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# COPHAN

# ensemble pour l’inclusion

## Brief on bill C-81--An Act to ensure a barrier-free Canada

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### Introduction

This document contains comments by the Confédération des organismes de personnes handicapées du Québec (COPHAN) regarding the *Act to ensure a barrier-free Canada* (hereinafter the “Act”). The recommendations contained in this brief are based on all consultations over the last two years FOOTNOTE 1.

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For more information, see: COPHAN, “Mémoire sur la Loi en matière d’accessibilité--Qu’est-ce qu’un Canada accessible pour vous?”, July 2017. Online: <https://cophan.org/wp-content/uploads/2017/07/2017-07-11-MEM-COPHAN-canada-accessible.pdf>

END FOOTNOTE 1.

### Definitions

First, the title must include the term “disability”, or it creates confusion at the outset regarding the purpose of the Act.

COPHAN is asking that the definition of “disability” refer more to the result of interaction between people with functional limitations and behavioural and environmental barriers, as defined in the United Nations Convention on the Rights of Persons with Disabilities (CRPD) and should also include social handicap. The broad and inclusive definition of the Act will be quite a challenge in implementing the legislation. We hope that it will first influence other federal programs and services intended for persons with disabilities and then provincially and in other sectors and levels of government.

### Purpose and principles

A major issue ignored by the Act is federal financial leverage, i.e. the various federal agreements and programs that support public and private actors (e.g. cash transfers to provinces in the fields of health and social services, education and employment). In our view, the federal government cannot implement the Act so that it applies in a silo and only in its areas of jurisdiction. Thus, to ensure sustainable social development, all cash transfers must also be governed by this Act, with specific accessibility criteria. We could also extend this aspect to international relations, to all economic accords, etc.

To illustrate this idea, COPHAN is proposing the concept of “social responsibility” that we previously proposed to ensure better governance in sustainable development FOOTNOTE 2. In the same way, the Canadian government must develop a reflex of “handi-responsibility”. We note that respect for the independence of partners, the provinces, the territories and the private sector does not apply when respect for human rights takes precedence. We refer to situations reported by our members regarding the fight against poverty and social exclusion. In fact,

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persons with disabilities who are in poverty often have no access to support, particularly when homeless, as there is little or no access for them to many facilities and services.

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For more information, see: COPHAN, “Mémoire portant sur la proposition de modification de la Stratégie de développement durable”, February 2015. Online: <https://cophan.org/wp-content/uploads/2015/02/COPHAN_M--moire-Strat--gie-developpement-durable_20151.pdf>

END FOOTNOTE 2.

The government could also consider implementing social inclusion clauses. For instance, when the government issues a call for tenders, businesses that offer accessible goods and demonstrate a high percentage of staff with limitations should have an advantage. The government must move away from an economic approach and toward an inclusive social approach.

Consistent with the reflex of handi-responsibility, we find that the following list is *de facto* included in the fields covered in the purpose of the Act: official languages (sign languages), political participation (including elections), immigration, justice (accessibility of courts and penitentiaries), the fight against poverty and social exclusion, and social housing.

As we noted previously, greater harmony with the CRPD is needed to allow certain principles to be added to the Act to reduce barriers to accessibility, for example: social inclusion, disproportionate poverty among persons with functional limitations, intersectionality, universal access and the concept of a disability situation put forth in the CRPD. As well, the principles must not simply aim to reduce and eliminate barriers, but also develop adequate support when there is a barrier, i.e. provide accommodations.

Another key aspect that was totally ignored in the Act is the need to have precise timelines for developing standards and regulations. We also refer to the idea of the Council of Canadians with Disabilities and to progressive implementation with precise stages and objectives over time to fully achieve all legal obligations arising from the Act. For instance, regarding area of employment, the Act could provide for a minimum threshold of employees with functional limitations in the federal public service FOOTNOTE 3.

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Moreover, according to figures from 2016-2017, employees with functional limitations represent 5.6% of the public service. Treasury Board of Canada Secretariat, “Employment Equity in the Public Service of Canada, 2016–2017”, 2018. Online: <https://www.canada.ca/content/dam/tbs-sct/documents/reports/eepsfy-emefp/2017/eepsfy-emefp-eng.pdf>

END FOOTNOTE 3.

We recommend that the Act be subject to an independent evaluation every five years.

### Application

Concerning the application, we wish to point out the importance of a cross-sectional approach so that the Act is applied to all federal government activities, including all amounts disbursed in areas of activity chosen by the federal government (commonly referred to as “spending power”) and intergovernmental transfers.

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### Data and statistics

All government departments and agencies, as in gender-based analysis, research or statistical studies, must be required to conduct a capacity-based analysis, that is, to highlight the specificity of persons with functional limitations in all data collected. The same obligation should also be placed on all entities that receive any funding from the federal government.

### Canadian Accessibility Standards Development Organization

Not knowing the exact date on which the Act will be passed or implemented, we believe that it would be appropriate to require that the standards of the Canadian Standards Association (CSA) be imposed while awaiting the creation and launch of the Organization. Although they are imperfect, we consider the CSA standards to be a minimum base. Similarly, updated WCAG standards should be adopted to meet the AA level on Government of Canada internal and external sites and mobile applications. This should also apply for any organization or initiative supported by Canadian public funds. The Organization will then be responsible for developing its own standards and may adjust the standards already established by the CSA and the WCAG.

In COPHAN’s view, a minimum threshold of 51% must be specifically provided for seats reserved for people with functional limitations. There must also be protected positions for Quebec and a concern for all functional limitations to be represented. Finally, the principle of transparency must be put forward. All documents from the Board of Directors must be public and sessions must be filmed and broadcast. We also note the fact that some people should represent community organizations, without the positions replacing the people themselves.

The section of the Act on the Organization does not provide any timeline for the review and development of accessibility standards. COPHAN recommends that timelines be established for the development of a standard and that, once they are adopted, a timeline be automatically established for their review.

In COPHAN’s view, the accessibility standards developed by CASDO must not become a “glass ceiling”, but act as a minimum threshold with a desire to encourage the various actors to exceed the standards. We must therefore develop an accessibility standard as a way to aim for greater accessibility. COPHAN has also conducted a project on Internet accessibility and found that compliance does not guarantee usability FOOTNOTE 4.

BEGIN FOOTNOTE 4:

COPHAN, “Accessibilité du Web : de la standardisation à l’utilisabilité”, 2017. Online: <https://cophan.org/publication/accessibilite-du-web-de-la-standardisation-a-lutilisabilite/> [French only]

END FOOTNOTE 4.

### Accessibility Commissioner

In COPHAN’s view, the Accessibility Commissioner should report to the House of Commons. We also feel that the position of Commissioner of the Environment and Sustainable

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Development is an interesting comparison with its non-renewable seven-year mandate. As well, a very simple [petition system](http://www.oag-bvg.gc.ca/internet/English/pet_lp_e_930.html) is also managed by the Commissioner and could also be an appropriate option regarding accessibility.

### Duties of regulated entities

The duty to adopt accessibility plans is not foreign to Quebec FOOTNOTE 5. Currently, action plans developed in Quebec for persons with disabilities are very questionable, as most objectives and measures contained in them are related to legal obligations that have existed for many years, and that have still never been respected. Thus, in Quebec, in their current form, action plans offer no guarantee regarding the relevance and quality of the objectives and measures presented FOOTNOTE 6. During consultations in 2017, however, COPHAN had also relied on action plans as means of achieving the rights set out in this Act. However, we do not want to repeat Quebec’s mistakes, i.e. the lack of sanctions, content and reporting mechanisms. Finally, there the consultation process must be clarified, those responsible for accessibility plans must be identified and their contact information published, and all accessibility plans and reports must de facto be available in an accessible format on the websites of the various entities.

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5. Section 61.1 of the *Act to secure handicapped persons in the exercise of their rights with a view to achieving social, school and workplace integration* sets forth a duty for departments, public agencies and municipalities of more than 15,000residents to prepare an annual plan to reduce barriers to inclusion of people with functional limitations.

6. For more information, see: COPHAN, “Rapport final du projet Analyse et évaluation des plans d’action à l’égard des personnes handicapées”, March 2017. Online: <https://cophan.org/wp-content/uploads/2018/04/2017-03-31-RAPCOPHAN-projet-PAPH.pdf> [French only]

END FOOTNOTES.

### Implementation and enforcement

Administrative monetary penalties can be assessed against regulated entities, without indicating amounts. However, “the purpose of a penalty is to promote compliance with this Act and not to punish.” In COPHAN’s view, there must be restorative justice.

### Regulations

Given that many of the specifics concerning the Act will be established by regulation, we ask that the government pre-publish regulatory and prescriptive intentions. Moreover, last April, the Quebec government published such regulatory intentions for Bill 173--*An Act mainly to introduce a basic income for persons with a severely limited capacity for employment*. In our opinion, it was a gesture of openness and transparency that made it possible to foresee the concrete implementation of the program. In 2019, the possible change in government led us to make a similar request to find out the intention of the executive and to have firm commitments regarding timelines.

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### Related amendments

In our opinion, with the development of a handi-responsibility reflex, the Act will contradict other legislation that must therefore be added to this Act. The list as defined must therefore not be restrictive. As well, to our knowledge, not all aspects of procurement are affected by the related amendments.

### Conclusion

The advancement of persons with functional limitations also depends on the willingness of everyone in their personal and professional environment. It is up to everyone to to walk the talk. In our opinion, the Act is interesting, but by including our comments, the federal government would have a law that would have a real impact on the daily lives of persons with disabilities.

END OF FILE 1 OF 1.