



April 17, 2019

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**Recommendations  
to the  
Standing Senate Committee on Social Affairs,  
Science and Technology (SOCI)**

**Amending Bill C-81, *An Act to ensure a barrier-free Canada*  
(As passed by the House of Commons November 27, 2018)**

## **ARCH Disability Law Centre**

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**55 University Avenue, 15th Floor, Toronto, ON, M5J 2H7**

Phone: 416-482-8255 1-866-482-2724

TTY: 416-482-1254 1-866-482-2728

**[www.archdisabilitylaw.ca](http://www.archdisabilitylaw.ca)**

** @ARCHDisabilityLawCentre**

** @ARCHDisability**

## INTRODUCTION

Bill C-81, *An Act to ensure a barrier-free Canada*, is a significant piece of legislation that has the potential to truly advance accessibility and inclusion of persons with disabilities in Canada. ARCH Disability Law Centre makes the following recommendations for strengthening Bill C-81. These recommended amendments are necessary to ensure that the Bill achieves its purpose and potential.

The recommendations in this brief are grounded in the legal research and analysis that ARCH conducted on Bill C-81, the consultations that informed our final report, and ARCH's ongoing work with disability organizations and communities in relation to the Bill. To read ARCH's legal analysis report on Bill C-81 and the recommendations ARCH made to the House of Commons for strengthening the Bill, go to: <https://archdisabilitylaw.ca/initiatives/advocating-for-accessibility-in-canada/arch-reports-and-recommendations/>

In addition, the recommendations in this brief are informed by ARCH's expertise in human rights law, international disability rights law, accessibility laws, and the experiences of the communities of persons with disabilities whom we serve.

**Bill C-81 needs strengthening:** During the fall of 2018, an Open Letter was submitted to the House of Commons and Minister Qualtrough asking for 9 essential amendments to be made to Bill C-81. 95 disability groups from across Canada have signed on to support the Open Letter. To read the Open Letter go to: <https://archdisabilitylaw.ca/initiatives/advocating-for-accessibility-in-canada/open-letter/>

ARCH reaffirms our support for the Open Letter. In this brief we highlight several of those 9 essential amendments, which we submit are critical for SOCI to consider when recommending amendments to Bill C-81.

### 1. RECOMMENDATIONS FOR AMENDMENTS TO BILL C-81

**Bill C-81 must ensure that accessibility requirements do not diminish existing human rights of persons with disabilities:** Bill C-81 must complement and enhance the duty to accommodate that federal employers, service providers and others have under the *Canadian Human Rights Act*. However, experience in Ontario demonstrates that the development of accessibility standards and regulations may lead organizations and businesses to believe that they must only comply with these standards, and that this will fulfill their duty to accommodate under human rights laws,

or that the duty to accommodate no longer applies to them. To prevent Bill C-81 from inadvertently undermining existing human rights in this way we recommend that:

- The preamble and purpose sections of Bill C-81 must clarify that nothing in the Act lessens the existing human rights obligations of federally-regulated entities under the *Canadian Human Rights Act*.
- Section 117 must state that nothing in the accessibility regulations can reduce or minimize the right to be free from discrimination under the *Canadian Human Rights Act*.

### **Bill C-81 must not diminish existing human rights of persons with**

**disabilities:** Currently, subsection 172(2) of the *Canada Transportation Act* requires the Canada Transportation Agency (CTA) to dismiss a complaint about inaccessibility of the federal transportation system if the transportation provider has complied with regulations made by the CTA. However, regulations made by the CTA may not meet the human rights law standard of accommodation to the point of undue hardship. Therefore, subsection 172(2) may have the impact of diminishing existing human rights because it allows the CTA to dismiss a complaint, even if the regulations that the transportation provider complied with do not meet the human rights law standard.

Subsection 172(2) is particularly concerning because under Bill C-81, the CTA is set to take on a larger role in dealing with complaints about inaccessibility of the federal transportation system. This is due to changes that Bill C-81 will make to the CTA, including giving the CTA broader powers to order remedies, and the “no wrong door” approach that is being taken to accessibility complaints under Bill C-81.<sup>1</sup>

To avoid diminishing existing human rights in this way Bill C-81 must clarify that compliance with regulations under the *Canada Transportation Act* does not necessarily mean that an “undue barrier” or discriminatory barrier does not exist. We recommend that:

- Subsection 172(2) of Bill C-81 must be amended so that it repeals its counterpart, subsection 172(2) of the *Canada Transportation Act*. Without this amendment, it is likely that transportation organizations who have complied with accessibility standards will not also be required to comply with their legal obligations under the *Canadian Human Rights Act*.

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<sup>1</sup> For more detailed legal and practice analysis on this point, see pages 41-42, 47, 57-62 of ARCH's final report, available at: <https://archdisabilitylaw.ca/initiatives/advocating-for-accessibility-in-canada/arch-reports-and-recommendations/>.

## **Bill C-81 must require government and other bodies to implement key elements:**

Many sections of the Bill use the permissive language may. The legal effect is to give government and other bodies power to make and enforce accessibility requirements, but not actually require this power to be used. In key provisions, may must be changed to shall or must, to ensure that accessibility requirements are made and enforced. In particular we recommend that:

- Subsection 117(1) currently states that the Governor in Council may make regulations. This subsection must be amended to require accessibility regulations to be made in employment, the built environment, information and communication technologies, communication, the procurement of goods, services and facilities, the design and delivery of programs and services, and transportation (those areas identified in section 5 of the Bill). Without a requirement to make accessibility regulations, there is no assurance that the government will do so and therefore no assurance that the law will advance accessibility in Canada. This can be achieved by creating an additional subsection, 117 (1.2), stating that the Governor in Council must make regulations under paragraph 1(c) within a particular timeframe.
- The word may must be changed to shall or must in section 95. This change will ensure that the Accessibility Commissioner *does* investigate all complaints that fall within its purview. There is no justification for the Accessibility Commissioner to decline to investigate if all the criteria described in the Bill are met, since there would be no other legal mechanism available for pursuing the complaint.
- The word may must be changed to shall or must in section 75(1). This change will ensure that the Accessibility Commissioner makes a compliance order every time there are reasonable grounds to believe that an organization is not complying with the Act.

**Bill C-81 must include dates and timelines:** The Bill does not include dates or timelines for achieving its purpose of a Canada without barriers, nor does it include dates or timelines for implementing key requirements such as making accessibility standards and regulations. Timelines are essential for ensuring that the Bill will advance accessibility in Canada. We recommend that:

- Section 5 of Bill C-81 must include a specific year or period of time by which a Canada without barriers will be achieved.
- Section 11(1) must include the same year or period of time as section 5.

- Section 117 must be amended to include a timeline within which the Federal Government will enact accessibility regulations in employment, the built environment, information and communication technologies, communication, the procurement of goods, services and facilities, the design and delivery of programs and services, and transportation (those areas identified in section 5 of the Bill).

**Bill C-81 must address barriers created by poverty and intersectional**

**discrimination:** The Bill must do more to address the multiple and intersectional barriers experienced by persons with disabilities in relation to their identities, and by persons with disabilities who live in poverty or on low incomes. We recommend that:

- Section 6 must be amended to include the following additional principles:
  - Persons with disabilities disproportionately live in conditions of poverty.
  - Women and girls with disabilities experience unique and intersecting barriers.
  - Persons with disabilities are diverse and experience multiple and intersecting barriers, as a result of discrimination on the basis of disability or multiple disabilities, race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, and/or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.
  - Barrier identification, removal and prevention must be done in accordance with principles of inclusive design and universal design.
  - In accordance with Article 12 of the *Convention on the Rights of Persons with Disabilities*, persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
- Section 117 must be amended to require that regulations advance the purpose and further the principles of the Act.

**Bill C-81 must recognize ASL and LSQ:** Bill C-81 does not specifically recognize American Sign Language (ASL) or Langue des Signes Québécoise (LSQ). Deaf culture has its own defining characteristics, which include sign languages, cultural norms, historical traditions and heritage. Deaf persons have long called on the Government of Canada to recognize their unique languages. This is important to ensure that Deaf persons have equal access to information, communication, employment, government services, transportation and other federally-regulated sectors. We recommend that:

- Bill C-81 must include a provision which recognizes ASL and LSQ as languages of people who are Deaf in Canada.

**Bill C-81 must include stronger definition of ‘barrier’:** To ensure that barriers created by federal laws are identified, removed and prevented, we recommend that:

- Section 2 should be amended by adding the word law to the definition of barrier.

## **2. RECOMMENDATIONS FOR OBSERVATIONS**

**Bill C-81 must not splinter compliance and enforcement:** Bill C-81 does not designate one central agency to oversee compliance with accessibility requirements and adjudicate accessibility complaints. Instead, enforcement will be done by multiple agencies, including the Accessibility Commissioner, Canadian Radio-television and Telecommunications Commission (CRTC), CTA, and the Federal Public Sector Labour Relations and Employment Board. This approach will create confusion and additional, unnecessary barriers to access to justice for persons with disabilities. Multiple bodies adjudicating accessibility complaints will likely result in uneven or unfair enforcement of the Act since different bodies may adopt different or contradictory approaches. Experience demonstrates that the CTA and CRTC may be more likely to treat human rights and accessibility as secondary to technical concerns.<sup>2</sup> Should this continue, it would result in weak adjudication of transportation and telecommunications complaints.

To address these concerns, ARCH and other disability groups have consistently recommended that Bill C-81 be amended to centralize compliance oversight and complaint handling within the Accessibility Commissioner. Such centralization would

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<sup>2</sup> For more detailed legal and practice analysis on this point, see pages 41-42, 47, 57-62 of ARCH's final report, available at: <https://archdisabilitylaw.ca/initiatives/advocating-for-accessibility-in-canada/arch-reports-and-recommendations/>.

avoid procedural barriers created by having multiple complaint processes at multiple agencies. Importantly, centralization would also address the substantive concerns related to weak adjudication of accessibility complaints by the CTA and CRTC.

However, ARCH recognizes that at this stage in the legislative process, for practical and political reasons, it is highly unlikely that such an amendment will be made to Bill C-81. Therefore, ARCH recommends that the Senate attach the following observations to the Bill:

- Recognizing the significant concerns raised by disability communities regarding the splintering of compliance, enforcement and complaint handling functions, the Committee recommends that as part of the first review of the *Accessible Canada Act*, the Government of Canada report to the Senate on the impact of splintering on access to justice for persons with disabilities. The Government of Canada's report must include:
  - Summary of consultations conducted with persons with disabilities regarding processes for handling accessibility complaints, and any barriers to accessing complaint processes.
  - Findings from an analysis comparing the accessibility complaint handling processes at the CTA, CRTC, Federal Public Sector Labour Relations and Employment Board, and Accessibility Commissioner.
  - Findings from a legal review and analysis of accessibility complaints adjudicated by the CTA, CRTC, Federal Public Sector Labour Relations and Employment Board, and Accessibility Commissioner. This legal review must assess whether these agencies applied a human rights legal analysis, and must assess the outcomes of accessibility complaints as compared with human rights cases adjudicated at the Canadian Human Rights Tribunal.
- In order to facilitate the above report, the CTA, CRTC, Federal Public Sector Labour Relations and Employment Board, and Accessibility Commissioner must all be required to publish their decisions regarding accessibility complaints.

**Bill C-81 must address barriers experienced by Indigenous and First Nations persons with disabilities:** Bill C-81 is silent on barriers affecting Indigenous and First Nations persons with disabilities. Throughout the development of Bill C-81, ARCH has recommended that the Government of Canada work with Indigenous communities and First Nations to determine how the Bill will address

barriers experienced by these communities, including the recognition of Indigenous Sign Languages. In her testimony to SOCI, Minister Qualtrough stated that the Government of Canada is in the process of doing so. However, testimony from other SOCI witnesses suggested that it is not clear what outcomes will result from this process.

ARCH recommends that the Senate attach the following observation to the Bill:

- Recognizing the fundamental importance of addressing barriers experienced by Indigenous and First Nations persons with disabilities, it is incumbent upon the Government of Canada to work with Indigenous communities and First Nations, on a nation to nation basis, to determine how Bill C-81 will address barriers experienced by these communities. The Senate requests that Government report back on the outcome of this work within 1 year after Bill C-81 receives Royal Assent.