



# **Oversight and Enforcement: Proposed Model Federal Accessibility Legislation**

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## Oversight and Enforcement: Proposed Model

The following is a proposed model/framework for the governing body that will monitor, oversee and enforce federal accessibility legislation in Canada.

The model or framework should adhere to the following key principles and operations:

- Independence and capacity to report directly to Parliament.
- Should be administered and/or directed by individuals with a disability and their representative organizations.
- Should include public education and programs that promote attitude change; it will administer as well as monitor these programs.
- Data retrieval—that is, the gathering of data and its dissemination to the public.
  - Critical data, for instance on the results of complaints or the results of periodic audits, must be published in a transparent manner, in contrast to the current procedure that often requires Access to Information Requests.
- Financial incentives are critical to enforcement. If procurement does not include an accessibility plan, the recipient will not be allowed to bid.

In particular, we emphasize the importance of the following three elements:

### **1) ARMS' LENGTH BODY:**

The body or agency should be cross-disability, that is, represented by persons with diverse disabilities and their representative organizations, and it needs to be nimble enough to access the multidisciplinary nature of the federal government (e.g. heritage, transportation, Canadian Human Rights Commission, etc.).

The body would have the right to refer matters to existing federal agencies and/or human rights bodies. As well, it would have the power to intervene in judicial and quasi-judicial matters relevant to the legislation as needed and/or intervene in existing complaints. It can receive and review reports, comment on them, and have a department made answerable to the complaints.

The body or agency would have the power to:

- 1) revoke funding;
- 2) disallow individuals or companies from bidding on tenders if they do not meet the standards; and,
- 3) issue fines for non-compliance.

### Status:

- To report only to Parliament.
- Whoever is in charge of the oversight body should be accorded high-level executive status equal to that of a Deputy Minister.

### Funding:

- The body must have sufficient funding to be able to carry out its mandate independently (choose their own staff, determine priorities, etc.).
- Representatives of Ministries should participate in an advisory capacity only. For instance, the body's budget should not be managed by a Minister.
- Meeting these criteria are necessary for full compliance with the UN's Paris Principles, which describe the responsibilities, composition, and working methods of national human rights' institutions.

## **2) MEDIATION AND RESTORATIVE JUSTICE:**

When the above body has identified a breach of the legislation, the body would be empowered to undertake a process of alternative dispute resolution with the body that has allegedly infringed on the legislation. Mediation is voluntary and undertaken on a without-prejudice basis.

Mediation brings all parties together for a discussion of differing perspectives and creates a process toward resolution that is mutually agreeable.

- If the offending party does not understand the experience of disability in an authentic or meaningful way, then they may tinker with a minimalist approach to removing barriers, and never embrace the change.
- The goal of systemic change would be lost should there not be a mediation or restorative justice component to the legislation.

## **3) PARTICIPATION OF PERSONS WITH DISABILITIES AND THEIR REPRESENTATIVE ORGANIZATIONS:**

Civil society, in particular persons with disabilities and their representative organizations, should be involved in and participate fully in the monitoring process and in provision of information.

### **FOR FURTHER INFORMATION**

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