

# **Review of Bill 6 - 2021:**

## ***The Accessible British Columbia Act***

Prepared By: Disability Alliance BC

With support from Plan Institute, Family Support Institute of BC, Planned Lifetime Advocacy Network, Burnaby Association for Community Inclusion, Canadian Institute for Inclusion and Citizenship, and BC Parents of Complex Kids

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### Introduction

Disability Alliance BC, Plan Institute, Family Support Institute of BC, Planned Lifetime Advocacy Network, Burnaby Association for Community Inclusion, Canadian Institute for Inclusion and Citizenship, and BC Parents of Complex Kids would first like to extend our congratulations, appreciation and gratitude to the BC Government who have taken on the great task of drafting this Bill after years of consultation with many stakeholders. The introduction of the *Accessible British Columbia Act* (ABCA) will conceivably initiate a meaningful, cultural shift in breaking down barriers to access and inclusion currently experienced by many people with disabilities across our province. We look forward to engaging in the implementation of this legislation, particularly in ensuring that the development of regulations and standards will promote accessibility for people with all disabilities, and which will influence various sectors across our society, including but not limited to: housing, education, employment and health.

While the BC government certainly deserves credit for introducing this accessibility legislation, we consider the current reading of Bill 6 to be weaker than other Canadian accessibility laws in many important ways. We strongly recommend changes to Bill 6 before it passes Royal Assent. Our main concerns are its:

- narrowed definition of impairment, which excludes learning and communication;
- lack of timelines to hold the government accountable in efficiently working to eliminate barriers;

- limited application, wherein prescribed organizations are not clearly stipulated.
- failure to include interactive communication within its list of standards;
- failure to refer to human rights and BC's Human Rights Code; and
- weakened enforcement mechanism due to its lack of an individual complaints process.

Our rationale and proposed changes are listed in detail below:

### Definition

The definition of impairment within Bill 6 fails to include learning and communication. The *Accessible Canada Act's* definition of disability means “any impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment — or a functional limitation — whether permanent, temporary or episodic in nature, or evident or not, that, in interaction with a barrier, hinders a person’s full and equal participation in society. (*handicap*)” We are concerned this omission will systemically exclude and discriminate against British Columbians who have communication disabilities as well as those who have learning disabilities. We feel the definitions need to be in alignment with the *Accessible Canada Act* (ACA).

**We recommend that the BC Government amend Bill 6, Part 1 to include all types of impairments within its definitions.**

### Timelines

Bill 6 includes no deadline or timeline of any kind for the creation of accessibility standards or the elimination of barriers. Other Canadian accessibility laws specify deadlines for the elimination of barriers, often targeted at 20 years from the date the law is passed. The only exception is the *Accessibility for Manitobans Act* (AMA), passed in 2013, but even this law says the government of Manitoba must “make significant progress towards achieving accessibility by 2023”.

Ontario's experience with the *Accessibility for Ontarians with Disabilities Act* (AODA), which was passed in 2005 and aimed to make Ontario barrier-free by 2025, shows that timelines are no guarantee of effectiveness. The most recent independent review, authored by former Lieutenant Governor David Onley in 2019, found that people with disabilities in Ontario still faced "soul-crushing" barriers. This review also stated that Ontario is not likely to achieve its goal of being fully accessible by 2025, even though the deadline is clearly set out in the AODA.

Despite the AODA's subpar review against its 2025 target, we believe that including a specific timeline within the ABCA is still vitally important for the purposes of ensuring the BC government is accountable for delivering a concerted and timely effort towards promoting accessibility and identifying, removing or preventing barriers for British Columbians with disabilities.

We understand that the ABCA provides for accountability through annual reports and independent reviews. We have concerns that without a timeline, the annual reports produced by the BC government will fail to address what still needs to be done to eliminate barriers in a timely manner. And, while the independent reviews are likely to be more thorough than the annual reports, they will not be as frequent. This is another area where the ABCA could look to other Canadian accessibility laws: the AODA requires independent reviews every three years and other laws require them every five years, whereas Bill 6 requires an independent review within five years from the Act becoming law and every ten years after that. We are concerned that the less frequent nature of the independent reviews diminishes the Act's significance in earnestly striving for the full and equal participation of people with disabilities in our society.

**We recommend that the BC Government amend Bill 6, Part 2 to:**

- **Include a specific deadline for the elimination of barriers;**
- **include specified timelines for when regulations and standards shall be implemented; and**
- **increase the frequency of independent reviews to every three years**

## Limited Application

Bill 6 currently only applies to the provincial government and organizations “prescribed” by the government. We are concerned that unless other organizations are explicitly prescribed in law, the ABCA may apply only to offices and services administered directly by provincial government ministries. We acknowledge that it is possible the regulations following this Act will prescribe other organizations so that the ABCA applies to parts of the private sector, but it is not guaranteed. Even if other organizations are prescribed later on within regulations, there is nothing within Bill 6 which prevents the government from ‘unprescribing’ organizations later on. This leaves the enforcement and compliance of the ABCA vulnerable to influence from the private sector. British Columbians with disabilities deserve to feel certain in knowing that their access to full and meaningful participation in society is being promoted and enforced through every level of society, not only through government services.

Further, the word “government” is not defined in Bill 6. We are concerned that this Act and its subsequent regulations and standards will not include government-funded services like schools and healthcare facilities.

Other Canadian accessibility laws are mandatory throughout society, in both the public and private sectors. These other laws may give the private sector more time to implement accessibility standards, but those standards will eventually be implemented everywhere, by all employers, businesses, and service-providers.

If the ABCA ultimately ends up only applying to BC government services, we would consider this Act to be failing its mandate in enacting meaningful normative change towards eliminating barriers and promoting accessibility through every level of society.

**We recommend that the BC Government amend Bill 6, Part 3, section 8 to explicitly apply to either the public, private and non-profit sectors or a detailed list of prescribed organizations**

## Enforcement

Bill 6 does not create any rights for individuals. It allows the government to hire inspectors to monitor how organizations comply with accessibility standards, but it does not require the government to do so. It does not provide any process for submitting complaints to inspectors, or anyone else, when organizations fail to comply with accessibility standards. Bill 6's enforcement process is similar to the AODA's. Considering Ontario's disappointing experience with the AODA so far, we do not wish for the ABCA to emulate Ontario's accessibility legislation in this regard. While we feel positive about the enforcement mechanism (inspection, monetary penalties and compliance agreements) included within Bill 6, we feel that in order for the government to provide full access for individuals to interact with this law, there must be multiple ways for enforcement, including an individual complaints process.

Other Canadian accessibility laws have better enforcement processes. Nova Scotia's Accessibility Act depends on government-appointed inspectors, like the ABCA, but it also provides a process for complaints by members of the public when organizations do not comply with accessibility standards. The ACA goes even further: it creates an Accessibility Commission to independently investigate complaints about non-compliance with accessibility standards. The Commission will have the power to force organizations to change their practices and, in some cases, to pay compensation to individuals who file complaints. We are concerned that the lack of an individual complaints process within Bill 6 will, ironically, create further barriers for people with disabilities in seeking remedy on the infringement of any rights which they may be granted in subsequent regulations and standards developed by the Act.

**We recommend that the BC Government amend Bill 6, Part 5 to:**

- **Include an individual complaints process;**
- **include an accessibility commissioner that works in close collaboration with the commissioner mandated through the ACA. As stated in the ACA, the commissioner can independently investigate complaints, and direct organizations to change their practices and pay financial compensation, if necessary; and**

- **replace within section 21: “The Minister may designate a person appointed under the *Public Service Act* as the director for the purposes of this Act” to “The Minister must designate a person appointed under the *Public Service Act* as the director for the purposes of this Act”**

## Standards

Bill 6 fails to include interactive communication within its list of standards (Part 4, Division 1, Section 13) to be developed under the Act. While this section includes “information and communications” as a standard, by virtue of making “communications” plural, this would exclude human communication accessibility, in which the Act would provide the conditions for a person to communicate in the way that works best for them. This communication accessibility can include speech, gestures, sign language, writing, pointing to object or pictures, spelling words, using a communication device and human help. Section 5 of the ACA makes this distinction clear by including both “information and communication technologies” and “communication, other than information and communication technologies.” The latter is defined further by the ACA as “barrier-free services and spaces for persons with communication disabilities.”<sup>1</sup> We are concerned this lack of distinction in Bill 6 will further systemically exclude people with speech, language and communication disabilities.

**We recommend that the BC Government amend Bill 6, Part 4, Division 1, Accessibility Standard 13.2 to:**

- **Include a separate standard for Communication which will outline:**
  - **Accessible communication – a person can communicate in the way that works best for them.**
  - **Accessible information – accessibility plans, standards and reports will be available in accessible formats and websites will follow accessibility standards.**

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<sup>1</sup> <https://www.canada.ca/en/employment-social-development/programs/accessible-canada/act-infographic.html#section1>

## Human Rights

Unlike other Canadian accessibility laws, the ABCA does not explicitly state that nothing within the law diminishes the existing rights of people with disabilities. The ABCA includes no reference to BC's Human Rights Code, to discrimination, or to human rights principles such as the duty to accommodate. We find this surprising because other Canadian accessibility laws explicitly state that they are supposed to work in alignment with other human rights laws to prevent discrimination. For instance, the AMA states: "Nothing in this Act or the regulations diminishes the obligations of a person or organization with respect to persons with disabilities under any other enactment, and, in particular, under The Human Rights Code."

Without any explicit reference to the Human Rights Code, there is a risk that the ABCA may make it harder for people with disabilities to exercise the right to be accommodated. Businesses and organizations that have a duty to accommodate may assume they meet all their obligations just by complying with the ABCA. This must not be allowed to happen.

**We recommend that the BC Government amend Bill 6 explicitly include reference to:**

- **The BC Human Rights Code within Part 1 and Part 4, Division 2, Section 18; and**
- **the rights and protections afforded to people with disabilities within federal jurisdiction under the Accessible Canada Act within Part 4, Division 2, Section 18.**

## Conclusion

The introduction of accessibility legislation in BC is a step in the right direction, but in its current form, Bill 6 is unfortunately weaker than accessibility laws elsewhere in Canada in many significant ways as noted above. We are disheartened to see that the current draft of Bill 6 does not build upon lessons learned and best practices arising out of the development of other Canadian accessibility laws, and urges all Members of the Legislative Assembly to consider our recommended changes to this Bill before it is passes Royal Assent.

Disability Alliance BC, Plan Institute, Family Support Institute of BC, Planned Lifetime Advocacy Network, Burnaby Association for Community Inclusion, Canadian Institute for Inclusion and Citizenship, and BC Parents of Complex Kids also welcome any Members to reach out to us and our networks to discuss further our points made within this review, ahead of or during any discussion which may take place at the Committee of the Whole stage of this process.

Sincerely,

**Disability Alliance BC**  
**Burnaby Association for Community Inclusion**  
**Family Support Institute of BC**  
**BC Parents of Complex Kids**

**Canadian Institute for Inclusion and Citizenship**  
**Planned Lifetime Advocacy Network**  
**Plan Institute**

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**Glenda Watson Hyatt, Communication Access Advocate**



THE UNIVERSITY OF BRITISH COLUMBIA

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