

Principles to Redraft Bill 59

The Nova Scotia Accessibility Act



Submission to the NS Law Amendments Committee
Prepared by the Bill 59 Community Alliance
2 March 2017

The principles prepared by the Bill 59 Community Alliance have been endorsed by:

Amyotrophic Lateral Sclerosis Society | NS-NB
 Autism Nova Scotia
 Barrier Free Nova Scotia
 Brain Injury Association of Nova Scotia
 Canadian Association of Retired Persons | Nova Scotia Division
 Canadian Council of the Blind | Nova Scotia
 Canadian Paraplegic Association | Nova Scotia Division
 Canadian National Institute for the Blind | NS - PEI
 CCB Blind Sport Nova Scotia
 Collaborative Partnership Network
 Community Transportation Nova Scotia
 CORD - Clare Organization Representing Persons with Disabilities
 Deaf Advocates Association of Nova Scotia
 Easter Seals | Nova Scotia
 Highland Community Resources Group
 Independent Living Nova Scotia
 James McGregor Stewart Society

Kings Transit Authority
 L'Arche Antigonish
 L'Arche Cape Breton
 L'Arche Halifax
 L'Arche Homefires (Wolfville)
 March of Dimes
 Maritime Association of Professional Sign Language Interpreters
 Muscular Dystrophy Association of Canada | Atlantic Division
 Multiple Sclerosis Society of Canada | Atlantic
 Nova Scotia Aphasia Association
 Nova Scotia Association for Community Living
 Nova Scotia League for Equal Opportunities
 Regional Residential Services Society
 Society for the Deaf and Hard of Hearing | NS
 Southwest Employment Services
 Summer Street Industries
 Tri-County Women's Centre
 Walk 'n' Roll Halifax



Summary of Principles to Redraft Bill 59 The Nova Scotia Accessibility Act

Be clear on the purpose

To fulfill government's promise of equality for all Nova Scotians
and to end discrimination against people with disabilities

To remove existing barriers and prevent new ones

Make sure it works everywhere

Apply the Act to public and private services, facilities,
transportation, and communication

Incorporate a broad and forward looking definition of disability

Accord people with disabilities a central role in creating and
implementing the Act

Standards are the key

Create and enforce standards

Standards should adhere to the principles of Universal Design

Include standards for assistive technologies and accessibility
services

Discourage arbitrary exemptions

Take practical steps

Embed meaningful deadlines in the Act

Employ incentives to advance the purpose of the Act.

Accept and investigate complaints

Enforce compliance with penalties

Do not subordinate fundamental human rights to cost-benefit
analysis

Require government to purchase accessible goods and services

Harmonize with other legislation Detailed Principles to

Amend Bill 59

Principles to Redraft Bill 59 The Nova Scotia Accessibility Act

Be clear on the purpose

To fulfill government's promise of equality for all Nova Scotians and to end discrimination against people with disabilities

- People with disabilities in Nova Scotia continue to face barriers to their participation as equal members of society. This violates their human rights.
- Achieving accessibility will improve the health, well-being, and independence of persons with disabilities.
- Barriers impose substantial costs on persons they disable, on their families and friends, and on communities and the economy.
- Under the United Nations Convention on the Rights of Persons with Disabilities, Canada and Nova Scotia are obliged to take all appropriate legislative, administrative and other measures to implement the rights recognized in the Convention.
- The Canadian Charter of Rights and Freedoms guarantees that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination based on, among other things, mental or physical disability.
- The Nova Scotia Human Rights Act recognizes that the Government of Nova Scotia, as well as all public agencies and all persons in the Province, have the responsibility to ensure that every individual is afforded an equal opportunity to enjoy a full and productive life

To remove existing barriers and prevent new ones

- There must be an effective process for removing the multitude of barriers currently in place.

Make sure it works everywhere

Apply the Act to public and private services, facilities, transportation, and communication

- The Act will apply to all provincial government departments, agencies, crown corporations, and entities, and to all organizations such as municipalities, utilities, and business regulated under provincial jurisdiction
- Incorporate a broad and forward looking definition of disability
- Disability is an evolving concept that continues to challenge society in unanticipated ways.

Accord people with disabilities a central role in creating and implementing the Act

- Tokenism is not enough. Nothing about us without us.

Standards are the key

Create and enforce standards

- Standards are essential to everyday order
- From traffic regulations to food safety, we depend on them to provide predictability in hundreds of situations
- Standards should be developed by an arms-length independent body in consultation with the disability community
- Standards should be subject to a cycle of review and update

Standards should adhere to principles of universal design

- "Universal design" means 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" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.

Include standards for assistive technologies and accessibility services

- Establish standards for funding assistive technology and accessibility services. (For example, it doesn't make sense to fund artificial limbs but not wheel chairs. Such chairs are the legs of a person with a spinal cord injury.)

Discourage arbitrary exemptions

- We must be careful of exemptions
- Most regulation is universal because it protects fundamental principles and avoids opportunities for malfeasance
- Ministerial discretion to enforce the Act must be removed
- Appeals related to enforcement should reside with an independent tribunal such as the NS Utility Review Board

Take practical steps

Embed meaningful deadlines in the Act

- The goal is to achieve a Barrier-Free province within a specific and clearly defined deadline set by the legislation
- A timeline that begins immediately upon proclamation will include checkpoints at regular intervals until existing barriers are removed
- Minimize delay: the Act must define the timeframe

Employ incentives to advance the purpose of the Act.

- Making workplaces accessible will increase the province's labour force participation improve the incomes of people with disabilities, and boost Nova Scotia's gross domestic product
- Removing barriers to schools, colleges, and universities will improve educational attainment
- Eliminating barriers will reduce health-care and social assistance costs as more individuals with disabilities become partly or fully self-supporting.

- The retail and tourist sectors will expand as people with disabilities can travel and shop

Accept and investigate complaints

- Accepting and acting on user feedback is productive, targeted, and effective. Appeals should be accommodated through an independent reviewer.
- The Act will include a comprehensive and clearly defined avenue for persons with disabilities who encounter barriers that violate the legislation to complain to enforcement officials.

Enforce compliance with penalties

- The Act will provide a prompt, independent, transparent, and effective process for enforcement with meaningful assessments
- Ministerial discretion over enforcement currently in the Bill needs to be removed to avoid abuse
- All appeals, including the Minister's, should be managed through an independent enforcement process

Do not subordinate fundamental human rights to cost-benefit analysis

- The current Act requires an economic analysis before standards are implemented, and focuses exclusively on the expense side of the ledger
- The requirement for a detailed cost/benefit analysis prior to the implementation of any new standard adds a new barrier to achieving accessibility, one that does not now exist.
- Fundamental human rights must not be subordinated to economic cost/benefit analysis
- If this Bill were about freedom of speech or religion, gender equality, or voting rights, there would be no insistence on an economic analysis.
- We will know this legislation is working as intended when people return to work, pay taxes, and participate in the life of their community. We will all benefit

Require government to purchase accessible goods and services

- The Act will require all provincially regulated service providers to ensure their services and facilities can be used by persons with disabilities based on principles of universal design. As a matter of policy, the Province should use its procurement system to encourage the business community to become accessible.

Harmonize with other legislation

- As an essential piece of human rights legislation, this Act should have the same quasi-constitutional status as the Nova Scotia Human Rights Act and Canada's Official Languages Act.
 - Where a provision of the Act or its regulations conflicts with a provision of another enactment, the provision providing the highest standard of accessibility and greatest protection of rights shall prevail.
-

BILL NO. 59

(as introduced)



*3rd Session, 62nd General Assembly
Nova Scotia
65 Elizabeth II, 2016*

Government Bill

Accessibility Act

The Honourable Joanne Bernard
Minister of Community Services

[First Reading](#): November 2, 2016
Second Reading:

An Act Respecting

Accessibility in Nova Scotia

AMENDMENT MATRIX			
Already Included	Clarification needed	A better alternative	Vital Amendment

WHEREAS barriers to accessibility are a reality for many Nova Scotians with disabilities;
AND WHEREAS, under the United Nations Convention on the Rights of Persons with Disabilities, member states undertake to take appropriate measures to ensure accessibility and to develop and monitor minimum accessibility standards;
AND WHEREAS the Canadian Charter of Rights and Freedoms grants equality rights to all persons without discrimination on the basis of a disability;
AND WHEREAS the Human Rights Act recognizes that the Government, public agencies and all persons have a responsibility to ensure equal opportunity for every individual to enjoy a full and productive life;
AND WHEREAS the number of Nova Scotians with disabilities is likely to rise due to the demographic changes associated with an aging population;
AND WHEREAS an accessible Nova Scotia will improve the health, well-being and independence of persons with disabilities;
AND WHEREAS public consultation provides an opportunity for Nova Scotians to be actively involved in the development of a process for identifying, reducing, removing and preventing barriers;
AND WHEREAS the Government is committed to establishing progressive timelines for developing and implementing accessibility standards while taking into account the resources required to comply with such standards;
THEREFORE be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the Accessibility Act.

2 The purpose of this Act is to

- (a) ensure that issues related to persons with disabilities are conveyed to and addressed by public sector bodies;
- (b) ensure that existing measures, policies, practices and other requirements are reviewed with a view to making suggestions to improve accessibility;
- (c) provide the framework and authority to create accessibility standards; and
- (d) facilitate the implementation and monitoring of and compliance with accessibility standards.

3 (1) In this Act,

- (a) "accessibility plan" means a plan to address the identification, reduction, removal and prevention of barriers in the policies, programs, practices and services of a public sector body;
- (b) "accessibility standard" means an accessibility standard established under this Act;
- (c) "barrier" means anything that hinders the full and effective participation in society of persons with disabilities including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice;
- (d) "Board" means the Accessibility Advisory Board established under this Act;
- (e) "built environment" means a building, a structure or premises;
- (f) "committee" means a committee established under this Act;
- (g) "Court" means the Supreme Court of Nova Scotia;
- (h) "disability" means a physical, mental, intellectual or sensory impairment that, in the interaction with a barrier, hinders an individual's full and effective participation in society;

Be clear on the purpose

To fulfill government's promise of equality for all Nova Scotians and to end discrimination against people with disabilities

To remove existing barriers and prevent new ones

Incorporate a broad and forward looking definition of disability

(i) "government entity" means any department, board, commission, foundation, agency, association or other body of persons, whether incorporated or unincorporated, all the members of which or all the members of the board of management or board of directors of which

- (i) are appointed by an Act of the Legislature or by order of the Governor in Council, or
- (ii) where not so appointed, in discharge of their duties are public officers or servants of Her Majesty in right of the Province or for the proper discharge of their duties are, directly or indirectly, responsible to Her Majesty in right of the Province;

(j) "inspector" means an inspector appointed under this Act;

(k) "Minister" means the Minister of Community Services;

(l) "organization" includes a government entity, sole proprietorship, corporation, society, association, partnership and limited liability partnership, any association of individuals and any similar body;

(m) "order" means an order made under this Act;

(n) "prescribed" means prescribed by the regulations;

(o) "public sector body" means

- (i) a government entity,
- (ii) a prescribed municipality, and

(iii) a prescribed organization.

(2) A document or information is publicly available if it is posted on a website or made available in a prescribed manner.

4 (1) Nothing in this Act or the regulations diminishes the rights and protections offered to persons with disabilities under the Human Rights Act.

Harmonize with other
legislation

(2) Where a provision of this Act or the regulations conflicts with a provision of another enactment, the provision of this Act or the regulations prevails unless the other enactment provides a higher level of accessibility for persons with disabilities.

5 This Act binds Her Majesty in right of the Province.

6 The Minister is responsible for the general supervision and management of this Act and the regulations.

7 The Minister shall

- (a) raise awareness of how persons with disabilities are disabled by barriers;
- (b) promote and encourage the prevention, reduction and removal of barriers;
- (c) oversee the development and implementation of accessibility standards necessary to attain the purpose of this Act;
- (d) assist in the integration of applicable accessibility standards into the activities of all persons in the Province; and
- (e) ensure persons in the Province are consulted in the development of accessibility standards and informed about their duties and responsibilities under the standards once created.

8 (1) The Minister shall annually prepare a report of the actions the Minister has undertaken pursuant to Section 7 during the preceding fiscal year.

(2) The Minister shall table the report in the House of Assembly within 15 days after it is completed or, where the Assembly is not then sitting, file it with the Clerk of the Assembly.

9 (1) The Minister may, in writing, delegate any power or duty conferred or imposed on the Minister under this Act to

- (a) an employee of a government entity;
- (b) an employee of a municipality; or
- (c) another person,

who, in the Minister's opinion, has the requisite qualifications and experience.

(2) Where the Minister delegates a power or duty under subsection (1), the Minister may

- (a) specify how the power or duty is to be exercised or performed and impose any requirement in relation to or restrictions on the exercise or performance of the power or duty that the Minister considers appropriate; and
- (b) provide that the delegate be paid for, or reimbursed for the cost of, exercising or performing the delegated power or duty.
- (3) Before making a delegation to a person under clause (1)(a) or (b), the Minister shall consult with and obtain the consent of the employer of the person.
- (4) Before making a delegation to a person under clause (1)(c), the Minister shall obtain the consent of the person.
- (5) The Minister may revoke a delegation made under subsection (1).

ACCESSIBILITY DIRECTORATE

- 10 (1) There shall be an Accessibility Directorate.
- (2) The role of the Accessibility Directorate is to
 - (a) support the implementation and administration of this Act and the regulations;
 - (b) address broader disability-related initiatives by acting as a central government mechanism to ensure that the concerns of persons with disabilities respecting policy, program development and delivery are advanced and considered by the Government.
- 11 (1) The Minister shall appoint an Executive Director and the staff of the Accessibility Directorate.
- (2) The Executive Director shall lead the Accessibility Directorate and liaise with the Board.
- (3) The staff appointed to the Accessibility Directorate are deemed to be appointed to the Civil Service pursuant to the Civil Service Act.
- 12 The Accessibility Directorate shall
 - (a) provide policy, programming, communication and administrative support on all aspects of this Act and the regulations;
 - (b) conduct research and develop and implement programs of public education and awareness on the purpose of this Act;
 - (c) examine and review measures, policies, practices and other requirements to improve opportunities for persons with disabilities; and
 - (d) identify and study issues of concern to persons with disabilities and recommend action where appropriate.

ACCESSIBILITY ADVISORY BOARD

- 13 (1) There shall be an Accessibility Advisory Board consisting of
 - (a) 12 members appointed by the Governor in Council on the recommendation of the Minister; and
 - (b) four non-voting members.
- (2) In making recommendations to the Governor in Council for the purpose of subsection (1), the Minister shall take into consideration

Accord people with disabilities a central role in creating and implementing standards

- (a) the skills and assets the Minister considers necessary to ensure an effective and optimally functioning Board; and
- (b) representation by stakeholder groups that will be subject to the accessibility standards.
- (3) At least one half of the members of the Board must be persons with disabilities.
- (4) The following persons are non-voting members of the Board whose presence at or absence from a meeting does not affect quorum:
 - (a) the Minister of Transportation and Infrastructure Renewal or that

Minister's designate;

- (b) the Minister of Business or that Minister's designate;
- (c) the Minister of Regulatory Affairs and Service Effectiveness or that Minister's designate; and

(d) the Minister of Municipal Affairs or that Minister's designate.

14 (1) A person appointed to the Board pursuant to clause 13(1)(a) holds office for a term of three years.

(2) No person may be appointed to the Board pursuant to clause 13(1)(a) for more than two consecutive terms.

15 (1) The Governor in Council, on the recommendation of the Minister, may designate members of the Board appointed pursuant to clause 13(1)(a) as the Chair and the Vice-chair of the Board.

(2) The Vice-chair shall act as Chair if the Chair is absent or unable to act or when authorized to act by the Chair.

16 (1) The Board shall hold at least four regular meetings in each year and meet with the Minister at least once every 12 months.

(2) The Board shall prepare a summary report after each regular meeting and make the report publicly available.

(3) The Board shall annually prepare a report of its activities and operations during the preceding fiscal year and file it with the Minister.

17 The Board shall advise and make recommendations to the Minister about accessibility and, in particular, shall

(a) suggest measures, policies, practices and requirements that may be implemented by the Government to improve accessibility;

**Embed meaningful deadlines
in the Act**

(b) assess whether existing measures, policies, practices and requirements are consistent with the purpose of this Act;

(c) set priorities for the establishment and content of accessibility standards and the timelines for their implementation;

(d) set long-term accessibility objectives for furthering the purpose of this Act; and

(e) respond to requests for accessibility advice from the Minister.

18 The Minister may, in consultation with the Board,

(a) establish standard development committees to assist the Board with making recommendations to the Minister on the content and implementation of accessibility standards;

(b) specify a committee's mandate;

(c) provide guidelines for a committee's functions and operations; and

(d) establish a subcommittee of technical experts and other individuals familiar with issues specific to the standard being developed.

19 (1) A standard development committee established under Section 18 must have

(a) one half of its membership consist of persons with disabilities or representatives from organizations representing persons with disabilities;

(b) representatives of organizations and classes of organizations likely to be affected by the standard being developed; and

(c) representatives from departments of the Government that have responsibilities related to the standard being developed.

(2) A person does not need to be a member of the Board to be a member of a committee.

20 (1) Committee members not employed in the public service of the Province shall be paid such remuneration as is determined by the Minister.

(2) Committee members shall be reimbursed for their reasonable expenses incurred in the performance of their duties.

ACCESSIBILITY STANDARDS

-21 (1) Where the Minister determines that there is an accessibility issue, the Minister shall prepare terms of reference for an accessibility standard to address the issue.

- (2) The terms of reference prepared under subsection (1) must
- (a) specify the accessibility issue;
 - (b) specify the individual, organization or class that may be subject to the standard;
 - (c) establish a timeline for a response by the Board; and
 - (d) suggest individuals, organizations and public sector bodies to be consulted.

(3) The Minister shall give the terms of reference to the Board and make them publicly available.

22 (1) Upon receipt of the terms of reference for a proposed accessibility standard, the Board shall consider and make any recommendations to the Minister respecting

(a) the accessibility objectives for the activity or undertaking, the class, the aspect of the built environment or the individuals or organizations to which the standard relates; and

(b) the measures, policies, practices and other requirements that the Board believes should be implemented, including

- (i) how and by whom they should be implemented, and
- (ii) the period for implementing them.

(2) An accessibility standard must include

(a) an economic impact assessment for the standard;

(b) an assessment of how the standard will increase accessibility in the Province; and

(c) resources required to comply.

(3) When recommending time periods for implementing an accessibility standard, the Board shall consider

(a) the nature of the barriers that the measures, policies, practices and other requirements are intended to identify, reduce,

remove or prevent;

(b) any technical and economic considerations that may be associated with implementing the standard; and

(c) any other matter referred to in the terms of reference.

23 When preparing recommendations under Section 28, the Board shall consult with

(a) persons with disabilities or representatives from organizations representing persons with disabilities;

(b) representatives of those engaged in the activity or undertaking, or the individuals or organizations, or representatives of the class that may be made subject to the proposed accessibility standard;

(c) representatives of government entities that have responsibilities relating to the activity, undertaking or class that may be made subject to the proposed accessibility standard; and

(d) other individuals or organizations that the Minister considers advisable, including a standard development committee.

24 The Board shall attempt to achieve a consensus among its members on its recommendations but, where there is no consensus, the majority may make recommendations and one or more members may submit separate recommendations.

25 The recommendations must be submitted to the Minister in the form and within the period specified by the Minister.

26 Upon receipt of the recommendations, the Minister may prepare a proposed accessibility standard adopting the recommendations in whole, in part or with any modifications the Minister considers appropriate.

Standards are the key

- Create and enforce standards
- Standards should adhere to the principles of Universal Design
- Include standards for assistive technologies

Do not subordinate fundamental human rights to cost-benefit analysis

27 An accessibility standard may

- (a) specify the individuals or organizations that are subject to the standard;
 - (b) set out measures, policies, practices and other requirements for
 - (i) identifying, reducing and removing barriers, and
 - (ii) preventing barriers from being established; and
 - (c) require the individuals or organizations that are subject to the standard to implement those measures, policies, practices and other requirements within the period specified in the standard.
- 28 An accessibility standard may be general or specific in its application and may be limited as to time and place.

29 Accessibility standards may apply to individuals or organizations that

- (a) employ others;
- (b) offer accommodation;
- (c) own, operate, maintain or control an aspect of the built environment other than a private residence with three or fewer dwelling units;
- (d) provide goods, services or information to the public; or
- (e) engage in a prescribed activity or undertaking or meet other prescribed requirements.

Apply the Act to
public and private
services, facilities,
transportation, and
communication

Discourage
arbitrary
exemptions

30 An accessibility standard may apply to different classes of individuals or organizations or aspects of the built environment and, without limiting the generality of the foregoing, may apply to classes with respect to any attribute, quality or characteristic, or any combination of those things, including

- (a) the number of persons employed by an individual or organization or its annual revenue;
- (b) the type of activity or undertaking in which an individual or organization is engaged or the sector of the economy of which an individual or organization is a part; or
- (c) a particular characteristic of an aspect of the built environment, such as the type of infrastructure or the size of a building, a structure or premises, that is owned, operated, maintained or controlled by an individual or organization.

31 An accessibility standard may define a class to include or exclude an individual or organization, or an aspect of the built environment, having the same or different attributes, qualities or characteristics.

32 An individual or organization may be subject to more than one accessibility standard.

33 The Minister shall make a proposed accessibility standard and the recommendations publicly available.

34 Within 60 days after a proposed accessibility standard is made publicly available, or within any other longer period specified by the Minister, an individual or organization may submit comments about the proposed standard to the Minister.

35 After consulting with the Board with respect to any comments received and revising the proposed accessibility standard if the Minister considers it appropriate, the Minister may recommend the standard to the Governor in Council for approval as a regulation.

36 The Minister may, by giving written notice to the Board, withdraw the terms of reference for an accessibility standard that has been given to the Board and, where the Minister does so, the Board shall cease its activities in respect of that standard.

37 An individual or organization that is subject to an accessibility standard shall

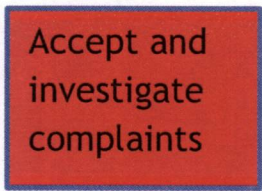
- (a) prepare and keep records in accordance with the regulations; and
- (b) make the records available for inspection and examination under this Act and the regulations.

38 An individual or organization that is subject to an accessibility standard shall comply with it within the period specified in the standard.

- 39 Every public sector body shall prepare and make publicly available an accessibility plan.
- 40 An accessibility plan must include
- (a) a report on measures the public sector body has taken and intends to take to identify, reduce, remove and prevent barriers;
- (b) information on procedures the public sector body has in place to assess the following for their effect on accessibility for persons with disabilities:
- (i) any of its proposed policies, programs, practices and services, and
 - (ii) any proposed enactments or by-laws it will be administering; and
- (c) any other prescribed information.
- 41 A public sector body shall consult with persons with disabilities or representatives of organizations representing persons with disabilities when preparing an accessibility plan.
- 42 A public sector body shall update its accessibility plan every three years and make it publicly available.
- 43 Two or more prescribed municipalities may have a joint accessibility plan.
- 44 (1) The council of every municipality having a population of 10,000 or more shall establish an accessibility advisory committee or continue any such committee that was established before the coming into force of this Act.
- (2) At least one half of the members of an accessibility advisory committee must be persons with disabilities or representatives from organizations representing persons with disabilities.

COMPLIANCE AND ENFORCEMENT

- 45 (1) Inspectors and other persons required to administer compliance with and enforcement of this Act and the regulations shall be appointed by the Minister in accordance with the Civil Service Act.
- (2) Notwithstanding subsection (1), the Minister may engage, upon such terms and conditions as the Minister considers necessary, the services of such persons as the Minister requires for administering compliance with and enforcement of this Act and the regulations.
- 46 (1) An inspector carrying out an inspection under this Act shall produce, on request, an identification card provided by the Minister for that purpose.
- (2) A copy of an identification card purporting to be signed by the Minister is proof in any court of law that an individual is an inspector.
- 47 (1) An inspector may carry out any inspection, examination or test reasonably required to
- (a) determine compliance with this Act and the regulations;
- (b) verify the accuracy or completeness of a record or of other information required to be prepared under this Act and the regulations; or
- (c) perform any other duty or function that the inspector considers necessary or advisable in the administration or enforcement of this Act and the regulations.
- (2) When carrying out an inspection under this Section, an inspector may
- (a) require the production of any document or record for inspection and copying; and
- (b) inspect the physical premises and equipment.
- 48 An inspector has all the powers, privileges and immunities of a commissioner appointed under the Public Inquiries Act, with the exception of the powers of contempt, arrest and imprisonment.
- 49 (1) Subject to subsection (2), an inspector may, at any reasonable time, enter
- (a) any land or any building, structure, premises or place that is subject to this Act or the regulations; or
- (b) any other premises or place where the inspector has reasonable grounds to believe that records or things relevant to the administration or enforcement of this Act or the regulations are kept, for the purpose of administering and enforcing this Act or the regulations.



Accept and
investigate
complaints

(2) An inspector may not enter a private dwelling place or any part of a place that is designed to be used and is being used as a permanent or temporary private dwelling place except

- (a) with the consent of the occupant of the place; or
- (b) under an order granted under Section 50.

50 (1) Where a justice is satisfied on evidence under oath by an inspector that

- (a) there are reasonable grounds to believe that it is appropriate for the administration of this Act for the inspector to do anything set out in Section 47; and
- (b) the inspector may not be able to carry out duties under this Act effectively without an order under this Section because

- (i) no person is present to grant access to premises that are locked or otherwise inaccessible,
- (ii) a person has denied the inspector access to premises or there are reasonable grounds for believing that a person may deny the inspector access to premises,
- (iii) a person has prevented the inspector from doing one or more things set out in Section 47 or denied the inspector access to something, as a result of which the inspector is unable to do one or more things set out in Section 47,
- (iv) there are reasonable grounds to believe that a person may prevent an inspector from doing one or more things set out in Section 47, or may deny the inspector access to something as a result of which the inspector may be unable to do one or more things set out in Section 47,
- (v) it is impractical, because of the remoteness of the premises to be inspected or because of any other reason, for the inspector to obtain an order under this Section without delay if access is denied, or
- (vi) there are reasonable grounds to believe that an attempt by the inspector to do anything set out in Section 47 without the order might defeat the purpose of that Section or cause an adverse effect,

the justice may issue an order authorizing the inspector to do anything set out in Section 47 that is specified in the order for the period set out in the order.

(2) The period referred to in subsection (1) may not extend beyond 30 days after the date on which the order is made, but the order may be renewed for any reason set out in subsection (1) for one or more periods, each of which may not be more than 30 days.

(3) An application for an extension under subsection (2) may be made before or after the expiry of the period.

**Discourage
arbitrary
exemptions**

(4) An order under this Section may be issued or renewed on application without notice.

51 An inspector who finds that this Act or the regulations are being or have been contravened may issue an order, in the form prescribed, requiring the individual or organization responsible for the contravention to remedy it.

52 (1) An individual or organization named in an order made under Section 51 may request the Minister to review the order.

(2) A request must be made in writing and must include the individual's or organization's name and address, the reasons for requesting the review and any additional information that the individual or organization wants to be considered by the Minister.

(3) The Minister is not required to hold a hearing when a request for review is made.

(4) A request for review operates as a stay of the inspector's order pending the outcome of the review by the Minister.

(5) The Minister may confirm, revoke or vary the order.

(6) The Minister shall, within 60 days of the request for review being made, provide the individual or organization who requested the review with

- (a) a copy of the Minister's decision, with written reasons; and
- (b) notification of the right to appeal the decision to the Court under Section 58.

(7) Where a request for review of an inspector's order is not received by the Minister within 30 days after the order is served, the inspector's order is final.

53 (1) Subject to Section 54, where the Minister is of the opinion that an individual or organization has failed to comply with an inspector's order within the period specified in the order, the Minister may issue a written notice requiring the individual or organization to pay an administrative penalty in the amount prescribed.

(2) Notice of an administrative penalty may only be issued after the period for appealing an order has expired or, where an appeal has been filed, after a decision has been made on the appeal.

(3) The notice of administrative penalty must be served on the individual or organization required to pay the penalty.

54 No penalty may be issued by the Minister more than three years after the act or omission that renders the individual or organization liable to a penalty first came to the knowledge of the Minister.

55 (1) The Minister may file a certificate in the Supreme Court signed by the Minister and setting out

(a) the amount of the administrative penalty issued; and

(b) the individual or organization against whom the penalty is issued.

(2) A certificate filed under this Section has the same force and effect as if it were a judgment obtained in the Court for the recovery of a debt in the amount set out in the certificate and may be enforced in the same manner as a judgment of that Court.

56 An individual or organization who pays an administrative penalty for an incident of non-compliance may not be charged with an offence with respect to that non-compliance unless the non-compliance continues after the penalty is paid.

57 Administrative penalties paid under this Act must be used for the purpose of accessibility initiatives, including public education and awareness.

58 (1) Any individual or organization who is directly affected by a decision of the Minister made under

(a) Section 52 with respect to an order; or

(b) Section 53 with respect to an administrative penalty,

may appeal the decision by filing a notice of appeal with the Court and serving a copy on the Minister.

(2) An appeal may be made on the following grounds:

(a) in the case of a decision under Section 52, that the finding of a contravention of this Act or the regulations was incorrect; or

(b) in the case of an administrative penalty, that

- (i) the amount of the penalty was not determined in accordance with the regulations, or
- (ii) the amount of the penalty is not justified in the public interest.

(3) An appeal may not be commenced more than 30 days after the individual or organization receives a decision of the Minister.

(4) An appellant shall serve a notice of appeal on any other person who the Court orders to be served.

59 On receipt of the notice of appeal under subsection 58(1), the Minister shall file with the Court true copies of

(a) all documents and materials that were before the Minister when the Minister made the decision;

(b) the Minister's decision; and

(c) the Minister's written reasons for the decision.

60 (1) On hearing an appeal under Section 58, the Court may confirm, vary or dismiss the decision or refer the matter back to the Minister.

(2) The Court may make any order as to costs on an appeal that the Court considers appropriate.

61 The commencement of an appeal under Section 58 operates as a stay of the decision pending the outcome of the appeal.

Enforce
compliance with
penalties

62 The Minister may issue public reports disclosing details of orders and decisions made and administrative penalties issued under this Act.

63 The following documents must be provided in an accessible format and at no charge to a person within a reasonable period after the person requests it from the Minister or a public sector body:

- (a) in the case of the Minister,
- (i) the terms of reference for a proposed accessibility standard,
 - (ii) the recommendations of the Board,
 - (iii) a proposed accessibility standard,
 - (iv) a review conducted under Section 64,
 - (v) any educational and awareness tools made publicly available,
 - (vi) a summary report prepared by the Board,
 - (vii) an accessibility plan; and
- (b) in the case of a public sector body, its accessibility plan.

64 (1) Within four years after the coming into force of this Act, and at least every five years thereafter, the Governor in Council shall appoint a person to undertake a comprehensive review of the effectiveness of the Act and report on the person's findings to the Minister.

(2) The person undertaking the review under this Section shall consult with

- (a) persons with disabilities;
- (b) representatives from organizations representing persons with disabilities; and
- (c) representatives from organizations affected by the implementation of accessibility standards.
- (3) Within 30 days of receiving the report, the Minister shall make the report publicly available.

65 No action lies against the Minister, the Accessibility Directorate, the Board, an inspector or any other person acting under the authority of this Act for anything done, or omitted to be done, in good faith, in the exercise or intended exercise of a power or duty under this Act or the regulations.

66 An individual or organization who

- (a) repeatedly fails to
- (i) prepare and keep records in accordance with the regulations,
 - (ii) make the records available for inspection and examination, or
 - (iii) comply with an accessibility standard as required under Section 38;
- (b) knowingly makes a false or misleading statement to the Minister or an inspector acting under the authority of this Act;
- (c) knowingly makes a false or misleading statement in a record or report given or required under this Act;
- (d) hinders, obstructs or interferes with, or attempts to hinder, obstruct or interfere with, the Minister or an inspector acting under the authority of this Act; or
- (e) continues to fail to comply with an inspector's order after having been issued an administrative penalty, regardless of whether the penalty is paid,

is guilty of an offence and liable on summary conviction to a fine of not more than \$25,000.

67 In a prosecution of an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused.

68 Where an organization commits an offence, a director, officer or agent of the organization who authorized, permitted or acquiesced in the offence is also guilty of the offence and liable on summary conviction to the penalty set out in Section 66, whether or not the organization has been prosecuted or convicted.

69 (1) The Governor in Council may make regulations

**Require government to
purchase accessible goods
and services**

- (a) prescribing municipalities and organizations in the public sector as public sector bodies;
- (b) prescribing the manner in which a report must be made publicly available;
- (c) prescribing an activity, undertaking or other requirements for the purpose of clause 23(1)(e);
- (d) establishing accessibility standards;

Discourage
arbitrary
exemptions

- (e) exempting an individual or organization or a class of individuals or organizations, or an aspect of the built environment, from the application of any provision of this Act or the regulations and prescribing terms and conditions for the exemption;
- (f) respecting record-keeping and reporting requirements for individuals and organizations that are subject to an accessibility

standard;

- (g) respecting accessibility plans, including the content, timing and preparation of such plans;
- (h) prescribing municipalities that may have a joint accessibility plan;
- (i) respecting the offices, positions, territorial jurisdiction and duties of inspectors generally or specifically;
- (j) establishing rules governing the qualifications, office, position, duties, conduct and discipline of inspectors;
- (k) respecting the form of the order an inspector may make, including the content of the order and the method of its service;
- (l) prescribing the form an inspector must use when making an order under Section 51;
- (m) for the purpose of Section 53, respecting administrative penalties for contraventions of this Act, including regulations
 - (i) prescribing the form and content of the notice of administrative penalty,
 - (ii) respecting the determination of amounts of administrative penalties, which may vary according to the nature or frequency of the contravention and whether it is an individual or organization in non-compliance, and
 - (iii) respecting any other matter necessary for the administration of the system of administrative penalties provided for under this Act;
- (n) respecting the specific use to be made of any funds collected through the imposition of administrative penalties;
- (o) respecting the manner in which any order, notice or other document under this Act may be served, given or provided to any individual or organization;

(p) respecting incentive-based measures to encourage and assist an individual or organization to meet an accessibility standard;

(q) defining any word or expression used but not defined in this Act;

(r) respecting any matter or thing the Governor in Council considers necessary or advisable to effectively carry out the intent and purpose of this Act.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is a regulation within the meaning of the Regulations Act.

70 Chapter 130 of the Acts of 1989, the Disabled Persons' Commission Act, is repealed.

71 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. or vary the order.

Employ incentives to advance the purpose of the Act.

- Making workplaces accessible will increase the province's labour force participation improve the incomes of people with disabilities, and boost Nova Scotia's gross domestic product
- Removing barriers to schools, colleges, and universities will improve educational attainment
- Eliminating barriers will reduce health-care and social assistance costs as more individuals with disabilities become partly or fully self-supporting.
- The retail and tourist sectors will expand as people with disabilities can travel and shop
- Accessible properties are more valuable properties with higher taxes and higher profits for business

Preamble and Purposes

An Act Respecting Accessibility in Nova Scotia **Draft Preamble and Purpose [with references]**

Archie Kaiser, Dianne Pothier, Barbara LeGay, Gerry Post, Sheila Wildeman

December 19, 2016

Whereas persons with disabilities in Nova Scotia continue to face attitudinal and environmental barriers in their participation as equal members of society and violations of their human rights; [See CRPD, Preamble (e), (k)]

And Whereas achieving accessibility will improve the health, independence and well-being of persons disabled by barriers; [Accessibility for Manitobans Act, preamble]

And Whereas barriers create considerable costs to persons disabled by those barriers, their families and friends, and to communities and the economy; [Accessibility for Manitobans Act, preamble]

And Whereas, under the United Nations Convention on the Rights of Persons with Disabilities, Canada and Nova Scotia are obliged to take all appropriate legislative, administrative and other measures to implement the rights recognized in the Convention; [See CRPD, Article 4(1)]

And Whereas the Canadian Charter of Rights and Freedoms guarantees that every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination based (*inter alia*) on mental or physical disability; [See Charter, s. 15 (1)]

And Whereas the Nova Scotia Human Rights Act recognizes that the Government of Nova Scotia, as well as all public agencies and all persons in the Province, have the responsibility to ensure that every individual is afforded an equal opportunity to enjoy a full and productive life; [See NS HRA, s. 2(e)]

And Whereas the Government of Nova Scotia needs to take a leadership role in advancing the collective responsibility to achieve a barrier-free Nova Scotia through the elimination of existing barriers to inclusion and the prohibition of the creation of new barriers to inclusion

And Whereas persons with disabilities disproportionately live in conditions of poverty; [See CRPD, Preamble (t)]

And Whereas persons with disabilities who are subject to multiple or aggravated forms of discrimination based on other grounds of discrimination face compound barriers; [See CRPD, Preamble (p)]

And Whereas the promotion of the full enjoyment by persons with disabilities of their human rights and of their full participation will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty; [See CRPD, Preamble(p)]

Therefore be it enacted by the Governor and Assembly as follows:

1 This Act may be cited as the Accessibility Act.

2 The purpose of this Act is:

- (a) to affirm the right of persons with disabilities to full and equal participation and inclusion in all aspects of Nova Scotia society, by ensuring province-wide accessibility for, but not limited to, the following areas of focus: legal, medical/health, education, employment and labour market opportunities, political involvement, housing, public transportation, information and communication, public spaces, customer and client services, positive attitudes through increased public awareness, recreation, and spiritual activities;
- (b) to achieve accessibility for persons with disabilities on an equal basis with others to the physical, social, economic, political and cultural environment, to health and education and to information and communication, to enable persons with disabilities to fully enjoy all human rights and fundamental freedoms; [CRPD, Preamble (v)]
- (c) to establish clear, progressive, mandatory and date-specific standards with respect to the removal and elimination of barriers and the adoption of measures to foster full and equal participation and inclusion in all aspects of Nova Scotia society;
- (d) to actively involve persons disabled by barriers in the decision-making processes regarding accessibility standards;
- (e) to provide independent and effective monitoring and enforcement of accessibility standards.

GUS REED

Canada's failing grade on disability rights

GUS REED

Special to The Globe and Mail

Published Friday, Aug. 02, 2013 6:00AM EDT

Last updated Friday, Aug. 02, 2013 6:00AM EDT

When I retired in 2003, my Nova Scotia-born spouse and I moved to Halifax from Boston. Lock, stock and wheelchair. Family, friends, Canadian values, social justice, single-payer health, the great outdoors, the sea and Maritime culture all beckoned. We were here full-time until 2007, when it became too frustrating and impractical to continue. Why would I want to live in a place where my wheelchair and I are excluded every day, and told nothing will be done about it?

We now live half the year in Halifax and half in North Carolina, which:

- is a Right to Work state;
- is a death penalty state;
- has a spiffy new Constitutional Amendment banning same-sex marriage;
- allows open carry of handguns without a permit.

Why would anyone want to live there? Because:

- the winters are nice;
- my wheelchair is always welcome, thanks to a federal law that makes it so.

On Feb. 1, 1960, at Woolworth's in Greensboro, N.C., four black college students sat down at a "whites-only" lunch counter. They were denied service and, when asked to leave, they refused. The Greensboro sit-in was a milestone on the road to civil rights. If you go to Woolworth's in Greensboro today, you will find a museum filled with mementos of the Jim Crow south

For wheelchair users, is there a difference between inaccessible restaurants in the Hydrostone Market in Halifax and the lunch counter at Woolworth's? Never mind that wheelchair users can't stage a demonstration by refusing to leave because they can't even get in. For disabled Nova Scotians, is there a difference between back-of-the-bus and the completely separate transportation system called Access-A-Bus? In employment, is there a difference between no ramp and Irish Need Not Apply? In a democracy, should the MLA of a voter with disabilities have an inaccessible office? Maybe these examples don't rise to the level of past racial injustices, but make no

mistake – this is discrimination of the hurtful, malicious, deliberate, small-minded, ignorant kind.

Discrimination enables economic and social injustice. As demonstrated in hundreds of locations in Halifax, employers can openly signal refusal to accommodate qualified disabled employees. Complain to the Nova Scotia Legal Information Society or to your local MLA, but mind the step.

Four years ago, I made a representation that my fitness centre in North Carolina, operated by Duke University, did not meet accessibility standards. Within 30 days, a federal Justice Department mediator appeared, and within another 30 days, the problems were addressed. Appealing to Duke's altruism would not have matched the authority of written and enforceable standards, which are critical.

Late last year, a gang of U.S. senators hijacked the ratification of the UN Convention on the Rights of Persons with Disabilities. Canada ratified it in March, 2010. Yet in the United States, people with disabilities enjoy broad social acceptance, integration and almost fierce equality. In Canada, they have only promises. How can that be?

In more than three years since ratification, Canada has neglected its obligation to implement and monitor the treaty, and currently has no plan to do so. Or even a plan to have a plan. Responsibility for reporting on progress (the first report is more than a year late) lies with the Department of Canadian Heritage, which says in best *Catch-22* fashion on its website: "The Human Rights Program cannot consider complaints concerning individual cases of alleged human rights violations, and cannot give legal advice concerning such cases."

The website link to the schedule for submission of Canada's reports to the UN is broken.

Canada has so much to offer the world, but it needs to give more than lip service to the rights of people with disabilities. Fair treatment is an obligation and a promise, not just a courtesy.

Warren (Gus) Reed is former associate dean of admissions at Harvard University.

Bill 59 Community Alliance

Recommended Resolution for Consideration
by Nova Scotia Law Amendments Committee

Be it resolved that the Preamble, Purpose and Principles presented by the Bill 59 Community Alliance be adopted and presented to the Department of Justice as the framework and redrafting guide for Bill 59: An Act Respecting Accessibility in Nova Scotia.

And that in redrafting Bill 59 the Department of Justice consult with the Nova Scotia Disability Community.

Respectfully Submitted,

The Bill 59 Community Alliance

Nihil de nobis, sine nobis | Nothing about us, without us | Rien pour nous, sans nous