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# Council of Canadians with Disabilities/Conseil des Canadiens avec déficiences

# A VOICE OF OUR OWN/CETTE VOIX QUI EST LA NOTRE

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## Standing Committee on Human Resources, Skills and Social Development and Status of Persons with Disabilities (HUMA)

## Study on Bill C-81, “An Act to Ensure a Barrier-Free Canada”

Submission by the **Council of Canadians with Disabilities**

### Introduction

Founded in 1976, the Council of Canadians with Disabilities (CCD) is a social justice organization of people with all disabilities that champions the voices of people with disabilities, advocating for an inclusive and accessible Canada, where people with disabilities have full realization of their human rights, as described in the UN Convention on the Rights of Persons with Disabilities. CCD unites advocacy organizations of people with disabilities to defend and extend human rights for persons with disabilities through public education, advocacy, intervention in litigation, research, consultation and partnerships. CCD amplifies the expertise of our partners by acting as a convening body and consensus builder.

### The Government of Canada is to be commended for introducing Bill C-81.

Along with others, CCD has used the time since First Reading in June to carefully review the Bill. In particular, CCD has worked collaboratively with the developers of three major papers analyzing Bill C-81: ARCH Disability Law Centre’s “Legal Analysis of Bill C-81”, the Accessibility for Ontarians with Disabilities Act Alliance’s (AODA) “Brief to the Parliament of Canada on Bill C-81, the Proposed Accessible Canada Act” and the Federal Accessibility Legislation Alliance’s “Our Position on Bill C-81: The Proposed Accessible Canada Act”. All three documents have at their core common recommendations which if adopted would assist Bill C-81 to achieve the goal of a barrier-free Canada. We support the consensus points in the documents and that were raised this week before the HUMA Committee by our colleagues in the disability rights community. CCD shares this written submission to the Committee as a way of further elaborating on the recommendations it made at its appearance before the Committee on October 22, 2018.

### Missing Voices

CCD appreciated appearing before the HUMA Committee. However, there were national organizations in our coalition that did not have the opportunity to appear before the Committee. Notably, the Committee did not hear from the National Network for Mental Health (NNMH), which has serious concerns about the “no wrong door’ approach being contemplated by the Government of Canada. Thus, the NNMH encouraged CCD to alert the HUMA Committee to the fact that the “no wrong door” approach has been implemented in some jurisdictions with negative consequences. Moreover, the NNMH firmly believes that wherever the “no wrong door” approach is implemented, navigational assistance is essential to ensure that accessibility complaints are heard by the appropriate decision-making body.

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### No One Left Behind

During the consultation phase prior to the introduction of Bill C-81, CCD heard people with disabilities emphasize that no one should be left behind, which means all people with disabilities should benefit from Bill C- 81. For this to occur, at a minimum the Bill’s preamble needs to be amended to include a gendered intersectional lens to ensure that the work of the Bill will be undertaken in a manner that responds effectively to rights holders with disabilities who experience, in addition to ableism, other forms of oppression (racism, sexism, homophobia, transphobia, xenophobia, classism, colonialism, etc.). CCD welcomes the leadership of the DisAbled Women’s Network Canada (DAWN Canada) in establishing the concept of a “gendered intersectional lens” and encourages the Committee to adopt the concept in its deliberations and recommendations.

The importance of adopting an intersectional approach is highlighted, yet again, by the fact that Bill C-81 does not address the barriers faced by Indigenous persons with disabilities. The ARCH brief identified numerous instances where Bill C-81 was silent on Indigenous peoples with disabilities (Please refer to page 45.) and the testimony provided by colleagues at BCANDS underscores the need to address these issues if the Bill is to achieve its stated purpose of making Canada accessible for everyone.

### Indigenous Peoples with Disabilities

As the unique barriers faced by Indigenous peoples with disabilities must be a priority issue to be addressed in areas that fall within the jurisdiction of First Nations governments, CCD recommends that the legislation include **recognition of Indigenous rights, the unique relationship between the Government of Canada and First Nations, and the fiduciary responsibilities owed by the Government of Canada to First Nations**.

Whereas consideration must be given to the final determination regarding First Nations communities in Canada and their involvement/compliance with new legislation or under a distinct First Nation accessibility legislation (as requested by the Assembly of First Nations through Resolution no--98/2017), regardless of this determination, CCD recommends that First Nations funding levels and policies must incorporate a disability lens/component to fully address barriers within all First Nations communities in Canada.

### Communication

CCD recommends the amendment of Bill C-81 to **recognize ASL, LSQ and the signed language of Indigenous peoples with disabilities as official languages of Deaf people in Canada**.

In light of the critical importance of communication for full and equal participation in day-to-day life, CCD recommends the **amendment of the Purpose section of C-81 to add communication as a new domain** to bring focus to barriers, accommodations and supports for people with communication disabilities and as well for people who are Deaf.

### Impose Obligations

Bill C-81 permits the Federal Government and federal accessibility agencies to advance accessibility through various means but it does not require them to do so. The language used in C-81 is too permissive. CCD reiterates points made by ARCH in its brief. ARCH notes that “Section 4 provides that the Governor in Council may designate a Minister responsible for the ACA. The word may is permissive; it provides the Governor in Council with legal power to designate a minister, but does not require the Governor to do so. (p. 14)” This is one of the critical places where the word may should be replaced by the word shall, to ensure the appointment of a

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Minister. Section 16 is another place where the word may should be replaced by the word shall, so as to oblige the federal Minister to coordinate efforts in support of accessibility with the provinces, territories and First Nations (ARCH, p. 15). Section 95 is another place where the word may should be replaced by the word shall so that the Accessibility Commissioner is required to investigate complaints under its jurisdiction (ARCH, p. 29).

The ARCH brief states, “The use of the permissive language may in section 95 means that there is no requirement for the Accessibility Commissioner to investigate. May should be changed to shall, in this section, in order to require the Accessibility Commissioner to investigate complaints that fall within its purview. There is no justification for the Accessibility Commissioner to decline to investigate if all the elements are met, since there would be no other legal mechanism available in which to pursue the complaint. (p. 29)”

### Timelines

CCD recommends amendment of Bill C-81 to include timelines for the achievement of accessibility. In particular, CCD recommends the following:

- A deadline date must be set within a five-year period following Royal Assent for approving ALL standards and regulations in each specific area required.

- A deadline for full implementation of each standard and regulation, following their approval, must be set within an 18-month period.

- It must be understood that there will always be continual progression towards a barrier-free society. It is not realistic to think that a deadline date will mark full compliance or completion of accessibility in Canada. Therefore, a review must occur every three years and a public report of progress must be developed with the intention of constant improvement. (FALA)

### Address Splintering

Bill C-81 proposes a very complicated approach to the creation of accessibility regulations and enforcement. These powers have been split among a number of agencies (i.e., the new federal Accessibility Commissioner, the Canadian Transportation Agency (CTA) and the Canadian Radio, Television and Telecommunications Commission (CRTC)). Our experience with the CTA and the CRTC has not been positive as these agencies have not applied a human right lens when addressing disability complaints.

We are also fearful that in such a regime complainants will be ‘bounced back and forth’ among agencies, which will disempower people with disabilities and lead to frustration and abandonment of complaints. Despite reassurances about a “no wrong door’ approach, we are not convinced, especially when we hear about the experiences of our colleagues in the mental health community.

For example, Ellen Cohen, National Coordinator of the National Network for Mental Health tells us that in the early 1990s in the mental health sector, the “no wrong door” policy only applied to people who were defined as being “severely mentally ill”. One woman, familiar to the NNMH, who was not considered to meet this criteria made two attempts to receive mental health service and was turned away on both occasions. She then committed suicide. So, although there was a “no wrong door” policy in place, this particular woman was not able to locate any door that would open to address her concern. We fear similar outcomes should the approach be replicated by Bill C-81.

We urge amendment of Bill C-81 to remedy the splintering problem. Instead, we submit that the newly created office of the Federal Accessibility Commissioner should be responsible for all enforcement under the Bill.

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### Nothing Without Us

CCD recommends amendment of Bill C-81 to ensure that at a minimum two-thirds of the CASDO Board, committee membership and staff are people with disabilities, who reflect the diversity of the Canadian population, including Indigenous peoples with disabilities. A minimum two-thirds representation on these entities will ensure that it is people with disabilities who are the decision makers on accessibility in Canada.

### Ensure Federal Spending Supports Accessibility

Bill C-81 does not leverage federal spending to promote accessibility. CCD recommends amending the Bill to require a “disability lens” that attaches accessibility strings to federal money; Federal dollars should not be spent to create new barriers. Adoption of such a lens would mean, for example, that when the federal government contributes funds to an infrastructure project, the new infrastructure would be accessible.

### Independence

As the federal government, itself, will have to comply with Accessible Canada Act, Bill C 81 needs to be amended to **make the federal accessibility agencies at arm’s length from the federal government**. We support recommendations that the new Accessibility Commissioner, the Canada Accessibility Standards Development Organization (CASDO), and the new Chief Accessibility Officer report directly to Parliament.

### Monitoring the Convention on the Rights of Persons with Disabilities

CCD is extremely pleased that Bill C-81 designates the Canadian Human Rights Commission as the domestic agency responsible for monitoring the Convention on the Rights of Persons with Disabilities (CRPD) in Section 149. We recommend further that the section be expanded slightly to mirror the language of the CRPD with the addition of a subparagraph, (149 (1)) that would **explicitly state that persons with disabilities, and our representative organizations, must also fully participate in the monitoring of the CRPD**.

### Sources

ARCH. 2018. “FINAL REPORT: Legal Analysis of Bill C-81 An Act to ensure a barrier-free Canada.” <http://archdisabilitylaw.ca/ARCH%27s_Recommendations_on_Bill_C-81>

AODA. 2018. “Brief to the Parliament of Canada on Bill C-81, the Proposed Accessible Canada Act.” <https://www.aodaalliance.org/wp-content/uploads/2018/09/Sept-27-2018-AODA-Alliance-Brief-to-Parliament-on-Bill-C81-Final-Version.docx>

FALA. 2018. “Bill C-81 Recommended Changes”. <https://www.include-me.ca/federal-accessibility-legislation-alliance/resource/bill-c-81-recommended-changes>

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