilities Act](#), [The Accessibility for Manitobans Act](#), and [An Act Respecting Accessibility in Nova Scotia](#). The requirements in the Accessible Canada Act are set out in more detailed language, however, compared to most other Canadian accessibility legislation. The Accessible Canada Act also requires the Accessibility Commissioner to focus on information about inspections, violations and other elements of overall enforcement in their annual report. This contrasts significantly to the annual reporting requirements found in provincial accessibility legislation to date, which focus on a range of broader issues, including standard development and awareness raising. While there may be provincial ministries that report on enforcement, enforcement reporting requirements are usually not found in the governing legislation.***

***Moreover, there is no requirement that the Minister produce an annual report on the ACA. This is likely because there is no mandatory requirement that a responsible minister be assigned to administer the ACA. The ACA (section 4) makes the appointment of a responsible minister discretionary on the part of the federal government.***

***Here are a few examples of the requirements to report under accessibility legislation elsewhere in Canada:***

- In the [Accessibility for Ontarians with Disabilities Act](#), section 40(1) lays out the requirement for an annual report, stating that “[t]he Minister shall prepare an annual report on the implementation and effectiveness of this Act.” With respect to the content of the report, section 40(2) indicates that the annual report should include “an analysis of how effective the standards development committees, the accessibility standards and the enforcement mechanisms provided for under this Act are in furthering the purpose of this Act.”
- In the [Accessibility for Manitobans Act](#), section 19(1) lays out the requirement for an annual report, stating:

*“Within six months after the end of each year, the minister must prepare a report on the following:*

- (a) the activities that the minister has undertaken in the year to carry out his or her mandate under this Act;*
- (b) the activities of the [Accessibility Advisory Council] in the year.”*

- Sections 8(1) and (2) of [An Act Respecting Accessibility in Nova Scotia](#) indicate that the responsible Minister must table an annual report. With respect to the contents of the report, the Nova Scotia statute requires information on a number of different aspects of the Minister’s mandate. These aspects are outlined in section 7:

*“7 (1) The mandate of the Minister is to achieve accessibility for persons disabled by barriers by*

- (a) raising awareness of how persons with disabilities are disabled by barriers;*
- (b) promoting and encouraging the prevention and removal of barriers;*
- (c) overseeing the development and implementation of accessibility standards necessary to attain the purpose of this Act;*
- (d) assisting in the integration of applicable accessibility standards into the activities of all persons in the Province; and*
- (e) ensuring persons in the Province are consulted in the development of accessibility standards and informed about their duties and responsibilities under the standards once created.”*

*The Nova Scotia statute asks the Minister to report on broad topics related to the smooth functioning of accessibility in Nova Scotia, including raising awareness, prevention of barriers and implementation. By contrast, the ACA asks, more narrowly, for a report on inspections and other aspects of administration and compliance.*

*Finally, section 61(1) of the [Canadian Human Rights Act](#) outlines requirements for an annual report by the Canadian Human Rights Commission, of which the Accessibility Commissioner is a part. In its annual report, the Commission can comment on matters within the broad scope of its policy work, including on human rights questions arising from any source. Under section 61(2) of the Canadian Human Rights Act, the Commission is also authorized to create special reports. It remains to be seen whether these powers under the Canadian Human Rights Act will permit for greater*

***commentary on accessibility issues or whether all commentary regarding accessibility will be channelled through the Accessibility Commissioner's reporting functions under the ACA.***

\*Reproduction of Act continues below\*

### **Delegation to any person**

- **40 (1)** Subject to subsection (2), the Accessibility Commissioner may delegate, subject to any restrictions or limitations that he or she may specify, any of his or her powers, duties and functions under this Act — other than those set out in sections 37 to 39, 76, 82, 84, 93, 95 to 103 and 110 and subsections 140(5), (7) and (8) and the power to delegate under this subsection and subsection (2) — to any person, other than the Chief Commissioner of the Canadian Human Rights Commission.
- **Delegation to member or staff of Commission**  
**(2)** The Accessibility Commissioner may delegate, subject to any restrictions or limitations that he or she may specify, any of his or her powers, duties and functions under sections 93 and 95 to 103 to another member of the Canadian Human Rights Commission — other than the Chief Commissioner — or to a member of the staff of that Commission.
- **Consultation**  
**(3)** The Accessibility Commissioner must consult with the Chief Commissioner before delegating any power, duty or function to a member of the Canadian Human Rights Commission.
- **Certificate of delegation — subsection (1)**  
**(4)** Each person to whom powers, duties or functions are delegated under subsection (1) must be provided with a certificate of delegation in the form established by the Accessibility Commissioner and, if the person enters any place under subsection 73(1), the person must, on request, produce the certificate to the occupant or person in charge of the place.
- **Certificate of delegation — subsection (2)**  
**(5)** Each person to whom powers, duties or functions are delegated under subsection (2) must be provided with a certificate of delegation in the form established by the Accessibility Commissioner and, if the person enters any place under subsection 73(1) or paragraph 98(d), the person must, on request, produce the certificate to the occupant or person in charge of the place.

\*Annotation\*

***The provision affords the Accessibility Commissioner a broad authority to delegate their powers to others. It displaces the common law rule of statutory interpretation that an administrative decision-maker cannot delegate their authority. (For an explanation of the rule, see [The Queen v. Harrison, \[1977\] 1 SCR 238.](#))***

***Delegation is important because it enables the Accessibility Commissioner — whose work involves numerous inspections (of premises, etc.) and the making of production and compliance orders, etc. — to share the work amongst staff. Delegation should result in having more inspections and orders completed, as well as having them completed more quickly and effectively. Please see Part 5 of the Accessible Canada Act***

*for information on the administration and enforcement duties (including conducting inspections and order-making) of the Accessibility Commissioner.*

*The ACA adopts a common practice of making it mandatory for individuals, such as staff, who have delegated powers to be required to show proof (i.e., a certificate) of their delegation upon demand (sections 40(4) and (5)).*

*The Accessibility Commissioner's authority to delegation is quite broad: the Commissioner can delegate any of their powers to any person, subject to the following three exceptions:*

- 1. The Accessibility Commissioner cannot delegate their authority under sections 37 to 39, 76, 82, 84 and 110 and sections 140(5), (7) and (8) at all.*
- 2. Under sections 93 and 95 to 103, the Accessibility Commissioner can only delegate their powers to another member of the Canadian Human Rights Commission or to a member of the Commission staff.*
- 3. The Accessibility Commissioner cannot delegate any of their authority to the Chief Commissioner of the Canadian Human Rights Commission.*

*The Accessibility Commissioner's power to delegate their authority is comparable to other accessibility statutes in Canada.*

*Section 34 of the [Accessibility for Ontarians with Disabilities Act](#) lays out the ability of the Minister to delegate powers.*

*Section 22(3) of [The Accessibility for Manitobans Act](#) lays out the ability of the Minister to delegate powers.*

*Sections 9(1) to (5) of [An Act Respecting Accessibility in Nova Scotia](#) provide detailed instructions on the power of delegation by the Minister.*

\*Reproduction of Act continues below \*

## **Immunity**

**41** No action or other proceeding of a civil nature lies against the Accessibility Commissioner, or any person acting on behalf or under the direction of the Accessibility Commissioner, in respect of anything that is done or omitted to be done in good faith while exercising their powers or performing their duties and functions under this Act.

\*Annotation\*

*This provision prevents the Accessibility Commissioner or anyone acting on their behalf or at their direction, from being sued for any action that they may have taken (or not taken) in good faith while performing their functions under the Accessible Canada Act. Some of the decisions of the Accessibility Commissioner are, however, subject to review under section 103 of the Act and to appeal to the Canadian Human Rights Tribunal under section 104 of the Accessible Canada Act.*

*Immunity from suit is very common in Canadian statutes involving public officials. There are comparable immunity from suit provisions in:*

- *the [Accessibility for Ontarians with Disabilities Act](#) (section 30(6) for directors),*
- *[The Accessibility for Manitobans Act](#) (s. 38, for the minister, directors and inspectors), and*
- *[An Act Respecting Accessibility in Nova Scotia](#) (sections 49 and 67 for the Minister, the Accessibility Directorate, the Board, the Director, an inspector and any other person acting under the authority of the Act)*

\*Reproduction of Act continues below \*

## PART 4

# Duties of Regulated Entities

\*Annotation\*

*A key expression used in the Annotated Canada Act is “regulated entity”. A regulated entity refers to a broad group of persons and organizations that fall within the following categories:*

- 1) *Individuals or organizations that operate works, undertakings or businesses within the jurisdiction of the federal government;*
- 2) *Individuals or organizations (including trustees, executors, liquidators administrators, guardians, etc.) that are acting on behalf of or for the benefit of the individuals or organizations under category 1);*
- 3) *Numerous federal government departments, agencies, commissions and tribunals that form part of the core public administration or are arm's-length agencies. (These are identified under Schedules I–V of the federal [Financial Administration Act, R.S.C. 1985, c. F-11.](#));*
- 4) *Any parts of the core public administration that the government explicitly designates to be a regulated entity under the ACA (see ACA sections 7(1)(c) and 7(3));*
- 5) *Federal Crown corporations such as the Canada Post Corporation, the Canadian Tourism Commission and the Windsor-Detroit Bridge Authority. (Many of the federal Crown corporations to which the ACA applies are listed in Schedule III of the federal [Financial Administration Act, R.S.C. 1985, c. F-11](#); and*
- 6) *the Canadian Forces.*

*Please see section 7 of the ACA for more information.*

*Part 4 of the Act establishes an obligation on every regulated entity to prepare an accessibility plan in consultation with persons with disabilities, to revise it periodically, and to create a progress report on the implementation of its accessibility plan in consultation with persons with disabilities. Finally, Part 4 obliges every regulated entity to develop a process in order to obtain feedback from users about the implementation of its accessibility plan.*

**The term “accessibility plan” is not defined in the definition section (section 2) of the ACA. Although it is not given a precise meaning in Part 4 of the statute either, one can determine from reading Part 4 that an accessibility plan should discuss the following elements, at a bare minimum:**

- 1) the policies, programs, practices and services relating to the identification, removal and prevention of barriers to inclusion, in the areas identified in section 5 of the ACA. (These areas include employment, the built environment, information and communication technologies etc. Please see section 5 for full details.);**
- 2) the provisions of any regulations relating to the identification, removal and prevention of barriers, that have been created under relevant sector-specific legislation and that apply to the regulated entity;**
- 3) the provisions of the accessibility standards (regulations) made under section 117(1) of the ACA that apply to the regulated entity.**

**What is particularly interesting about Part 4 is the architecture of this Part of the Act as it pertains to the duty to create accessibility plans as well as related documents and processes. Specifically, every regulated entity that belongs to the specialized sectors of broadcasting, telecommunications or transportation, is subject to two (2) sets of obligations when it comes to creating accessibility plans and related documents and processes:**

- i) obligations to create accessibility plans (and their related documents and processes) that stem from the principal legislation governing their sector (namely, the Broadcasting Act, the Telecommunications Act and the Canada Transportation Act);**
- ii) obligations to create accessibility plans (and their related documents and processes) that arise independently under the ACA.**

**Part 4 is an important, though controversial, part of the Act because it assigns sector-specific federal administrative tribunals to supervise the obligations relating to the accessibility plans of the regulated entities in question. Moreover it empowers the Minister, the CRTC and the CTA to exempt a regulated entity or class thereof from the requirement to prepare an initial or revised accessibility plan; establish a feedback process; and to prepare and publish progress reports.**

**Many of the provisions under Part 4 are repetitive. This is because the ACA gives each of the CRTC, the CTA and the Accessibility Commissioner similar authority to oversee the accessibility plans (and related documents and processes) of regulated entities in their subject-matter jurisdiction. In the case of the Accessibility Commissioner, the regulated entities overseen extend also to encompass the broad swath of regulated entities at the federal level that are not specialized by subject matter. Tables 4.1, 4.2 and 4.3 (located in our annotations below with links to more developed explanations on the Law, Disability & Social Change Website) provide information to help the reader navigate this statutory repetition.**

**We wish to make some general comments that address all of Part 4. We present these general comments on the following pages, here at the beginning of Part 4. They are divided into the following five subtopics: a) Disability Advocates’ Concerns about Part 4 of the ACA; b) Accessibility Plans; c) Accessibility Plans — Consultation and Revisions; d) Accessibility Plans — Feedback Processes; e) Accessibility Plans — Exemptions:**

a) **Disability Advocates' Concerns about Part 4 of the ACA**

*In 2018, when it was first introduced into the House of Commons as Bill C-81, the Accessible Canada Act was criticized for failing to place obligations directly on the broadcasting, telecommunications and transportation sectors that would require them to develop accessibility plans. The relevant sections of the Bill indicated that oversight bodies in these sectors (namely the CRTC and CTA) could, at their discretion, create regulations mandating their regulated entities to develop accessibility plans (see in particular sections 45(1), 54(1) and 63(1), which use the word “may”. As noted previously, operative words like “may” are permissive, and do not create a mandatory requirement.).*

*Critics called for Part 4 to place obligations on these sectors to create accessibility plans by replacing “may” with “shall” in order to make the requirements mandatory. By the time Bill C-81 had its final reading in the House of Commons, and moved to the Senate, new provisions had been added that required the CRTC and CTA to make at least one regulation within the first two years of the Act coming into force. (See for example section 45(1.1) read in conjunction with section 42(1); section 54(1.1) read in conjunction with section 51(1); and section 63(1.1) read in conjunction with section 60(1).)*

*Disability advocates were concerned that the authority to ensure accessibility had been splintered by delegating responsibility to subject-matter specialized tribunals without proper oversight and regulation of accessibility concerns in those sectors. [You may read more in this open letter from disability organizations, “Open Letter Regarding the Need to Strengthen Bill C-81 – Accessible Canada Act” \(October 30, 2018\).](#)*

b) **Accessibility Plans**

*How the preparation of an accessibility plan fits into the mechanisms under the Act for removing a barrier should be understood. An individual makes a regulated entity aware of a barrier; the regulated entity either removes the barrier or outlines in its accessibility plan what steps it will take to remove it; if the person thinks that the manner by which the accessibility plan proposes to remove the barrier is insufficient, they may give feedback to the regulated entity; and the person can re-inform the regulated entity of that barrier (or how the steps to remove it should be different) when the regulated entity updates its accessibility plan. The person can also advise the Accessibility Commissioner, the CTA or the CRTC of the barrier and why the steps to be taken to remove it are insufficient; provide feedback — in the progress report to the supervising body — of how the regulated entity is or is not addressing the barrier; and the person can make a complaint (under Part 6 of the ACA, section 94).*

*The requirement to prepare an initial accessibility plan and then revise it may allow a regulated entity to identify and then work toward the removal of newly emerging barriers. It may also allow the Accessibility Commissioner, the CTA or the CRTC to see what progress the regulated entity is making to remove barriers generally, and to take action if it is not satisfied that the regulated entity is moving fast enough to remove barriers.*

*The requirement to publish the initial and revised accessibility plans may serve a number of purposes: to inform the public of what the regulated entity understands the barriers to be; to inform the public of what it plans to do to remove those barriers; and, potentially, to present an internal accountability mechanism for assessing its progress in removing the barriers.*



*The requirement to provide the accessibility plan in an accessible format permits a person to ask for a copy of the accessibility plan in a format that is accessible to them. It might be of particular use to those who face barriers accessing print or electronic media.*

**c) Accessibility Plans — Consultation and Revisions**

*The duty to consult with people with disabilities in the preparation and revision of an accessibility plan is mandatory. Consideration should be made regarding the persons with disabilities who should be consulted (which may depend on who is affected by the barrier); the form that the consultation should take (how will it be accessible?) and what should be done with the results of the consultation (who will consider them?; how precisely will consultation results be used to make changes to the accessibility plan?). With respect to the form of the consultation, further specific considerations could arise regarding the manner of consultation. For instance, if a website is not readable by persons with visual challenges, a web-based consultation process might not be sufficient.*

*Absence of consideration for these types of issues could lead to challenges before the CTA, CRTC or the Accessibility Commissioner as to the sufficiency of the accessibility plan or the consultation process employed to develop it. Concerns about sufficiency could involve questions about whether the consultation process is adequately directed to the population of persons with disabilities facing the barrier, how that process meshes with the accessibility needs of that population, and how that consultation mechanism compares to other regulated entities in the same field comparable in size and scope. There could also be issues as to who would be in a position to advance such issues before the CTA or the CRTC (for example, a person with a disability affected by the barrier, a person who is also a client or consumer of the regulated entity, or a public interest organization meeting the criteria in Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society (2012 SCC 45) to advance such an issue).*

**d) Accessibility Plans — Feedback Processes**

*Regulated entities are required to develop feedback mechanisms on their accessibility plans. Feedback could be given on: the contents of the accessibility plan; how the accessibility plan is being implemented; the barriers encountered by persons in dealing with the regulated entity; to identify new barriers that come up and/or to highlight how an existing barrier is continuing. This information could inform how the implementation of the accessibility plan should be modified or how the barrier should be addressed in the revision to the accessibility plan.*

*There is, however, no explicit mechanism within the Act for the Accessibility Commissioner, the CTA or the CRTC to ensure the sufficiency of the feedback process. This is unfortunate, as a poor feedback process could affect how barriers are identified and plans are made to remove them. However, such a mechanism may come in the regulations, which will be published in the future.*

*The obligation to submit a progress report may allow the Accessibility Commissioner, the CTA or the CRTC to follow how the regulated entity is doing in removing barriers and implementing its accessibility plan. Active supervision by the Accessibility Commissioner, the CTA or the CRTC may position them to take steps to address any flaws in the implementation of the accessibility plan and/or the regulated entity's steps to remove barriers.*

*As noted above, the regulations for Part 4 of the Act have not yet been implemented. The regulation-making provisions allow the Minister, the CRTC or the CTA to start the clock for the one-year deadline for a regulated entity to: prepare and publish an accessibility plan; direct how an accessibility plan is to be prepared and published; establish standards for the feedback process; specify how the description of the feedback process is to be published; direct when the progress report is to be prepared and how it is to be published; and enact regulations related to those specified provisions.*

*Parliament chose to distribute the regulation-making authority across three regulators: the CRTC (for broadcasting and telecommunications); the CTA (for transportation) and the Minister (for all other regulated entities). The deadline for the CRTC to make its first regulation is July 10, 2021.*

***e) Accessibility Plans — Exemptions***

*This provision authorizes the Minister, the CTA and the CRTC to exempt a regulated entity or class thereof from the requirement to: prepare an initial or revised accessibility plan; establish a feedback process; and prepare and publish progress reports. The Minister, the CTA and the CRTC have a broad discretion to exempt (“on any terms that the Commission considers necessary”). Such exemptions have a limited duration, but there is no restriction on the ability to issue a fresh exemption.*

*Caution may be warranted by the Minister, the CTA and the CRTC in exercising the exemption power. Exemptions could prevent the identification of barriers and their removal, and/or allow existing or emerging barriers to linger. There could be challenges to the exercise of this exemption power. These challenges would likely need to proceed in the Federal Court via judicial review as the Act provides no internal mechanism for review of such orders. Persons with standing to make such a challenge could include persons with disabilities who face a barrier in one or more services offered by the regulated entity, and/or public interest organizations meeting the criteria in [Canada \(Attorney General\) v. Downtown Eastside Sex Workers United Against Violence Society \(2012 SCC 45\)](#) for public interest standing.*

*There are also significant exemptions within the broader structure of the ACA itself. For example, with respect to broadcasting, section 118(1) indicates that accessibility standards created as regulations under section 117 will apply to broadcasting undertakings only if they deal with four specific types of barriers. These types of barriers are enumerated in section 5(a), (b), (f) and (g) and concern employment, the built environment, transportation and any other areas designated by regulation by Cabinet under section 117(1)(b). What can be seen by the types of barrier enumerated is that they do not concern the core or pith and substance of broadcasting, telecommunications or transportation. A careful interpretation of the Act, reading sections 5, 117(1) and 118(1) and (3) show that accessibility issues related to the core or pith and substance of broadcasting will likely be regulated by the regulator responsible for broadcasting issues under the [Broadcasting Act](#), S.C. 1991, c. 11. A similar interpretation can be made for telecommunications and transportation.*

*Finally, the [Statutory Instruments Act](#) does not apply to these orders. This may signal that the exemption orders will not have the force of a regulation. If they do not have the force of regulations, they likely cannot be challenged on the basis of their vires — given the broad scope to make such exemption, a challenge on vires might have been difficult to make in any event. Rather, the exemption orders may be administrative decisions that can be challenged on their reasonableness, possibly in light of such factors as the*

*rationale for the exemption, to whom they apply, what they cover, for how long, how they allow a barrier to access to remain unabated, restrict persons affected by that barrier from seeking to have the regulated entity address it, and its impact on the principles underlying the ACA as expressed in section 6 of the Act.*

*This marks the end of our general comments. The reproduction of the Act continues below. We provide two tables of information on how to navigate the key requirements of Part 4 of the statute (accessibility plans, progress reports, feedback processes, exemptions, etc.) after each portion of Part 4 relating to broadcasting, telecommunications and transportation respectively.*

\*Reproduction of Act continues below \*

## Regulated Entities That Carry On Broadcasting Undertakings

### ***Accessibility Plans — Requirements Under the Broadcasting Act***

\*Reproduction of Act continues below \*

#### **Initial accessibility plan**

- **42 (1)** A regulated entity that carries on a broadcasting undertaking must, before the expiry of one year after the day fixed or determined by regulations made under subsection 45(1) that apply to that regulated entity, prepare and publish, in accordance with this Act and regulations made under that subsection, an accessibility plan respecting
  - **(a)** its policies, programs, practices and services in relation to the identification and removal of barriers, and the prevention of new barriers, in the areas referred to in paragraphs 5(c), (d) and (e), the area referred to in paragraph 5(c.1) as it relates to the areas referred to in paragraphs (d) and (e) and, if it is not subject to the *Employment Equity Act*, employment equity;
  - **(b)** the conditions of the regulated entity's licence issued under Part II of the *Broadcasting Act* that relate to the identification and removal of barriers and the prevention of new barriers;
  - **(c)** the provisions of any order made under subsection 9(4) of that Act that relate to the identification and removal of barriers and the prevention of new barriers and that apply to the regulated entity; and
  - **(d)** the provisions of any regulations made under subsection 10(1) of that Act that relate to the identification and removal of barriers and the prevention of new barriers and that apply to the regulated entity.
- **Updated accessibility plan**  
**(2)** The regulated entity must prepare and publish, in accordance with this Act and regulations made under subsection 45(1), an updated version of its accessibility plan no later than the third anniversary of the day on which the plan was last published or before the expiry of the applicable period prescribed by regulations made under that subsection.

- **Notice to Commission**

(3) The regulated entity must notify the Canadian Radio-television and Telecommunications Commission, within the time and in the manner prescribed in regulations made under subsection 45(1), of the publication of every version of its accessibility plan.
- **Duty to consult**

(4) The regulated entity must consult persons with disabilities in the preparation of its accessibility plan and every updated version of its accessibility plan.
- **Manner of consultation**

(5) The accessibility plan must set out the manner in which the regulated entity consulted persons with disabilities in the preparation of the plan.
- **Applicable requirements**

(6) The accessibility plan need not address a requirement that applies to the regulated entity and that is set out in a condition, order or regulation referred to in paragraphs (1)(b) to (d) unless the requirement has been in force at least three months before the day on which the accessibility plan must be published.
- **Duty to make plan available on request**

(7) If a person makes a request in accordance with subsection (8), the regulated entity must, within the time prescribed by regulations made under subsection 45(1), make its accessibility plan available to the person in the format prescribed by regulations made under that subsection that is indicated in the request.
- **Conditions**

(8) The request must be made in the form and manner prescribed by regulations made under subsection 45(1) and must indicate the format prescribed by regulations made under that subsection in which the accessibility plan is to be made available to the person making the request.
- **Principles**

(9) The regulated entity must take into account the principles set out in section 6 when it prepares an accessibility plan or an updated version of its accessibility plan.

## ***Feedback***

### **Establishment of process**

- **43 (1)** A regulated entity referred to in subsection 42(1) must establish a process for receiving feedback about the following and for dealing with that feedback:
  - (a) the manner in which the regulated entity is implementing its accessibility plan; and
  - (b) the barriers encountered by persons that deal with the regulated entity.
- **Publication**

(2) The regulated entity must publish a description of its process in accordance with regulations made under subsection 45(1).
- **Notice to Commission**

(3) The regulated entity must notify the Canadian Radio-television and Telecommunications Commission, within the time and in the manner prescribed in regulations made under subsection 45(1), of the publication of the description of every version of its process.

## Progress Reports

### Obligation

- **44 (1)** A regulated entity referred to in subsection 42(1) must prepare and publish, in accordance with this Act and regulations made under subsection 45(1), a progress report respecting its implementation of its accessibility plan.
- **Notice to Commission**  
**(2)** The regulated entity must notify the Canadian Radio-television and Telecommunications Commission, within the time and in the manner prescribed in regulations made under subsection 45(1), of the publication of its progress report.
- **Duty to consult**  
**(3)** The regulated entity must consult persons with disabilities in the preparation of its progress report.
- **Manner of consultation**  
**(4)** The progress report must set out the manner in which the regulated entity consulted persons with disabilities in the preparation of its progress report.
- **Feedback information**  
**(5)** The progress report must set out information concerning the feedback received by the regulated entity through its feedback process and how that feedback was taken into consideration.
- **Duty to make progress report available on request**  
**(6)** If a person makes a request in accordance with subsection (7), the regulated entity must, within the time prescribed by regulations made under subsection 45(1), make its progress report available to the person in the format prescribed by regulations made under that subsection that is indicated in the request.
- **Conditions**  
**(7)** The request must be made in the form and manner prescribed by regulations made under subsection 45(1) and must indicate the format prescribed by regulations made under that subsection in which the progress report is to be made available to the person making the request.

## Regulations

### Regulations

- **45 (1)** The Canadian Radio-television and Telecommunications Commission may make regulations
  - **(a)** fixing or determining, for the purposes of subsection 42(1), a day in respect of a regulated entity;
  - **(b)** specifying the form in which accessibility plans required by subsections 42(1) and (2) are to be prepared and the manner in which they are to be published;
  - **(b.1)** respecting the feedback process required by subsection 43(1);
  - **(c)** specifying the form and manner in which descriptions of the feedback process required by subsection 43(1) are to be published;

- **(d)** specifying the form in which progress reports required by subsection 44(1) are to be prepared and the time and manner in which they are to be published; and
- **(e)** prescribing anything that is to be prescribed by any of subsections 42(3), (7) and (8), 43(3) and 44(2), (6) and (7).
- **Obligation**

**(1.1)** The Canadian Radio-television and Telecommunications Commission must make at least one regulation under subsection (1) within the period of two years that begins on the day on which this subsection comes into force.
- **Distinguishing — classes**

**(2)** Regulations made under subsection (1) may distinguish among different classes of regulated entities.

## Exemptions

### Power to exempt

- **46 (1)** The Canadian Radio-television and Telecommunications Commission may, by order, exempt any regulated entity or class of regulated entities from the application of all or any part of sections 42 to 44, on any terms that the Commission considers necessary. The order ceases to have effect on the earlier of the end of the period of three years that begins on the day on which the order is made and the end of any shorter period specified in the order.
- **Non-application of *Statutory Instruments Act***

**(2)** The *Statutory Instruments Act* does not apply to an order made under subsection (1) in respect of a regulated entity, but the order must be published in the *Canada Gazette* and the reasons for the making of the order must be made available to the public.

## Accessibility Plans — Regulations Under This Act

### Initial accessibility plan

- **47 (1)** A regulated entity referred to in subsection 42(1) must, before the expiry of one year after the day fixed or determined by regulations made under subsection 117(1) that apply to that regulated entity, prepare and publish, in accordance with this Act and regulations made under subsection 117(1), an accessibility plan respecting
  - **(a)** its policies, programs, practices and services in relation to the identification and removal of barriers, and the prevention of new barriers, in the areas referred to in paragraphs 5(a), (b), (f) and (g) and in the area referred to in paragraph 5(c.1) as that paragraph applies in respect of the areas referred to in those paragraphs; and
  - **(b)** the provisions of regulations made under subsection 117(1) that apply to it.
- **Updated accessibility plan**

**(2)** The regulated entity must prepare and publish, in accordance with this Act and regulations made under subsection 117(1), an updated version of its accessibility plan no later than the third anniversary of the day on which the plan was last published or before the expiry of the applicable period prescribed by regulations made under that subsection.
- **Notice to Accessibility Commissioner**

**(3)** The regulated entity must notify the Accessibility Commissioner, within the time and in the

manner prescribed in regulations made under subsection 117(1), of the publication of every version of its accessibility plan.

- **Duty to consult**  
(4) The regulated entity must consult persons with disabilities in the preparation of its accessibility plan and every updated version of its accessibility plan.
- **Manner of consultation**  
(5) The accessibility plan must set out the manner in which the regulated entity consulted persons with disabilities in the preparation of the plan.
- **Applicable requirements**  
(6) The accessibility plan need not address a requirement that applies to the regulated entity and that is set out in regulations made under subsection 117(1) unless the requirement has been in force at least three months before the day on which the accessibility plan must be published.
- **Duty to make plan available on request**  
(7) If a person makes a request in accordance with subsection (8), the regulated entity must, within the time prescribed by regulations made under subsection 117(1), make its accessibility plan available to the person in the format prescribed by regulations made under that subsection that is indicated in the request.
- **Conditions**  
(8) The request must be made in the form and manner prescribed by regulations made under subsection 117(1) and must indicate the format prescribed by regulations made under that subsection in which the accessibility plan is to be made available to the person making the request.
- **Principles**  
(9) The regulated entity must take into account the principles set out in section 6 when it prepares an accessibility plan or an updated version of its accessibility plan.

## ***Feedback***

### **Establishment of process**

- **48 (1)** A regulated entity referred to in subsection 42(1) must establish a process for receiving feedback about the following and for dealing with that feedback:
  - (a) the manner in which the regulated entity is implementing its accessibility plan; and
  - (b) the barriers encountered by the regulated entity's employees and by other persons that deal with the regulated entity.
- **Publication**  
(2) The regulated entity must publish a description of its process in accordance with regulations made under subsection 117(1).
- **Notice to Accessibility Commissioner**  
(3) The regulated entity must notify the Accessibility Commissioner, within the time and in the manner prescribed in regulations made under subsection 117(1), of the publication of the description of every version of its process.

## ***Progress Reports***

### **Obligation**

- **49 (1)** A regulated entity referred to in subsection 42(1) must prepare and publish, in accordance with this Act and regulations made under subsection 117(1), a progress report respecting its implementation of its accessibility plan.
- **Notice to Accessibility Commissioner**  
**(2)** The regulated entity must notify the Accessibility Commissioner, within the time and in the manner prescribed in regulations made under subsection 117(1), of the publication of its progress report.
- **Duty to consult**  
**(3)** The regulated entity must consult persons with disabilities in the preparation of its progress report.
- **Manner of consultation**  
**(4)** The progress report must set out the manner in which the regulated entity consulted persons with disabilities in the preparation of its progress report.
- **Feedback information**  
**(5)** The progress report must set out information concerning the feedback received by the regulated entity through its feedback process and how that feedback was taken into consideration.
- **Duty to make progress report available on request**  
**(6)** If a person makes a request in accordance with subsection (7), the regulated entity must, within the time prescribed by regulations made under subsection 117(1), make its progress report available to the person in the format prescribed by regulations made under that subsection that is indicated in the request.
- **Conditions**  
**(7)** The request must be made in the form and manner prescribed by regulations made under subsection 117(1) and must indicate the format prescribed by regulations made under that subsection in which the progress report is to be made available to the person making the request.

## ***Exemptions***

### **Power to exempt**

- **50 (1)** The Minister may, by order, exempt any regulated entity or class of regulated entities from the application of all or any part of sections 47 to 49, on any terms that the Minister considers necessary. The order ceases to have effect on the earlier of the end of the period of three years that begins on the day on which the order is made and the end of any shorter period specified in the order.
- **Copy to Accessibility Commissioner**  
**(2)** The Minister must provide the Accessibility Commissioner with a copy of every order made under subsection (1).



- **Non-application of *Statutory Instruments Act***  
**(3)** The *Statutory Instruments Act* does not apply to an order made under subsection (1) in respect of a regulated entity, but the order must be published in the *Canada Gazette* and the reasons for the making of the order must be made available to the public.

Table 4.1 Part 1: Accessibility Plans — Requirements Under the *Broadcasting Act*

[You may also find this table with additional explanations at the following link.](#)

<i>Obligation of Regulated Entity</i>	<i>Relevant Provision</i>	<i>General Comments</i>	<i>Parallel ACA Provisions for Other Regulated Entities</i>
<p><b>Accessibility plans requirements under the <i>Broadcasting Act</i> (Initial accessibility plan)</b></p>	<p><b>Section 42</b></p>	<p><i>This is the first set of accessibility plans that every regulated entity will have to complete for the specialized administrative tribunal that oversees their sector. Each organization must publish their plan to remove all barriers and ensure the future is barrier-free. Deadlines for this will be set out by the forthcoming regulations. These organizations must also consult with people with disabilities. And these documents must be made available to the public upon request. These plans must also be updated according to the regulations. The regulations will have a significant effect on how these plans look, how they are updated, presented and followed through. These will be reported to the <u>CRTC</u> (for radio and</i></p>	<p><b>Sections 51, 60, 69</b></p>

<b><i>Obligation of Regulated Entity</i></b>	<b><i>Relevant Provision</i></b>	<b><i>General Comments</i></b>	<b><i>Parallel ACA Provisions for Other Regulated Entities</i></b>
		<i>telecommunications) or <u>CTA</u> (for transportation) as applicable.</i>	
<b><i>Establishment of feedback process</i></b>	<b><i>Section 43</i></b>	<b><i>Regulated entities will be required to outline how they will manage feedback from those who deal with them.</i></b>	<b><i>Sections 52, 61, 70</i></b>
<b><i>Progress reports</i></b>	<b><i>Section 44</i></b>	<b><i>Again, as the regulations are forthcoming, it is unclear when these reports will come due. However, they must include the progress of implementing the accessibility plan and include any feedback received.</i></b>	<b><i>Sections 53, 62, 71</i></b>
<b><i>Regulations — accessibility plan requirements</i></b>	<b><i>Section 45</i></b>	<b><i>This section outlines the suggestions for regulations.</i></b>	<b><i>Sections 54, 63</i></b>
<b><i>Exemptions — from requirements to</i></b>	<b><i>Section 46</i></b>	<b><i>This section allows the CRTC to exempt</i></b>	<b><i>Sections 55, 64, 72</i></b>

<b><i>Obligation of Regulated Entity</i></b>	<b><i>Relevant Provision</i></b>	<b><i>General Comments</i></b>	<b><i>Parallel ACA Provisions for Other Regulated Entities</i></b>
<b><i>produce accessibility plans</i></b>		<b><i>organizations from the creation and implementation of accessibility plans. A controversial section for many disability advocates, it remains to be seen if, how and when this power will be exercised.</i></b>	

Table 4.1 Part 2: Accessibility Plans — Regulations Under This Act (the *Accessible Canada Act*)

You may also find this table with additional explanations at the following link.

<b><i>Obligation of Regulated Entity</i></b>	<b><i>Relevant provision</i></b>	<b><i>General Comments</i></b>	<b><i>Parallel ACA provisions for other Regulated entities</i></b>
<b><i>Initial accessibility plan</i></b>	<b><i>Section 47</i></b>	<b><i>This is the second set of obligations relating to accessibility plans and related processes. The requirements are similar to those in the first set of obligations. However, the regulated entity must report directly to the Accessibility Commissioner, not the CRTC or CTA. Moreover, the governing accessibility regulations are created under the ACA, not the principal legislation governing the sector.</i></b>	<b><i>Sections 56, 65, 69</i></b>
<b><i>Feedback provisions — accessibility plan</i></b>	<b><i>Section 48</i></b>	<b><i>Again, the organizations will be required to create a feedback plan — similar to the requirements under the first set of obligations. Reporting requirements and the source of the obligation are the same as in section 47.</i></b>	<b><i>Sections 57, 66, 70</i></b>
<b><i>Progress reports — accessibility plan</i></b>	<b><i>Section 49</i></b>	<b><i>Again, organizations will be required to publish reports, including progress and feedback — similar to the requirements under the first set of obligations. Reporting requirements and the source of the obligation are the same as in section 47.</i></b>	<b><i>Sections 58, 67, 71</i></b>
<b><i>Power to exempt</i></b>	<b><i>Section 50</i></b>	<b><i>Finally, the Minister can exempt organizations from participating. It is still unclear if, how and when this power will be exercised. Currently, some provincial accessibility legislation, like <u>Manitoba's AMA</u>, also have provisions allowing for exemptions to be made.</i></b>	<b><i>Sections 59, 68, 72</i></b>

## Regulated Entities That Are Canadian Carriers or Telecommunications Service Providers

### ***Accessibility Plans — Requirements Under the Telecommunications Act***

#### **Initial accessibility plan**

- **51 (1)** A regulated entity that is a Canadian carrier or a telecommunications service provider must, before the expiry of one year after the day fixed or determined by regulations made under subsection 54(1) that apply to that regulated entity, prepare and publish, in accordance with this Act and regulations made under that subsection, an accessibility plan respecting
  - **(a)** its policies, programs, practices and services in relation to the identification and removal of barriers, and the prevention of new barriers, in the areas referred to in paragraphs 5(c), (d) and (e) and the area referred to in paragraph 5(c.1) as it relates to the areas referred to in paragraphs (d) and (e);
  - **(b)** the conditions imposed under section 24 or 24.1 of the *Telecommunications Act* to which the regulated entity is subject that relate to the identification and removal of barriers and the prevention of new barriers; and
  - **(c)** the provisions of any regulations made under that Act that relate to the identification and removal of barriers and the prevention of new barriers and that apply to the regulated entity.
- **Updated accessibility plan**

**(2)** The regulated entity must prepare and publish, in accordance with this Act and regulations made under subsection 54(1), an updated version of its accessibility plan no later than the third anniversary of the day on which the plan was last published or before the expiry of the applicable period prescribed by regulations made under that subsection.
- **Notice to Commission**

**(3)** The regulated entity must notify the Canadian Radio-television and Telecommunications Commission, within the time and in the manner prescribed in regulations made under subsection 54(1), of the publication of every version of its accessibility plan.
- **Duty to consult**

**(4)** The regulated entity must consult persons with disabilities in the preparation of its accessibility plan and every updated version of its accessibility plan.
- **Manner of consultation**

**(5)** The accessibility plan must set out the manner in which the regulated entity consulted persons with disabilities in the preparation of the plan.
- **Applicable requirements**

**(6)** The accessibility plan need not address a requirement that applies to the regulated entity and that is set out in a condition or regulation referred to in paragraphs (1)(b) and (c) unless the requirement has been in force at least three months before the day on which the accessibility plan must be published.
- **Duty to make plan available on request**

**(7)** If a person makes a request in accordance with subsection (8), the regulated entity must, within the time prescribed by regulations made under subsection 54(1), make its accessibility

plan available to the person in the format prescribed by regulations made under that subsection that is indicated in the request.

- **Conditions**

(8) The request must be made in the form and manner prescribed by regulations made under subsection 54(1) and must indicate the format prescribed by regulations made under that subsection in which the accessibility plan is to be made available to the person making the request.

- **Principles**

(9) The regulated entity must take into account the principles set out in section 6 when it prepares an accessibility plan or an updated version of its accessibility plan.

## ***Feedback***

### **Establishment of process**

- **52 (1)** A regulated entity referred to in subsection 51(1) must establish a process for receiving feedback about the following and for dealing with that feedback:
  - (a) the manner in which the regulated entity is implementing its accessibility plan; and
  - (b) the barriers encountered by persons that deal with the regulated entity.
- **Publication**

(2) The regulated entity must publish a description of its process in accordance with regulations made under subsection 54(1).
- **Notice to Commission**

(3) The regulated entity must notify the Canadian Radio-television and Telecommunications Commission, within the time and in the manner prescribed in regulations made under subsection 54(1), of the publication of the description of every version of its process.

## ***Progress Reports***

### **Obligation**

- **53 (1)** A regulated entity referred to in subsection 51(1) must prepare and publish, in accordance with this Act and regulations made under subsection 54(1), a progress report respecting its implementation of its accessibility plan.
- **Notice to Commission**

(2) The regulated entity must notify the Canadian Radio-television and Telecommunications Commission, within the time and in the manner prescribed in regulations made under subsection 54(1), of the publication of its progress report.
- **Duty to consult**

(3) The regulated entity must consult persons with disabilities in the preparation of its progress report.
- **Manner of consultation**

(4) The progress report must set out the manner in which the regulated entity consulted persons with disabilities in the preparation of its progress report.
- **Feedback information**

(5) The progress report must set out information concerning the feedback received by the

regulated entity through its feedback process and how that feedback was taken into consideration.

- **Duty to make progress report available on request**

**(6)** If a person makes a request in accordance with subsection (7), the regulated entity must, within the time prescribed by regulations made under subsection 54(1), make its progress report available to the person in the format prescribed by regulations made under that subsection that is indicated in the request.

- **Conditions**

**(7)** The request must be made in the form and manner prescribed by regulations made under subsection 54(1) and must indicate the format prescribed by regulations made under that subsection in which the progress report is to be made available to the person making the request.

## ***Regulations***

### **Regulations**

- **54 (1)** The Canadian Radio-television and Telecommunications Commission may make regulations
  - **(a)** fixing or determining, for the purposes of subsection 5(1), a day in respect of a regulated entity;
  - **(b)** specifying the form in which accessibility plans required by subsections 51(1) and (2) are to be prepared and the manner in which they are to be published;
  - **(b.1)** respecting the feedback process required by subsection 52(1);
  - **(c)** specifying the form and manner in which descriptions of the feedback process required by subsection 52(1) are to be published;
  - **(d)** specifying the form in which progress reports required by subsection 53(1) are to be prepared and the time and manner in which they are to be published; and
  - **(e)** prescribing anything that is to be prescribed by any of subsections 51(3), (7) and (8), 52(3) and 53(2), (6) and (7).
- **Obligation**

**(1.1)** The Canadian Radio-television and Telecommunications Commission must make at least one regulation under subsection (1) within the period of two years that begins on the day on which this subsection comes into force.
- **Distinguishing — classes**

**(2)** Regulations made under subsection (1) may distinguish among different classes of regulated entities.



## Exemptions

### Power to exempt

- **55 (1)** The Canadian Radio-television and Telecommunication Commission may, by order, exempt any regulated entity or class of regulated entities from the application of all or any part of sections 51 to 53, on any terms that the Commission considers necessary. The order ceases to have effect on the earlier of the end of the period of three years that begins on the day on which the order is made and the end of any shorter period specified in the order.
- **Non-application of *Statutory Instruments Act***  
**(2)** The *Statutory Instruments Act* does not apply to an order made under subsection (1) in respect of a regulated entity, but the order must be published in the *Canada Gazette* and the reasons for the making of the order must be made available to the public.

## Accessibility Plans — Regulations Under This Act

### Initial accessibility plan

- **56 (1)** A regulated entity referred to in subsection 51(1) must, before the expiry of one year after the day fixed or determined by regulations made under subsection 117(1) that apply to that regulated entity, prepare and publish, in accordance with this Act and regulations made under subsection 117(1), an accessibility plan respecting
  - **(a)** its policies, programs, practices and services in relation to the identification and removal of barriers, and the prevention of new barriers, in the areas referred to in paragraphs 5(a), (b), (f) and (g) and in the area referred to in paragraph 5(c.1) as it relates to the areas referred to in those paragraphs; and
  - **(b)** the provisions of regulations made under subsection 117(1) that apply to it.
- **Updated accessibility plan**  
**(2)** The regulated entity must prepare and publish, in accordance with this Act and regulations made under subsection 117(1), an updated version of its accessibility plan no later than the third anniversary of the day on which the plan was last published or before the expiry of the applicable period prescribed by regulations made under that subsection.
- **Notice to Accessibility Commissioner**  
**(3)** The regulated entity must notify the Accessibility Commissioner, within the time and in the manner prescribed in regulations made under subsection 117(1), of the publication of every version of its accessibility plan.
- **Duty to consult**  
**(4)** The regulated entity must consult persons with disabilities in the preparation of its accessibility plan and every updated version of its accessibility plan.
- **Manner of consultation**  
**(5)** The accessibility plan must set out the manner in which the regulated entity consulted persons with disabilities in the preparation of the plan.
- **Applicable requirements**  
**(6)** The accessibility plan need not address a requirement that applies to the regulated entity and that is set out in regulations made under subsection 117(1) unless the requirement has been in force at least three months before the day on which the accessibility plan must be published.

- **Duty to make plan available on request**

(7) If a person makes a request in accordance with subsection (8), the regulated entity must, within the time prescribed by regulations made under subsection 117(1), make its accessibility plan available to the person in the format prescribed by regulations made under that subsection that is indicated in the request.
- **Conditions**

(8) The request must be made in the form and manner prescribed by regulations made under subsection 117(1) and must indicate the format prescribed by regulations made under that subsection in which the accessibility plan is to be made available to the person making the request.
- **Principles**

(9) The regulated entity must take into account the principles set out in section 6 when it prepares an accessibility plan or an updated version of its accessibility plan.

## ***Feedback***

### **Establishment of process**

- **57 (1)** A regulated entity referred to in subsection 51(1) must establish a process for receiving feedback about the following and for dealing with that feedback:
  - (a) the manner in which the regulated entity is implementing its accessibility plan; and
  - (b) the barriers encountered by the regulated entity's employees and by other persons that deal with the regulated entity.
- **Publication**

(2) The regulated entity must publish a description of its process in accordance with regulations made under subsection 117(1).
- **Notice to Accessibility Commissioner**

(3) The regulated entity must notify the Accessibility Commissioner, within the time and in the manner prescribed in regulations made under subsection 117(1), of the publication of the description of every version of its process.

## ***Progress Reports***

### **Obligation**

- **58 (1)** A regulated entity referred to in subsection 51(1) must prepare and publish, in accordance with this Act and regulations made under subsection 117(1), a progress report respecting its implementation of its accessibility plan.
- **Notice to Accessibility Commissioner**

(2) The regulated entity must notify the Accessibility Commissioner, within the time and in the manner prescribed in regulations made under subsection 117(1), of the publication of its progress report.
- **Duty to consult**

(3) The regulated entity must consult persons with disabilities in the preparation of its progress report.

- **Manner of consultation**

(4) The progress report must set out the manner in which the regulated entity consulted persons with disabilities in the preparation of its progress report.
- **Feedback information**

(5) The progress report must set out information concerning the feedback received by the regulated entity through its feedback process and how that feedback was taken into consideration.
- **Duty to make progress report available on request**

(6) If a person makes a request in accordance with subsection (7), the regulated entity must, within the time prescribed by regulations made under subsection 117(1), make its progress report available to the person in the format prescribed by regulations made under that subsection that is indicated in the request.
- **Conditions**

(7) The request must be made in the form and manner prescribed by regulations made under subsection 117(1) and must indicate the format prescribed by regulations made under that subsection in which the progress report is to be made available to the person making the request.

## ***Exemptions***

### **Power to exempt**

- **59 (1)** The Minister may, by order, exempt any regulated entity or class of regulated entities from the application of all or any part of sections 56 to 58, on any terms that the Minister considers necessary. The order ceases to have effect on the earlier of the end of the period of three years that begins on the day on which the order is made and the end of any shorter period specified in the order.
- **Copy to Accessibility Commissioner**

(2) The Minister must provide the Accessibility Commissioner with a copy of every order made under subsection (1).
- **Non-application of *Statutory Instruments Act***

(3) The *Statutory Instruments Act* does not apply to an order made under subsection (1) in respect of a regulated entity, but the order must be published in the *Canada Gazette* and the reasons for the making of the order must be made available to the public.

\*Annotation\*

***Overall, this portion of the Act establishes the obligation on Canadian carriers and telecommunications service providers to prepare an accessibility plan, revise it periodically, develop a feedback process on a plan. It also assigns a particular administrative tribunal, the CRTC, to supervise those processes.***

\*Reproduction of Act continues below \*

Table 4.2 Part 1: Accessibility Plans — Requirements Under the *Broadcasting Act*

[You may also find this table with additional explanations at the following link.](#)

<b><i>Obligation of Regulated Entity</i></b>	<b><i>Relevant Provision</i></b>	<b><i>General Comments</i></b>	<b><i>Parallel ACA Provisions for Other Regulated Entities</i></b>
<b><i>Initial accessibility plans</i></b>	<b><i>Section 51</i></b>	<b><i>This is the first set of accessibility plans that every regulated entity will have to complete for the specialized administrative tribunal that oversees their sector. Each organization must publish their plan to remove all barriers and ensure the future is barrier-free. Deadlines for this will be set out by the forthcoming regulations. These organizations must also consult with people with disabilities. And these documents must be made available to the public upon request. These plans must also be updated according to the regulations. The regulations will have a significant effect on how these plans look, how they are updated, presented and followed through. These will be reported to the <u>CRTC</u> (for radio and telecommunications) or <u>CTA</u> (for transportation) as applicable.</i></b>	<b><i>Sections 42, 60, 69</i></b>
<b><i>Establishment of feedback process</i></b>	<b><i>Section 52</i></b>	<b><i>Regulated entities will be required to outline how they will manage feedback from those who deal with them.</i></b>	<b><i>Sections 43, 61, 70</i></b>
<b><i>Progress reports</i></b>	<b><i>Section 53</i></b>	<b><i>Again, as the regulations are forthcoming, it is unclear when these reports will come due. However, they must include the progress of implementing the accessibility plan and include any feedback received.</i></b>	<b><i>Sections 44, 62, 71</i></b>
<b><i>Regulations — accessibility plan requirements</i></b>	<b><i>Section 54</i></b>	<b><i>This section outlines the suggestions for regulation.</i></b>	<b><i>Sections 45, 63, 72</i></b>
<b><i>Exemptions — from requirements to produce accessibility plans</i></b>	<b><i>Section 55</i></b>	<b><i>This section allows the CRTC to exempt organizations from the creation and implementation of accessibility plans. A controversial section for many disability advocates, it remains to be seen if, how and when this power will be exercised.</i></b>	<b><i>Sections 46, 64</i></b>

Table 4.2 Part 2: Accessibility Plans — Regulations Under This Act (the *Accessible Canada Act*)

You may also find this table with additional explanations at the following link.

<b><i>Obligation of Regulated Entity</i></b>	<b><i>Relevant Provision</i></b>	<b><i>General Comments</i></b>	<b><i>Parallel ACA Provisions for Other Regulated Entities</i></b>
<b><i>Initial accessibility plan</i></b>	<b><i>Section 56</i></b>	<b><i>This is the second set of obligations relating to accessibility plans and related processes. The requirements are similar to those in the first set of obligations. However, the regulated entity must report directly to the Accessibility Commissioner, not the CRTC or CTA. Moreover, the governing accessibility regulations are created under the ACA, not the principal legislation governing the sector.</i></b>	<b><i>Sections 47, 65</i></b>
<b><i>Feedback provisions — accessibility plan</i></b>	<b><i>Section 57</i></b>	<b><i>Again, the organizations will be required to create a feedback plan — similar to the requirements under the first set of obligations. Reporting requirements and the source of the obligation are the same as in section 56.</i></b>	<b><i>Sections 48, 66</i></b>
<b><i>Progress reports — accessibility plan</i></b>	<b><i>Section 58</i></b>	<b><i>Again, organizations will be required to publish reports, including progress and feedback — similar to the requirements under the first set of obligations. Reporting requirements and the source of the obligation are the same as in section 56.</i></b>	<b><i>Sections 49, 67</i></b>
<b><i>Power to exempt</i></b>	<b><i>Section 59</i></b>	<b><i>Finally, the Minister can exempt organizations from participating. It is still unclear if, how and when this power will be exercised. Currently, some provincial accessibility legislation, like <u>Manitoba's AMA</u>, also have provisions allowing for exemptions to be made.</i></b>	<b><i>Sections 50, 68</i></b>

## Regulated Entities in the Transportation Network

### ***Accessibility Plans — Regulations Under the Canada Transportation Act***

\*Reproduction of Act continues below \*

#### **Initial accessibility plan**

- **60 (1)** A regulated entity that is required to comply with any provision of regulations made under subsection 170(1) of the *Canada Transportation Act* must, before the expiry of one year after the day fixed or determined by regulations made under subsection 63(1) that apply to that regulated entity, prepare and publish, in accordance with this Act and regulations made under subsection 63(1), an accessibility plan respecting
  - **(a)** its policies, programs, practices and services in relation to the identification and removal of barriers, and the prevention of new barriers, in
    - **(i)** the areas referred to in paragraphs 5(c) and (d) to (f),
    - **(ii)** the built environment, to the extent that the built environment is a passenger aircraft, passenger train, passenger bus, passenger vessel, aerodrome passenger terminal, railway passenger station, bus passenger station or marine passenger terminal, and
    - **(iii)** the area referred to in paragraph 5(c.1) as it relates to the areas referred to in paragraphs 5(c) and (d) to (f) and to the built environment referred to in subparagraph (ii); and
  - **(b)** the provisions of regulations made under subsection 170(1) of the *Canada Transportation Act* that apply to it.
- **Updated accessibility plan**

**(2)** The regulated entity must prepare and publish, in accordance with this Act and regulations made under subsection 63(1), an updated version of its accessibility plan no later than the third anniversary of the day on which the plan was last published or before the expiry of the applicable period prescribed by regulations made under that subsection.
- **Notice to Agency**

**(3)** The regulated entity must notify the Canadian Transportation Agency, within the time and in the manner prescribed in regulations made under subsection 63(1), of the publication of every version of its accessibility plan.
- **Duty to consult**

**(4)** The regulated entity must consult persons with disabilities in the preparation of its accessibility plan and every updated version of its accessibility plan.
- **Manner of consultation**

**(5)** The accessibility plan must set out the manner in which the regulated entity consulted persons with disabilities in the preparation of the plan.
- **Applicable requirements**

**(6)** The accessibility plan need not address a requirement that applies to the regulated entity and that is set out in regulations made under subsection 170(1) of the *Canada*

*Transportation Act* unless the requirement has been in force at least three months before the day on which the accessibility plan must be published.

- **Duty to make plan available on request**  
(7) If a person makes a request in accordance with subsection (8), the regulated entity must, within the time prescribed by regulations made under subsection 63(1), make its accessibility plan available to the person in the format prescribed by regulations made under that subsection that is indicated in the request.
- **Conditions**  
(8) The request must be made in the form and manner prescribed by regulations made under subsection 63(1) and must indicate the format prescribed by regulations made under that subsection in which the accessibility plan is to be made available to the person making the request.
- **Principles**  
(9) The regulated entity must take into account the principles set out in section 6 when it prepares an accessibility plan or an updated version of its accessibility plan.

## ***Feedback***

### **Establishment of process**

- **61 (1)** A regulated entity referred to in subsection 60(1) must establish a process for receiving feedback about the following and for dealing with that feedback:
  - (a) the manner in which the regulated entity is implementing its accessibility plan; and
  - (b) the barriers encountered by persons that deal with the regulated entity.
- **Publication**  
(2) The regulated entity must publish a description of its process in accordance with regulations made under subsection 63(1).
- **Notice to Agency**  
(3) The regulated entity must notify the Canadian Transportation Agency, within the time and in the manner prescribed in regulations made under subsection 63(1), of the publication of the description of every version of its process.

## ***Progress Reports***

### **Obligation**

- **62 (1)** A regulated entity referred to in subsection 60(1) must prepare and publish, in accordance with this Act and regulations made under subsection 63(1), a progress report respecting its implementation of its accessibility plan.
- **Notice to Agency**  
(2) The regulated entity must notify the Canadian Transportation Agency, within the time and in the manner prescribed in regulations made under subsection 63(1), of the publication of its progress report.
- **Duty to consult**  
(3) The regulated entity must consult persons with disabilities in the preparation of its progress report.

- **Manner of consultation**

(4) The progress report must set out the manner in which the regulated entity consulted persons with disabilities in the preparation of its progress report.
- **Feedback information**

(5) The progress report must set out information concerning the feedback received by the regulated entity through its feedback process and how that feedback was taken into consideration.
- **Duty to make progress report available on request**

(6) If a person makes a request in accordance with subsection (7), the regulated entity must, within the time prescribed by regulations made under subsection 63(1), make its progress report available to the person in the format prescribed by regulations made under that subsection that is indicated in the request.
- **Conditions**

(7) The request must be made in the form and manner prescribed by regulations made under subsection 63(1) and must indicate the format prescribed by regulations made under that subsection in which the progress report is to be made available to the person making the request.

## ***Regulations***

### **Regulations**

- **63 (1)** The Canadian Transportation Agency may, with the approval of the Governor in Council given on the recommendation of the Minister of Transport, make regulations
  - (a) fixing or determining, for the purposes of subsection 60(1), a day in respect of a regulated entity;
  - (b) specifying the form in which accessibility plans required by subsections 60(1) and (2) are to be prepared and the manner in which they are to be published;
  - (b.1) respecting the feedback process required by subsection 61(1);
  - (c) specifying the form and manner in which descriptions of the feedback process required by subsection 61(1) are to be published;
  - (d) specifying the form in which progress reports required by subsection 62(1) are to be prepared and the time and manner in which they are to be published; and
  - (e) prescribing anything that is to be prescribed by any of subsections 60(2), (3), (7) and (8), 61(3) and 62(2), (6) and (7).
- **Obligation**

(1.1) The Canadian Transportation Agency must make at least one regulation under subsection (1) within the period of two years that begins on the day on which this subsection comes into force.
- **Distinguishing — classes**

(2) Regulations made under subsection (1) may distinguish among different classes of regulated entities.

## ***Exemptions***

### **Power to exempt**



- **64 (1)** The Canadian Transportation Agency, with the approval of the Minister of Transport, may, by order, exempt any regulated entity or class of regulated entities from the application of all or any part of sections 60 to 62, on any terms that the Agency considers necessary. The order ceases to have effect on the earlier of the end of the period of three years that begins on the day on which the order is made and the end of any shorter period specified in the order.
- **Non-application of *Statutory Instruments Act***  
**(2)** The *Statutory Instruments Act* does not apply to an order made under subsection (1) in respect of a regulated entity, but the order must be published in the *Canada Gazette* and the reasons for the making of the order must be made available to the public.

## ***Accessibility Plans — Regulations Under This Act***

### **Initial accessibility plan**

- **65 (1)** A regulated entity referred to in subsection 60(1) must, before the expiry of one year after the day fixed or determined by regulations made under subsection 117(1) that apply to that regulated entity, prepare and publish, in accordance with this Act and regulations made under subsection 117(1), an accessibility plan respecting
  - **(a)** its policies, programs, practices and services in relation to the identification and removal of barriers, and the prevention of new barriers, in
    - **(i)** the areas referred to in paragraphs 5(a) and (g),
    - **(ii)** the built environment, other than passenger aircraft, passenger trains, passenger buses, passenger vessels, aerodrome passenger terminals, railway passenger stations, bus passenger stations or marine passenger terminals, and
    - **(iii)** the area referred to in paragraph 5(c.1) as it relates to the areas referred to in paragraphs 5(a) and (g) and to the built environment referred to in subparagraph (ii); and
  - **(b)** the provisions of regulations made under subsection 117(1) that apply to it.
- **Updated accessibility plan**  
**(2)** The regulated entity must prepare and publish, in accordance with this Act and regulations made under subsection 117(1), an updated version of its accessibility plan no later than the third anniversary of the day on which the plan was last published or before the expiry of the applicable period prescribed by regulations made under that subsection.
- **Notice to Accessibility Commissioner**  
**(3)** The regulated entity must notify the Accessibility Commissioner, within the time and in the manner prescribed in regulations made under subsection 117(1), of the publication of every version of its accessibility plan.
- **Duty to consult**  
**(4)** The regulated entity must consult persons with disabilities in the preparation of its accessibility plan and every updated version of its accessibility plan.
- **Manner of consultation**  
**(5)** The accessibility plan must set out the manner in which the regulated entity consulted persons with disabilities in the preparation of the plan.
- **Applicable requirements**  
**(6)** The accessibility plan need not address a requirement that applies to the regulated entity

and that is set out in regulations made under subsection 117(1) unless the requirement has been in force at least three months before the day on which the accessibility plan must be published.

- **Duty to make plan available on request**

(7) If a person makes a request in accordance with subsection (8), the regulated entity must, within the time prescribed by regulations made under subsection 117(1), make its accessibility plan available to the person in the format prescribed by regulations made under that subsection that is indicated in the request.

- **Conditions**

(8) The request must be made in the form and manner prescribed by regulations made under subsection 117(1) and must indicate the format prescribed by regulations made under that subsection in which the accessibility plan is to be made available to the person making the request.

- **Principles**

(9) The regulated entity must take into account the principles set out in section 6 when it prepares an accessibility plan or an updated version of its accessibility plan.

## ***Feedback***

### **Establishment of process**

- **66 (1)** A regulated entity referred to in subsection 60(1) must establish a process for receiving feedback about the following and for dealing with that feedback:
  - (a) the manner in which the regulated entity is implementing its accessibility plan; and
  - (b) the barriers encountered by the regulated entity's employees and by other persons that deal with the regulated entity.
- **Publication**

(2) The regulated entity must publish a description of its process in accordance with regulations made under subsection 117(1).
- **Notice to Accessibility Commissioner**

(3) The regulated entity must notify the Accessibility Commissioner, within the time and in the manner prescribed in regulations made under subsection 117(1), of the publication of the description of every version of its process.

## ***Progress Reports***

### **Obligation**

- **67 (1)** A regulated entity referred to in subsection 60(1) must prepare and publish, in accordance with this Act and regulations made under subsection 117(1), a progress report respecting its implementation of its accessibility plan.
- **Notice to Accessibility Commissioner**

(2) The regulated entity must notify the Accessibility Commissioner, within the time and in the manner prescribed in regulations made under subsection 117(1), of the publication of its progress report.

- **Duty to consult**  
(3) The regulated entity must consult persons with disabilities in the preparation of its progress report.
- **Manner of consultation**  
(4) The progress report must set out the manner in which the regulated entity consulted persons with disabilities in the preparation of its progress report.
- **Feedback information**  
(5) The progress report must set out information concerning the feedback received by the regulated entity through its feedback process and how that feedback was taken into consideration.
- **Duty to make progress report available on request**  
(6) If a person makes a request in accordance with subsection (7), the regulated entity must, within the time prescribed by regulations made under subsection 117(1), make its progress report available to the person in the format prescribed by regulations made under that subsection that is indicated in the request.
- **Conditions**  
(7) The request must be made in the form and manner prescribed by regulations made under subsection 117(1) and must indicate the format prescribed by regulations made under that subsection in which the progress report is to be made available to the person making the request.

## ***Exemptions***

### **Power to exempt**

- **68 (1)** The Minister may, by order, exempt any regulated entity or class of regulated entities from the application of all or any part of sections 65 to 67, on any terms that the Minister considers necessary. The order ceases to have effect on the earlier of the end of the period of three years that begins on the day on which the order is made and the end of any shorter period specified in the order.
- **Copy to Accessibility Commissioner**  
(2) The Minister must provide the Accessibility Commissioner with a copy of every order made under subsection (1).
- **Non-application of *Statutory Instruments Act***  
(3) The *Statutory Instruments Act* does not apply to an order made under subsection (1) in respect of a regulated entity, but the order must be published in the *Canada Gazette* and the reasons for the making of the order must be made available to the public.

\*Annotation\*

***Overall, this portion of the Act establishes the obligation on federally regulated transportation entities to prepare an accessibility plan, revise it periodically, develop a feedback process on a plan. It also assigns a particular administrative tribunal, the CTA, to supervise those processes.***

Table 4.3 Part 1: Accessibility Plans — Regulations Under the *Canada Transportation Act*

You may also find this table with additional explanations at the following [link](#).

<b><i>Obligation of Regulated Entity</i></b>	<b><i>Relevant Provision</i></b>	<b><i>General Comments</i></b>	<b><i>Parallel ACA Provisions for Other Regulated Entities</i></b>
<b><i>Initial accessibility plans</i></b>	<b><i>Section 60</i></b>	<b><i>This is the first set of accessibility plans that every regulated entity will have to complete for the specialized administrative tribunal that oversees their sector. Each organization must publish their plan to remove all barriers and ensure the future is barrier-free. Deadlines for this will be set out by the forthcoming regulations. These organizations must also consult with people with disabilities. And these documents must be made available to the public upon request. These plans must also be updated according to the regulations. The regulations will have a significant effect on how these plans look, how they are updated, presented and followed through. These will be reported to the <u>CRTC</u> (for radio and telecommunications) or <u>CTA</u> (for transportation) as applicable.</i></b>	<b><i>Sections 42, 51, 69</i></b>
<b><i>Establishment of feedback process</i></b>	<b><i>Section 61</i></b>	<b><i>Regulated entities will be required to outline how they will manage feedback from those who deal with them.</i></b>	<b><i>Sections 43, 52, 70</i></b>
<b><i>Progress reports</i></b>	<b><i>Section 62</i></b>	<b><i>Again, as the regulations are forthcoming, it is unclear when these reports will come due. However, they must include the progress of implementing the accessibility plan and include any feedback received.</i></b>	<b><i>Sections 44, 53, 71</i></b>
<b><i>Regulations — accessibility plan requirements</i></b>	<b><i>Section 63</i></b>	<b><i>This section outlines the suggestions for regulation.</i></b>	<b><i>Sections 45, 54</i></b>

<p><b>Exemptions — from requirements to produce accessibility plans</b></p>	<p><b>Section 64</b></p>	<p><i>This section allows the CTA to exempt organizations from the creation and implementation of accessibility plans. A controversial section for many disability advocates, it remains to be seen if, how and when this power will be exercised.</i></p>	<p><b>Sections 46, 55,72</b></p>
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**Table 4.3 Part 2: Accessibility Plans — Regulations Under This Act (the *Accessible Canada Act*)**

You may also find this table with additional explanations at the following [link](#).

<b><i>Obligation of Regulated Entity</i></b>	<b><i>Relevant Provision</i></b>	<b><i>General Comments</i></b>	<b><i>Parallel ACA Provisions for Other Regulated Entities</i></b>
<b><i>Initial accessibility plan</i></b>	<b><i>Section 65</i></b>	<b><i>This is the second set of obligations relating to accessibility plans and related processes. The requirements are similar to those in the first set of obligations. However, the regulated entity must report directly to the Accessibility Commissioner, not the CRTC or CTA. Moreover, the governing accessibility regulations are created under the ACA, not the principal legislation governing the sector.</i></b>	<b><i>Sections 47, 56, 69</i></b>
<b><i>Feedback provisions — accessibility plan</i></b>	<b><i>Section 66</i></b>	<b><i>Again, the organizations will be required to create a feedback plan — similar to the requirements under the first set of obligations. Reporting requirements and the source of the obligation are the same as in section 65.</i></b>	<b><i>Sections 48, 57, 70</i></b>
<b><i>Progress reports — accessibility plan</i></b>	<b><i>Section 67</i></b>	<b><i>Again, organizations will be required to publish reports, including progress and feedback — similar to the requirements under the first set of obligations. Reporting requirements and the source of the obligation are the same as in section 65.</i></b>	<b><i>Sections 49, 58, 71</i></b>
<b><i>Power to exempt</i></b>	<b><i>Section 68</i></b>	<b><i>Finally, the Minister can exempt organizations from participating. It is still unclear if, how and when this power will be exercised. Currently, some provincial accessibility legislation, like <u>Manitoba's AMA</u>, also have provisions allowing for exemptions to be made.</i></b>	<b><i>Sections 50, 59, 72</i></b>

## Other Regulated Entities

### ***Accessibility Plans — Regulations Under This Act***

#### **Initial accessibility plan**

- **69 (1)** A regulated entity — other than a regulated entity referred to in any of subsections 42(1), 51(1) and 60(1) — must, before the expiry of one year after the day fixed or determined by regulations made under subsection 117(1) that apply to that regulated entity, prepare and publish, in accordance with this Act and regulations made under subsection 117(1), an accessibility plan respecting
  - **(a)** its policies, programs, practices and services in relation to the identification and removal of barriers, and the prevention of new barriers, in the areas referred to in paragraphs 5(a) to (g); and
  - **(b)** the provisions of regulations made under subsection 117(1) that apply to it.
- **Updated accessibility plan**

**(2)** The regulated entity must prepare and publish, in accordance with this Act and regulations made under subsection 117(1), an updated version of its accessibility plan no later than the third anniversary of the day on which the plan was last published or before the expiry of the applicable period prescribed by regulations made under that subsection.
- **Notice to Accessibility Commissioner**

**(3)** The regulated entity must notify the Accessibility Commissioner, within the time and in the manner prescribed in regulations made under subsection 117(1), of the publication of every version of its accessibility plan.
- **Duty to consult**

**(4)** The regulated entity must consult persons with disabilities in the preparation of its accessibility plan and every updated version of its accessibility plan.
- **Manner of consultation**

**(5)** The accessibility plan must set out the manner in which the regulated entity consulted persons with disabilities in the preparation of the plan.
- **Applicable requirements**

**(6)** The accessibility plan need not address a requirement that applies to the regulated entity and that is set out in regulations made under subsection 117(1) unless the requirement has been in force at least three months before the day on which the accessibility plan must be published.
- **Duty to make plan available on request**

**(7)** If a person makes a request in accordance with subsection (8), the regulated entity must, within the time prescribed by regulations made under subsection 117(1), make its accessibility plan available to the person in the format prescribed by regulations made under that subsection that is indicated in the request.
- **Conditions**

**(8)** The request must be made in the form and manner prescribed by regulations made under subsection 117(1) and must indicate the format prescribed by regulations made under that subsection in which the accessibility plan is to be made available to the person making the request.

- **Principles**

(9) The regulated entity must take into account the principles set out in section 6 when it prepares an accessibility plan or an updated version of its accessibility plan.

## ***Feedback***

### **Establishment of process**

- **70 (1)** A regulated entity — other than a regulated entity referred to in any of subsections 42(1), 51(1) and 60(1) — must establish a process for receiving feedback about the following and for dealing with that feedback:
  - **(a)** the manner in which the regulated entity is implementing its accessibility plan; and
  - **(b)** the barriers encountered by the regulated entity's employees and by other persons that deal with the regulated entity.
- **Publication**

(2) The regulated entity must publish a description of its process in accordance with regulations made under subsection 117(1).
- **Notice to Accessibility Commissioner**

(3) The regulated entity must notify the Accessibility Commissioner, within the time and in the manner prescribed in regulations made under subsection 117(1), of the publication of the description of every version of its process.

## ***Progress Reports***

### **Obligation**

- **71 (1)** A regulated entity — other than a regulated entity referred to in any of subsections 42(1), 51(1) and 60(1) — must prepare and publish, in accordance with this Act and regulations made under subsection 117(1), a progress report respecting its implementation of its accessibility plan.
- **Notice to Accessibility Commissioner**

(2) The regulated entity must notify the Accessibility Commissioner, within the time and in the manner prescribed in regulations made under subsection 117(1), of the publication of its progress report.
- **Duty to consult**

(3) The regulated entity must consult persons with disabilities in the preparation of its progress report.
- **Manner of consultation**

(4) The progress report must set out the manner in which the regulated entity consulted persons with disabilities in the preparation of its progress report.
- **Feedback information**

(5) The progress report must set out information concerning the feedback received by the regulated entity through its feedback process and how that feedback was taken into consideration.
- **Duty to make progress report available on request**

(6) If a person makes a request in accordance with subsection (7), the regulated entity must,



within the time prescribed by regulations made under subsection 117(1), make its progress report available to the person in the format prescribed by regulations made under that subsection that is indicated in the request.

- **Conditions**

(7) The request must be made in the form and manner prescribed by regulations made under subsection 117(1) and must indicate the format prescribed by regulations made under that subsection in which the progress report is to be made available to the person making the request.

## **Exemptions**

### **Power to exempt**

- **72 (1)** The Minister may, by order, exempt any regulated entity or class of regulated entities from the application of all or any part of sections 69 to 71, on any terms that the Minister considers necessary. The order ceases to have effect on the earlier of the end of the period of three years that begins on the day on which the order is made and the end of any shorter period specified in the order.
- **Copy to Accessibility Commissioner**

(2) The Minister must provide the Accessibility Commissioner with a copy of every order made under subsection (1).
- **Non-application of *Statutory Instruments Act***

(3) The *Statutory Instruments Act* does not apply to an order made under subsection (1) in respect of a regulated entity, but the order must be published in the *Canada Gazette* and the reasons for the making of the order must be made available to the public.

\*Annotation\*

*Overall, this portion of the Act (sections 69-72) places an obligation on regulated entities other than those related to broadcasting, telecommunications and transportation (discussed above and receiving statutory treatment in sections 42 to 68, ACA) to prepare accessibility plans, to revise them every three years and to develop feedback processes for their plans. The statute creates a duty to consult with people with disabilities during these processes. The Accessibility Commissioner is assigned to oversee these processes, as set out in sections 69(3), 70(3) and 71(2) of the Act. Similar to other parts of the ACA, an exemption power has been provided. Here, it has been provided to the Minister. By virtue of section 72, the Minister has the discretion to exempt regulated entities from the obligation of creating accessibility plans, progress reports and feedback processes. Exemptions must be for a specified period of time and cannot exceed 3 years. The Minister must make the exemptions by way of an order and give notice to the Accessibility Commissioner of the order that has been made (section 72(2)).*

*Although this segment of the Accessible Canada Act is short, containing only 3 major sections, it is of significant import. These sections of the ACA apply to the bulk of federally regulated entities and they, in turn, represent a wide range and collection of businesses, works and undertakings. This collection includes banks, Crown corporations, federal public sector workplaces, parliamentary entities (the House of Commons, Senate), and several federal tribunals, boards and agencies. (See our*

*annotation directly under “PART 4 Duties of Regulated Entities” above for a definition of federally regulated entities.)*

*One should note the interplay between the regulations (i.e. accessibility standards) that will be created under section 117 and the obligations for accessibility plans and the related processes such as those relating to feedback. For example, it is noteworthy that the accessibility plan, its updates and all progress reports must be developed in accordance with both the ACA and the regulations.*

\*Reproduction of Act continues below \*

## PART 5

# Administration and Enforcement

\*Annotation\*

*This section of the Act sets out the enforcement and prevention powers of the Accessibility Commissioner, who is tasked with overseeing compliance with the Act. The enforcement powers of the Accessibility Commissioner only cover matters that fall within the scope of the Act. As noted above, some regulated entities (e.g., transportation) may be subject to a different administration and enforcement process.*

\*Reproduction of Act continues below \*

## Inspections

### Power to enter

- **73 (1)** Subject to subsection (7), the Accessibility Commissioner may, for a purpose related to verifying compliance or preventing non-compliance with any of sections 47 to 49, 56 to 58, 65 to 67 and 69 to 71 or any provision of regulations made under subsection 117(1), enter any place, including a conveyance, in which he or she has reasonable grounds to believe there is any record, report, electronic data or other document, or any information or thing, relevant to that purpose.
- **Other powers**
  - (2)** The Accessibility Commissioner may, for that purpose,
    - **(a)** open and examine any receptacle or package found in the place;
    - **(b)** examine anything found in the place;
    - **(c)** examine any record, report, electronic data or other document that is found in the place and make copies of it or take extracts from it;
    - **(d)** use or cause to be used any computer system at the place to examine any electronic data referred to in paragraph (c);
    - **(e)** reproduce any document from any electronic data referred to in paragraph (c), or cause it to be reproduced, in the form of a printout or other output;

- **(f)** take the record, report or other document referred to in paragraph (c) or the printout or other output referred to in paragraph (e) for examination or copying;
  - **(g)** use or cause to be used any copying equipment at the place to make copies of any document;
  - **(h)** take photographs and make recordings and sketches;
  - **(i)** order the owner or person having possession of any thing to which any provision of regulations made under subsection 117(1) applies that is found in that place to move it or, for any time that may be necessary, not to move it or to restrict its movement;
  - **(j)** order the owner or person having possession of any conveyance that is found in the place to stop the conveyance, to move it or, for any time that may be necessary, not to move it or to restrict its movement;
  - **(k)** order any person in that place to establish their identity to the Accessibility Commissioner's satisfaction, or to the satisfaction of the Accessibility Commissioner's delegate, as the case may be; and
  - **(l)** order a person in that place to start any activity that is necessary for the purpose of the inspection or to stop any activity that impedes the inspection.
- **Means of telecommunication**

**(3)** For the purposes of subsection (1), the Accessibility Commissioner is considered to have entered a place when accessing it remotely by a means of telecommunication.
  - **Limitation — place not accessible to the public**

**(4)** The Accessibility Commissioner who, by a means of telecommunication, accesses remotely a place that is not accessible to the public must do so with the knowledge of the owner or person in charge of the place and must be remotely in the place for no longer than the period necessary for the purpose referred to in subsection (1).
  - **Accompanying individual**

**(5)** The Accessibility Commissioner may be accompanied by any other individual the Accessibility Commissioner believes is necessary to help him or her exercise his or her powers or perform his or her duties or functions under this section.
  - **Entering private property**

**(6)** The Accessibility Commissioner and any individual accompanying him or her may enter and pass through private property, other than a dwelling-house on that property, in order to gain entry to a place referred to in subsection (1). For greater certainty, they are not liable for doing so.
  - **Consent required to enter dwelling-house**

**(7)** In the case of a dwelling-house, the Accessibility Commissioner may enter it only with the consent of an occupant.
  - **Assistance**

**(8)** The owner or other person in charge of a place entered by the Accessibility Commissioner or his or her delegate under subsection (1) and every individual found in the place must give the Accessibility Commissioner or the delegate, as the case may be, all reasonable assistance in the individual's power and provide the Accessibility Commissioner or delegate with any information that the Accessibility Commissioner or delegate may reasonably require.

\*Annotation\*

*The Accessibility Commissioner is afforded broad inspection powers to ensure compliance with the Act. For the Accessibility Commissioner to conduct an inspection, they must have reasonable grounds to believe that there is a record, report, electronic data or other document, or any information or thing, relevant to the purpose of verifying compliance or preventing non-compliance. While the “reasonable grounds to believe” criterion does not require proof on the usual civil procedure standard of a balance of probabilities, it does require a true belief in a serious possibility (of an issue) based on credible evidence (see Chiau v. Canada (Minister of Citizenship and Immigration) at para. 60).*

*The Accessibility Commissioner's inspection powers include the power to enter private property (other than a dwelling house, which requires consent of an occupant), examine electronic data including data on a computer, make copies of documents and take photos. The Accessibility Commissioner may also request that individuals comply with tasks necessary to the inspection taking place.*

*The Accessibility Commissioner's inspection powers include interesting provisions relating to remote access. If the Accessibility Commissioner accesses property remotely via telecommunication, they will be considered to have entered the place once the remote access has begun. If the property is not accessible to the public, then the Accessibility Commissioner may remain remotely in that place only so long as necessary to complete the inspection.*

*Although the office of the Accessibility Commissioner is unique to the federal Accessible Canada Act, inspection powers may be found in The Accessibility for Manitobans Act at section 24, and the Accessibility for Ontarians with Disabilities Act starting at section 18.*

*Inspection powers and the corresponding authority to retain documents and information may raise concerns regarding the protection in section 8 of the Charter against unreasonable search and seizure. The reasonableness of search and seizure is highly contextual (see R. v. Rodgers). There is a robust and intricate body of jurisprudence from the Supreme Court of Canada and other appellate courts in Canada as to what qualifies as search and/or seizure and when one or both are unreasonable. There may also be issues as to whether or not regulated entities that are corporations may exercise rights under section 8 of the Charter and/or when they may do so. A full examination of these issues is beyond the scope of this annotation.*

*The ACA does not indicate that a warrant is required for the Accessibility Commissioner to examine documents, etc.*

*Any challenges to the exercise of the Accessibility Commissioner's inspection powers will need to be made by way of judicial review before the Federal Court (see for example Mackenzie v. Canada (Transportation Safety Board), 2018 FC 728). One can speculate that challenges could arise for a number of reasons. For example, one could argue that the Minister did not have proper grounds to pursue the inspection, seize or copy the information or thing, or conducted too broad of a search. While the relief may vary with the situation, relief could include an order that the documents be returned or that information obtained not be used or considered by the Accessibility Commissioner. One will need to wait until cases have arisen in order to have a better sense of the*

**challenges that will be brought against the Accessibility Commissioner's inspection powers.**

\*Reproduction of Act continues below\*

## Production Order

### Power to order production

- **74 (1)** The Accessibility Commissioner may, for a purpose related to verifying compliance or preventing non-compliance with any of sections 47 to 49, 56 to 58, 65 to 67 and 69 to 71 or any provision of regulations made under subsection 117(1), make an order requiring a regulated entity to produce, at the time and place specified in the order, for examination or copying, any record, report, electronic data or other document that the Accessibility Commissioner has reasonable grounds to believe contains information that is relevant to that purpose.
- **Copies**  
(2) The Accessibility Commissioner may
  - (a) make copies or take extracts from the record, report, electronic data or other document produced under an order made under subsection (1); and
  - (b) reproduce any document from such electronic data, or cause it to be reproduced, in the form of a printout or other output.

\*Annotation\*

***Section 74(1) gives the Accessibility Commissioner the power to order that entities make available certain documents to them (commonly called a “production order”). This means that the Accessibility Commissioner can require entities such as the businesses that it regulates to produce documents, if those documents will assist the Accessibility Commissioner to verify compliance or prevent non-compliance with the Act. Section 74(2) of this provision allows the Accessibility Commissioner to copy or take extracts from the material produced and reproduce documents from electronic data, all for purposes of promoting compliance or preventing non-compliance with the Act.***

***This provision relates to specific elements of the compliance process, in particular, the requirement to prepare accessibility plans and feedback processes for identifying barriers, as well as the requirements for implementing accessibility plans, which include the preparation of progress reports, after consulting with persons with disabilities about the entity's progress. Other aspects of compliance that are subjected to this section of the Act stem from any regulations (accessibility standards) made pursuant to section 117(1). At the time of writing, no regulations have yet been made under the ACA.***

***One should recall that the three categories of specialized regulated entities encompassed by this provision (broadcasting, telecommunications and transportation)***

*may be exempted from these compliance requirements (see sections 46, 50, 55, 59, 64 and 72). There are also significant exemptions within the broader structure of the ACA itself. For example, with respect to broadcasting, section 118(1) indicates that accessibility standards created as regulations under section 117 will apply to broadcasting undertakings only if they deal with four specific types of barriers. These types of barrier are enumerated in section 5(a), (b), (f) and (g) and concern employment, the built environment, transportation and any other areas designated by regulation by Cabinet under section 117 (1) (b). What can be seen by the types of barrier enumerated is that they do not concern the core or pith and substance of broadcasting, telecommunications or transportation. A careful interpretation of the Act, reading sections 5, 117(1) and 118(1) and (3) show that accessibility issues related to the core or pith and substance of broadcasting will likely be regulated by the regulator responsible for broadcasting issues under the [Broadcasting Act](#), S.C. 1991, c. 11. A similar interpretation can be made for telecommunications and transportation.*

*The ACA only allows for appeals to the Canadian Human Rights Tribunal from decisions of the Accessibility Commissioner relating to damage or injury caused to an individual as a result of a regulated entity's contravention of the Act (sections 94 and 104). Therefore, when it comes to challenges to the exercise of the Accessibility Commissioner's power to issue a production order under section 76, regulated entities would need to bring those challenges by way of judicial review before the Federal Court. As with challenges to inspections generally discussed above, these challenges could be based on a number of grounds including those alleging that the Accessibility Commissioner did not have proper grounds to pursue the inspection, or to issue the production order. The grounds of the challenge could affect the relief sought for any improper use of these powers.*

*As with the power to enter discussed above in relation to section 73, the Commissioner's authority to compel production may raise concerns regarding protection under section 8 of the [Charter](#) against unreasonable search and seizure. The reasonableness of search and seizure is highly contextual (see [R. v. Rodgers](#)). There is a robust and intricate body of jurisprudence from the Supreme Court of Canada and other appellate courts in Canada as to what qualifies as a search and/or a seizure and when one or both are unreasonable. A full examination of these issues are beyond the scope of this annotation.*

\*Reproduction of Act continues below \*

## Compliance Order

### Power to order termination of contravention

- **75 (1)** If the Accessibility Commissioner has reasonable grounds to believe that a regulated entity is contravening or has contravened any of sections 47 to 49, 56 to 58, 65 to 67 and 69 to 71 or any provision of regulations made under subsection 117(1), he or she may make a compliance order requiring the regulated entity to terminate the contravention within the time specified in the order or to take any step specified in the order, within the time specified in the order, to ensure that the contravention does not continue or reoccur.

- **Copy**  
(2) The Accessibility Commissioner must cause the regulated entity to be served with a copy of the order.

\*Annotation\*

*The Accessibility Commissioner has broad authority to order a regulated entity to comply with the requirements to prepare initial and updated accessibility plans, prepare a feedback process for identifying barriers and implementing an accessibility plan, the preparation of progress reports, and any requirement imposed by regulation made pursuant to section 117(1).*

*The Accessibility Commissioner requires “reasonable grounds to believe” in order to make a compliance order. While “reasonable grounds to believe” does not require proof on the usual civil standard of balance of probabilities, it does require a true belief in a serious possibility of a contravention based on credible evidence (see Chiau v. Canada (Minister of Citizenship and Immigration) at [para. 60](#)).*

*If the Accessibility Commissioner makes a compliance order, the Accessibility Commissioner must also ensure that the regulated entity is served with the compliance order.*

*Common law procedural fairness may require that the order include information about the contravention, including what the issue is, where and when it occurred, how it is occurring and the date by which the problem must be rectified. However, this will have to be determined through quasi-judicial or judicial interpretation of the provision.*

\*Reproduction of Act continues below \*

## Request for review

- **76 (1)** Subject to any other provision of this section, an order that is made under section 75 must be reviewed by the Accessibility Commissioner on the written request of the regulated entity to which the order is addressed.
- **Contents and time for making request**  
(2) The request must be made within the time and in the manner specified in the order and state the grounds for review and set out the evidence that supports those grounds.
- **Order in effect**  
(3) An order made under section 75 continues to apply during a review unless the Accessibility Commissioner decides otherwise.
- **Decision on completion of review**  
(4) On completion of a review, the Accessibility Commissioner must confirm, amend, revoke or cancel the order.
- **Notice of decision**  
(5) The Accessibility Commissioner must cause the regulated entity to be served with a notice setting out the Accessibility Commissioner’s decision under subsection (4) and the reasons for it.

\*Annotation\*

***Section 76 allows for the review of a compliance order by the Accessibility Commissioner. This is a form of reconsideration. It can only be requested by the regulated entity that is subject to the order. The grounds for review and the supporting evidence are to be set out in the request.***

***The original order will continue to apply during the review period unless the Accessibility Commissioner decides otherwise. At the end of the review, the Accessibility Commissioner must confirm, amend, revoke or cancel the order. A notice must be served to the regulated entity setting out the decision reached in the review and providing reasons.***

***The Governor in Council (Cabinet) is empowered under section 117(1)(k) of the Act to make regulations as to when the Accessibility Commissioner's review can be oral or must be in writing. These regulations have not yet been made.***

\*Reproduction of Act continues below \*

## Administrative Monetary Penalties

### Commission — regulated entity

- **77 (1)** Every regulated entity that contravenes any of the following commits a violation and is liable to a warning or to a penalty fixed in accordance with regulations made under subsection 91(1):
  - **(a)** any of subsections 47(1) to (4) and (7), 48(1) to (3), 49(1) to (3) and (6), 56(1) to (4) and (7), 57(1) to (3), 58(1) to (3) and (6), 65(1) to (4) and (7), 66(1) to (3), 67(1) to (3) and (6), 69(1) to (4) and (7), 70(1) to (3), 71(1) to (3) and (6) and 73(8) and sections 124 to 126;
  - **(b)** an order made under section 74;
  - **(c)** an order made under subsection 75(1) or amended under subsection 76(4); and
  - **(d)** a provision of regulations made under subsection 117(1).
- **Commission — person**
  - (2)** Every person that contravenes an order made under any of paragraphs 73(2)(i) to (l) or contravenes subsection 73(8) or section 124 or 125 commits a violation and is liable to a warning or to a penalty fixed in accordance with regulations made under subsection 91(1).
- **Exception**
  - (3)** Subsection (2) does not apply to a specified person as defined in subsection 140(11).

### Purpose of penalty

**78** The purpose of a penalty is to promote compliance with this Act and not to punish.

### Issuance of notice of violation



- **79 (1)** If the Accessibility Commissioner has reasonable grounds to believe that a regulated entity or person has committed a violation, the Accessibility Commissioner may issue, and must cause to be served on the regulated entity or person, a notice of violation that names the regulated entity or person, identifies the violation and
  - **(a)** contains a warning; or
  - **(b)** sets out
    - **(i)** the penalty for the violation that the regulated entity or person is liable to pay,
    - **(ii)** the particulars concerning the time and manner of payment of the penalty, and
    - **(iii)** the lesser amount that may be paid in complete satisfaction of the penalty if paid within the time and manner specified in the notice.
- **Summary of rights and obligations**

**(2)** The notice of violation must also summarize, in plain language, the rights and obligations of the regulated entity or person under this Part, including their right referred to in subsection 80(1), or their rights referred to in subsection 81(2), and the procedure for exercising that right, or those rights, as the case may be.

### Warning — right to request review

- **80 (1)** A regulated entity or person that is served with a notice of violation that sets out a warning may, within the time and in the manner specified in the notice, request a review of the Acts or omissions that constitute the violation.
- **Warning — right not exercised**

**(2)** If a regulated entity or person that is served with a notice of violation that contains a warning does not exercise the right referred to in subsection (1) within the time and in the manner specified in the notice, they are deemed to have committed the violation identified in the notice of violation.

### Notices with penalty — payment

- **81 (1)** If a notice of violation sets out a penalty and the regulated entity or person named in the notice pays, within the time and in the manner specified in the notice, the amount of the penalty or the lesser amount set out in the notice,
  - **(a)** they are deemed to have committed the violation in respect of which the amount is paid;
  - **(b)** the Accessibility Commissioner must accept that amount in complete satisfaction of the penalty; and
  - **(c)** the proceedings commenced in respect of the violation are ended.
- **Alternatives to payment**

**(2)** Instead of paying the penalty set out in a notice of violation or the lesser amount that may be paid in lieu of the penalty, the regulated entity or person named in the notice may, within the time and in the manner specified in the notice,

  - **(a)** request to enter into a compliance agreement with the Accessibility Commissioner for the purpose of ensuring their compliance with the provisions of this Act or of regulations made under subsection 117(1), or the order, to which the violation relates; or

- **(b)** request a review of the Acts or omissions that constitute the violation or of the amount of the penalty.
- **Deeming**  
**(3)** If a regulated entity or person that is served with a notice of violation does not exercise any right referred to in subsection (2) within the time and in the manner specified in the notice, they are deemed to have committed the violation identified in the notice.

## Entering into compliance agreements

- **82 (1)** After considering a request made under paragraph 81(2)(a), the Accessibility Commissioner may enter into a compliance agreement, as described in that paragraph, with the regulated entity or person making the request on any terms that the Accessibility Commissioner considers appropriate. The terms may
  - **(a)** include a provision for the deposit of reasonable security, in a form and amount satisfactory to the Accessibility Commissioner, as a guarantee that the regulated entity or person will comply with the compliance agreement; and
  - **(b)** provide for the reduction, in whole or in part, of the penalty for the violation.
- **Deeming**  
**(2)** A regulated entity or person that enters into a compliance agreement is, on doing so, deemed to have committed the violation in respect of which the compliance agreement was entered into.
- **Notice of compliance**  
**(3)** If the Accessibility Commissioner is satisfied that a regulated entity or person that has entered into a compliance agreement has complied with it, the Accessibility Commissioner must cause the regulated entity or person to be served with a notice of compliance, and once it is served,
  - **(a)** the proceedings commenced in respect of the violation are ended; and
  - **(b)** any security given under the compliance agreement must be returned to them.
- **Notice of default**  
**(4)** If the Accessibility Commissioner is of the opinion that a regulated entity or person that has entered into a compliance agreement has not complied with it, the Accessibility Commissioner must cause the regulated entity or person to be served with a notice of default informing them of one of the following:
  - **(a)** that instead of being liable to pay the amount of the penalty set out in the notice of violation in respect of which the compliance agreement was entered into, they are liable to pay, within the time and in the manner set out in the notice of default, and without taking account of the limit set out in subsection 91(2), an amount that is twice the amount of that penalty;
  - **(b)** that the security, if any, given under the compliance agreement will be forfeited to Her Majesty in right of Canada.
- **Effect of service of notice of default — payment**  
**(5)** If served with a notice of default under paragraph (4)(a), the regulated entity or person may not deduct from the amount set out in the notice of default any amount they spent under the compliance agreement and they are liable to pay the amount set out in the notice of default within the time and in the manner specified in the notice of default.

- **Effect of service of notice of default — forfeiture**  
(6) If served with a notice of default under paragraph (4)(b), the security is forfeited to Her Majesty in right of Canada and the proceedings commenced in respect of the violation are ended.
- **Effect of payment**  
(7) If the regulated entity or person pays the amount set out in the notice of default within the time and in the manner specified in the notice of default, the Accessibility Commissioner must accept the amount in complete satisfaction of the amount owing in respect of the violation and the proceedings commenced in respect of the violation are ended.

### **Refusal to enter into compliance agreement**

- **83 (1)** If the Accessibility Commissioner refuses to enter into a compliance agreement requested under paragraph 81(2)(a), the regulated entity or person that made the request is liable to pay, within the time and in the manner specified in the notice of violation, the amount of the penalty set out in the notice of violation.
- **Effect of payment**  
(2) If the regulated entity or person pays the amount set out in the notice of violation within the time and in the manner specified in the notice of violation,
  - (a) they are deemed to have committed the violation in respect of which the amount is paid;
  - (b) the Accessibility Commissioner must accept the amount in complete satisfaction of the penalty in respect of the violation; and
  - (c) the proceedings commenced in respect of the violation are ended.
- **Deeming**  
(3) If the regulated entity or person does not pay the amount set out in the notice of violation within the time and in the manner specified in the notice of violation, they are deemed to have committed the violation identified in the notice of violation.

### **Review — with respect to facts**

- **84 (1)** On completion of a review requested under subsection 80(1), or under paragraph 81(2)(b) with respect to the Acts or omissions that constitute the violation, the Accessibility Commissioner must determine, on a balance of probabilities, whether the regulated entity or person that requested the review committed the violation.
- **Violation not committed — effect**  
(2) If the Accessibility Commissioner determines under subsection (1) that the regulated entity or person did not commit the violation, the proceedings commenced in respect of it are ended.
- **Violation committed — penalty**  
(3) If the Accessibility Commissioner determines that the regulated entity or person committed the violation, and a penalty was set out in the notice of violation, the Accessibility Commissioner must determine whether the amount of the penalty was fixed in accordance with regulations made under subsection 91(1) and
  - (a) if the Accessibility Commissioner determines that it was correctly fixed, he or she must confirm the amount of the penalty; and

- **(b)** if the Accessibility Commissioner determines that it was not correctly fixed, he or she must correct the amount.
- **Notice of decision**

**(4)** The Accessibility Commissioner must cause the regulated entity or person to be served with a notice that sets out the Accessibility Commissioner's decision under this section and the reasons for it and, if the amount of the penalty was confirmed or corrected by the Accessibility Commissioner, the time and manner in which that amount is to be paid.
- **Payment**

**(5)** The regulated entity or person is liable to pay, within the time and in the manner specified in the notice, the amount of the penalty confirmed or corrected by the Accessibility Commissioner.
- **Effect of payment**

**(6)** If a regulated entity or person pays the amount referred to in subsection (5), the Accessibility Commissioner must accept the amount in complete satisfaction of the penalty in respect of the violation and the proceedings commenced in respect of the violation are ended.

### **Certain defences not available**

- **85 (1)** A regulated entity or person named in a notice of violation does not have a defence by reason that they
  - **(a)** exercised due diligence to prevent the violation; or
  - **(b)** reasonably and honestly believed in the existence of facts that, if true, would exonerate them.
- **Common law principles**

**(2)** Every rule and principle of the common law that renders any circumstance a justification or excuse if the Act or omission to which the violation relates could have been the subject of a charge for an offence under this Act but for section 127 applies in respect of a violation to the extent that it is not inconsistent with this Act.

### **Party to violation**

**86** If a regulated entity commits a violation, any of the following persons that directed, authorized, assented to, acquiesced in or participated in the commission of the violation is a party to and liable for the violation whether or not the regulated entity is proceeded against under this Act:

- **(a)** an officer, director, agent or mandatary of the regulated entity;
- **(b)** a senior official of the regulated entity; or
- **(c)** any other person authorized to exercise managerial or supervisory functions on behalf of the regulated entity.

### **Employees or agents or mandataries**

**87** A regulated entity is liable for a violation that is committed by any of their employees or agents or mandataries acting in the course of their employment or the scope of their authority as agent or mandatary, whether or not the employee or agent or mandatary that actually committed the violation is identified.

## Continuing violation

**88** A violation that is committed or continued on more than one day constitutes a separate violation in respect of each day on which it is committed or continued.

## Evidence

**89** In any proceeding in respect of a violation, a notice of violation purporting to be issued under this Act is admissible in evidence without proof of the signature or official character of the individual purporting to have signed the notice of violation.

## Limitation period or prescription

**90** No proceedings in respect of a violation may be commenced after the expiry of two years after the day on which the subject matter of the proceedings arose.

## Regulations

- **91 (1)** The Governor in Council may make regulations
  - **(a)** classifying each violation as a minor violation, a serious violation or a very serious violation;
  - **(b)** fixing a penalty, or a range of penalties, in respect of each violation;
  - **(c)** establishing criteria to be considered in determining the amount of the penalty if a range of penalties is established;
  - **(d)** respecting the determination of a lesser amount for the purposes of subparagraph 79(1)(b)(iii) and the time and manner in which it is to be paid;
  - **(e)** respecting the circumstances under which, the criteria by which and the manner in which a penalty for a violation may be reduced under the terms of a compliance agreement entered into under subsection 82(1);
  - **(f)** respecting the circumstances under which reviews under section 84 are to be oral or in writing; and
  - **(g)** specifying information for the purposes of section 93.
- **Paragraph (1)(b)**

**(2)** The maximum penalty in respect of a violation that may be fixed under regulations made under paragraph (1)(b) is \$250,000.

## Powers regarding notices of violation

**92** The Accessibility Commissioner may establish the form of notices of violation and establish, in respect of each violation, a short-form description to be used in notices of violation.

## Publication

- **93** The Accessibility Commissioner may make public
  - **(a)** the name of a regulated entity or person that is determined under section 84, or that is deemed by this Act, to have committed a violation;
  - **(b)** the nature of the violation;
  - **(c)** the amount of the penalty imposed, if any; and
  - **(d)** any other information specified in regulations made under subsection 91(1).

\*Annotation\*

**Sections 77 to 93 (above) establish the procedure related to the administrative monetary penalties which are intended to promote compliance with the Accessible Canada Act. The Accessibility Commissioner has the authority to issue a Notice of Violation under section 79 which can either provide a warning or levy an administrative monetary penalty. Section 77 outlines the infractions for which a warning or an administrative monetary penalty may be levied. Section 78 states that the purpose of the penalties is not to punish but promote compliance.**

**Regulated entities or persons issued a warning can seek a review of what has occurred from the Accessibility Commissioner under section 80(1). The timeframe and steps for requesting a review are set out in the notice of violation.**

**Regulated entities or persons issued an administrative monetary penalty can request to enter into a compliance agreement with the Accessibility Commissioner under section 81(2)(a) of the Accessible Canada Act. . The Accessibility Commissioner has the authority to accept or reject a proposed compliance agreement — if the proposal is rejected, the regulated entity or persons issued can pay the penalty or seek a review under section 83 of the Act.**

**Regulated entities or persons issued an administrative monetary penalty can also seek a review of the evidence or of the amount of the penalty under section 81(2)(b),**

**Requesting a compliance agreement, a review of the evidence said to constitute the violation, or of the amount of the penalty are the 3 alternatives to payment of the penalty available under the Act.**

**Defences of due diligence to prevent the violation, or of reasonable and honest but mistaken understanding of the facts are not available to a regulated entity or person that has received a notice of violation (Section 85(1)).**

**More information on the nature of compliance agreements is provided in sections 82-83.**

**Sections 84 and 85 outline how reviews of warnings and administrative monetary penalties are to be conducted.**

**Under sections 86 and 87 of the Act, a regulated entity can be liable for a violation committed by its corporate officers, senior officials, managers, supervisors, employees, agents or mandataries. Section 90 provides a limitation period for bringing proceedings regarding a violation. This time limit is two years after the day when the infringement occurred. Section 91 sets out the powers of the Governor in Council to make regulations concerning these processes. The Governor in Council (Cabinet) may make regulations classifying violations as minor, serious or very serious, determining penalties, etc.**

**The Accessibility Commissioner may make public the name of the entity or individual who has committed the violation, the nature of the violation and other related information (section 93).**

\*Reproduction of Act continues below \*

## PART 6

**Remedies****Filing of Complaint****Right to file complaint**

- **94 (1)** Any individual that has suffered physical or psychological harm, property damage or economic loss as the result of — or that has otherwise been adversely affected by — a contravention by a regulated entity of any provision of regulations made under subsection 117(1) may file with the Accessibility Commissioner a complaint that is in a form acceptable to the Accessibility Commissioner.
- **Exception — *Federal Public Sector Labour Relations Act* — employee**  
**(2)** An employee, as defined in subsection 2(1) of the *Federal Public Sector Labour Relations Act*, is not entitled to file a complaint in respect of a contravention of any provision of regulations made under subsection 117(1) if he or she is entitled to present an individual grievance in respect of that contravention under section 208 of that Act, determined without taking into account subsection 208(2) of that Act and the definition of employee in subsection 206(1) of that Act.
- **Exception — *Federal Public Sector Labour Relations Act* — RCMP member**  
**(3)** An employee, as defined in subsection 2(1) of the *Federal Public Sector Labour Relations Act*, that is an RCMP member is not entitled to file a complaint in respect of a contravention of any provision of regulations made under subsection 117(1) if he or she is entitled to present an individual grievance in respect of that contravention under section 238.24 of that Act, determined without taking into account subsection 208(2) of that Act.
- **Exception — *Public Service Employment Act***  
**(4)** An individual is not entitled to file a complaint in respect of a contravention of any provision of regulations made under subsection 117(1) if he or she is entitled to make a complaint in respect of that contravention under section 65 or 77 of the *Public Service Employment Act*.
- **Notice**  
**(5)** The Accessibility Commissioner must cause a written notice of a complaint to be served on the regulated entity against which the complaint was made.

\*Annotation\*

***Part 6 of the ACA sets out the process for filing complaints with the Accessibility Commissioner for contraventions of the regulations established under the Accessible Canada Act. Part 6 also establishes the Accessibility Commissioner's power to undertake investigations and order remedies when a complaint is substantiated.***

***Individuals can pursue a complaint where they have suffered: (i) physical harm; (ii) psychological harm; (iii) property damage; or (iv) economic loss. They may***

**also file a complaint if they have been otherwise adversely affected because a regulated entity contravened a regulation made under section 117(1).**

**In the Accessibility Commissioner's assessment of such complaints, future litigable issues may arise regarding the "what, why and how" of these complaints. Regarding the "what", there will likely be questions as to the nature and degree of impact that qualifies as psychological harm, and/or economic loss. There may also be issues as to what qualifies as "adversely affected" and/or the threshold of harm that is required for an adverse effect to exist.**

**Regarding the "why", legal issues may arise regarding whether the harm is "as a result of" a violation of the Accessible Canada Act regulations. The expression "as a result of" has been held in other contexts to envision a causal link ([see for example, Saskatchewan Government Insurance v. Pipchuk, 2008 SKCA 82, \[2008\] I.L.R. 1-4706, 170 A.C.W.S. \(3d\) 185, 311 Sask. R. 81, 428 W.A.C. 81, 63 C.C.L.I. \(4th\) 1 at paras. 33-36](#)).**

**Regarding the "how", in framing a complaint, an individual will likely need to explain what loss or harm they incurred, when or how they incurred it, and how that loss or harm is related to the contravention of the regulations made under section 117(1) of the Act. The complainant should also specify what remedy (or combination of remedies) available under section 102 they would like the Accessibility Commissioner to give, explaining that the remedy (or remedies) is warranted in the circumstances.**

**More specifically, section 94 identifies a prominent role for the three Federal Public Sector Labour Relations and Employment Board (FPSLREB). The FPSLREB (or "Board") is a specialized administrative tribunal that regularly addresses complaints from federal public servants and parliamentary employees. It has been given responsibility for deciding certain complaints relating to employees (including RCMP members) even if they also involve disability access. To do this, the Board has been permitted to interpret and apply the Accessible Canada Act under the relevant public service statute.**

**Section 94(1) provides individuals with the right to file a complaint if they have suffered "physical or psychological harm, property damage or economic loss". However, the right to file a complaint to the Accessibility Commissioner does not apply to employees (including RCMP members) in the federal public service who are entitled to present a grievance under the Federal Public Sector Labour Relations Act (FPSLRA) or the Public Service Employment Act (PSEA). Those individuals remain entitled to file a complaint for the contravention of the Accessible Canada Act, but must do so by way of individual grievance under the FPSLRA or the PSEA.**

**Public service employees who believe that they were aggrieved by the interpretation of a statute, have been selected for layoff incorrectly, or have been an unsuccessful candidate in an internal appointment process, may bring a complaint to the FPSLREB (or "Board"). The FPSLREB or "the Board" will interpret and apply the Accessible Canada Act if a contravention of that Act is alleged. The Accessibility Commissioner has the power to make submissions before the Board.**



***Ultimately, the Board may provide a remedy in accordance with section 102 of the Accessible Canada Act. Ultimate power raises the question of whether there will be coherence or fragmentation in the vision behind the decisions decided by the Accessibility Commissioner on disability access and the decisions made by the FPSLREB. It would be useful for mechanisms to be put in place to foster coherence in the decision-making of all bodies charged with the authority to interpret and apply the Accessible Canada Act.***

***The Accessibility Commissioner can, as a result of an investigation, dismiss a complaint under section 101 or find a complaint to be substantiated under section 102. If a complaint is found to be substantiated, the Accessibility Commissioner has the authority to order the regulated entity to provide one or more of the avenues of reliefs outlined in section 102(1). These avenues include requiring the regulated entity to provide the complainant with the rights and opportunities that they were denied, and paying the complainant compensation for the alternate good services facilities, etc. that they needed to obtain for accessibility purposes. (For the full list of remedies see sector 102 below.)***

***The Accessibility Commissioner is required, under section 109, to deal with complaints as “informally and expeditiously as the circumstances and considerations of fairness and natural justice permit”. The Accessibility Commissioner must, however, provide the regulated entity with written notice of the complaint against it (see section 94(5)), advise the complainant and the regulated entity by written notice of whether they will investigate a complaint (see section 96(1)), provide written notice to the complainant and the regulated entity of any decision to discontinue an investigation (see section 100(2)) and of any order granting the complainant relief. Section 110 allows the Accessibility Commissioner to disclose to the Canadian Human Rights Commission any personal information that is contained in a complaint filed with the Accessibility Commissioner.***

***The Accessibility Commissioner must give a regulated entity notice of any complaints that the Commissioner has received alleging that the entity has violated the Act. To preserve procedural fairness, the contents of the notice will likely need to allow the regulated entity to know what the alleged contravention is, how the contravention is alleged to have occurred, when and against whom, and what injury, loss, damage or other adverse effect gave rise to it.***

***Before making a complaint, there may be other quicker resolutions for a person facing the barrier to pursue. For example, they may wish to write the regulated entity and outline the barriers experienced, making suggestions as to how the barriers could or should be removed. They might wish to review the regulated entity’s accessibility plan as it might outline a plan to remove the barrier in the near to medium-term future, thus making a complaint of lesser utility. Depending on what is involved in removing the barrier, the individual might also wish to give the regulated entity feedback when it is time to update its accessibility plan, noting the barrier and making suggestions for its proactive removal.***

\*Reproduction of Act continues below\*

# Investigation

## Power to conduct investigation

- **95** The Accessibility Commissioner may conduct an investigation into a complaint filed under subsection 94(1) unless it appears to him or her that
  - (a) the complainant ought to exhaust grievance or review procedures otherwise reasonably available;
  - (b) the complaint is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under an Act of Parliament other than this Act;
  - (c) the complaint is beyond the jurisdiction of the Accessibility Commissioner;
  - (d) the complaint is trivial, frivolous, vexatious or made in bad faith; or
  - (e) the complaint is based on Acts or omissions the complainant became aware of more than one year, or any longer period of time that the Accessibility Commissioner considers appropriate in the circumstances, before the filing of the complaint.

\*Annotation\*

***Section 95 empowers the Accessibility Commissioner to investigate the complaints that they receive. Section 95 sets out five specific circumstances enumerated by Parliament where the Accessibility Commissioner need not conduct such an investigation. The first three circumstances (i.e., sections 95(a), (b) and (c)) deal with jurisdiction (i.e., the authority of the Accessibility Commissioner to address the complaint, particularly if there is another venue that is more suited under a different statute. The last two circumstances deal with dismissal because the matter is trivial (i.e., section 95(d)) or dismissal because the complainant became aware of the issue more than a year before filing the complaint, although some discretion is provided to the Accessibility Commissioner to accept complaints outside of this timeframe (i.e., section 95(e)).***

***Although it is too early to tell and it is necessary to wait for case law to develop under this section, there may be litigable issues in the future as to when the Accessibility Commissioner can or should decline to conduct an investigation. On the one hand, “may” is permissive and does not mandate an investigation as would more imperative language. On the other hand, the Accessibility Commissioner’s decision to decline to investigate may need to be carefully exercised considering the objective of removing all barriers by January 1, 2040 or earlier. the role of the Accessibility Commissioner in ensuring compliance with the Act; the existence of the complaint mechanism to bring issues to the attention of the Accessibility Commissioner; and the fact that Parliament already provided the specific circumstances when no investigation was required will also have to be factored into the Accessibility Commissioner’s exercise of discretion in deciding whether to forgo an investigation.***

***Litigation may also arise over issues such as when a grievance or review procedure that is otherwise reasonably available is a suitable substitute for an investigation by the Accessibility Commissioner; when and why a complaint should be considered beyond the jurisdiction of the Accessibility Commissioner; when and why a complaint should be***

***considered trivial, frivolous, vexatious or made in bad faith; and when and why the complaint should not be considered because the complainant waited too long to bring it forward.***

\*Reproduction of Act continues below \*

## Notice

- **96 (1)** The Accessibility Commissioner must cause a written notice advising of whether or not he or she has decided to investigate a complaint to be served on the complainant and the regulated entity against which the complaint was made.
- **Time and manner for application for review**  
**(2)** If the Accessibility Commissioner's decision is that the complaint will not be investigated, the notice must specify the time within which and the manner in which an application may be made for a review of the decision.

\*Annotation\*

***There are four dispositions that the Accessibility Commissioner may make in respect of a complaint: (1) decide not to investigate it (section 96); (2) discontinue an investigation (section 100); (3) dismiss the complaint (section 101); and (4) accept the complaint and order an appropriate remedy (section 102). Each will be explained in this resource.***

***Section 96 requires the Accessibility Commissioner to advise the complainant and the regulated entity whether or not the complaint will be investigated. Should the Accessibility Commissioner decide not to investigate, notice must be sent to the complainant and the regulated entity outlining the manner and timeframes through which that decision can be reviewed.***

***Common law principles of procedural fairness may require that the Accessibility Commissioner offer a rationale for deciding not to investigate. The decision not to investigate could allow the barrier identified to continue for some time as well as deprive the complainant of their avenue of redress for their complaint. Knowing the rationale for the decision may also be necessary for the complainant to make an effective challenge to the decision when seeking review.***

***If the Accessibility Commissioner decides to conduct an investigation, a regulated entity does not have the right to a review of that decision under the statute. The ACA does not afford regulated entities a right to seek review of the decision to conduct an investigation. They could try to seek immediate judicial review of that decision, depending on whether and how the investigation prejudices the regulated entity. As a general principle, investigations are not always subject to judicial review on the grounds of procedural fairness. (See *Knight v. Indian Head School Division No 19*, [1990] 1 SCR 653. In doing so, they may be subject to the rule in *CB Powell*, 2010 FCA 61 at paras. 30-33 against the judicial review of intermediate steps in an administrative law proceeding as well as the rule against the judicial review of actions that do not affect rights (see [Democracy Watch v. Canada \(Attorney General\)](#), 2020 FCA 69, [2020] F.C.J. No. 498 at para. 19; [Tsleil-Waututh Nation v. Canada \(Attorney General\)](#), 2018 FCA 153).***

***If a complaint is found to be substantiated then both the regulated entity and the complainant has a right to seek an appeal before the Canadian Human Rights Tribunal (CHRT) under section 104(1) of the ACA.***

\*Reproduction of Act continues below \*

## Joint investigation

**97** If the Accessibility Commissioner is of the opinion that two or more complaints involve substantially the same issues of fact, he or she may conduct a joint investigation into the complaints.

\*Annotation\*

***Section 97 allows the Accessibility Commissioner to conduct a joint investigation when two or more complaints involve substantially the same issues of fact. This may be the case in such circumstances as when two or more persons raise the same complaint about a regulated entity or when different persons make the same complaint about the same things but involving different regulated entities.***

***Holding a joint investigation does not require the Accessibility Commissioner to make the same findings in respect of each of the joint complaints or order identical remedies for each complaint. The Accessibility Commissioner retains their authority to tailor their finding and remedy to the circumstances of the complainant or the regulated entity as required.***

***Regulated entities subject to the joint investigation process could challenge the decision, depending on whether the joint investigation process prejudices the regulated entity. In doing so, they may be subject to the reasoning in [Canada \(Border Services Agency\) v. C.B. Powell Limited, 2010 FCA 61 at paras. 30-33](#) against the judicial review of intermediate steps in an administrative law proceeding as well as the rule against the judicial review of actions that do not affect rights (see [Democracy Watch v. Canada \(Attorney General\), 2020 FCA 69, \[2020\] F.C.J. No. 498 at para. 19](#); [Tsleil-Waututh Nation v. Canada \(Attorney General\), 2018 FCA 153](#)).***

\*Reproduction of Act continues below \*

## Powers of Accessibility Commissioner

- **98** In the conduct of an investigation of a complaint, the Accessibility Commissioner may
  - **(a)** summon and enforce the appearance of persons before the Accessibility Commissioner and compel them to give oral or written evidence on oath and to produce any records and things that the Accessibility Commissioner considers necessary to investigate the complaint, in the same manner and to the same extent as a superior court of record;
  - **(b)** administer oaths;
  - **(c)** receive and accept any evidence and other information, whether on oath, by affidavit or otherwise, that the Accessibility Commissioner sees fit, whether or not it is or would be admissible in a court of law;
  - **(d)** enter any place — including a conveyance — other than a dwelling-house;

- (e) converse in private with any person in any place entered under paragraph (d) and otherwise carry out in that place any inquiries that the Accessibility Commissioner sees fit; and
- (f) exercise any of the powers referred to in any of paragraphs 73(2)(a) to (l).

\*Annotation\*

***In conducting an investigation into a complaint, the Accessibility Commissioner has broad authority, including the power to summons witnesses; compel the production of evidence; enter premises and converse with any persons found therein; access, open and examine records of all kinds; copy or reproduce records; take photographs and make recordings; order persons to provide their identity; and order persons to do something to assist in the investigation.***

***There may be future litigable issues as to whether one of the actions taken by the Accessibility Commissioner to conduct an investigation was necessary or reasonable in the circumstances. The necessity and reasonableness of those actions could be informed by factors such as how the actions affected the interests of a person or a regulated entity to privacy; freedom from unreasonable search and seizure; interference with business interests; how the actions affected the ability to conduct affairs or carry on operations; and whether the actions caused a person to provide evidence against their interests. Each of these issues are contextual and would turn on the individual facts.***

***Persons or regulated entities having such concerns could try to object to the Accessibility Commissioner as to the use of the technique or seek immediate judicial review of the investigation technique, depending on how it prejudices their interests. In doing so, they may be subject to the rule in [Canada \(Border Services Agency\) v. C.B. Powell Limited, 2010 FCA 61](#) at paras. 30-33 against the judicial review of intermediate steps in an administrative law proceeding as well as the rule against the judicial review of actions that do not affect rights (see [Democracy Watch v. Canada \(Attorney General\), 2020 FCA 69, \[2020\] F.C.J. No. 498](#) at para. 19). Given how such orders could affect the rights and interests of a person or a regulated entity, there may be greater leeway to seek judicial review than in other cases.***

***Also of note is the discretion that the Accessibility Commissioner has to accept and rely on evidence that they see fit, even if that information would not be admissible under the rules of evidence in a court of law. This includes the authority to rely on unsworn evidence and information. The Accessibility Commissioner's broad jurisdiction to admit and rely on such information may be tempered by the need for the information to be probative (i.e., be relevant to the issues raised in the complaint) and to be reliable in the circumstances. The use and reliance of such evidence could be the subject of an appeal to the Canadian Human Rights Tribunal (CHRT) under section 104 of the ACA, and any further appeals.***

\*Reproduction of Act continues below \*

## **Dispute resolution mechanisms**

**99** The Accessibility Commissioner may attempt to resolve complaints by means of a dispute resolution mechanism.

\*Annotation\*

***The Accessibility Commissioner has the authority to resolve complaints through dispute resolution mechanisms. Both the persons making the complaint and the regulated entity facing them may wish to consider the merits of dispute resolution as it may provide more control over the result and how the matter leading to the complaint is ameliorated.***

***If it is successful, the complaint and regulated entity can reach an amicable resolution. If it is not successful, the person and regulated entity can still have the matter assessed by the regulated entity. However, downsides to the use of the dispute resolution mechanisms are that the result of dispute resolution mechanisms are often sealed settlements. Because they are sealed, the settlements cannot be used by members of the public as precedents for future similar matters. If unsuccessful, they may also lengthen the time that the Accessibility Commissioner takes to decide the matter brought by the complaint.***

\*Reproduction of Act continues below \*

## **Discontinuance of investigation**

- **100 (1)** The Accessibility Commissioner may discontinue the investigation of a complaint if he or she is of the opinion that
  - (a) there is insufficient evidence to pursue the investigation;
  - (b) any of the circumstances mentioned in paragraphs 95(a) to (e) applies; or
  - (c) the matter has been resolved — by means of a dispute resolution mechanism or otherwise — by the complainant and the regulated entity.
- **Notice**  
**(2)** The Accessibility Commissioner must cause the complainant and the regulated entity to be served with written notice of the discontinuance of the investigation that sets out the reasons for the discontinuance and that specifies the time within which and the manner in which an application may be made for a review of the decision to discontinue the investigation.

\*Annotation\*

***The Accessibility Commissioner has the authority to discontinue an investigation in the three scenarios described above in section 100(1).***

***While the section uses the word “may”, which connotes discretion, it is likely that an Accessibility Commissioner would discontinue the investigation if one of the three scenarios arose. Outside of these three scenarios, the Accessibility Commissioner likely has no authority to discontinue the investigation into the complaint.***

***The Accessibility Commissioner must give written notice of their decision to discontinue an investigation and state the reasons for doing so.***

\*Reproduction of Act continues below \*

## Complaint dismissed

- **101 (1)** At the conclusion of an investigation, the Accessibility Commissioner must dismiss the complaint if he or she finds that the complaint is not substantiated.
- **Notice**  
**(2)** The Accessibility Commissioner must cause the complainant and the regulated entity to be served with a written notice of the dismissal of the complaint that sets out the reasons for the dismissal and that specifies the time within which and the manner in which an application may be made for an appeal of the decision to dismiss the complaint.

\*Annotation\*

*Section 101 requires the Accessibility Commissioner to dismiss a complaint if they find that it is not substantiated. Although cases of investigation dismissal have not yet been reported, and it is not clear that they will be reported, one can speculate that “not substantiated” be interpreted to mean that the barrier to access of which the complainant has complained has not been found to exist, that there is no breach of any provisions of the regulations according to the facts as found by the Accessibility Commissioner.*

*The Accessibility Commissioner must give the complainant and regulated entity written notice of the decision to dismiss a complaint and state the reasons for doing so. On a review of that decision, future litigable issues may arise as to whether the legal and factual bases on which the Accessibility Commissioner did so are well-founded, given the law and the evidence before them.*

\*Reproduction of Act continues below \*

## Complaint substantiated

- **102 (1)** If, at the conclusion of an investigation, the Accessibility Commissioner finds that the complaint is substantiated, he or she may order the regulated entity to do one or more of the following:
  - **(a)** take the appropriate corrective measures specified in the order;
  - **(b)** make available to the complainant, on the first reasonable occasion, the rights, opportunities or privileges that were denied to the complainant as a result of the contravention to which the complaint relates;
  - **(c)** pay compensation to the complainant for any or all of the wages that they were deprived of and for any or all of the expenses incurred by the complainant as a result of the contravention;
  - **(d)** pay compensation to the complainant for any or all additional costs of obtaining alternative goods, services, facilities or accommodation, and for any or all of the expenses incurred by the complainant, as a result of the contravention;
  - **(e)** pay compensation to the complainant in an amount that is not more than the amount referred to in subsection (2) for any pain and suffering that the complainant experienced as a result of the contravention;

- (f) pay to the complainant an amount that is not more than the amount referred to in subsection (2), if the Accessibility Commissioner determines that the contravention is the result of a willful or reckless practice.
- **Amount**
  - (2) The amount, for the purposes of each of paragraphs (1)(e) and (f), is
    - (a) for the calendar year during which subsection (1) comes into force, \$20,000; and
    - (b) for each subsequent calendar year, the amount that is equal to the product obtained by multiplying
      - (i) the amount determined under this subsection for the preceding calendar year
    - by
      - (ii) the ratio that the Consumer Price Index for the preceding calendar year bears to the Consumer Price Index for the calendar year before that preceding calendar year.
- **Definition of Consumer Price Index**
  - (3) In subsection (2), **Consumer Price Index**, for a calendar year, means the average of the Consumer Price Index for Canada, as published by Statistics Canada under the authority of the *Statistics Act*, for each month in the calendar year.
- **Amount to be published**
  - (4) The Accessibility Commissioner must, as soon as it is determined, publish the amount that is the amount for the purposes of paragraphs (1)(e) and (f) for each calendar year after the year during which subsection (1) comes into force.
- **Interest**
  - (5) An order to pay compensation under paragraph (1)(c) or (d) may include an award of interest at a rate and for a period that the Accessibility Commissioner considers appropriate.
- **Copy**
  - (6) The Accessibility Commissioner must cause the complainant and the regulated entity to be served with a copy of the order made under subsection (1) and a notice that specifies the time within which and the manner in which an application may be made for an appeal of the order.

\*Annotation\*

***Section 102 of the ACA is important because it outlines the remedies that may be awarded if a complaint about accessibility is determined to be successful.***

***As noted above, the Accessibility Commissioner may find a complaint to be substantiated. As a result and by virtue of section 102 of the ACA, the Accessibility Commissioner can grant the complainant one remedy or a combination of the remedies under section 102. As explained below, some of those remedies are quite broad.***

***“May” provides the Accessibility Commissioner discretion to award or not award a remedy. Although cases have not yet been decided, it would seem logical that if one of the remedies listed under section 102 were required to remove a barrier and/or address a contravention, the Accessibility Commissioner would award the appropriate remedy. Deciding not to award a remedy may be warranted in cases where the contravention has passed, the barrier does not exist, the contravention and/or barrier is on its way to being addressed.***



**The Accessibility Commissioner also has discretion to award any combination of the six remedies noted below. The exercise of that discretion may depend on such factors as the nature of the contravention or of the resulting barrier, how it affected the complainant, what is required to remove the barrier, and what is required to restore the complainant to the situation they should have been in without the barrier.**

**The Accessibility Commissioner has the authority under section 102(1)(a) to order a regulated entity to make appropriate corrective measures. Of all the six remedies possible under section 102(1), section 102(1)(a) presents the most general remedy. What might be an “appropriate corrective measure” may depend on the nature of the contravention or underlying barrier, its scope, and where it is present or how it blocks access for the complainant or others in a similar situation. The purpose of the remedial power in section 102(1)(a) is to enable the Accessibility Commissioner to design a solution that will rectify the barrier underlying the successful complaint.**

**Each subsection between sections 102(1)(b)–(f) is a bit more specific than the last. Section 102(1)(b) allows the Accessibility Commissioner to provide a remedy that will give the complainant the rights, opportunities or privileges that were denied as a result of the barrier.**

**The purpose of the remedial power in section 102(1)(d) is to ensure that the complainant receives the goods, services or facility that they were denied. The Accessibility Commissioner has the authority to order the regulated entity to provide the complainant what they were denied as a result of the contravention.**

**Section 102(1) (c) and (d) provide remedial powers in the nature of restorative remedies. Under section 102(1)(c) — the Accessibility Commissioner can order a regulated entity to pay the complainant the lost wages or extra costs they incurred as a result of the regulated entity’s contravention of the ACA. Where monetary compensation of this nature is available, generally speaking in law, there must be a link between the loss the contravention (see e.g., [Saskatchewan Government Insurance v. Pipchuk, 2008 SKCA 82, \[2008\] I.L.R. I-4706, 170 A.C.W.S. \(3d\) 185, 311 Sask. R. 81, 428 W.A.C. 81, 63 C.C.L.I. \(4th\) 1 at paras. 33-36](#)).**

**Section 102(1)(d) allows the Accessibility Commissioner to order the regulated entity to compensate the complainant for the costs of obtaining the goods, services and facilities that the complainant could not obtain because of the barrier that existed.**

**Section 102(1) remedial (e) and (f) empower the Accessibility Commissioner to order a regulated entity to pay compensation for pain and suffering or for a willful or reckless practice. There are general principles in law for ascertaining what qualifies as pain and suffering and for quantifying compensation for pain and suffering. There are also rules under the law for determining what is a willful or reckless practice whose impacts warrant compensation.**

**The amount that the Accessibility Commissioner may award for pain and suffering and/or willful and reckless practice is capped at \$20,000 (to be adjusted for inflation on an annual basis). (See sections 102(2)-(5).) There may be a number of strategies that a complainant could use to argue for a higher amount of compensation: they could claim that in allowing the contravention to occur, the regulated entity caused them pain and suffering and acted in a willful and reckless manner, allowing separate compensation for each of the pain and suffering and the wilful and reckless manner; they could rely on section 88 of the Act and claim that each day the contravention occurred is a separate contravention for which they**

*should be individually compensated; they could try to seek an amount of compensation that reflects the interest that they would have earned on the amount if they had they been compensated earlier; and/or they could claim that the \$20,000 amount is simply insufficient to compensate them, pushing for a higher degree of compensation.*

*Although there are no interpretive decisions on this yet, if the limit prevents the complainant from obtaining just and appropriate compensation, it may also be possible to argue for discrimination under section 15 of the [Charter](#). For a short and informative description of the criteria to establish discrimination under section 15 of the [Charter](#), see *Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30, [2015] 2 SCR 548. For a recent example of how the courts have assessed a disability-related discrimination claim under the [Taypotat](#) criteria, see *Simpson v. Canada (Attorney General)*, 2020 ONSC 6465.*

*The Accessibility Commissioner must provide notice to the regulated entity and/or the complainant of the order made, explaining how a review of the order may be sought (section 102(6)). Reasons explaining why the Commissioner issued the order that they did are not required under the ACA. Nevertheless, not having reasons attached to the order made leads to difficulties in proving that the decision is reasonable on further review/appeal*

\*Reproduction of Act continues below\*

## Review by Accessibility Commissioner

- **103 (1)** The Accessibility Commissioner may, on application made within the time and in the manner specified in the notice served under section 96 or 100, as the case may be, review a decision under section 95 not to investigate a complaint or a decision under section 100 to discontinue an investigation.
- **Representations**  
(1.1) The complainant must be given the opportunity to make representations to the officer or employee conducting the review in a manner that is accessible to the complainant.
- **Powers**  
(2) After concluding the review, the Accessibility Commissioner must
  - (a) confirm the decision not to investigate the complaint;
  - (b) investigate the complaint;
  - (c) confirm the decision to discontinue the investigation; or
  - (d) continue the investigation.
- **Notice**  
(3) The Accessibility Commissioner must cause the complainant and the regulated entity to be served with a written notice that sets out the Accessibility Commissioner's decision under subsection (2) and the reasons for it.
- **Decision final**  
(4) Every decision made by the Accessibility Commissioner under any of paragraphs (2)(a) to (d) is final and is not to be questioned or reviewed in any court.

\*Annotation\*

***Section 103 stipulates that the Accessibility Commissioner may, on application by a party, review a decision made by the Commissioner not to investigate or to terminate***

*an investigation. The complainant must be given the opportunity to make representations to the officer or employee conducting the review in a manner that is accessible to the complainant. The stipulation that the complainant be allowed to make representations in a manner that is accessible to the complainant was discussed by [HUMA on November 8, 2018](#). This may be a unique addition to the duty of fairness — while fairness may require that the potentially affected party make submissions on the issue, the right to do so in a manner accessible to the individual is a unique feature of the Accessible Canada Act.*

*Section 103(2) stipulates that the Accessibility Commissioner must either confirm the original decision not to investigate or to terminate the investigation or else must investigate or continue the investigation. The Accessibility Commissioner can confirm their original decision when it is supported by the facts of the case. The Accessibility Commissioner can alter their decision if they are of the view that the matter should be investigated or continue to be investigated, based on the legal criteria and the facts of the case.*

*Section 103(4) is a privative clause — that is, it is an exemption to the right to seek judicial review of the decision of an administrative decision-maker. Every review decision made by the Accessibility Commissioner about whether to (or continue to) investigate is final and not subject to review in any court.*

*In light of the privative clause, parties pursuing a review may wish to take steps to maximize their chances on a review. For example, they may wish to make submissions as to: whether the review should or should not be limited to the documentation or information that was before the Accessibility Commissioner (and if new evidence is to be considered, it should be identified and both its relevance to the review and why it was not previously available should be clearly articulated); the basis on which the Accessibility Commissioner's order or decision subject to the review is wrong; and what the right decision on the issue should be.*

*It is odd that an administrative body making an original order would also sit in review of that order. However, as noted in [Ocean Port Hotel Ltd. v. British Columbia \(General Manager, Liquor Control and Licensing Branch\)](#), 2001 SCC 52, [2001] 2 SCR 781, Parliament is free to craft such an arrangement. Procedural fairness may mandate certain safeguards when the review is conducted. For example, the review may need to be conducted by a different person than the one who made the initial order. This seems to be implied in the statute by section 103(1.1), although whether it mandates the requirement of a different officer representing the Accessibility Commissioner than the original officer is not entirely clear. While the reviewer should give due consideration to the views of the person who made the original order, they should have an open mind about the bases on which the party is seeking the review. The reviewer should consider all evidence and submissions carefully.*

*Unlike in the situations where a complaint has been substantiated (i.e., under section 102(6)), the person conducting the review of the Accessibility Commissioner's decision not to undertake or continue an investigation must provide reasons for the decision that they reach.*

*Given that the review is the only means available to challenge the original decision, the reviewer should provide clear reasons.*

\*Reproduction of Act continues below\*

## Appeal

- **104 (1)** A complainant or regulated entity that is affected by a decision made under section 101 or an order made under subsection 102(1) may appeal the decision or order to the Canadian Human Rights Tribunal, in writing, within 30 days after the day on which a copy of the order or notice of the decision is served or any longer period — that is not more than 60 days after that day — that the Canadian Human Rights Tribunal considers appropriate in the circumstances.
- **Nature of appeal**  
**(1.1)** The appeal lies on any ground of appeal that involves a question of law or fact alone, or a question of mixed law and fact, including a principle of natural justice.
- **Grounds of appeal**  
**(2)** The request for appeal must contain a statement of the grounds of appeal and set out the evidence that supports those grounds.

\*Annotation\*

*Under section 104, a complainant or regulated entity can appeal a decision dismissing a complaint or a decision finding the complaint to be substantiated, so long as they are affected by the decision. The appeal is made to the [Canadian Human Rights Tribunal \(CHRT\)](#). The appeal must be made within 30 days of that party receiving the decision which is the subject of the appeal. The CHRT can extend the period for filing an appeal up to 60 days following the receipt of the decision that is the subject of an appeal. The appeal must be made in writing.*

*On appeal, a party can raise any issue of fact or law, including a concern about procedural fairness (termed “natural justice” in section 104(1.1)) that may arise in a decision to dismiss or substantiate a complaint. The ability to raise a natural justice issue may be helpful should a complaint not be afforded a process that is accessible to them in instances where it is not clearly required under the statute.*

*Where the Accessibility Commissioner has made a decision substantiating a complaint under section 102, an appeal could challenge the decision to find the complaint well-founded and/or the remedy for the contravention. In both cases, an appeal might be made on the basis that the Accessibility Commissioner erred in law or in fact in finding a contravention or fashioning a remedy.*

*In advancing an appeal to the CHRT, an appellant should identify which decision of the Accessibility Commissioner is wrong and explain why they believe it is wrong. For an error of fact, the appellant should show how and why the Accessibility Commissioner ignored the relevant evidence or misunderstood it. For an error of fact, the appellant will need to refer to the evidence that was before the Accessibility Commissioner and/or — if the applicable appeal rules allow — to other evidence that was not before the Accessibility Commissioner during the original decision-making process.*

***For an error of law, the appellant should explain how and why the Accessibility Commissioner misunderstood or misapplied the legal test(s) that applied and/or overstepped their jurisdiction in making their decision***

***For a breach of procedural fairness (“natural justice”), the appellant should show how and why they were not given fair notice of the case they had to respond to, or were not given an adequate opportunity to respond to that case, including any concern that the person was not afforded a process that was not accessible to them.***

\*Reproduction of Act continues below \*

### Assignment of member

- **105 (1)** On receipt of an application for an appeal, the Chairperson of the Canadian Human Rights Tribunal must assign a member of the Tribunal to hear the appeal, but the Chairperson may assign a panel of three members of the Tribunal to hear the appeal if he or she considers that the complexity of the matters under appeal requires three members.
- **Chair of panel**  
**(2)** If a panel of three members is assigned, the Chairperson must designate one of them to be its chair, but the Chairperson is to be the chair if he or she is a member of the panel.

\*Annotation\*

***Section 105 permits the Chair of the CHRT to appoint a one-member or three-member panel of the CHRT to hear the appeal. The Chair will appoint the larger panel where the matter is of sufficient complexity to warrant it.***

\*Reproduction of Act continues below \*

### Decision

- **106 (1)** The member or panel of members of the Canadian Human Rights Tribunal assigned to hear the appeal may, by order, confirm, vary, give the decision that the Accessibility Commissioner should have given or rescind the decision or order to which the appeal relates or refer the complaint back to the Accessibility Commissioner for reconsideration in accordance with any direction the Canadian Human Rights Tribunal may give.
- **Nature of appeal**  
**(1.1)** An appeal shall be on the merits based on the record of the proceedings before the Accessibility Commissioner, but the member or panel of members of the Canadian Human Rights Tribunal shall allow arguments and, if he, she or it considers it necessary for the purposes of the appeal, shall hear evidence not previously available.

- **Panel's decision**

(2) A decision made by a majority of the members of the panel is the decision of the panel or, if no decision is supported by the majority, the decision of the panel's chair is the decision of the panel.
- **Copy**

(3) A copy of the order made by the member or panel of members of the Canadian Human Rights Tribunal must be provided to the Accessibility Commissioner and the parties to the appeal.
- **Decision final**

(4) Every decision made under subsection (1) is final and is not to be questioned or reviewed in any court.

\*Annotation\*

***Section 106(1.1) governs how appeals of the Accessibility Commissioner's decisions to the CHRT are to proceed. Appeals via section 106 ordinarily proceed on the basis of the record that was before the Accessibility Commissioner but the CHRT has leeway to consider new evidence that was not previously available and is necessary to determine the appeal.***

***The CHRT has wide latitude in determining an appeal. It can:***

- ***confirm the decision (likely when the decision is valid in law and/or supported by the evidence before the Accessibility Commissioner or otherwise adduced before the CHRT);***
- ***vary the decision (likely when the Accessibility Commissioner's decision is either subject to a legal error or not supported by the evidence before the Accessibility Commissioner or otherwise before the CHRT);***
- ***give the order that the Accessibility Commissioner should have given (when the CHRT finds that the Accessibility Commissioner was mistaken in their assessment, the CHRT can order the remedy in line with section 102(1) that the Accessibility Commissioner should have awarded in the circumstances);***
- ***rescind the Accessibility Commissioner's order (likely done when the Accessibility Commissioner's decision is in error or the remedy they directed is not warranted in the circumstances); or***
- ***refer the matter back to the Accessibility Commissioner for re-consideration with or without directions (a reference back may be warranted when the CHRT identifies an error in the Accessibility Commissioner's decision but does not have the facts necessary to make a final determination on the matter or believes that it should be determined at first instance by the Accessibility Commissioner; the decision of whether to give directions may depend on whether the CHRT deems it necessary to set out an approach for the Accessibility Commissioner to take on any legal or factual issue).***

***Section 106(2) outlines what will happen if there is not a unanimous decision. In such cases, the decision of the majority of the panel will govern. And, in the absence of a majority decision, the decision of the chair of the panel will govern (making the decision***

*of the chairperson of the CHRT to appoint a chair of the hearing panel under section 105(2) of great importance).*

*Section 106(4) represents a privative clause and is an exemption to the right to seek judicial review of the decision of an administrative decision-maker.*

*These appeal decisions of the CHRT are not subject to review. Parties pursuing an appeal may therefore wish to take steps to maximize their chances on an appeal. This includes making submissions as to whether the appeal should or should not be limited to the record that was before the Accessibility Commissioner (and if new evidence is to be considered, it should be identified and both its relevance to the appeal and why it was not previously available should be clearly articulated); the basis on which the Accessibility Commissioner's order or decision subject to the appeal is wrong; what the right decision on the issue should be; and, where applicable, what remedy the CHRT should issue under section 102(1) of the ACA to bring about that right decision.*

\*Reproduction of Act continues below \*

## Report of Activities

**107** The Canadian Human Rights Tribunal must include in its annual report referred to in subsection 61(3) of the *Canadian Human Rights Act* a report of its activities under this Act during the year.

\*Annotation\*

*The CHRT is required under the CHRA to file an annual report to be placed before Parliament every year. Section 107 requires the CHRT to outline, in that annual report, information about how it has entertained and/or determined appeals under sections 105 and 106.*

\*Reproduction of Act continues below \*

## Regulations

- **108** The Governor in Council may make regulations
  - (a) prescribing the procedures to be followed by the Accessibility Commissioner when conducting an investigation; and
  - (b) governing the manner in which complaints are to be investigated by the Accessibility Commissioner.

\*Annotation\*

*Section 108 empowers the Governor in Council to make regulations governing how the Accessibility Commissioner is to conduct investigations and how they are to assess complaints.*

***Should the Accessibility Commissioner not follow a requirement set out in these regulations, a complainant or regulated entity subject to an investigation can take escalating actions: advise the Accessibility Commissioner of the requirement and ask them to follow it; raise the issue on a request to review or appeal a decision; or, on the rare chance that it's possible to seek judicial review, raise the issue on judicial review before the Federal Court. In taking any of these actions, they may be subject to the rule in [Canada \(Border Services Agency\) v. CB Powell Limited, 2010 FCA 61](#) at paras. 30-33 against the judicial review of intermediate steps in an administrative law proceeding as well as the rule against the judicial review of actions that do not affect rights (see [Democracy Watch v. Canada \(Attorney General\), 2020 FCA 69](#) at para. 19).***

\*Reproduction of Act continues below\*

## General

### Duty to Act informally and expeditiously

**109** The Accessibility Commissioner must deal with complaints filed under subsection 94(1) and applications made under subsection 103(1) as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit.

\*Annotation\*

***Section 109 requires the Accessibility Commissioner to deal with complaints informally and expeditiously. In doing so, the Accessibility Commissioner must observe rules of fairness and natural justice. The Accessibility Commissioner cannot compromise fairness in order to pursue process that is informal and expeditious. The rules of fairness in administrative law require the Accessibility Commissioner to employ a fair process. While what fairness requires in a given context can vary in the circumstance, the Accessibility Commissioner at a minimum is required to:***

- ***allow the person to put forward their full case on the complaint and the review;***
- ***allow the party responding to the complaint or the request for review to know that the request was made and to see the contents of that request;***
- ***allow the responding party to the complaint or the request for a review to submit its views or evidence on the same;***
- ***allow the complainant or requestor to respond; and***
- ***assess both parties' evidence and submissions fairly with an open mind in accordance with the law. Procedural fairness may require other things depending on such factors as the nature of the question and the impact of the potential decision on the parties ([Baker v. Canada \(Minister of Citizenship and Immigration\), \[1999\] 2 S.C.R. 817](#)).***

***Where the Accessibility Commissioner does not fulfil its duty set out under section 109, their decisions can be subject to the review or appeal processes set out in the ACA, and potentially to judicial review, depending on whether their actions do or do not fall outside of the privative clauses in sections 103(4) and 106(4).***



\*Reproduction of Act continues below\*

## Disclosure of personal information

**110** For the purpose of the administration of Part III of the *Canadian Human Rights Act*, the Accessibility Commissioner may disclose to any officer or employee of the Canadian Human Rights Commission any personal information that is contained in a complaint filed with the Accessibility Commissioner.

\*Annotation\*

*This provision allows the Accessibility Commissioner to disclose to the Canadian Human Rights Commission (CHRC) any personal information contained in a complaint filed with the Accessibility Commissioner. However, the [Privacy Act](#) prohibits a government department from releasing personal information about an individual except as provided for in that Act or in another Act.*

*Disability-related information may come within the scope of “personal information”. For example, this might include the person’s name, whether or not they have a disability, the type of disability they have, the nature and severity of that disability, and what the person may require in order to accommodate the disability.*

\*Reproduction of Act continues below\*

## PART 7

# Chief Accessibility Officer

## Appointment

### Special advisor

- **111 (1)** The Governor in Council may appoint, on a full-time basis, a special adviser to the Minister to be called the Chief Accessibility Officer.

\*Annotation\*

*At the time of writing in early 2021, the government has yet to appoint someone to this role. This section was criticized during the drafting process as it used the operative word “may” as opposed to “shall”. The distinction is discussed earlier in the annotation for section 11 with respect to the appointment of a Minister responsible for the entire Act. “May” allows the government to opt not to appoint anyone to the position.*

*Although the description of the role of Chief Accessibility Officer (CAO) is very brief in the statute, we see the CAO working as a much-needed “glue” that would strengthen policies across the federal government to ensure that barriers are identified, prevented*

*and removed across the federal government and as soon as possible. The CAO may also play a role in bringing together the moving parts of those in charge of implementing and enforcing the Act. The duties of the CAO are noted in sections 113-116 below.*

*The ACA does not prescribe any other criteria for the appointment of the Chief Accessibility Officer. However, to properly serve the function of advising the Minister with respect to the Minister's duties under the ACA, we think that it would be preferable for the person appointed as CAO to have knowledge of or be able to gather knowledge of the kinds of barriers that persons with a range of disabilities face, and to be creative about the options that might exist in various circumstances for removing those barriers. This is necessarily a position that requires interaction and consultation with the disability community.*

*Moreover, we believe that the CAO could helpfully assist in monitoring the implementation of the aims of the Act and liaise between the Minister and CASDO. This role could be important in ensuring that all parties with an interest or role in implementing the pieces of the Act are doing so.*

*Finally, this particular position is interesting as it might provide some of the cohesion sometimes missing in disability activism and bring issues that need resolution to the direct attention of the government (a disconnect that has been criticized).*

*The role of the Chief Accessibility Officer should be distinguished from that of the Accessibility Commissioner. While the Accessibility Commissioner can investigate and assess complaints, the Chief Accessibility Officer is to serve as a special advisor to the Minister separate and apart from the Accessibility Commissioner.*

\*Reproduction of Act continues below \*

- **Tenure of office**  
(2) The Chief Accessibility Officer holds office during good behaviour, for a term of not more than five years, but may be removed for cause at any time by the Governor in Council.
- **Reappointment**  
(3) The Chief Accessibility Officer is eligible to be re-appointed for a maximum of two further terms of office.

\*Annotation\*

*Section 111(2) and (3) set out the tenure of the CAO. The CAO is to be appointed for a five-year term, which can be renewed twice. The CAO is offered a fairly strong degree of job security in that they can only be removed by the Governor in Council (and not just the Minister) and only "for cause". "For cause" generally has a meaning informed by employment law jurisprudence as well as the public law principles concerning the appointment and dismissal of higher-ranking government officials appointed by the Governor in Council. "Just cause" for dismissal in the employment law context "exists where the dishonesty violates an essential condition of the employment contract, breaches the faith inherent to the work relationship, or is fundamentally or directly*

*inconsistent with the employee's obligations to his or her employer” (see para. 48 of McKinley v. BC Tel, 2001 SCC 38).*

*There may be situations where the Minister and the CAO do not agree with one another. In these instances, one must recall that the CAO is an advisor. As such, the Minister can decline to accept in whole or in part, the advice of the CAO, depending on a wide range of economic, political, legal and other considerations that might also have an impact on the Minister's decision with respect to an accessibility issue.*

\*Reproduction of Act continues below \*

- **Absence or incapacity of Chief Accessibility Officer**  
**(4)** In the event of the absence or incapacity of the Chief Accessibility Officer, or if the office of Chief Accessibility Officer is vacant, the Minister may authorize a person to Act as Chief Accessibility 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.

\*Annotation\*

*Section 111(4) allows the Minister to appoint an Acting Chief Accessibility Officer should the CAO be absent or unable to perform their duties, or if no one is appointed to the position at that time. However, the person chosen as Acting Chief Accessibility Officer cannot serve in that capacity for more than a 90-day period unless they receive the approval of the Governor in Council (Cabinet) to do so.*

*Section 111(4) strikes the balance of permitting the Minister to appoint a temporary Acting Chief Accessibility Officer when such an advisor is needed while ensuring that the individual serving in that capacity on a longer-term basis is an individual who is approved by the Governor in Council (or Cabinet).*

*Similar to the permanently appointed CAO, we think an Acting Chief Accessibility Officer would need to have knowledge of or be able to gather knowledge of the kinds of barriers that persons with a range of disabilities face, and to be creative about the options that might exist in various circumstances for removing those barriers. This is necessarily a position that requires interaction and consultation with the disability community.*

\*Reproduction of Act continues below \*

## Remuneration and Expenses

### Remuneration and expenses

- **112 (1)** The Chief Accessibility 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**  
**(2)** The Chief Accessibility 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*.

\*Annotation\*

*This section merely points out the way in which the CAO will be paid. It also makes clear that the CAO is a public servant and a government employee. The Governor in Council (Cabinet) has considerable latitude to set the remuneration or salary of the CAO. The CAO is entitled by statute to participate in the pension plan for federal public servants. The remuneration of the CAO may have an impact on the range of persons who accept such a position.*

\*Reproduction of Act continues below \*

## Duties and Functions

### Advice

**113** The Chief Accessibility Officer may — or, if requested to do so by the Minister, must — provide information or advice to the Minister in respect of systemic or emerging accessibility issues.

\*Annotation\*

*This provision outlines the issues on which the CAO may provide advice to the Minister and when they should do so.*

*The range of topics includes a systemic or emerging accessibility issue. A systemic issue is a structural disability barrier and likely one that exists and that has been or is proving difficult to address. An emerging one may be an accessibility issue that has just arisen or that will arise that could pose a barrier or obstacle to persons with disabilities in certain circumstances.*

*Note as well the types of “guidance” that the CAO can provide the Minister — namely, “information” or “advice”. “Information” may involve the who/what/where of an accessibility issue. “Advice” on the other hand allows the CAO to offer recommendations to the Minister as to how the accessibility issue could be addressed, and seemingly could include a list of ranked options and/or a statement of what course of action should be adopted.*

*Section 113 also governs when the CAO is to provide such advice. The CAO must provide that advice when the Minister requests it. As such, the Minister might ask the CAO to evaluate whether a circumstance poses an accessibility issue, for whom, and how severe that accessibility issue is. It would also not be surprising for the Minister to ask the CAO to outline what options may exist for addressing the accessibility issue and to discuss the pros and cons of each option.*

*The provision also notes that the CAO “may” provide such advice. The word “may” is a permissive term which allows the CAO to give advice but does not mandate them to do so unless the Minister asks for their advice.*

*The CAO’s discretionary power to offer advice or information may be a useful lever for addressing persisting barriers. Persons concerned about such barriers could bring them either to the attention of the Minister or the CAO.*

*Disability rights advocates may find it useful to know the information or advice that the CAO has offered to the Minister. This knowledge could help to inform submissions to the Minister about how an accessibility issue or barrier could be removed. That knowledge could also assist in challenging the course of action that the Minister chooses to deal with an issue. In making such a challenge, both the challenger and the entity reviewing the challenge would need to bear in mind that the CAO’s report is advisory and not binding on the Minister, with the Minister being able to choose a different path in light of other economic, political, legal or other considerations. The information or advice offered by the CAO to the Minister may be subject to disclosure under the federal Access to Information Act, and also subject to the restrictions on disclosure under that Act (meaning that information could be redacted (blacked out) in whole or in part, depending on the subject matter of the report and who/what it concerns).*

\*Reproduction of Act continues below \*

### Special report

- **114 (1)** The Chief Accessibility Officer may — or, if requested to do so by the Minister, must — report in writing to the Minister in respect of systemic or emerging accessibility issues.
- **Publication**  
**(2)** The Chief Accessibility Officer may, after the sixtieth day after the day on which it was provided, publish any report that he or she provided to the Minister.

\*Annotation\*

*Section 114 allows the CAO to make special reports to the Minister in respect of any systemic or emerging accessibility issues.*

*The range of topics that could be the subject of a special report is quite wide — namely, a systemic or emerging accessibility issue. As noted above (in the annotation for section 113), a systemic issue is likely a structural disability barrier that exists and that has been or is proving to be difficult to address. An emerging issue may be one that has just arisen or that will arise and that could pose a barrier or obstacle to persons with disabilities in certain circumstances.*

*Unlike the information or advice to be given by the CAO in the section 113, section 114 calls for a written report. The nature of the report is not constrained by the provision. It could include information as to the who/what/where of an accessibility issue. It could also include recommendations as to how the accessibility issue could be addressed, including a list of ranked options and/or a statement of what course of action should be adopted.*

*As with the previous provision, section 114 empowers the Minister to direct the CAO to prepare a special report. Alternatively, the CAO may choose to write a report on their own initiative.*

*The CAO must provide a report if the Minister requests it. Although detailed requirements of such reports are not specified in the Act, we believe that it would be acceptable for the Minister to ask the CAO to evaluate whether a circumstance poses an accessibility issue, for whom, how severe the accessibility issue is, and to outline what options that may exist for addressing the accessibility issue, discussing the pros and cons of each option.*

*The CAO's discretionary power to prepare special reports may be a useful tool in addressing persisting barriers. Persons concerned with such barriers could bring the barrier at issue to the attention of either the Minister or the CAO, suggesting that the Minister direct the CAO to report on the accessibility issue (and canvass the options for removing it). They could also directly ask the CAO to inquire into the barrier.*

*Unlike section 113, special reports under section 114 may be made public by the CAO 60 days after they were provided to the Minister. As noted above, the contents of such reports may be useful to disability advocates in making submissions to the Minister as to how an accessibility barrier could be removed or in challenging how the Minister has directed that an accessibility barrier be addressed. In making such a challenge, both the challenger and government office receiving it will need to bear in mind that the CAO's report is advisory and not binding on the Minister. In other words, the Minister will be able to choose a different path in light of other economic, political, legal or other considerations. Still, a departure from a recommended course of action might speak to the reasonableness of the approach chosen by the Minister.*

*Unpublished reports of the CAO might be obtainable under the federal Access to Information Act. They may be subject to the restrictions on disclosure under that Act (meaning, among other things, that the information could be redacted (blacked out) in whole or in part, depending on the subject matter of the report and who/what it concerns).*

\*Reproduction of Act continues below \*

## **Assistance**

**115** The Accessibility Commissioner, the Canadian Transportation Agency, the Canadian Radio-television and Telecommunications Commission, the Canadian Human Rights Commission, the Federal Public Sector Labour Relations and Employment Board and the Standards Organization must take all reasonable steps to assist the Chief Accessibility Officer in the performance of his or her duties and functions.

\*Annotation\*

***This provision requires the other six administrative bodies responsible for accessibility issues under the Accessible Canada Act to take “all reasonable steps” to assist the CAO in the performance of their duties and functions. “All reasonable steps” translates to an extensive duty to assist.***

***A potential legal question to ask is: what is or what is not reasonable in a given set of circumstances? This may be a matter of considerable debate (see for example [Canada \(MCI\) v. Vavilov, 2019 SCC 65](#)). What is a reasonable decision in terms of assistance for any of these six entities could one day be the subject of litigation.***

***A refusal to assist the CAO could one day be the subject of judicial review.***

***See also section 122, which similarly deals with the need for all administrative bodies to work together to enforce the ACA by providing appropriate mechanisms for complaints, applications and grievances.***

\*Reproduction of Act continues below \*

## Annual report

- **116 (1)** The Chief Accessibility Officer must, after the end of each fiscal year but no later than December 31 following the end of that fiscal year, submit to the Minister a report on
  - (a) the outcomes achieved by this Act during that fiscal year; and
  - (b) systemic or emerging accessibility issues.
- **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\*

***Each year, the CAO must produce an annual report that must be put before the House of Parliament. This contrasts to any “special reports” on any emerging specific issues surrounding accessibility and Canadians, produced by the CAO at the request of the Minister under section 114.***

\*Reproduction of Act continues below \*

## PART 8

**General****Regulations****Regulations**

- **117 (1)** Subject to sections 118 to 120, the Governor in Council may make regulations
  - **(a)** defining, for the purposes of this Act, any term that is used but not defined in this Act;
  - **(b)** designating areas for the purposes of paragraph 5(g);
  - **(c)** establishing standards intended to remove barriers and to improve accessibility in the areas referred to in section 5;
  - **(d)** imposing obligations or prohibitions on regulated entities for the purpose of identifying or removing barriers or preventing new barriers;
  - **(e)** fixing or determining, for the purposes of subsections 47(1), 56(1), 65(1) and 69(1), a day in respect of a regulated entity;
  - **(f)** specifying the form in which the accessibility plans required by subsections 47(1) and (2), 56(1) and (2), 65(1) and (2) and 69(1) and (2) are to be prepared and the manner in which they are to be published;
  - **(f.1)** respecting the feedback process required by subsections 48(1), 57(1), 66(1) and 70(1);
  - **(g)** specifying the form and manner in which descriptions of the feedback process required by subsections 48(1), 57(1), 66(1) and 70(1) are to be published;
  - **(h)** specifying the form in which progress reports required by subsections 49(1), 58(1), 67(1) and 71(1) are to be prepared and the time and manner in which they are to be published;
  - **(i)** respecting the records, reports, electronic data or other documents that are required to be prepared, retained or provided by regulated entities and
    - **(i)** the time, manner or place in which they are to be prepared and retained, or
    - **(ii)** the time, manner or form in which they are to be provided;
  - **(j)** respecting the making, serving, filing and manner of proving service of any notice, order, report or other document referred to in this Act or regulations made under this subsection;
  - **(k)** respecting the circumstances under which reviews under section 76 are to be oral or in writing;
  - **(l)** exempting, on any terms that are specified in the regulations, in whole or in part, any of the following, or any class of the following, from the application of all or any part of sections 47 to 49, 56 to 58, 65 to 67 and 69 to 71 or all or any provision of regulations made under this subsection:
    - **(i)** a regulated entity,
    - **(ii)** a built environment,
    - **(iii)** an object,



- (iv) a work, undertaking or business that is within the legislative authority of Parliament,
    - (v) an activity conducted by a regulated entity, and
    - (vi) a location; and
  - (m) prescribing anything that is to be prescribed by any of sections 39, 47 to 49, 56 to 58, 65 to 67 and 69 to 71.
- **Obligation**

(1.1) The Governor in Council must make at least one regulation under any of paragraphs (1)(e) to (h) within the period of two years that begins on the day on which this subsection comes into force.
- **Distinguishing — classes**

(2) Regulations made under subsection (1) may distinguish among different classes of regulated entities.
- **Paragraph (1)(c)**

(3) A standard established in regulations made under paragraph (1)(c) may be general or specific in its application and may be limited as to time and location.
- **Incorporation by reference — limitation removed**

(4) The limitation set out in paragraph 18.1(2)(a) of the *Statutory Instruments Act* to the effect that a document must be incorporated as it exists on a particular date does not apply to the powers to make regulations under paragraph (1)(c).

\*Annotation\*

***Section 117 is an important and central provision of the ACA. It is the provision that deals with the various regulations required for the statute to function. The section allows for the Governor in Council (Cabinet) to create regulations that establish standards, define terms, create obligations, etc. There are many ways in which the regulations created under this section will affect the functioning of the ACA. So, this section of the statute is definitely worth noting. However, three crucial ways in which section 117 is important are as follows:***

- 1. Section 117(1)(c) allows for the establishment of accessibility standards designed to remove barriers and improve accessibility. The standards relate to the areas identified in section 5 of the ACA. (These areas include employment, the built environment, information and communication technologies and transportation. Please see section 5 ACA for the complete list.)***
- 2. Section 117(1)(d) gives the Governor in Council the power to create regulations that impose obligations or prohibitions on regulated entities for the purpose of identifying or removing barriers and preventing new barriers; and***
- 3. Section 117(1)(f)-(h) provides for the creation of regulations dealing with the form of accessibility plans, the feedback process and progress reports. (See also sections 47-66 and 70.) Unfortunately, there is not much direction with respect to the content of these documents.***

\*Reproduction of Act continues below \*

### Limited application — broadcasting

- **118 (1)** Subject to subsections (2) and (3), regulations made under subsection 117(1) apply in respect of a regulated entity that carries on a broadcasting undertaking only if the regulations relate to the identification, prevention and removal of barriers in the areas referred to in paragraphs 5(a), (b), (f) and (g) and in the area referred to in paragraph 5(c.1) as it relates to the areas referred to in those paragraphs.
- **Non-application — employment equity**  
(2) Regulations made under subsection 117(1) that are in relation to employment do not apply in respect of a regulated entity that carries on a broadcasting undertaking and that is not subject to the *Employment Equity Act*.
- **Non-application — areas specified in regulations**  
(3) Regulations made under subsection 117(1) that are in relation to the identification, prevention and removal of barriers in an area referred to in paragraph 5(g) do not apply in respect of a regulated entity that carries on a broadcasting undertaking if requirements in relation to the identification, prevention and removal of barriers in that area apply to the regulated entity under
  - (a) a condition of a licence issued under Part II of the *Broadcasting Act*;
  - (b) an order under subsection 9(4) of that Act; or
  - (c) a regulation made under subsection 10(1) of that Act.

### Limited application — telecommunications

- **119 (1)** Subject to subsection (2), regulations made under subsection 117(1) apply in respect of a regulated entity that is a Canadian carrier or a telecommunications service provider only if the regulations relate to the identification, prevention and removal of barriers in the areas referred to in paragraphs 5(a), (b), (f) and (g) and in the area referred to in paragraph 5(c.1) as it relates to the areas referred to in those paragraphs.
- **Non-application — areas specified in regulations**  
(2) Regulations made under subsection 117(1) that are in relation to the identification, prevention and removal of barriers in an area referred to in paragraph 5(g) do not apply in respect of a regulated entity that is a Canadian carrier or telecommunications service provider if requirements in relation to the identification, prevention and removal of barriers in that area apply to the regulated entity under a condition imposed under section 24 or 24.1 of the *Telecommunications Act* or a regulation made under that Act.

### Limited application — transportation

- **120** The only regulations made under subsection 117(1) that apply in respect of a regulated entity that is required to comply with any provision of regulations made under subsection 170(1) of the *Canada Transportation Act* are those that relate to the identification and removal of barriers, and the prevention of new barriers, in the following areas:
  - (a) employment;
  - (b) the built environment, other than a passenger aircraft, passenger train, passenger bus, passenger vessel, aerodrome passenger terminal, railway passenger station, bus passenger station or marine passenger terminal;

- (c) the procurement of goods, services and facilities that are not related to the mobility of persons with disabilities;
- (d) areas designated under regulations made under paragraph 117(1)(b); and
- (e) the area referred to in paragraph 5(c.1) as it relates to the areas referred to paragraphs (a) to (d).

## Exemption

- **121 (1)** On application by a regulated entity, the Minister may, by order and on any terms that he or she considers necessary,
  - (a) exempt a regulated entity from the application of any provision of regulations made under subsection 117(1) if the Minister is satisfied that the regulated entity has taken or will take measures that will result in an equivalent or greater level of accessibility for persons with disabilities; or
  - (b) exempt a class of regulated entities from the application of any provision of regulations made under subsection 117(1) if the Minister is satisfied that all the members of the class have taken or will take measures that will result in an equivalent or greater level of accessibility for persons with disabilities.
- The order ceases to have effect on the earlier of the end of the period of three years that begins on the day on which the order is made and the end of any shorter period specified in the order.
- **Copy to Accessibility Commissioner**  
(2) The Minister must provide the Accessibility Commissioner with a copy of every order made under subsection (1).
- **Non-application of *Statutory Instruments Act***  
(3) The *Statutory Instruments Act* does not apply to an order made under paragraph (1)(a), but the order must be published in the *Canada Gazette* and the reasons for the making of the order must be made available to the public.

\*Annotation\*

***Section 117 of the Accessible Canada Act affords the Governor in Council broad power to make regulations for the implementation of the Act. Sections 118 through 120 limit the application of those regulations with respect to regulated entities in the broadcasting, telecommunications and transportation fields. Section 121 empowers the Minister to exempt a regulated entity or class of regulated entities from the requirements of any regulations made under subsection 117(1). The Minister can only do so if the Minister is satisfied that the regulated entity (or class of regulated entities) has assured an equivalent or greater level of accessibility for persons with disabilities. Such exemptions may only be for three years.***

***There have not yet been any regulations made under this Act. For a greater understanding of what regulations are, the government has put together a helpful guide/summary [here](#).***

***For legal professionals, a thorough discussion on the legality and functionality of regulations can be found in Chapter 25 of Ruth Sullivan, Sullivan on the Construction of Statutes, 6th Edition and may be of further interest.***

\*Reproduction of Act continues below \*

### **For greater certainty**

**121.1** For greater certainty, nothing in any provision of this Act or the regulations limits a regulated entity's duty to accommodate under any other Act of Parliament.

## **Miscellaneous**

### **Collaboration — complaints, applications and grievances**

- **122 (1)** The Accessibility Commissioner, the Canadian Transportation Agency, the Canadian Radio-television and Telecommunications Commission, the Canadian Human Rights Commission and the Federal Public Sector Labour Relations and Employment Board must work together to put in place mechanisms for the efficient and expeditious referral to the appropriate authority of accessibility-related complaints, applications and grievances.
- **Notice of referral**

**(2)** If an authority referred to in subsection (1) decides not to deal with a complaint, application or grievance for one of the following reasons and it decides to refer the complaint, application or grievance to the appropriate authority, it must cause a written notice of its decision, and the reasons for it, to be served on the individual that filed the complaint or application, or presented the grievance, and on the individual or entity that is the subject of the complaint, application or grievance:

  - **(a)** the complaint, application or grievance is one that could more appropriately be dealt with, initially or completely, according to a procedure provided for under any Act of Parliament; or
  - **(b)** the complaint, application or grievance is beyond the jurisdiction of the authority required to serve the notice.
- **Suspension of time**

**(3)** If an authority causes a notice under subsection (2) to be served, the period that begins on the day on which the complaint or application was filed or the grievance was referred to adjudication and that ends on the day on which the complaint, application, or grievance was referred to the appropriate authority is not to be included in the calculation of any time the individual has to avail themselves of any procedure under any Act of Parliament.
- **Disclosure of information**

**(4)** An authority referred to in subsection (1) may, for the purpose of implementing the mechanisms referred to in subsection (1), disclose to the appropriate authority any information, including personal information, that is contained in a complaint, application or grievance that it refers to the appropriate authority.

### **Collaboration — policies and practices**

**123** The Accessibility Commissioner, the Canadian Transportation Agency, the Canadian Radio-television and Telecommunications Commission, the Canadian Human Rights Commission and the Federal Public Sector Labour Relations and Employment Board must work together to foster complementary policies and practices in relation to accessibility-related matters.

### **Obstruction**

**124** It is prohibited to obstruct, by Act or omission, the Accessibility Commissioner or his or her delegate while they are engaged in the exercise of powers or the performance of duties or functions under this Act.

### **False statements — Accessibility Commissioner**

**125** It is prohibited to knowingly make any false or misleading statement verbally or in writing to the Accessibility Commissioner, or to his or her delegate, while they are engaged in the exercise of powers or the performance of duties or functions under this Act.

### **False statements — records, reports, etc.**

**126** It is prohibited for a regulated entity to knowingly make, or participate in, assent to or acquiesce in the making of a false or misleading statement in any record, report, electronic data or other document that it is required to prepare, retain or provide under this Act.

### **Section 126 of *Criminal Code***

**127** Section 126 of the *Criminal Code* does not apply to or in respect of any contravention of any provision of this Act or of regulations made under subsection 117(1).

### **Debts to Her Majesty**

- **128 (1)** The following amounts constitute debts due to Her Majesty in right of Canada that may be recovered in the Federal Court:
  - **(a)** costs incurred by Her Majesty in right of Canada in relation to the inspection of a place or the examination of any thing;
  - **(b)** the amount of a penalty, from the time the notice of violation setting out the amount of the penalty is served;
  - **(c)** every amount undertaken to be paid under a compliance agreement entered into with the Accessibility Commissioner under subsection 82(1), from the time the compliance agreement is entered into;
  - **(d)** the amount set out in a notice of default referred to in subsection 82(4), from the time the notice is served;
  - **(e)** the amount of a penalty confirmed or corrected in the Accessibility Commissioner's notice of decision served under subsection 84(4), from the expiry of the time specified in the notice.
- **Limitation period**
  - (2)** No proceedings to recover a debt referred to in subsection (1) may be commenced after the expiry of five years after the day on which the debt became payable.

- **Debt final**  
(3) A debt referred to in subsection (1) is final and not subject to review or to be restrained, prohibited, removed, set aside or otherwise dealt with except to the extent and in the manner provided by sections 81 to 84.

### **Certificate of default**

- **129 (1)** Any debt referred to in subsection 128(1) in respect of which there is a default of payment, or the part of any such debt that has not been paid, may be certified by the Accessibility Commissioner.
- **Registration in Federal Court**  
(2) Registration in the Federal Court of a certificate issued under subsection (1) has the same force and effect as a judgment of that court for a debt of the amount specified in the certificate and all related registration costs.

### **Enforcement of order**

- **130** An order made under subsection 75(1) or amended under subsection 76(4) and an order made under subsection 102(1) or section 106 may, for the purpose of enforcement, be made an order of the Federal Court by following the usual procedure or by the Accessibility Commissioner filing in the Registry of the Court a copy of the order certified by the Accessibility Commissioner to be a true copy.

### **Review by Senate and House of Commons**

- **131 (1)** Five years after the day on which the first regulation is made under subsection 117(1), or as soon as feasible after that day, a comprehensive review of the provisions and operation of this Act is to be commenced by a committee of the Senate, of the House of Commons or of both Houses of Parliament that may be designated or established by the Senate, the House of Commons or both Houses of Parliament, as the case may be, for that purpose.
- **Report**  
(2) Within six months, or any further time that is authorized by the Senate, the House of Commons or both Houses of Parliament, as the case may be, after the day on which the review is commenced, the committee must submit a report on that review to the Senate, the House of Commons or both Houses of Parliament, as the case may be, together with a statement of any changes recommended by the committee.

### **Independent review**

- **132 (1)** Five years after the first day on which a report is submitted under subsection 131(2) to either House of Parliament and every tenth anniversary of that day, the Minister must cause an independent review of the provisions and operation of this Act to be conducted, and must cause a report on the review to be laid before each House of Parliament on any of the first 15 days on which that House is sitting after the review is completed.
- **Duty to consult**  
(2) The person or persons conducting the review must consult the public, persons with

disabilities, organizations that represent the interests of persons with disabilities, regulated entities and organizations that represent the interests of regulated entities.

\*Annotation\*

***Sections 131 and 132 mandate a comprehensive review of the provisions and operation of the Act. The first review is to be conducted by the Senate, the House of Commons or by a joint committee of both Houses of Parliament. The first review takes place five years after the first regulation has been made. The subsequent reviews are independent reviews. Independent reviews will be conducted by someone appointed by the Minister. They will take place every 10 years following the five-year review prepared by Parliament.***

***The independent review process will provide persons with disabilities and the public in Canada the opportunity to comment on how the Accessible Canada Act is working to remove barriers and/or how its efforts to do so ought to be enhanced.***

***No regulations have been made to date.***

\*Reproduction of Act continues below \*

## National AccessAbility Week

### Designation

**133** Throughout Canada, in each year, the week starting on the last Sunday in May is to be known as National AccessAbility Week.

\*Annotation\*

***This exciting week began in 2017 and is hereby enshrined into law. For more information on National AccessAbility Week, see [here](#).***

\*Reproduction of Act continues below \*

## PART 9

# Parliamentary Entities

## Definition and Application

### Definition of parliamentary entity

- **134** In this Part, **parliamentary entity** means
  - **(a)** the Senate, as represented by any committee or person that the Senate by its rules or orders designates for the purposes of this Part;
  - **(b)** the House of Commons, as represented by the Board of Internal Economy of the House of Commons;
  - **(c)** the Library of Parliament;
  - **(d)** the office of the Senate Ethics Officer;
  - **(e)** the office of the Conflict of Interest and Ethics Commissioner;
  - **(f)** the Parliamentary Protective Service; and
  - **(g)** the office of the Parliamentary Budget Officer.

### Application of other Parts

**135** Parts 4 to 6 and 8 apply in respect of parliamentary entities only to the extent provided for in this Part.

\*Annotation\*

*Part 4 of the ACA concerns the duty of regulated entities to prepare accessibility plans, progress reports and feedback processes. (See sections 42-72.)*

*Part 5 of the ACA deals with the administration and enforcement of the ACA. It sets out the Accessibility Commissioner's powers of inspection, as well as the powers related to production orders, compliance, administrative monetary penalties, etc. (See sections 73-93.)*

*Part 6 contains the provisions of the ACA dealing with complaints, compensation and appeals for those who have been adversely affected by a contravention of the statute. (See sections 94-110.)*

*Part 8 deals with the establishment of regulations by the Governor in Council and also establishes National AccessAbility Week. (See sections 117-133.)*

*This part of the ACA (Part 9) limits the extent to which the ACA applies to Parliamentary entities in Parts 4 –6 and 8.*



\*Reproduction of Act continues below\*

### Constituency offices

**136** For greater certainty, this Part applies with respect to the constituency offices of members of the House of Commons.

## Parliamentary Powers, Privileges and Immunities

### Powers, privileges and immunities

**137** For greater certainty, nothing in this Act or in any regulations made under it is to be construed as limiting in any way the powers, privileges and immunities of the Senate and the House of Commons and their members or as authorizing the exercise of a power or the performance of a function or duty under this Act if the exercise of that power or the performance of that function or duty would interfere, directly or indirectly, with the business of the Senate or the House of Commons.

## Application

### Application of Part 4

- **138 (1)** Sections 69 to 71 apply with respect to a parliamentary entity as if it were a regulated entity.
- **Exemption**  
**(2)** After consulting with the Accessibility Commissioner, the Speaker of the Senate or the Speaker of the House of Commons — or, in the case of the Library of Parliament, the Parliamentary Protective Service and the office of the Parliamentary Budget Officer, both Speakers Acting jointly — may exempt in writing a parliamentary entity from the application of all or any part of sections 69 to 71, on any terms that the Speaker or Speakers consider necessary.
- **Amendment or revocation**  
**(3)** The Speaker or Speakers who gave an exemption under subsection (2) must consult with the Accessibility Commissioner before amending it but need not do so before revoking it.
- ***Statutory Instruments Act***  
**(4)** For greater certainty, an exemption, amendment or revocation referred to in this section is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

### Application of Part 5 — inspection

- **139 (1)** Section 73 applies with respect to a parliamentary entity.
- **Orders**  
**(2)** Sections 74 to 76 apply with respect to a parliamentary entity as if it were a regulated entity.

## Contravention — parliamentary entity

- **140 (1)** The Accessibility Commissioner may issue a notice of contravention to a parliamentary entity, and must cause it to be served with the notice, if the Accessibility Commissioner has reasonable grounds to believe that the parliamentary entity has contravened
  - (a) any of subsections 69(1) to (4) and (7), 70(1) to (3), 71(1) to (3) and (6) and 73(8) and sections 124 to 126;
  - (b) an order made under section 74;
  - (c) an order made under subsection 75(1) or amended under subsection 76(4); or
  - (d) a provision of regulations made under subsection 117(1) that applies with respect to the parliamentary entity.
- **Contravention — specified person**

**(2)** The Accessibility Commissioner may issue a notice of contravention to a specified person, and must cause them to be served with the notice, if the Accessibility Commissioner has reasonable grounds to believe that the specified person has contravened an order made under any of paragraphs 73(2)(i) to (l) or has contravened subsection 73(8) or section 124 or 125.
- **Contents of notice**

**(3)** A notice of contravention must

  - (a) name the parliamentary entity or specified person;
  - (b) identify the contravention;
  - (c) summarize, in plain language, the rights and obligations of the parliamentary entity or specified person under this section, including their right to request to enter into a compliance agreement with the Accessibility Commissioner or request a review of the Acts or omissions that constitute the contravention; and
  - (d) set out the time and manner — as determined by the Accessibility Commissioner — in which the parliamentary entity or specified person may make a request under subsection (4).
- **Options**

**(4)** A parliamentary entity or specified person that is served with a notice of contravention may, within the time and in the manner set out in the notice,

  - (a) request to enter into a compliance agreement with the Accessibility Commissioner for the purpose of ensuring their compliance with the provision or order to which the notice relates; or
  - (b) request a review of the Acts or omissions that constitute the contravention.
- **Review**

**(5)** On completion of a review requested under paragraph (4)(b), the Accessibility Commissioner must determine, on a balance of probabilities, whether the parliamentary entity or specified person committed the contravention and confirm or cancel the notice of contravention. The Accessibility Commissioner must cause the parliamentary entity or specified person to be served with a notice setting out the decision under this subsection and must, if the notice of contravention is confirmed, specify in the notice the time and the manner in which they may make a request under subsection (6).
- **Request for compliance agreement**

**(6)** If the Accessibility Commissioner confirms the notice of contravention on review, the

parliamentary entity or specified person may, within the time and in the manner set out in the notice of decision, request to enter into a compliance agreement as set out in paragraph (4)(a).

- **Entering into compliance agreement**

(7) After considering a request to enter into a compliance agreement, the Accessibility Commissioner may enter into a compliance agreement with the parliamentary entity or specified person on any terms that the Accessibility Commissioner considers appropriate, other than any terms that would provide for a deposit of security or for a penalty.

- **Notice**

(8) If the Accessibility Commissioner is satisfied that a parliamentary entity or specified person that has entered into a compliance agreement has complied with it, he or she must cause the parliamentary entity or specified person to be served with a notice of compliance. If he or she is satisfied that the parliamentary entity or specified person has not complied with the agreement, he or she must cause them to be served with a notice of default.

- **Limitation period or prescription**

(9) No notice of contravention is to be issued after the expiry of two years after the day on which the subject matter of the contravention arose.

- **Application — sections 85 and 87**

(10) Sections 85 and 87 apply with respect to contraventions referred to in this section, with any reference to a regulated entity to be read as a reference to a parliamentary entity, any reference to a person to be read as a reference to a specified person and any reference to a violation to be read as a reference to a contravention.

- **Definition of specified person**

(11) In this section, **specified person** means a person performing duties and functions in the course of the activities or business of a parliamentary entity.

## Application of Part 6

- **141 (1)** Subject to subsections (2) and (3), sections 94 to 104, subsection 106(1) and sections 108 to 110 apply with respect to a parliamentary entity as if it were a regulated entity.

- **Exception**

(2) An individual is not entitled to file a complaint under subsection 94(1) in respect of a contravention by a parliamentary entity of any provision of regulations made under subsection 117(1) if the individual is entitled to present a grievance under section 62 of the *Parliamentary Employment and Staff Relations Act* in respect of the contravention.

- **Appeal**

(3) An appeal with respect to a parliamentary entity under subsection 104(1) is to be made to the Federal Public Sector Labour Relations and Employment Board instead of to the Canadian Human Rights Tribunal and, with respect to such an appeal, a reference to the member or panel of members of the Tribunal in subsection 106(1) is to be read as a reference to a panel of the Board.

- **For greater certainty**

(4) For greater certainty, section 35 of the *Federal Public Sector Labour Relations and Employment Board Act* does not apply with respect to an order of the Federal Public Sector

Labour Relations and Employment Board made with respect to an appeal under subsection 104(1).

### Application of Part 8 — regulations

- **142 (1)** Regulations made under any of paragraphs 117(1)(a) to (l) — and under paragraph 117(1)(m) with respect to sections 69 to 71 — apply with respect to a parliamentary entity as if it were a regulated entity, but only to the extent that the regulations apply generally to regulated entities that are departments named in Schedule I to the Financial Administration Act.
- **Exemption**  
**(2)** On application by a parliamentary entity and after consulting with the Accessibility Commissioner, the Speaker of the Senate or the Speaker of the House of Commons — or, in the case of the Library of Parliament, the Parliamentary Protective Service and the office of the Parliamentary Budget Officer, both Speakers acting jointly — may, in writing and on any terms that they consider necessary, exempt the parliamentary entity from the application of any provision of the regulations referred to in subsection (1) if the Speaker or Speakers are satisfied that the parliamentary entity will take or has taken measures that will result in an equivalent or greater level of accessibility for persons with disabilities.
- **Amendment or revocation**  
**(3)** The Speaker or Speakers who gave an exemption under subsection (2) must consult with the Accessibility Commissioner before amending it but need not do so before revoking it.
- **Statutory Instruments Act**  
**(4)** For greater certainty, an exemption, amendment or revocation referred to in this section is not a statutory instrument for the purposes of the *Statutory Instruments Act*.
- **Sections 122 to 125, 127 and 131**  
**(5)** Sections 122 to 125, 127 and 131 apply with respect to a parliamentary entity.
- **Sections 126 and 132**  
**(6)** Sections 126 and 132 apply with respect to a parliamentary entity as if it were a regulated entity.

## Notification of Speakers

### Notification — entrance into place

- **143 (1)** The Accessibility Commissioner must notify the Speaker of the Senate or the Speaker of the House of Commons, or both, of his or her intention to enter, under section 73 or paragraph 98(d), a place that is under the authority of a parliamentary entity.
- **Other notifications**  
**(2)** The Accessibility Commissioner must notify the Speaker of the Senate or the Speaker of the House of Commons, or both, as soon as possible after he or she
  - **(a)** makes an order with respect to a parliamentary entity under section 74;
  - **(b)** makes a compliance order with respect to a parliamentary entity under section 75;
  - **(c)** makes a decision under subsection 76(4) in respect of a compliance order referred to in paragraph (b);
  - **(d)** begins to conduct an investigation of a parliamentary entity under section 95;

- (e) makes an order under subsection 102(1) with respect to a parliamentary entity;
  - (f) issues a notice of contravention under subsection 140(1) or (2);
  - (g) makes a decision under subsection 140(5); or
  - (h) causes a notice of compliance or default to be served under subsection 140(8).
- **Notice or order — complaint**

(3) Whenever the Accessibility Commissioner causes a parliamentary entity to be served with a notice under subsection 94(5), 96(1), 100(2), 101(2) or 103(3), the Accessibility Commissioner must provide a copy to the Speaker of the Senate or the Speaker of the House of Commons, or both.

### Notification — appeal under subsection 104(1)

- **144 (1)** The Federal Public Sector Labour Relations and Employment Board must notify the Speaker of the Senate or the Speaker of the House of Commons, or both, as soon as possible after the Board receives a request for appeal of a decision or order with respect to a parliamentary entity under subsection 104(1).
- **Power of Speakers**

(2) If the Speaker of the Senate or the Speaker of the House of Commons is notified that an appeal has been brought,

  - (a) the Board must, at the Speaker's request, provide to the Speaker a copy of any document that is filed with the Board in the appeal and that is necessary to enable the Speaker to present evidence and make representations under paragraph (b); and
  - (b) the Speaker may present evidence and make representations to the Board in the appeal.

### Non-compliance with compliance order

- **145 (1)** The Accessibility Commissioner must provide to the Speaker of the Senate or the Speaker of the House of Commons, or both, a compliance order that is made under section 75 or amended under subsection 76(4) with respect to a parliamentary entity, if the order is not complied with.
- **Order under subsection 102(1)**

(2) The Accessibility Commissioner must provide an order made under subsection 102(1) with respect to a parliamentary entity to the Speaker of the Senate or the Speaker of the House of Commons, or both, if the order is not complied with.
- **Order under subsection 106(1)**

(3) The Federal Public Sector Labour Relations and Employment Board must, at the request of the Accessibility Commissioner or the complainant, provide an order made under subsection 106(1) with respect to a parliamentary entity to the Speaker of the Senate or the Speaker of the House of Commons, or both, if the order is not complied with.

### Tabling by Speaker

**146** The Speaker of the Senate or the Speaker of the House of Commons, or both, must, within a reasonable time after receiving it, table every notice of default received under paragraph 143(2)(h) and every order received under section 145 in the House over which the Speaker presides.

\*Annotation\*

**Part 9 extends the duty to remove barriers to parliamentary entities, which are defined in section 134.**

**While Parliament has extended the Act to parliamentary entities, it has also provided that the Act not be construed as limiting the powers, privileges and immunities of the Senate and the House of Commons and their members.**

**Parliamentary entities are required to prepare an initial accessibility plan, establish a feedback process, and to present progress reports on the implementation of their accessibility plan. The Speaker of the House of Commons or the Senate can exempt parliamentary entities from these requirements on any terms that the Speaker(s) consider necessary. Caution may be warranted by the Speaker(s) in exercising this exemption power as it could prevent the identification of barriers and their removal and/or allow existing or emerging barriers to linger.**

**The Accessibility Commissioner is granted the power to conduct inspections and issue notices of contravention to a parliamentary entity. Individuals may make a complaint to the Accessibility Commissioner in respect of any barrier that they find within a parliamentary entity.**

**The regulations enacted for the implementation of the Accessible Canada Act also apply to parliamentary entities. The Speaker of the House of Commons or the Senate can exempt parliamentary entities from the requirements of the regulations if the Speakers are satisfied that the parliamentary entity will take or has taken measures that will result in an equivalent or greater level of accessibility for persons with disabilities.**

**The objective of Part 9 can be seen as an effort to make Canada's democratic institutions at the federal level more accessible to persons with disabilities. In Reference re Secession of Quebec, 1998 CanLII 793 (SCC), [1998] 2 SCR 217, the Supreme Court of Canada confirmed the unwritten constitutional principle of democracy that governments are chosen by popular franchise. This principle requires citizen access to elected representatives. Requiring that barriers be removed within parliamentary entities better positions persons with disabilities to be able to access their elected representatives and influence government policy. It would only be a "thin" version of the idea of "removing barriers" if access to democratic institutions were not facilitated. It will be interesting to see how Part 9 of the ACA is actually implemented.**

\*End of Annotations – Concluding Commentary by authors below\*.

## CURRENT EVENT – COVID-19

***During the COVID-19 global pandemic, many people with disabilities not only faced the challenges that the pandemic thrust upon all Canadians but also increased costs related to their disability. People with disabilities are often from low-income households***

***In 2020, the federal government provided a one-time payment of \$600 — to those who qualified. But to qualify for this benefit, one needed to be eligible to receive a separate tax credit — the federal disability tax credit (DTC). Therefore, not all people living with disabilities qualified for the one-time payment.***

***Some say that this global pandemic has shown us that we can be more inclusive. Others say that the government left people with disabilities behind and forgot them while rushing to help the “average” Canadian.***

## FINAL COMMENTARY

***The Accessible Canada Act is an initiative by the federal government that has the promise to lead us to a more inclusive Canadian society. As we continue to monitor the accessibility standards that are created and the cases that arise under the Act, we hope to see the continued prevention and breaking down of disabling barriers, and the progressive realization of greater community inclusion for people with disabilities.***

\*End of Document\*