



BUILDING AN INCLUSIVE AND ACCESSIBLE CANADIAN TRANSPORTATION SYSTEM

CCD Submission to Canada Transportation Act Review

23 December 2014

Note: Accessibility as referred to in this document is not simply access related to mobility impairment but rather related to the access needs of all persons with disabilities and grounded in the principles of Universal Design. We are seeking a cross disability framework in the development of an accessible, federally regulated transportation system.

Convention on the Rights of Persons with Disabilities (CRPD)

The Council of Canadians with Disabilities (CCD), a national organization that works for an accessible and inclusive Canada, reminds the Canada Transportation Act Review that in March 2010, Canada ratified the Convention on the Rights of Persons with Disabilities (CRPD). By ratifying the CRPD, Canada made a commitment to meet the standards set by this international law, which upholds accessibility for persons with disabilities. Articles 9 (Accessibility) and 21 (Freedom of Expression and Opinion and Access to Information) elaborate measures States Parties must undertake to ensure people with disabilities experience full enjoyment of their human rights when using transportation services. (Please refer to Appendix One to read Article 9 and 21.)

It is CCD's view that the CRPD sets a framework for new policy development and creates a government obligation for continuous improvements and removal of barriers that will make Canada more inclusive and accessible.

The Current Environment

Canada Is No Longer a World Leader in Accessible Transportation – Although Canada was once a world leader in accessible transportation, Canadian access levels have fallen, whereas other jurisdictions, such as Japan and the European Union, are ensuring inclusive and universal design in their transportation

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systems. CCD encourages the Review to study international best practices of inclusive and universal design in order to bring these to the attention of the Minister and industry. CCD would be willing to assist the Review with this work. In addition, CCD encourages the Review to include on its staff people with disabilities who are experts on accessible transportation to ensure that the Review is benefitting from the wealth of experiential and professional knowledge in the disability community.

Barriers - As will be apparent from the examples below, there continues to be work that needs to be undertaken to remedy barriers and to make Canada's federally regulated transportation system accessible and inclusive of people with disabilities.

Carriers, in the air and rail industries, are inappropriately challenging passengers with disabilities who have determined that they are self-reliant and able to travel without an attendant. In some instances, individual staff members are applying their own criteria to passengers. One traveler with a disability informed CCD that when she arrived at the airport an Air Canada agent informed her that she would need to travel with an attendant. The traveler waited and then went to another agent who did not question her self-reliance.

In some Canadian airports, staff are assigned to assist passengers with disabilities. Some travelers have reported that even when they indicated that assistance was not required, the staff remained with them until they boarded. This is another example of how a traveler's declaration of self-reliance can be disregarded.

A wheelchair using traveler, who travels independently to Asia from Pearson International Airport, reported that while the staff of domestic carriers will assist him get to the exit of the airport to take a taxi, they will not accompany him to the international terminal.

Domestic air carriers are now charging travelers to check their luggage. This is a barrier for passengers with disabilities who may need to travel with various aids, devices and supplies.

Travelers now find that a variety of services in terminals are offered through inaccessible touch screen devices. These devices are a barrier to travelers with physical and sensory disabilities.

Air carriers are reducing aircraft seat pitch and width. North American travelers are becoming larger. Small seat size is a barrier for passengers with an obesity disability.

There are still limited options for making reservations to various modes of transportation throughout Canada and sometimes the only method available is a telephone. Internet-based applications are available but sometimes do not support adaptive technology software used by some people with disabilities. Outdated methods of accommodations, such as TTYs, are being relied upon rather than also upgrading to text or messaging systems.

In summer 2014, a wheelchair user wanted to travel by bus from Ontario to the City of St. John's. Once he arrived in North Sydney, Nova Scotia he planned to travel from North Sydney to Port aux Basque via a Marine Atlantic vessel. He had wanted to book a bus from Port aux Basque to the City of St. John's. Unfortunately, there was no form of accessible transportation from Port aux Basque to the City of St. John's.

Some public transportation systems across Canada are now refusing to transport scooters. Even on parallel transportation systems, scooters are being questioned.

There are a variety of eligibility criteria for parallel transit systems. Many transportation systems are using a medical model approach with occupational therapists determining whether a person with disability can board and disembark a bus or maneuverer at a bus stop, in a shelter or station.

Each year, travelers with disabilities bring many complaints about barriers to the Canadian Transportation Agency (CTA). The same problems (for example, poorly trained staff, damage to equipment, barriers to mobility) keep re-occurring and travelers with disabilities continue to lodge complaints. Systemic barriers remain and discrimination is ongoing; systemic remedies are required.

The status quo of minor complaints based on aging regulations is not motivating carriers to enhance accessibility and service standards are falling rather than rising.

While there are barriers, there are also carriers who have made progress and Marine Atlantic is one that has made significant progress.

Canadian Transportation Act

The consultation document, "Discussion Paper: Canada Transportation Act Review" states,

Canada's system of consumer protection for the travelling public is based on formal complaints to the Canadian Transportation Agency. Dispute resolution options ranging from facilitation to mediation to adjudication are available. Decisions are made on a case-by-case basis and only apply to the service provider targeted in the complaint, not to the industry as a whole. Other jurisdictions, such as the U.S. and the European Union, have more prescriptive regulatory regimes based on a pre-established consumer rights associated with specific issues. (p. 9)

The case-by-case approach and decisions only applying to the carrier targeted in a complaint have been frustrating efforts to create an accessible and inclusive transportation system. CCD, in collaboration with Eric Norman and Joanne Neubauer, lodged a Canadian Transportation Agency (CTA) complaint against WestJet and Air Canada which resulted in a decision that established the one person/one fare policy for these carriers domestically. Unfortunately, the decision did not affect other carriers or international flights. For the realization of an accessible and inclusive transportation system, the CTA must have the power to order systemic solutions.

Unlike the CTA, the Canadian Human Rights Tribunal, has the power to order robust corrective measures. For example, a complainant can be awarded:

- up to a maximum of \$20,000 for pain and suffering and any losses caused by the discrimination, and
- up to a maximum of \$20,000 for reckless or willful discrimination.

Similar measures should be available to the CTA to resolve undue obstacles to the mobility of persons with disabilities.

Part V Transportation of Persons with Disabilities – It is CCD's view that the Canadian Transportation Act's s. 170 -173, should not be changed, with the exception of s. 173 (3), which should be amended to give the Canadian Transportation Agency (CTA) the same range of remedies as the Canadian Human Rights Tribunal. This is essential because the courts have prohibited people with disabilities from taking their human rights issues involving disability access to the Canadian Human Rights Commission.

In addition to empowering the CTA to award human rights remedies, CCD is also calling for the CTA to have the power: to grant interim injunctions related to the

purchase of inaccessible equipment by carriers, to issue a prospective order requiring carriers to pay the legal costs of persons with disabilities and to mandate the CTA to make systemic cost orders.

CCD is opposed to any amendment of the Canadian Transportation Act which would dilute the mandate of the CTA. The CTA's current mandate with regard to "undue obstacles" complies with human rights standards [VIA Rail] and the UN Convention on the Rights of Persons with Disabilities. CCD holds that the problem is not with the law but the enforcement of the law (lack of remedies and lack of advance cost awards for individuals) and the need for regulations.

CCD v. VIA Rail

In April 2000, the Federal Government gave VIA Rail \$400 million to purchase new trains. At a meeting of the Advisory Committee on Accessible Transportation (ACAT), the Minister promised that the new trains would be accessible. In the end, VIA purchased inaccessible cars even though the Federal Government was paying 100% of the cost. VIA ignored the Minister and the Voluntary Code and put inaccessible cars into service. As this example demonstrates, accessibility standards are a thing of the past for Canada's federal transport system. Voluntary codes of practice are the Canadian way. The result: travel denied.

Seven years later, the disability community finally won its case at the Supreme Court of Canada. VIA is now required to retrofit the coach cars to make them accessible. These cars could not go into service in other countries, such as the United States and Britain, because access regulations there would not allow them on the tracks.

What the Supreme Court of Canada said in the VIA case:

"162 The accommodation of personal wheelchairs enables persons with disabilities to access public services and facilities as independently and seamlessly as possible. Independent access to the same comfort, dignity, safety and security as those without physical limitations, is a fundamental human right for persons who use wheelchairs. This is the goal of the duty to accommodate: to render those services and facilities to which the public has access equally accessible to people with and without physical limitations."

"176 Likewise the fact that there are accessible trains traveling along some routes does not justify inaccessible trains on others. It is the global network of rail services that should be accessible."

"186 The twin goals of preventing and remedying discrimination in Canadian National Railway Co. v. Canada (CHRC) cannot be accomplished if the creation of new, exclusionary barriers can be defended on the basis that they are no more discriminating than what they are replacing. This is an approach that serves to perpetuate and exacerbate the historic disadvantage endured by persons with disabilities."

"221 Members of the public who are physically disabled are members of the public. This is not a fight between able-bodied and disabled persons to keep fares down by avoiding the expense of eliminating discrimination. Safety measures can be expensive too, but one would hardly expect to hear that their cost justifies dangerous conditions. In the long run, danger is more expensive than safety and discrimination is more expensive than inclusion."

Clarification Needed

There is a lack of clarity about voluntary codes of practice in the post-VIA environment. Correspondence from a Minister of Transport suggests that these codes now have the force of regulation. The Hon. Chuck Strahl wrote the following:

I would clarify that codes of practice are not voluntary in their application. The decision of the Supreme Court in *Council of Canadians with Disabilities vs. VIA Rail Canada*, to which you've referred in your letter, settled the question of the nature and the strength of codes of practice for the different modes of transportation. The Supreme Court of Canada reasoned that, since the Passenger Rail Car Accessibility Code of Practice was the result of a voluntary, consensus-building process that VIA Rail had publicly accepted, the Code functioned as a self-imposed regulation.

The current review provides an opportunity for clarification on the status of voluntary codes of practice and how code enforcement will occur.

Regulation for Access

CCD is seeking accessibility regulations for all federally regulated modes of transportation. For example, Canada could adopt the US regulatory accessibility model and utilize US Access Board guidelines and expertise.

Recommendations for Building an Inclusive and Accessible Federal Transportation System

CCD appreciates that the "Discussion Paper: Canada Transportation Act Review", made the following commitment, "Ensuring the accessibility of the transportation network for persons with disabilities will continue to be an important objective in light of Canada's aging population." (p. 21) To ensure the fulfillment of the aforementioned objective, CCD encourages the Review to recommend:

1. That Canada meets its obligations outlined in Article 9 and 21 of the Convention on the Rights of Persons with Disabilities.
2. That the Minister of Transport, the Department of Transport, the CTA and carriers work with the disability community to develop a deeper understanding of the barriers, faced by people with disabilities and Deaf people. The experience of barriers is affected by various biological, social, cultural and identity categories, such as gender, race, class, sexual orientation, language. For barriers to be successfully remedied, these dynamics cannot be ignored. For example, carriers' training programs on access and inclusion of persons with disabilities should be grounded in an intersectional analysis of disability.
3. That, in keeping with guarantees found in the Convention on the Rights of Persons with Disabilities, the Charter of Rights and Freedoms, and the Canadian Human Rights Act, the Canadian Transportation Act continue to explicitly state a strong commitment to access and the removal of undue obstacles to the mobility of persons with disabilities.
4. That one of the outcomes of the review be a clarification for both the disability community and the Canadian transportation industry of the effect that the VIA Rail decision has had on the status of the voluntary codes of practice. If the VIA decision has not had the effect of rendering these codes equivalent to regulations, then the Review should recommend that the Minister of Transport immediately develop accessibility regulations

similar to the United States regulatory model for all federally regulated modes of transportation and federally regulated transportation service systems (airports, stations, station based ground transport, information systems, etc.).

5. That the Minister appoint as full-time members to the Canadian Transportation Agency (CTA) disability community-based persons with expertise, including experiential knowledge, in the area of accessible transportation.
6. That Canada adopt clear and enforceable access regulations to govern the modes of transportation in federal jurisdiction and that the Council of Canadians with Disabilities be actively involved in the development of those regulations.
7. That the enforcement of accessibility needs to be strengthened by providing the CTA with:
 - The power to award human rights remedies (for example, awards for pain and suffering).
 - The power to grant interim injunctions related to the purchase of any new equipment that would create new barriers.
 - The power to issue a prospective order requiring carriers to pay the legal costs of persons with disabilities.
 - The mandate to make systemic cost orders.
8. That the Minister take immediate action to enhance the capacity of Transport Canada to address accessible transportation and to call for the development of a national action plan which includes a research capacity to look at best practices in other jurisdictions, reports annually on goals and achieved outcomes, monitors type and focus of complaints made to CTA and ensures appropriate consultation with the disability community in the development of a national action plan.
9. That the Minister enhance the capacity of the Transport Development Centre to engage in research related to identifying new means of advancing accessibility and universal design in all federally regulated modes of transportation and service delivery.
 - a. Research undertaken by Transport Canada's Transport Development Centre relating to accessible transportation should be grounded in a rights based approach and the principles of inclusive and universal design rather than a medical model approach.

10. That the Government of Canada include a strong access standard/universal design principle in all infrastructure initiatives.
11. That Canada adopt international best practices on inclusive and universal design, which are identified by the Review during the course of its work.

Appendix One

Article 9 (Accessibility)

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

a) Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces; ...

Article 21 (Freedom of Expression and Opinion and Access to Information)

States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:

a) Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost;

b) Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other

accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;

c) Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;

d) Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;

e) Recognizing and promoting the use of sign languages.

Appendix Two

Contact Information for CCD

The contact person for the Council of Canadians with Disabilities is Mr. Laurie Beachell, CCD National Coordinator, who can be reached by telephone at 204-947-0303 or by email at laurie@ccdonline.ca.