

# **Contributing to the Dialogue**

## **A Federal Disability Act: Opportunities and Challenges**

**A Paper  
Commissioned by the  
Council of Canadians with Disabilities  
and  
Canadian Association for Community Living**

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## EXECUTIVE SUMMARY

Despite progress in the status of Canadians with disabilities high proportions still face lives of exclusion, poverty and isolation. With the Conservative Party of Canada's commitment to a National Disability Act, there is renewed debate about how such legislation might be useful in addressing these issues.

This paper advances a set of tools that might be implemented in a Federal Disability Act, and outlines a model legislative framework to illustrate how proposed strategies and tools might interact.

### **Available Statutory Strategies**

The paper recommends considering a multiple-strategy approach in crafting an effective Federal Disability Act, which could draw on a range of existing statutory strategies including:

- A generously stated legislative purpose as this will guide future interpretation – including broad goals (i.e. inclusion) and procedural goals (related to accountability, barrier removal, political participation, universal design);
- Development of guidelines and/or standards to direct the removal of barriers;
- Requirements that federal audits and policy/program reviews identify barriers to full inclusion and make recommendations for their removal;
- Directing government inquiries and reports to include a focus to disability;
- Mandating accessibility plans to identify barriers and to plan for their removal over time – ensuring these do not provide automatic defence to a complaint of discrimination;
- Promoting universal design as a necessary tool to successful achievement of full inclusion;
- Providing that federal purchasing power encourage development of accessible products and services;
- Directing omnibus reform of federal legislation that continues to discriminate on the basis of disability (although this paper recognizes that this strategy may prove unduly complex and lessen support).

### **Creative New Mechanisms For Advancing Inclusion**

The paper recommends that new mechanisms would also be needed in a Federal Disability Act if it were to make an effective contribution to addressing barriers:

- ***A Commissioner of Disability and Inclusion*** –The Commissioner's mandate would be to supplement existing accountability mechanisms, conduct independent assessment of disability programs and services, and report directly to Parliament. The Office would recommend Task Forces,

infrastructure requirements, monitor accessibility plans, and recommend standards.

- **An Accessibility Design Centre** – This Centre would act as a cross-government focal point of responsibility to harmonize, track and deliver results in the area of barrier removal. It would consolidate expertise in disability and universal design and support federal departments or agencies, proactively advising them in standards and barrier removal. It may also have standards enforcement responsibilities.
- **A Full Inclusion Policy Centre** – This Centre would be a department of the Canadian Human Rights Commission (CHRC) with the general mandate to address disability-related barriers that exist within the policies and practices of federal departments, commissions and agencies. The Centre would develop guidelines to review and revise policies and practices and would report to the Office of the Disability Commissioner.

### **Jurisdiction**

The Federal Disability Act would apply in the federal jurisdiction – federal government departments, agencies and commissions, as well as federally regulated industries. The paper recognizes the current legislative and regulatory complexity of many spheres of federal jurisdiction where barrier removal must be addressed. With this in mind, it urges that a Federal Disability Act also account for inter-jurisdictional issues such as barriers facing Aboriginal people with disabilities, as well as account for and enhance regulatory regimes in transportation, banking, and telecommunications.

The paper concludes that a Federal Disability Act, with the components outlined above, would be a significant contribution to the federal legislative, policy, and regulatory framework for building an inclusive and accessible Canada. It would go some distance in demonstrating the federal leadership in disability promised under the *In Unison Accord*. However, the paper cautions that a Federal Disability Act should not be seen as an end in and of itself.

Rather, it can only legitimately be seen as a beginning which lays the foundation for federal leadership in disability and the ground on which much needed federal investments in disability supports, income, and employment would follow.

# I INTRODUCTION

## Background

There are more than three million Canadians with disabilities and more than 2.3 million families in Canada who provide day-to-day support for a family member with a disability.

In 1981, the International Year of Disabled Persons, the Canadian Parliament, through its 'Special Committee on the Disabled and the Handicapped', released a comprehensive report called *Obstacles*. Since then, there have been a number of important milestones and reports written to further address and improve the situation for persons living with a disability and their families.

Despite progress in the last two decades, Canadians with disabilities and their families still face significant barriers. It is clear that the experience of exclusion, poverty and isolation for people with disabilities continues. This is unacceptable in a country as prosperous as Canada.

The disability community continues to call for increased investments that would substantively improve the availability of disability related supports and alleviate the poverty experienced by Canadians with disabilities. The core issues affecting disability and income supports are complex, multi-jurisdictional and would require substantial analysis and review of the programs and delivery mechanisms used to date. Both federal and provincial governments have committed in recent years to addressing these issues directly, however progress in policy reform is slow. Nonetheless the disability community will continue to pursue fundamental changes to address poverty and lack of disability supports. It is these barriers to inclusion and full participation that remain the ongoing and long-term priority of the disability community.

## Examining Legislation as an Option

There has been a great deal of debate about whether disability legislation effectively removes barriers and improves the lives of people with disabilities. There has been experience in other jurisdictions (US, Ontario, Australia) that has demonstrated mixed results.

Within the Canadian disability community there has been debate about whether a Federal Disability Act would be useful and whether it is necessary. It had been thought by some, that existing mechanisms, including the Charter, federal statutes and strong anti-discrimination and duty to accommodate jurisprudence were sufficient to achieve barrier removal and that therefore enacting new federal legislation was not necessary. Others have held a contrary view, hoping for a comprehensive statute, believing that the American legislation the Americans

with Disabilities Act is very effective and should be replicated here. The Scott Task Force of 1996 was in favour of a limited disability act and also recommended other framework or structural changes that it believed would provide greater accountability with respect to the disability related initiatives of the Canadian government. It supported the idea of an Office of a Disability Commissioner. This proposal has also been advocated and further developed by Michael Prince of the University of Victoria. Today there is a political commitment to legislation as the Conservative Party of Canada in 2005 included the following in its election platform:

Introduce a National Disability Act to promote reasonable access to medical care, medical equipment, education, employment, transportation, and housing for Canadians with disabilities.

Further detail of the Government's proposal has not yet been brought forward.

### **Where are we now? CCD and CACL's contribution to the dialogue**

In light of anticipated action by the Government of Canada, the Council of Canadians with Disabilities (CCD) and Canadian Association for Community Living (CACL) have commissioned this "contribution to the dialogue" to further the understanding of both the potentials and limitations of a Federal Disability Act. Phyllis Gordon, a lawyer and Director of ARCH Disability Law Centre, was hired as a consultant to help frame this discussion but this paper is not the policy position of either ARCH or Ms. Gordon. Mark Hecht, Visiting Professor at the University of Ottawa acted as Executive Researcher.

- The **goal** of this paper is to focus and stimulate discussion and to assist the disability community and the government in the formulation of a vision and viewpoint.
- The **intent** of this paper is to make a "contribution to the dialogue" and the discussion necessary for the development of good policy.
- **It is not a position paper on behalf of disability organizations**, nor a definitive view of what a federal disability statute could or should entail. These positions will come forward in the consultation and dialogue at the time that the federal government outlines its proposal for an Act

This paper examines different tools and strategies that might be implemented in the legislation. It also reviews the reach of the federal government's legislative authority and highlights some of the areas where a federal disability act may have significant impact on the lives of persons with disabilities. Finally, a model framework or architecture for a Federal Disability Act has been developed to illustrate how the various strategies and tools might interact. In doing so, it is

hoped to stimulate a practical – rather than abstract discussion .of potential objectives and mechanisms.

The model framework is rudimentary and not what a fully developed statute would look like. This is not an attempt to draft legislation but rather to frame and encourage a relevant and focused policy discussion. In order to indicate that this is **not** a proposal for a Federal Disability Act, it is referred to throughout as a “Framework Bill”.

It will be important as the dialogue continues to keep the following questions in mind.

- What kind of Federal Disability Act is possible at this time that will be of significant value to persons with disabilities?
  - Key components of this discussion relate to the “reach” of the federal government as well as to whether a majority of the disability community will benefit and in what specific ways.
- Are there minimum requirements? The disability community will focus on results and therefore would look for:
  - An Federal Disability Act that does not reduce or undermine the guarantees enshrined in the *Charter of Rights and Freedoms and the Canadian Human Rights Act*.
  - Effective regulations, strong enforcement and a significant allocation of resources for implementation.
  - Provisions that move beyond voluntary guidelines.
  - A focus beyond awareness and public education to deliver meaningful outcomes.

Without these basic components there will be little support for a Federal Disability Act. Further, the priority for the community remains disability supports and poverty alleviation and these would not be substantively addressed in a Federal Disability Act. Therefore, an examination of those options will form part of another policy paper.

## II FEDERAL – PROVINCIAL JURISDICTION

This portion of the discussion is a brief outline of jurisdiction under Canada's constitutional separation of federal and provincial powers. This is important to remember, because while Canadians might look to successes in other countries, the reach of a disability statute will differ from country to country.

Canada's federal and provincial and territorial governments have the power to make laws with respect to different aspects of Canadian life. The rules about which government can do what flows from the Constitution, the interpretations placed on it over time by the Courts, and also by agreement of the governments, in certain circumstances. It is important to note that different countries have different constitutional arrangements and thus the division of federal and provincial (or state) powers and the reach of disability statutes will differ from country to country. This is particularly true with respect to complaints of discrimination and where they are addressed.

It is not our intent to present a comprehensive examination of federal and provincial jurisdiction in this paper. However, in Budget 2006, the federal government released a paper "**Restoring Fiscal Balance in Canada; Focusing on Priorities**" in which it set out a listing of this division of responsibilities. As it is a useful outline for this discussion, the table 'Current Roles and Responsibilities in Canada' from that report is reproduced below.

It is important to note the areas of shared jurisdiction. Action in these areas may require effective legislation, equivalency provisions and potentially a collaborative approach. It should also be noted that Quebec has negotiated a more expansive jurisdiction than the other provinces with respect to certain matters including immigration and pensions.



## Current Roles and Responsibilities in Canada

	Federal	Provincial
Money and banking	✓	
International and interprovincial trade	✓	
Airlines and railways	✓	
Telecommunications and broadcasting	✓	
Foreign affairs/international assistance	✓	
Defence and veterans affairs	✓	
Border security	✓	
Employment insurance	✓	
Criminal law	✓	
Fiscal Equalization	✓	
Indirect taxation	✓	
Direct taxation	✓	✓
Pensions and income support	✓	✓
Aboriginal peoples	✓	✓
Immigration	✓	✓
Agriculture	✓	✓
Industry	✓	✓
Environment	✓	✓
Policing	✓	✓
Transportation infrastructure	✓	✓
Housing	✓	✓
Post-secondary education, training and research	✓	✓
Public health	✓	✓
Primary and secondary education		✓
Health care		✓
Municipal institutions		✓
Social assistance and social services		✓
Natural resources		✓
Administration of justice		✓

Again, while not undertaking an intensive review of the division of powers, it may be helpful to provide some examples of common barriers to inclusion that would be dealt with either by agencies of the provinces and territories, on the one hand, or, by federal agencies, on the other hand.

**Illustrations of barriers that would be addressed by the provinces and territories through a comprehensive barrier removal regime, specific statutes or by provincial or territorial human rights commissions include:**

- A hospital that does not have accessible washrooms
- A provincial benefit program that fails to provide information in alternate formats
- Towns or cities that don't have accessible voting stations
- Restaurants that have no ramp
- Professionals whose behavior demonstrate discriminatory attitudes
- Courts that are not accessible
- Restrictive rules about driving licenses
- Schools that do not provide accommodation for students with disabilities
- Municipal planning and zoning rules that don't permit group homes for persons with intellectual disabilities
- Employers (operating in areas of provincial jurisdiction) who believe that individuals with a mental illness are a risk because they are dangerous.
- Day care centers or home day care programs that won't admit children with disabilities
- Disabled parking problems
- Provincial health insurance offices that do not have TTY

**Illustrations of barriers that would be addressed by the federal government through a comprehensive barrier removal regime, specific statutes or by the federal human rights commission include:**

- Banking machines that are not usable by people who are blind
- Airports that rely on video screens to communicate flight information
- Employment insurance offices that do not have an accessible washroom.
- Television channels that do not provide captioning
- Federal government buildings and parks that are not accessible for persons with mobility disabilities
- Regulations in the shipping industry that discriminate against persons with a mental illness
- Post offices that do not have visible fire alarm systems

### **III THE FRAMEWORK BILL**

As noted in the introduction, a model framework or architecture for a Federal Disability Act has been added to this discussion in order to show how the various strategies and tools might interact. The goal is to better imagine potential objectives or mechanisms and to stimulate a practical – rather than abstract - discussion.

As previously stated, the following model framework is rudimentary and not what a fully developed statute would look like. This is not an attempt to draft legislation but rather to frame and encourage a relevant and focused policy discussion.

#### **Principles and Framework Assumptions**

A list of principles and assumptions has been developed in order to scope and focus discussion. Others principles may be added as the discussion continues.

##### ***Core principles / leadership / accountability***

1. The purpose/goal of the Act is the achievement of full inclusion and citizenship of persons with disabilities in all aspects of Canadian society. The Act should articulate means to achieve that goal.
2. The Act's focus is to provide systemic solutions and mechanisms to advance the goals of inclusion and citizenship within spheres of activity with federal jurisdiction.
3. The Act will require government accountability with respect to the delivery of programs and services that are designed for persons with disabilities within federal jurisdiction.
4. The Act will provide enforcement mechanisms that will ensure compliance with its provisions.
5. The Act will provide for appropriate federal funding to meet the obligations established therein.
6. The Act will eventually cover all aspects of federal jurisdiction, including public and private. The Federal Disability Act may have a phase-in plan both with respect to timing and coverage.
7. The Act will articulate the requirement for federal government leadership with respect to full inclusion in those areas that are within provincial and territorial jurisdiction that are the subject of transfer payments or federal-provincial-

territorial agreements and initiatives. Certain principles could be attached to federal transfer programs. .

8. The Act will also consider ways to advance inclusion and citizenship in areas of shared responsibility.
9. The Act will at least meet Canada's international commitments to achieve full inclusion and the recently agreed to Draft Convention on the Rights of Persons with Disabilities.
10. The Act will be a cross-disability instrument with a broad understanding of disability.

### ***Barrier removal and accessibility***

11. The Act should be a statute that establishes directions and structures in order to revise and redirect government so that it actively advances inclusion. It will establish various mechanisms that will promote inclusion and obligate the public and private sectors to remove barriers.
12. The Act may set out strategies for barrier removal which may differ from sector to sector. While these strategies are being implemented, existing mechanisms will remain in force. A comprehensive and multi-pronged approach is required.
13. The Act will establish an institutional architecture or framework to implement the tools adopted in it, including consideration of new agencies or mechanisms.
14. The Act will recognize that the adoption and application of universal design principles is essential to the successful achievement of full inclusion

### ***Protecting human rights for persons with disabilities***

15. The Act will explicitly provide that it does not undermine existing legal rights under the *Canadian Human Rights Act* (CHRA) or the *Canadian Charter of Rights and Freedoms*.
16. The Act should enhance the *Canadian Human Rights Act* through amendments where required.
17. The Act would not establish a separate and parallel complaint system to that already in place under the CHRA for individual complaints of discrimination on the ground of disability.

18. The Act may, where appropriate, include amendments to a range of existing legislation to support and strengthen its effectiveness.

### ***Consultation***

19. The Act will provide for adequate representation and compensation of persons with disabilities with respect to appointment processes established under the Act.

20. The Act will enshrine a principle that persons with disabilities and their national organizations are to be consulted regularly and that funding is essential to this end.

21. The Act will only be enacted after broad consultation with the public and persons with disabilities. There will be adequate time to provide input. Committee Hearings are essential.

## **The Framework Bill**

Part I. Interpretation

Part II. The Federal Government and Agencies and Commissions and the Federally Regulated Private Sector

- A. Accountability
- B. Leadership
- C. Accessibility of the built environment, transportation, telecommunications, and electronic and information technology
- D. Inclusive Practices and Policies throughout Government and Public Life
- E. Regulatory Commissions and Agencies
- F. Statutory Review
- G. Canadian Human Rights Act Amendments

## PART I. INTERPRETATION

- Recognizing that all persons are entitled to fully participate in Canadian social, economic, political, and cultural life without discrimination and exclusion, and that persons with disabilities have historically been excluded and continue to be excluded from full participation on a regular basis
  - Recognizing that disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others, (*This language is drawn from the Draft UN Convention on the Rights of Persons with Disabilities*)
  - Recognizing Canada's international obligations established in the Universal Declaration of Human Rights and in the International Covenants on Human Rights as well as its potential obligations pursuant to the Draft UN Convention on the Rights of Persons with Disabilities
  - Recognizing that the achievement of full inclusion of persons with disabilities requires concerted leadership, planning and action on the part of Government, its agencies and commissions, the private sector, and the Canadian public
1. The purpose of this Act is to:
    - a. Promote and secure the full inclusion of persons with disabilities in all sectors of Canadian life through the means set out in this Act including promotion, education, support and planning as well as the establishment of regulatory mechanisms.
    - b. Establish offices and agencies to effectively address the full inclusion of persons with disabilities in areas of Canadian life that fall within the legislative jurisdiction of the Government of Canada
    - c. Establish expectations and directions and regulatory mechanisms for various branches and offices of Government, its agencies and commissions and the federally regulated private sector to promote and secure the full inclusion of persons with disabilities
    - d. Demonstrate federal leadership and commitment to removing the barriers that prevent the full and equal participation of persons with disabilities in Canadian society.
  2. This Act is to be construed and applied in a manner that is consistent with the Canadian Charter of Rights and Freedoms

3. This Act is intended, in particular, to benefit persons 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. *(This is drawn from the Draft UN Convention on the Rights of Persons with Disabilities)*
4. Nothing in this Act or in the regulations diminishes in any way the legal obligations of the Government of Canada or of any person or organization with respect to persons with disabilities that are imposed under any other Act or otherwise imposed by law. *(This is drawn from the Accessibility for Ontarians with Disabilities Act, s. 3 )*
5. If a provision of this Act, of an accessibility standard or of any other regulation conflicts with a provision of any other Act or regulation, the provision that provides the highest level of accessibility for persons with disabilities with respect to goods, services, facilities, employment, accommodation, buildings, structures or premises shall prevail. *(This is directly from the Accessibility for Ontarians with Disabilities Act, s. 38 )*
6. It is a goal of this Act to promote the appreciation of and establish the implementation of universal and inclusive design as a means to reduce barriers to persons with disabilities. “Universal design” and “inclusive design” mean the design of products, environments, programs and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. “Universal design” and “inclusive design” shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.
7. It is a goal of the Act to ensure effective participation of persons with disabilities and their organizations in its implementation. It is the responsibility of elected officials, public servants and other persons who have obligations under this Act, or with respect to initiatives pursuant to it, to consult effectively with persons with disabilities and their organizations.
8. Specific terms that may be used in this Act or in its implementation that require clarification include the following:
  - “Language” includes spoken and signed languages and other forms of non-spoken languages; *(This is from the Draft UN Convention on the Rights of Persons with Disabilities)*
  - “Communication” includes spoken and signed languages, display of text, and Braille, and tactile communication, large print, written, audio, accessible multimedia, plain language, human reader and augmentative and alternative modes, means and formats of

communication, including accessible information and communication technology; (*This is from the Draft UN Convention on the Rights of Persons with Disabilities*)

- “Barrier” means 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. (*This is from the Accessibility for Ontarians with Disabilities Act, s.2*)

## **PART II. THE FEDERAL GOVERNMENT, AGENCIES AND COMMISSIONS AND THE FEDERALLY REGULATED PRIVATE SECTOR**

### **A. Leadership**

9. The Government of Canada is committed to leadership with respect to the goal of full inclusion and wishes to ensure that its own legislative initiatives promote accessibility and do not create inadvertent barriers.
10. The Government of Canada recognizes that the public appointment process has often overlooked qualified persons with disabilities and wishes to reverse this situation.
11. The Government of Canada will demonstrate its commitment to addressing issues of Canadians with disabilities by raising disability issues and promoting inclusion within all relevant discussions with provinces and territories. It will provide leadership with respect to full inclusion in those areas that are within provincial and territorial jurisdiction that are the subject of transfer payments or federal-provincial-territorial initiatives.
12. The Government of Canada will ensure that all Canadians are able to participate in Canada’s electoral system by ensuring that Canada’s political process is fully accessible for persons with disabilities as voters, members of national political parties and candidates for office.

### **B. Accountability**

13. The Government of Canada is committed to holding itself publicly accountable in all aspects of its undertakings including its obligation to promote and secure the full inclusion of persons with disabilities in areas of Canadian life that fall within its legislative jurisdiction.



14. The Office of a Commissioner of Disability and Inclusion is established. The Commissioner shall report annually to Parliament.
15. The mandate of the Commissioner of Disability and Inclusion includes but is not limited to the following:
- To supplement and strengthen existing accountability mechanisms in Parliament, Cabinet, and the public service
  - To audit and evaluate disability programs and services delivered and funded by the federal government to assess their success with respect to advancing inclusion and citizenship
  - To conduct program reviews
  - To make reports public
  - To recommend task forces and advisory committees that will advance inclusion and citizenship
  - To identify infrastructure requirements
  - To receive, assess and comment on accessibility plans of government departments and agencies
  - To recommend that standards be developed in addition to any standards/initiatives that are already in place.
  - To carry out other related activities assigned by this statute

**C. Accessibility of the built environment, transportation, telecommunications, and electronic and information technology**

16. The Government of Canada recognizes that technological developments are occurring at a very fast pace. Technological developments have the potential to increase the participation of persons with disabilities in many aspects of Canadian life if designed effectively at the outset in accordance with universal design principles.
17. An Accessibility Design Centre is established to provide support, research and expertise with respect to accessible technology and universal design to the federal government, its agencies and commissions and the federally regulated private sector.

18. The mandate of the Accessibility Design Centre includes but is not limited to the following:

- To develop and maintain design criteria for the built environment, transportation vehicles, telecommunications equipment, and for electronic and information technology.
- To conduct research on universal standards developments by sector and internationally and make this information available to the public as well as to government.
- To oversee and coordinate the development of technical accessibility guidelines and standards, provide technical assistance and training on these requirements and on accessible design.
- To monitor standards compliance and enforce standards as assigned by statute or the regulation establishing the standard
- To function as a coordinating body among federal departments, agencies and commissions and to directly represent the public, particularly people with disabilities.

19. The Accessibility Design Centre will be governed by a board that includes members of the public who either have a disability or represent a national disability organization, representation from federal departments, agencies or commissions and the federally regulated private sector; designers with expertise in various technologies and universal design principles .

20. Notwithstanding the establishment of the Accessibility Design Centre, each federal department, agency or commission with responsibility for the regulation of products, processes or services (including buildings) that are used by the public or for the benefit of the public or that supports research and development initiatives shall establish a universal design unit. The universal design units will ensure that the mandate and operations of the department consistently address accessibility.

21. Each universal design unit shall identify all aspects of the mandate of the department, agency or commission that would benefit from the application of universal design principles, set out plans for training, design and implementation with respect to such principles. Time frames need to be established for various stages.

22. The Accessibility Design Centre and the Disability and Inclusion Commissioner shall within one year from the Proclamation of this Act jointly develop a Universal Design/Accessibility report that shall specify:

- a. The aspects of each federal department, commission or agency's mandate that pertains to technology for the built environment, transportation vehicles, telecommunications equipment, and for electronic and information technology
  - b. An assessment of the accessibility of the relevant technology, products equipment and/or built environment
  - c. A plan for introduction of universal design and time frames.
  - d. Any additional information that the Accessibility Design Centre deems essential to fulfil its mandate and the Disability and Inclusion Commissioner deems essential to report to Parliament.
23. Federally regulated industries and enterprises that design, import, manufacture, distribute or provide products, processes or services (including buildings) that are used by the public or for the benefit of the public shall incorporate into their operations a commitment to universal design principles.
24. Where federal funds are distributed to support research or industrial development, the initiative funded shall be required to identify whether universal design principles pertain to the initiative and, if they do, how they will be addressed in the initiative, as a requirement of funding.
25. The federal government, its agencies and commissions will be required to ensure that all third party procurement policies require suppliers of goods and services to comply with any accessibility guideline or standard made pursuant to this Act.

**D. Inclusive Practices and Policies throughout Government and Public Life**

26. The Government of Canada recognizes that barriers to the full participation of persons with disabilities may inadvertently exist or be imbedded within current governmental policies and practices which impede effective interaction and communication with persons with disabilities. Likewise, policies and practices may inadvertently exclude persons with disabilities from their benefit.
27. Each department, agency or commission or entity within the federally regulated private sector review its policies and practices to identify those policies and practices which contain barriers to full inclusion or participation of persons with disabilities or which may inadvertently exclude persons with disabilities from their benefit.

28. The Full Inclusion Policy Centre is established as a discrete department of the Canadian Human Rights Commission. Its overall mandate is to address the removal of disability-related barriers that exist within the policies and practices of departments, commissions and agencies and entities within the federally regulated private sector.

29. The mandate of the Full Inclusion Policy Centre shall include but is not limited to the following:

- To review policies and practices of departments, commissions and agencies and entities within the federally regulated private sector.
- To identify, and prioritize the removal of the most common barriers
- To provide research, information and training to departments, agencies and commissions and entities within the federally regulated private sector with respect to the review and revision of policies and practices
- To develop advisory guidelines with respect to the review and revision of policies and practices
- To establish a system for the reporting of the policies and practices to the Centre
- To report to the Office of the Disability and Inclusion Commissioner with respect to the overall and specific review and revisions of such barriers
- Where a department, commission or agency or an entity in the federally regulated private sector fails to review and report with respect to barriers, or fails to address and revise those policies that contain barriers, the Full Inclusion Policy Centre may initiate a complaint of systemic discrimination under the Canadian Human Rights Act.
- Nothing in this section affects the right of an individual to make a complaint, whether individual or systemic, to the Canadian Human Rights Commission with respect to the same issue.

## **E. Regulatory Commissions and Agencies**

30. Regulatory commissions and agencies shall examine their regulatory practices to ensure that, in the exercise of their mandate, the goals of this Act are addressed.

31. Regulatory commissions and agencies shall advise the public and the parties that appear before them that the advancement of the goal of full inclusion and the removal of barriers wherever feasible will be a guiding principle to their endeavours.

## **F. Statutory and Program Review**

32. The Disability and Inclusion Commissioner may conduct a review of Canadian statutes and programs to identify whether they contain barriers to full inclusion or participation of persons with disabilities.

## **G. Canadian Human Rights Act Amendments**

33. Section 17, 18, and 19 of the Canadian Human Rights Act are to be reviewed to be consistent with this Act. In particular, amendments are required to ensure that the Canadian Human Rights Commission no longer has the power to approve “plans to meet the needs of disabled persons” and that the filing of such a plan in no way protects a respondent from a complaint of discrimination. Section 24 likewise is to be reviewed to be consistent with the framework established under this Act.

34. Section 27 (2), (3) and (4) of the Canadian Human Rights Act should be replaced with a new section allowing the Commission to issue guidelines to assist those with responsibilities under the CHRA to avoid discriminating. Such guidelines should be advisory and not binding on either the Commission or those who use them. A potential respondent’s compliance with a guideline would not protect the respondent from a complaint of discrimination.

## **IV CREATIVE NEW MECHANISMS FOR ADVANCING INCLUSION**

### **A Commissioner of Disability and Inclusion**

A Commissioner of Disability Issues and Inclusion at the national level is proposed. The vision for this office would be to assist the Government of Canada to fulfill its agenda and commitments to building a society that is inclusive and respectful of all Canadians, and by promoting the inclusion and participation of the full diversity of persons with disabilities in Canada. The Commission would be an independent office serving Parliament and Canadians.

The mission for the office of the Commissioner of Disability and Inclusion would be to promote accountable government, an ethical and effective public service, and ensure the social well-being and inclusion of persons with disabilities. The Commissioner's mandate would be:

- To supplement and strengthen existing accountability mechanisms in Parliament, Cabinet, and the public service.
- To carry out an auditor or evaluator role of providing an independent assessment of disability programs and services delivered and funded by the federal government.
- To report directly to Parliament as do other federal commissioners such as the commissioners for official languages, human rights, and privacy and information.

In addition to the audit functions proposed, the following strategies outlined above could be made available to the Commissioner:

- Program reviews would be conducted by the Commissioner
- Reports would be made public and filed.
- Task forces and advisory committees could be recommended by the Commissioner
- Infrastructure requirements could be identified by the Commissioner
- Accessibility plans of government departments and agencies be filed with and monitored by the Commissioner. They can form part of the information gathered by the Commissioner.
- The Commissioner could recommend changes and strategies that need to be utilized in specific instances.
- The Commissioner could recommend that standards be developed in addition to any standards initiatives that are already in place.

It is the view of Professor Michael Prince, Lansdowne Professor of Social Policy at the University of Victoria, that accountability is the duty to answer, explain and

justify the exercise of public powers, the disbursement of public resources, and the achievement of public policy objectives. It includes an understanding that there is an obligation of public servants and government members to answer for their actions, and inactions, to legislative bodies and, through these bodies, to the public. He argues that accountability is central to our democratic system, that it motivates policy makers, administrators and service providers alike, and that it provides a measure of performance, prompts discussion of goals and results, and identifies areas for improvements.

Although there have been several federal initiatives with respect to persons with disabilities over the last few decades, we still do not have a transparent or accountable system that is measured against the goals of inclusion and citizenship. There is continued frustration and disappointment in the disability community that policies and services remain hit-and-miss and that rights-based processes rely on individual complaints, making decisions on a case-by-case basis.

Most government and intergovernmental reports are strong on intentions and visions but weaker on analyzing success and failures. This leaves a strong sense among the public that we have heard all the good plans before. He argues that this mixed and slow progress is due in part to the absence of clear, consistent and government-wide accountability mechanisms with respect to the disability agenda.

## **An Accessibility Design Centre**

An Accessibility Design Centre is proposed to harmonize, track and deliver results in the area of barrier removal. This proposal is modeled on a U.S. initiative that has been in place for the last 30 years.

An Accessibility Design Centre would be a hub that consolidates expertise in disability as well as in universal design principles and knowledge of how these can be utilized in technological development to advance accessibility. The Centre's staff would have the duty to be fully informed about current technical developments internationally and would ensure that Canadian standards are consistent with international technical accessibility standards in a variety of domains.

It is advisable to have one central organization responsible for accessibility design infrastructure and support in order to develop disability expertise, technical expertise and consistency of approach. One Centre minimizes duplication and expenditures that would occur when various departments of government become involved in technical standards development. Transparency and accountability are enhanced and policy silos are reduced.

An Accessibility Design Centre would support federal departments or agencies as required and would also proactively advise them. An Accessibility Design Centre would provide infrastructure support to government departments and agencies with respect to the design and development of guidelines, and standards. An Accessibility Design Centre could take the lead on standards development in some instances. It may also have standards enforcement responsibilities.

### *The American Experience*

The Accessibility Design Centre could be modeled on the American Access Board. A visit to the Access Board website at <http://www.access-board.gov/> is instructive. Briefly, this is a statement from that website:

*The Access Board is an independent Federal agency devoted to accessibility for people with disabilities. Created in 1973 to ensure access to federally funded facilities, the Board is now a leading source of information on accessible design. The Board develops and maintains design criteria for the built environment, transit vehicles, telecommunications equipment, and for electronic and information technology. It also provides technical assistance and training on these requirements and on accessible design and continues to enforce accessibility standards that cover federally funded facilities.*

*The Board is structured to function as a coordinating body among Federal agencies and to directly represent the public, particularly people with disabilities. Half of its members are representatives from most of the Federal departments. The other half is comprised of members of the public appointed by the President, a majority of whom must have a disability.*

The most recent annual report of the Access Board outlines the reach of its activities. <http://www.access-board.gov/about/annualreport/report.htm#access/>

### *Relevant and Timely*

This year the Telecommunications Policy Review Panel (TPRP) identified as a key government priority the need for Canada to be in the forefront of technological development and to have an overall Information and Communications Technology (ICT) strategy. This should include focus on universal design and the strategy could well support an Accessibility Design Centre. <http://www.telecomreview.ca/>



## **A Full Inclusion Policy Centre**

There are historic barriers that inhibit or block full participation and which detract from the dignity and autonomy of persons with disabilities in most, if not all, Canadian institutions. The Canadian government is no different. While most of these barriers are inadvertent, their impact is significant and affects the design of policies and programs, and how persons with disabilities are treated within and by the federal government, its agencies and commissions.

It is important that policies, programs and laws which incorporate outdated assumptions about disability and underestimate the capabilities of persons with disabilities be modified to remove these assumptions as they lead to policy and program barriers to full inclusion and citizenship.

It is proposed that a particular department of the Canadian Human Rights Commission (CHRC) be established to take the lead to remedy these practices in a comprehensive manner. The Full Inclusion Policy Centre of the CHRC would have as its general mandate the removal of disability-related barriers that exist within the policies and practices of departments, commissions and agencies.

It is suggested that the CHRC be assigned this task because it has built a great deal of expertise in this regard. For example:

- It has much institutional understanding of barriers through its administration of the Employment Equity Act over the past decade.
- It conducts research and investigates barriers and undertakes full inclusion promotion already.
- It is presently engaging large federal entities in discrimination prevention initiatives on a voluntary basis.

The additional steps that are proposed to systematically identify and address policy barriers will require additional resources, and a clear legislative mandate. The Centre would review policies and practices of departments, commissions and agencies in order to identify, and prioritize the removal of the most common barriers. It would develop advisory guidelines with respect to the review and revision of policies and practices. It would report to the Office of the Disability and Inclusion Commissioner with respect to the overall and specific review and revisions of such barriers

In addition, and to provide teeth to this aspect of a Federal Disability Act, where a department, commission or agency fails to review and report with respect to barriers, or fails to address and revise those policies that contain barriers, the Full Inclusion Policy Centre may initiate a complaint of systemic discrimination under the Canadian Human Rights Act.

It is suggested that the Centre's mandate should also apply to entities within the federally regulated private sector.

## **Other Considerations**

### **A note about the Private Sector**

While the Framework Bill addresses accessibility in the federally regulated private sector in some major respects, other options exist and questions remain. How are private sector obligations best covered? How would they be best enforced? Do we want to require accessibility plans, contract compliance, procurement policies, audits or regulations, or all of these?

### **A note about enforcement**

Enforcement of accessibility standards may best be carried out in different ways, given the complex environment that exists in the federal jurisdiction. A key discussion with respect to standards enforcement is whether there should be one agency or branch of government that does all the enforcement or whether accessibility standards should be enforced within each federal department, agency or commission.

It is anticipated that if the structures set out within this Act were adopted, then there would be other mechanisms for achieving the goals of the Act and so we are not solely reliant upon standards. Recall that standards may take several years to write.

In the interim, the Disability and Inclusion Commissioner would be auditing and making recommendations and identifying required universal design initiatives, along with the Accessibility Design Centre. The Full Inclusion Policy Centre would be providing leadership, training, guidelines for policies reviews and changes and would be able to bring systemic complaints to the Canadian Human Rights commission. Regulatory agencies would be directed to incorporate the principles of this Act into their activities and to so advise the parties that appear before. This Framework Bill also is insistent upon no diminishment of current rights and obligations.

## **V AREAS OF FEDERAL JURISDICTION REQUIRING PARTICULAR ATTENTION**

### **First Nations**

A Federal Disability Act should expressly address barrier removal for First Nations and Aboriginal persons with disabilities both on and off reserve.. The incidence of disability among Aboriginal Peoples in some age categories is almost twice that of the rest of the Canadian population. It is true that addressing the issue of Aboriginal people with disabilities is complicated by complex jurisdictional issues that relate to Aboriginal affairs. The Government of Canada has jurisdictional responsibility for those living on reserves, yet many are forced to leave reserves in order to secure the services they require. These services for the most part are provided by provincial and territorial governments. However, the issues of jurisdiction must not hold back an effective and immediate response by all governments to the extreme circumstances Aboriginal people with disabilities experience. The dialogue about a Federal Disability Act must be informed by discussions with the key First Nations organizations.

### *Other Areas*

These are some of the areas where a federal disability act can have an impact on the lives of Canadians with disabilities and where consideration of particular contexts will be essential. These examples are presented to illustrate the current legislative and regulatory complexity of many spheres of federal jurisdiction where barrier removal must be addressed. There are other areas that we do not elaborate on at this time that will also require particular examination.

Where there is already a regulatory regime in place, where the obligations of the private sector are addressed by statute and policy-making at the regulatory level, such as transportation, telecommunications and broadcasting, decisions will need to be made about where inclusion is addressed. Is it by the existing regulatory agency or by a new overarching agency that will cover all areas of federal jurisdiction

### **Transportation**

The *Canada Transportation Act* (CTA), which covers air, rail, inter-provincial ferry and inter-provincial bus transport, includes a regime intended to provide for accessible transport for persons with disabilities. It also establishes the Canadian Transportation Agency (Agency), which has the power to remove undue obstacles from Canada's transportation network. In addition, Transport Canada provides policy support to the Minister to regulate transportation safety and conduct research and development in the area of accessible transportation.

In the past, the Agency and Transport Canada have engaged in extensive consultations with the transportation industry and persons with disabilities regarding their activities. Through the Accessible Transportation Directorate, the Agency handles complaint resolution, introduction of regulations and guidelines and monitoring and liaison. Any individual who encounters an undue obstacle in their use of the federally regulated transportation system is entitled to complain to the Agency. The Agency has the power to order the repayment of expenses or require that action be taken to correct the problem.

A large part of the Agency's efforts have historically been directed towards the resolution of complaints by travellers. Examples of the nature of complaints include those related to equipment, service deficiencies and personnel awareness. When the Agency finds that undue obstacles exist, it frequently orders that corrective measures be taken and requires a report on progress and implementation. Besides formal complaints, both the Agency and Transport Canada have shown a willingness to resolve informal complaints and provide informal assistance to persons with disabilities.

On its face, it would seem that the Act provides for an adjudication structure that embodies human rights obligations, duties, and processes. However, this was not the view of the Federal Court of Appeal in the VIA Rail case. The Supreme Court of Canada has now heard the Council of Canadians with Disabilities' appeal of this decision and a decision is pending. This decision will be very relevant to considerations of how to approach transportation accessibility in the context of a Federal Disability Act.

There are both transportation regulations and voluntary codes of practice dealing with accessibility. The codes of practice were introduced as an alternative to regulations as a result of government policy to effect change through non-regulatory measures. Elimination of systemic obstacles is the articulated goal of both the codes and the regulations. Regulations exist for air transportation and personnel training. Codes of Practice exist for aircraft, rail, marine, and inter-city bus. However, it seems from the number of incidents that are in the public eye, that far too many Canadians continue to encounter transportation problems.

As the Canadian Transportation Act already sets out a regime to address disability, an assessment of its success and what is required to improve accessibility is needed. In 2000 and 2001 a Review of the Canadian Transportation Act was carried out. The CCD made submissions itemizing many deficiencies and barriers. The Final Report did not accept all of the CCD's views but did note that there is no adequate mechanism to address systemic barriers and problems.

### ***Other jurisdictions:***

In Australia, it took ten years to develop a comprehensive regulation that provides for an eventually fully accessible transportation system, nationwide. Next year there will be a review of the regulation. According to the Australian government's audit carried out by the Productivity Commission, the *Disability Discrimination Act* 1992 appears to have been relatively effective in improving the accessibility of public transport in urban areas. However, it has been less effective in relation to taxis.

In Quebec, the *Act to Secure Handicapped Persons in the Exercise of their Rights with a view to Achieving Social, School and Workplace Integration* creates an obligation that public transit authorities, municipal, and inter-municipal or regional transport companies develop accessibility plans by December 17 2004. The purpose is to provide, within a reasonable period, accessible public transportation for persons with disabilities. The plans are to be filed with the Ministry of Transport who is to approve the plan or require amendments to it. It is the Ministry's task to see that the plan is carried out.

In Ontario, under the AODA, the Terms of Reference for the proposed Transportation Accessibility Standard have been set. The regulation will address barriers to accessibility for persons with disabilities in the delivery of public and private transportation services. Public and private transportation services refer to modes of passenger transportation within provincial and municipal jurisdiction.

### **Telecommunications**

Our society is becoming increasingly dependent on digital and Internet Protocol (IP) communications of all sorts, as well as wireless communication. There is great potential for these technological developments to have a positive impact upon the lives of people with disabilities, increasing participation and inclusion dramatically. There is also a danger that swift and unchecked technological change may exclude persons with disabilities if accessibility is not considered an essential component of its development.

If universal design principles were to be used in the development of phone and related equipment, then many current barriers would be removed. If international interconnectivity standards and protocols that address accessibility are included in telecommunications delivery design in Canada, then more of the services that we use will be accessible.

Unlike the Canadian Transportation Act, the *Telecommunications Act* does not address disability specifically. The main focus of the Canadian Radio-television Commission (CRTC) is presently economic regulation (or deregulation), while guided by the telecommunications policy objectives set out in the Act. Most of

the cases that come before the CRTC concern competition issues between companies from different parts of the telecom industry. These decisions deal with how the delivery of the service occurs, how it is paid for, what competition will exist, who must sell to whom, what rates will be set, how to develop greater competition, and what customer interests need to be protected and how.

It is in this context that the CRTC had made decisions about accessibility features for person with disabilities. Over time, the CRTC has made decisions that respond to specific problematic aspects of the delivery of telecom for persons with disabilities including TTY, MRS, alternate format, billing practices, etc. In the past, the CRTC has ordered that registered users of TTY not pay the full burden of the technology that enhances or permits their use of the telephone. One of today's questions will be whether the same principles will be used to provide a similar reduction in charges related to the Internet environment.

In the past, the CRTC decided not to regulate with respect to "terminal equipment" (telephones and other end-user equipment) and the cellular or wireless markets because it was convinced that market forces were sufficient to provide for the consumer interest. However, market forces have not solved the accessibility problems in these two areas. They are also areas that tend to be regulated by Industry Canada in other respects, such as product safety standards.

More recently, the CRTC has recognized that market forces do not sufficiently address the issues of persons with disabilities. In another decision it ordered that a large sum of money be dedicated to accessibility telecommunications services and that the companies consult with disability organizations in preparing their plans to spend these funds.

It is also noteworthy that in its three year planning cycle the CRTC has indicated that it intends to "conduct a proceeding to address unresolved accessibility issues for persons with disabilities" in 2007-2008. At issue is whether the CRTC will effectively regulate the industry so that barrier removal is comprehensively addressed.

What direction can a Federal Disability Act provide for such decision-making, including the decisions that are made on a daily basis by government officials in many areas that affect persons with disabilities? For example, telecommunications services and products are also regulated by Industry Canada.

Another recent development is the review of Canada's telecommunication policy. The Telecom Policy Review panel reported in March 2006 and has recommended a stronger reliance on market forces generally. It does however identify four areas where market forces may not be sufficient and where the regulator may still have to act. In its proposal for a new articulation of

telecommunications policy objectives, it suggests that “facilitating access to telecommunications by persons with disabilities” is one of four mechanisms that will “enhance the social well-being of Canadians and the inclusiveness of Canadian society”.

There are indications that the federal government is looking favourably on this Report and may make the recommended amendments to the Telecommunications Act in the not too distant future. It will also likely support the Review Panel’s recommendation that Industry Canada develop a clear information and communications technology (ICT) policy and take a leading role in technological development. However, despite submissions made to it in this regard, the Panel did not address universal design or accessibility in the context of ICT policy and research. Thus, it is important the Federal Disability Act refer to universal design principles and provide direction with respect to them.

## **Banking**

The banking industry has not adequately addressed its obligation to ensure inclusion and accessibility for persons with disabilities. Many of these barriers arise from a lack of attention at the design stage to the principles of universal design.

While there are several agencies that deal with the banking industry, none of them explicitly addresses systemic barriers to persons with disabilities. The Department of Finance Canada is responsible for banking. The Office of the Superintendent of Financial Institutions (OSFI) is responsible for supervising federally regulated financial institutions, including the banks and federally incorporated insurance and trust and loan companies, to ensure that they are in sound financial condition and in compliance with the laws that govern federally regulated financial institutions.

The Financial Consumer Agency of Canada (FCAC) is an independent body working to protect and educate consumers of financial services. Established in 2001 by the federal government, its objective is to strengthen oversight of consumer issues and expand consumer education in the financial sector. Its written mandate does not identify accessibility as an issue.

The Ombudsman for Banking Services and Investments (OBSI) is an independent organization that investigates customer complaints against financial services providers, including banks and other deposit-taking organizations, investment dealers, mutual fund dealers and mutual fund companies. OBSI provides prompt and impartial resolution of complaints that customers have been unable to resolve satisfactorily with their financial services provider. The Ombudsman process is based on the simple principle that every client deserves a fair and prompt resolution of complaints. The process is meant to be readily

available and informal. It may be possible to bring accessibility issues to this body, for settlement.

Established in 1891, the Canadian Bankers Association (CBA) is the main representative body for banks in Canada and the country's oldest industry association. All chartered banks are eligible for membership and currently all domestic and virtually all foreign banks doing business in Canada are members. The CBA is funded by its members and works with them to promote the strength and continued success of the industry, while building a greater understanding of the banking sector. The CBA is an important lobby group and undertakes research and policy development on behalf of the industry. Likely, development of systemic solutions to accessibility will require the involvement of the CBA.

There appears to have been little progress in the development of voluntary codes or standards within the Canadian banking industry for people with disabilities and this is an area where an Federal Disability Act can have significant impact.

International examples of progress need to be examined. For example, in Australia, following a HREOC inquiry, the banking industry adopted industry accessibility standards on Internet Banking, Automatic Phone Banking, Electronic Funds Transfer at the Point of Sale and Automatic Teller Machines.

### **Accessible Democracy**

While Elections Canada has made significant efforts to improve the capacity of persons with disabilities to vote in federal elections, there are still complaints that voting is unduly complex or not possible. In addition to removing barriers to voting, steps need to be taken to ensure that persons with disabilities can participate in all electoral and national political party electoral activities. This includes attendance at candidates' meetings and political party functions with accommodation so that participation can be meaningful. It also includes accommodation so that persons with disabilities can run for office effectively. Their participation as Members of Parliament needs to be recognized as an important public goal. A federal disability act needs to state this aspiration clearly and provide the mechanisms by which it can be achieved.

### **Employment**

Employment of persons with disabilities continues to be at unacceptable levels that amount to a public disgrace. This is true for federal jurisdiction and provincial jurisdiction employers. This failure is reported elsewhere also, including Australia and the United States. Thus, a multi-pronged strategy, including supports strategies) remains essential. An Federal Disability Act alone will not provide increased or permanent employment.



The Government of Canada is a large employer and could in addition to bringing forward a Federal Disability Act commit to becoming a model employer through the establishment of targets and goals for improved representation of persons with disabilities in the federal civil service. The Government of Canada could also increase the obligations on federally regulated employers to ensure that their labour force was reflective of the diversity of Canadian society. This may require amendments of the *Employment Equity Act* to require establishment of goal and timetables as well as creation of an enforcement mechanism to ensure goals are met. Additionally Labour Market Agreements should be amended to ensure specific targets for addressing the unemployment of Canadians with disabilities.

However, a Federal Disability Act can provide that underemployment of persons with disabilities be continually monitored and that policies and programs that address the situation are maintained. Among other approaches, this can happen through the activities of the Commissioner, and the Canadian Human Rights Commission given its experience administering the *Employment Equity Act*. The mandate of Human Resources and Social Development Canada can explicitly address this issue.

## **VI AVAILABLE STATUTORY STRATEGIES AND TOOLS**

This section describes various tools and strategies that can be incorporated into a Federal Disability Act and also refers to practices in other jurisdictions. While not all of these strategies and tools are utilized within the framework bill, it is hoped that this survey of options broadens the policy debate and helps us understand trade-offs.

### **Statutory declaration of purpose**

It is important that the purpose and goal of the statute be generously stated. In the future, the public, politicians, bureaucrats and courts will be guided by the purpose of the statute. The goal should be consistent with the broad language of federal documents that speak of full inclusion and participation, dignity and citizenship. The purpose of the Federal Disability Act should be to further that goal and articulate a proactive agenda.

Sub-goals or purposes of the Federal Disability Act would be the leadership and accountability of government; barrier removal; accessible democracy and the promotion of universal design.

The importance of being clear about the purpose of legislation has recently been demonstrated by the American experience. On September 29, 2006 a bipartisan bill was introduced to restore protections for people with disabilities under the *Americans with Disabilities Act* (ADA) that have been eroded by the Supreme Court's interpretation of that law. Essentially, the Supreme Court had placed great emphasis on the definition of disability, reducing the reach and impact of the ADA. The new Bill attempts to restore the definition of disability to Congress' original intent and to redirect the focus to discrimination. While the American approach is unlikely to be transposed to Canada given the difference in constitutional arrangements between Canada and the United States, their experience illustrates how essential it is to be clear about the intent and goal of the legislation at the outset.

### **An Omnibus Approach**

A Federal Disability Act could include an Omnibus Bill component that would direct reform of legislation that continues to discriminate on the basis of disability. An example of on-going concern is the "excessive demands" clause of the Immigration and Refugee Protection Act that is often used to prohibit immigration of persons with disabilities to Canada. Another is the "drop out" clause of the

Canada Pension Plan Act which overly restricts eligibility to disability benefits. Other legislative reforms could be identified. An Omnibus approach could remove long standing barriers but it may also create an unduly complex piece of legislation and lessen support.

## **Guidelines and Standards**

Guidelines and/or standards can be used to direct the removal of barriers that result in the exclusion of persons with disabilities. The development of guidelines and standards requires technical expertise related to the area of activity that is being regulated. However, guidelines and standards must also be grounded in an understanding of the lived experience of persons with disabilities. They also need to reflect an understanding of the different barriers that exist with respect to the wide range of the agility, mobility, sensory, learning and mental and intellectual disabilities that exist, whether visible or invisible. As well, a commitment to remaining current with developments in international standards and accessibility developments is essential.

### *Guidelines*

Guidelines can be developed in many areas of federal jurisdiction to direct or advise action that will lead to inclusion. Guidelines can be quite useful if they are written by an agency with authority to insist that they be followed. An example of successful guidelines is the Policy and Guidelines on Disability and the Duty to Accommodate adopted by the Ontario Human Rights Commission. Not only do these Guidelines inform the public, companies and institutions of Ontario about the expectations of the Ontario Human Rights Commission and the principles that guide its assessment of complaints, they are widely quoted and followed by other entities that develop their own policies and guidelines.

### *Standards*

It is widely understood that standards are a very effective mechanism to achieve compliance. They are commonly used in a wide variety of situations such as the regulation of health products, food and drug safety, product safety, environment, building codes or policing. The enforceability of standards is on a continuum depending on whether they are voluntary, as with some industry codes, or have the force of law, when adopted as regulations.

The Accessibility for Ontarians with Disabilities Act (AODA) has adopted mandatory standards to be enacted into regulation as its key strategy to achieve full accessibility within twenty years. Much of the AODA sets out how standards will be developed, and the website indicates that some of the committees are underway. The American with Disabilities Act (ADA) also is reliant on standards in

many instances. Quebec is instituting some accessibility standards development with respect to transportation and buildings.

The Australian Disability Discrimination Act (DDA) permits “disability standards” to be made by the Attorney General in specified areas, presently accommodation, administration of Commonwealth laws and programs, education, employment and public transport. When the Act was being developed it was recognised that general anti-discrimination provisions alone would not be sufficient to achieve equality in many areas. The first Australian standard to come into force, on accessible public transport, was approved by the Parliament slightly over ten years after the Act itself was passed. It will be reviewed at the five-year point next year. Australia has also led the way with many voluntary industry standards and codes. These take less time to develop and often are more acceptable to industry and government.

One of the key considerations about standards is that they take a very long time to develop. It is expected that any standards development will include broad participation in their creation and there will be adequate time for review and public comment before adoption. Given the length of time involved with the development of accessibility standards, it would be strategic for the Federal Disability Act not to be reliant only on standards, but rather, to employ a multiple-strategy approach.

The Canadian Standards Association is the lead non-governmental agency in Canada that prepares standards on a broad basis on a variety of topics. The ISO is the International Organization for Standardization.

## **Accessibility Plans**

Accessibility plans are documents that an institution, agency, corporation, Ministry or department prepares with the goal of reducing or eliminating barriers that exist within the organization’s environment. The approach is usually to identify the barriers that exist in an organization, with respect to many dimensions and then to develop a plan for their removal over time.

The Ontarians with Disabilities Act (ODA) (the predecessor to the AODA) was really an accessibility planning statute that obligated the public sector to undertake accessibility planning. The DDA of Australia provides for voluntary Action Plans.

One issue with respect to plans is to ensure that the existence, filing or approval of an accessibility plan does not provide an automatic defence to a complaint of discrimination.

The development of accessibility plans has been useful at the municipal levels, both in Ontario and Australia, and also in public institutions such as universities. One reason for this is that they have provided formal opportunities for many persons with disabilities who are removed from the management of the organization to become involved in a more significant way with accessibility

## **Universal design**

A key component of a Federal Disability Act should be the recognition of the significance of universal design as a necessary tool to the successful achievement of full inclusion. When 'universal design' principles are incorporated into the design of new products, the products become usable by all people to the greatest extent possible. This eliminates the need for adaptation or specialized design. Making technology that is under federal jurisdiction accessible in this way has the potential to not only benefit persons with disabilities but also the increasing number of seniors. Universal design principles need also to be extended to many other aspects of social life, including programs and policies.

The Draft Convention on the Rights of Persons with Disabilities includes strong reference to universal design in the General Obligations section of the Convention, recognizing also the important role of assistive device technology.

## **Procurement policies**

The Federal Disability Act could provide for the use of federal purchasing power to encourage the development of accessible products and services. Or, it could provide for the examination of when and how federal government purchasing power can lead to greater compliance and who should undertake this review. Procurement policies can encourage accessibility by requiring that products and services purchased or contracted are accessible.

The clearest precedent for this is section 508 of the United States Rehabilitation Act of 1973 that makes accessibility a procurement criterion for the United States federal government. More specifically, when Federal agencies develop, procure, maintain or use electronic and information technology, they must ensure that the technology is accessible to employees and members of the public who have disabilities to the extent that it does not pose an "undue burden". The law establishes a complaint procedure and reporting requirements. Individuals may also sue an agency in court to correct an alleged violation.

Even though the scope of section 508 is limited to the federal sector and does not apply to the private sector, the implementation of section 508 has had an enormous impact on ensuring that electronic and information technology products and services are accessible. Accessible products designed for sales to

the Federal market spill over to society as a whole. This is especially true in the United States as the American federal government is the largest purchaser in the world. For companies manufacturing products or providing services, to the extent that they intend to sell to the U.S. government, they must comply with the U.S. government's procurement policies. It is reported that many private businesses are considering accessibility issues in their strategic planning. Even if they are not mandated to comply with 508 accessibility provisions now, they are concerned that such requirements may come into being in the future. This approach has been referred to as a softer route to enforcement.

The impact of section 508 has attracted legislative interest in other jurisdictions such as Australia. As well, some states in the United States have begun implementing 508-like state laws. Given the globalization of industry and commerce, we expect that Canadian industry might be familiar with the American rules and ready to accept a parallel initiative in Canada.

## **Program Reviews**

Currently, there are some services and programs directly or indirectly provided by the federal government that have goals of increasing inclusion, participation and citizenship. These include contributory programs such as Employment Insurance, Canada Pension Plan Disability (CPP-D); programs directly delivered by the Federal Government like the "Opportunity Fund" to support employability initiatives, as well as a variety of tax initiatives to offset additional costs of disability and create greater tax fairness for persons with disabilities and their families. There are also federal/provincial agreements such as the Multilateral Labour Market Agreements for Persons with Disabilities that flow funds to provinces and territories to deliver services and supports. Other national policy strategies such as strategies with respect to housing, employment or child care, could well incorporate a disability dimension.

These and other government programs are subject to periodic reviews conducted by the Auditor General, a consultant or a task force. Typically, programs are evaluated for efficiency, fiscal responsibility and to identify program delivery improvements.

Canadians with disabilities require a change of focus in these reviews. The key review questions should be whether the program or statute is effectively leading to the attainment of the substantive goals of inclusion and citizenship. An Federal Disability Act could require that such reviews be undertaken and direct that the review identify hindrances and barriers to full inclusion in the program or statute and make recommendations for their removal.

## **Inquiries and Reports**

An inquiry can be formal or informal. It can identify an issue of concern, seek public input, and investigate the issue in a comprehensive manner. It can make recommendations. We are familiar with Coroner's inquests which make recommendations regarding matters of serious public concern, when a death has occurred. We are also familiar with formal judicial inquiries that are used to investigate a matter of grave public concern. Less formal inquiries can be simpler and can potentially use the Internet as their primary method of seeking public input. Inquiries can be useful tools to focus public attention on issues of concern to persons with disabilities.

Reports can be effective tools for informing the public of issues. A report has the potential to identify problems, solutions and who has the duty to rectify the problem. The Senate of Canada annually publishes reports on a variety of topics. In May of this year the Standing Senate Committee on Social Affairs, Science and Technology released "Out of the Shadows at Last, Transforming Mental Health, Mental Illness and Addition Services in Canada." The Canadian Human Rights Commission also investigates and reports on issues of concern. This year it published "No Answer" which documented problematic telephone access to governmental information and services for the deaf and hard of hearing.

## **Task Forces and Representative Advisory Committees**

Advisory committees and task forces can be useful if they include significant representation of persons with disabilities. Maintaining avenues for input from the disability community to government and agencies as well as governmental programs is a useful way of keeping bureaucrats and regulators aware of the issues faced by persons with disabilities. An Federal Disability Act could establish on-going representative advisory committees that must be consulted as programs evolve.

An example of such input is the Disability Advisory Committee that meets periodically with senior officials at Industry Canada. In the United States, at the Consumer and Governmental Affairs Bureau of the American Federal Communications Commission (FCC) there is a Consumer Advisory Committee with the mandate of making recommendations regarding consumer issues and to facilitate the participation of consumers, including persons with disabilities and underserved populations, such as Native Americans and persons living in rural areas

## VII CONCLUSION

A Federal Disability Act, with the components outlined above, would be a significant contribution to the federal legislative, policy, and regulatory framework for building an inclusive and accessible Canada.

It would provide for the first time, through the Office of a Commissioner of Disability, an independent accountability mechanism for reporting to Parliament on the social, economic, and political status of Canadians with disabilities. With a mandate to report on the effectiveness of the federal jurisdiction in addressing longstanding barriers and obstacles the Supreme Court of Canada recognizes as historic disadvantage for people with disabilities, this Office would provide a much needed vantage point for assessing federal government policies and practices.

In establishing an Accessibility Design Centre and a Full Inclusion Policy Centre, such an Act would finally provide essential focal points of responsibility in the federal government for articulating evolving criteria of accessibility and inclusion that should apply across policies and practices of federal government departments, agencies, commissions and the federally-regulated sector. These focal points would provide a place to go for information and assistance in designing and implementing plans to remove barriers, and would play a crucial role in identifying and confronting policies and practices that discriminate.

The Act as envisioned in this framework bill is also integrative. It does not establish a parallel system for advancing disability rights within the federal domain, but rather enhances and strengthens the capacities of existing institutions like the Canadian Human Rights Commission.

A Federal Disability Act modeled along the lines of this framework bill could do much to improve the status of Canadians with disabilities; and it would go some distance in demonstrating the federal leadership in disability long ago promised when the Government of Canada signed the first inter-governmental accord on disability in this country – *In Unison*. But, even at its best, it would only go some of the distance. The real test of the success of a Federal Disability Act is whether it provides a foundation of leadership, commitment and awareness on which the needed federal investments in disability supports, income, and employment would follow. Thus, a Federal Disability Act is not an end in itself; more appropriately it must be seen as a beginning – a beginning of a comprehensive, cross-departmental, coordinated set of instruments for establishing federal government accountability, responsibility, and intervention to advance and assure the *Charter* rights of Canadians with disabilities.