

## **Formal Submission Regarding the British Columbia Framework for Accessibility Legislation**

As a group of scholars and experts with and without lived experience of disability who are associated directly or indirectly with the International Collaboration on Repair Discovery (ICORD), we the undersigned are submitting this formal submission regarding the British Columbia Framework for Accessibility Legislation. The mission of ICORD is to conduct research and training towards the development and translation of more effective strategies promoting prevention of spinal cord injury, functional recovery, and improved quality of life after SCI. The findings of this research are applicable to a variety of other populations of people with disabilities.

### **Topic 1: Initial Reflections on What's Important to You**

First, we would like to commend the British Columbia government for moving forward with this legislation, as evidence from other jurisdictions indicates this kind of legislation can be beneficial to improve accessibility for all members of the community. Second, we want the British Columbia government to use the experiences of other jurisdictions to avoid many of the pitfalls that research evidence has previously identified. We support the intention identified in page 8 of the Framework document that indicates a commitment to "Learning from Accessibility Legislation in Other Provinces." However, would strongly encourage the government to consider accessibility legislation in jurisdictions outside of Canada. For example, the Americans with Disabilities Act, which became law in 1990 is one of the best-researched pieces of legislation in this area. Systematic and scoping reviews should be conducted to ensure all of the relevant evidence is synthesized to inform the creation of evidence-based statutes and regulations. In the European Union they are looking at coordinating services for anyone with a disability more holistically, which aligns with the United Nations Convention on the Rights of People with Disabilities (UNCRPD), rather than focusing primarily on environmental accessibility (European Commission, 2010). There is also emerging research and reports into the impacts of the 'Disability Confident Scheme' that replaced the 'Two Ticks Scheme' in the UK in 2016 (Department of Work and Pensions, 2018). We would like to draw your attention to the end of mission statement by the United Nations Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas-Aguilar (2019), which she issued on April 12, 2019 after her visit to Canada. Although she was positive about recent initiatives such as Bill C-81, the Enabling Accessibility Fund, and improvements to the Canadian Disability Saving Program, she identified the need for fully inclusive education, access to justice, acknowledgement of legal capacity, and support for living independently in the community. She concluded by indicating:

As a highly-developed nation, Canada still lags behind in the implementation of its obligations under the Convention on the Rights of Persons with Disabilities. There are significant shortcomings in the way the federal, provincial and territorial governments of Canada respect, protect and fulfill the rights of persons with disabilities.

Notwithstanding, the country has the potential to undertake a major transformation

and fully embrace the human rights based approach to disability introduced by the Convention.

If the province intends to implement the UNCRPD then these are important considerations.

## **Topic 2: Proposed Approach, Scope, Definitions, Purpose and Principles**

We noted that the framework provides formal definitions of concepts like disability in the body of the document, but the term accessibility, which is at the heart of the framework is only defined in the Message from the Premier. We would suggest that the definition be integrated into the framework more explicitly. We have noted that the two definitions of disability in the Framework document (UNCRPD and the Accessible Canada Act) are based on an interactional definition of disability. However, we believe that it should be acknowledged that there are those in the disability community who support a social model of disability, which indicates disability is not an intrinsic characteristic of an individual, but rather the result of discriminatory societal practices. Although there have been criticisms of the social model, Oliver (2013) emphasizes that the social model was developed as a political tool to advocate for the rights of all people with disabilities<sup>1</sup>. This is critical given recent trends to dichotomize people with disabilities into those who are deemed deserving versus who are deemed undeserving of government services as a cost-saving austerity measure (Oliver, 2013). We would recommend that the framework should acknowledge the social model of disability and provide a justification for why interactional definitions have been adopted.

In considering the framework as a whole, we note it seems to be focused on reducing barriers, which may portray disability negatively. It may be helpful to highlight more affirmative approaches (e.g., cultural models, human rights models, affirmative approaches (Gable, 2014; Swain & French, 2000)) in considering disability. This could include acknowledging the positive societal contributions of people with disabilities outside of paid employment. For example, despite barriers they face taking part in formal volunteering people with disabilities frequently contribute through their participation with informal volunteering (Shandra, 2017). This broader perspective might involve a commitment to the principles of equity, diversity and inclusion that have been adopted by Canadian Universities (Universities Canada, 2019). In this regard, it is important to ensure the legislation goes beyond physical notions of accessibility so that people with invisible disabilities, in particular people with mental health, chronic conditions or substance use-related disabilities, can fully participate in their communities.

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<sup>1</sup> We are using the phrase “people with disabilities” in this formal submission, as this is the North American tradition. This is intended to emphasize the humanity of individuals (puts the person first); however, we acknowledge that in Britain the term “disabled people” is often used to indicate how they are disabled by discriminatory social practices.

Although we do not have the resources to conduct a full review, we would like to draw your attention to several studies, which we feel are particularly relevant in this regard.

In their research entitled, “A Failed Game Changer: Post-Secondary Education and the Accessibility for Ontarians with Disabilities Act (AODA)” Flaherty and Roussey (2014) identified three main general weaknesses of the AODA. First, as is being proposed with the legislation in British Columbia and unlike the Americans with Disabilities Act, the legislation was implemented in 2005 without any standards in place. The standards are being developed in a protracted piecemeal manner and some will not be fully rolled out until 2021 (Government of Ontario, 2019a), which seems to undermine Ontario’s goal of achieving full accessibility by 2025. We question whether it would be better to implement standards at the same time as the legislation is proclaimed or at the very least ensure the development process in much more truncated. Second, as of December 2013, despite the fact that only 30% of businesses had met their reporting requirements the Flaherty and Roussey note, “there does not appear to have been any inspection, compliance order or fine of any kind imposed under the AODA” (p. 17). In this regard, although the British Columbian Framework document outlines various types of enforcement that could occur and potential fines in other jurisdictions that could be levied, it is important that to ensure that this actually occurs in practice (i.e., that sufficient, dedicated resources are in place). These concerns are echoed in a recent scathing review of the Ontario’s with Accessibility for Ontarians with Disability Act by David Onley, former Ontario lieutenant-governor, which highlighted problems with enforcement, delays in the development of regulations, out of date information-technology standards that have never been fully applied and inadequate government support (Government of Ontario, 2019b). Third, Flaherty and Roussey note that there is no complaint resolution process with the AODA. This is based on the assumption that the act would deal with all accessibility issues proactively; however, this is problematic if there are issues with enforcement as have been noted in Ontario. The current framework document does not mention the creation of a complaint resolution process, which we believe should be added as a consideration.

Currently, a much larger proportion of people with disabilities in Canada and around the world are unemployed compared to those without disabilities (Stienstra, 2012). For example, in the United States, in 2017, the employment-population ratio for persons with a disability was 19% whereas the ratio for those without disability was 66% (US Bureau of Labour Statistics, 2019). Deshpande (2016) outlines how the Americans with Disabilities Act Amendments Act (ADAAA) that was passed in 2009 has affected work related practices in the United States. Employers are required to provide “reasonable accommodations” for customer and employees with disabilities as long as this does not represent an “undue hardship” on the employer. With the amendments act, scooters and wheelchairs need to be allowed in all pedestrian areas. Two types of accommodations that are required with the act include 1) changes/modifications to the application process, and 2) changes/modifications to the work environment or manner in which the job is performed. To prevent unintentional discrimination, “essential functions” (those that cannot be distributed to other workers) that are included in job descriptions need

to be carefully distinguished from desirable functions, which are nice but not essential to include. Under the act, employers are not allowed to discriminate against potential employees based on disability. It is therefore not lawful to ask applicants about their disability status until after a job offer is made. In Canada, there is the Employment Equity Act, which covers federal jurisdictions (Government of Canada, 2018). We suggest that the British Columbian legislation should build on these laws. For example, affirmative action, which is recommended in the United Nations Convention on the Rights of Persons with Disabilities (United Nations Committee on the Rights of Persons with Disabilities, 2016), may be required to help increase the number of people with disabilities who are employed.

### **Topic 3: Accessibility Standards --- Key Areas of Focus**

In terms of areas where standards need to be developed, we were concerned with potential siloed thinking in this regard. For example, wayfinding is an important consideration among people with disabilities that would bridge many of the proposed standards (e.g., transportation; built environment). We also noted several potential areas where standards could be developed or integrated into the ones being proposed. For example, we believe that access to natural environments should be added as a standard given research that emphasizes the beneficial effects of green and blue spaces (World Health Organization, 2016), from which people with disabilities are frequently excluded. Outdoor recreation programs have been shown to create positive experiences, as well as unique social opportunities for users and volunteers who help support programs (James, Shing, Mortenson, Mattie Borisoff, 2017; Labbé, Hanna, Bahen, Borisoff, Mattie and Mortenson, 2019). Addressing physical and psychological barriers would improve wilderness access for individuals with disabilities (James et al., 2017; Labbé et al., 2018). This is especially important given British Columbia's unique outdoor recreation opportunities, which along with its milder winter weather in coastal communities is a drawing card for people with disabilities. For instance, research has shown that easy access to vehicular transportation regardless of weather condition is a key factor in promoting community participation across the year for wheelchair users (Ripat, Borisoff, Grant & Chan, 2018). This access requires policies that address temporary obstacles such as snow clearance and timely enforcement after a snowfall event. Financial accessibility is also an important consideration. For example, ensuring attendants can enter venues for free to accompany someone with a disability. Furthermore, while we acknowledge that issues of employment are priorities for many people with disabilities and also areas where provincial governments have direct and immediate influence, we contend that legislation should also address the many informal economies that also shape peoples' experiences and contribute to resilient and sustainable communities – this could include legislation that addresses accessibility in regards to participation in volunteer activities, recreation and leisure. It is vital that people are valued for their personhood, not just for their perceived productivity and contributions via paid employment (Easterbrook et al., 2019). For example, Hall and Wilton (2011) contend that unpaid work such as volunteering and creative work can offer valuable opportunities for social inclusion. Scholars in sport, recreation and leisure studies have also pointed to the valuable

economic and social contribution of people with disabilities as artists, volunteers, spectators and tourists – provided that initiatives are in place to ensure their opportunities are accessible (Darcy, Dickson, Benson, 2014 & 2017; Dickson, Darcy, Johns, Pentifallo, 2016; Darcy, Maxwell, Grabowski, Onyx, 2019).

All of this is to say that we believe there is ample evidence and reason to ensure that BC accessibility legislation extends beyond considering access to employment and ‘services’ and addresses the multitude of ways that people with disabilities can contribute to our society and experience inclusion in a way that is congruent with the United Nations Convention on the Rights of People with Disabilities. This also speaks to our earlier comment about advancing more affirmative ways of thinking about disability, which acknowledges that people with disabilities have equal rights vis-à-vis the dominant population. .

#### **Topic 4: Implementation Details**

Transparency is very important to consider throughout the legislation development and implementation process. For example, although three potential governance structures were identified in the consultation document and stakeholders were asked to provide feedback about them, we felt there was not enough information provided to make an informed decision. Describing pros and cons of each of the models (from experiences in other jurisdictions or similar approaches in British Columbia) would have been beneficial.

#### **Topic 5: Looking Beyond Legislation**

In responding to the question about “what other initiatives or actions would you recommend to promote a culture of accessibility?” there are four main points we would like to raise. First, despite good evidence about the benefits of assistive technology for users and their caregivers (Mortenson, Demers, Fuhrer, Jutai, Lenker, DeRuyter, 2012 & 2013; Mortenson et al. 2018), the citizens of British Columbia have worse access to assistive technology funding technology for things like wheelchairs, hospital beds, and bathing equipment than the majority of Canadians (e.g., people living in provinces including Quebec, Ontario, Alberta) (Peckham, Kashaf Al-Ghetaa, Ho & Marchildon, 2018). In British Columbia, there is very limited governmental funding. For those who qualify, “the ministry provides medical equipment and devices under the Employment and Assistance Regulation and the Employment and Assistance for Persons with Disabilities Regulation.” (Government of British Columbia, 2019a). Assistive technology may also be available via WorkBC Assistive Technology Services. “WorkBC Assistive Technology Services support individuals that need assistive technology products and services to overcome disability-related barriers in the workplace.” (Government of British Columbia, 2019). Many British Columbians need to resort to advocacy-based resources, such as the ALS BC Equipment Loan Program, which is funded entirely through donations. We applaud that the British Columbia government now provides funding for basic wheelchairs for people living in residential care (Government of British Columbia, 2016); however, we are concerned because many residents in these settings need more advanced wheelchairs with better seating to

participate in the facilities and in the community (e.g., tilt-in-space wheelchairs) (McEachern & Mortenson, in press; Mortenson, Oliffe, Miller & Backman, 2012; Shankar, Mortenson, & Wallace, 2015). People who need access to prostheses face similar challenges. Pharmacare has not increased rates for prosthetic coverage for the last 15 years. As a result, given the ongoing development of better prosthetic technologies, there is a significant gap between the cost of new prosthetic equipment and the coverage that PharmaCare provides. This is troubling as research shows that such advancements (e.g., knee microprocessors) have significant benefits for amputees' health and well-being (Chen et al., 2018). Thus, inadequate prosthetic coverage denies people with amputations opportunities for meaningful engagement in their communities. Access to assistive technologies, including prostheses, which enable participation in everyday life, should be provided to individuals regardless of employment status or employment seeking behaviours, as a basic human right. British Columbia would benefit from greater equity in assistive devices by 1) not restricting programs based on place of residence (because it disproportionately discriminates against older, lower income people who tend to live in care homes), and 2) reviewing funding for paid employment goals only, rather than other goals – e.g. specific pockets of funding only for people seeking paid work (Wang & Wilson, 2019).

Second, the funding provided to individuals with disabilities on income assistance is approximately \$14,201 annually, which is 60% of the Market Basket Measure for singles living in British Columbia (which is approximately \$20,000) (Government of British Columbia, 2019b). We question why this rate is set so far below the poverty line, especially given that the day-to-day expenses of people living with disabilities are considerably higher than for the general population. Furthermore, we appreciate recent initiatives that allow people with disabilities to earn up to \$12,000 per year without claw backs, among other policy changes that came into effect on July 1, 2019 (Government of British Columbia, 2019c), but we question why most other benefits remain clawed back (e.g., CPP, CPP-D, employment insurance, workers compensation, veterans benefits, survivor benefits, and other non-exempt income, insurance and pensions). Furthermore, we question why those who receive disability benefits are required to apply for Canadian Pension Plan benefits (to be clawed back) at the age of 60 (Government of British Columbia, 2019d). This has long-term financial effects on them, as they will receive 36% lower CPP payments for the rest of their lives (Hume 2016). It would also be beneficial to review financial resources cut-offs for disability services (i.e. income vs means testing) to make sure that people in need have their needs met.

Third, concerns have been raised about the accessibility of the British Columbia Ministry of Social Development and Poverty Reduction, which may prevent people from getting and retaining the supports they need. For example, the 2017-2018 Annual Report from the British Columbia Office of the Ombudsperson (2018) found that almost one third of complaints and enquiries were related to the Ministry of Social Development and Poverty Reduction. It has been suggested that this was due to the “complicated eligibility criteria that make assistance difficult to access, and a culture focused on enforcement” (BC Poverty Reduction Coalition et

al., 2019). Concerns about long phone wait times for this ministry were also identified in *Special Report No. 40 Holding Pattern: Call Wait Times for Income and Disability Assistance* (British Columbia Office of the Ombudsperson (2019)). We urge the ministry to continue steps to improve the income and disability application processes. For example, the application should only collect information that is relevant and absolutely necessary; avoid repetition; and not focus solely on deficits (i.e., applicants should be allowed to identify strengths without affecting eligibility) (Milne & Hamfelt, 2019). Frontline ministry staff should be trained in trauma-informed service provision and people with lived experience should be hired and trained as peer navigators or case managers when possible (Milne & Hamfelt, 2019).

Fourth, while access, funding, and policies are very important, we know that these factors alone will not create a culture of inclusion. Policies carry little weight in influencing the lived experiences of people with disabilities when they are still made to feel excluded (i.e., they do not belong through their interactions with others), or are singled us out when they have to request accommodations (Bulk et al., 2017; Monica, 2016). Culture change requires alternation of peoples' attitudes, beliefs, and values. Therefore, we encourage the government to work with experts, including people with disabilities and their allies, to implement innovative culture-change strategies, such as research-based theatre (Crimmins, 2016; Fisher & Purcal, 2017; Leavy, 2017).

To move towards a prompt resolution of these key challenges, as a group, we are interested in working with the government in applying an evidenced-based lens to the implementation of accessibility legislation moving forward. Please do not hesitate to contact us this regard.

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