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The Interplay Between Human Rights and Accessibility Laws: Lessons Learned and Considerations for the Planned Federal Accessibility Legislation

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An abstract graphic featuring three blue, 3D-rendered spheres of varying sizes. Two thin blue lines intersect to form an 'X' shape across the page. One line passes through the center of the top two spheres, and the other passes through the center of the bottom sphere. The spheres have a glossy finish with highlights and shadows.

The Interplay Between Human Rights and Accessibility Laws: *Lessons Learned and Considerations for the Planned Federal Accessibility Legislation*

Final Report

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The Interplay Between Human Rights and Accessibility Laws: Lessons Learned and Considerations for the Planned Federal Accessibility Legislation

Laverne Jacobs*

1) Executive Summary

People with disabilities in Canada have fought a long battle to have accessibility standards legislation enacted to assist with breaking down barriers to disability equality in society. The purpose of the social movement toward accessibility standards legislation was to establish a distinct, proactive system for realizing equality rights for people with disabilities.

The federal government has proposed to introduce legislation that will likely establish a framework for the development of accessibility standards within Canada's federal legislative jurisdiction. This follows on the heels of accessibility legislation being enacted in Ontario (2005), Manitoba (2013) and, most recently, Nova Scotia (2017).

Public consultations in 2016-17 for the proposed federal accessibility legislation identified confusion about the practical differences between human rights laws and accessibility laws, and the need for more clarity about how these two laws interact. This study was commissioned to examine the interplay between human rights legislation and accessibility legislation in Canada and internationally.

In this study, the author analyzes, comparatively, the administrative governance functions of legislation that provides accessibility standards in six jurisdictions that also offer legal protection from discrimination to people with disabilities: Australia, the United Kingdom, the United States and the Canadian provinces of Ontario, Manitoba and Nova Scotia. The following governance functions were examined: a) creating accessibility standards, b) enforcing accessibility standards, c) enforcing decisions,

* Associate Professor & Director of Graduate Studies, Faculty of Law, University of Windsor. The author wishes to thank the various individuals who took the time to share with how accessibility legislation and human rights laws work together in their jurisdictions. Thanks also to Horia Tabatabaei Soltani (Windsor Law JD Cand. '18) for her excellent and timely research assistance and Employment and Social Development Canada (Government of Canada) (ESDC) for its support of this research. The views expressed in this document are those of the author and not those of ESDC.

d) encouraging compliance, e) raising public awareness (and promoting systemic culture change) and f) public education. The study was conducted with a view to understanding how human rights laws, principles and values can be used to further and strengthen disability access laws on the ground.

This research study is based on a review of relevant legislation and jurisprudence, pertinent literature emanating from the disability community, scholars, NGOs, and government, including accessibility directorates and Statistics Canada. Interviews were also conducted with past and current government officials who have worked closely on the administration and enforcement of accessibility standard legislation. Detailed tables outlining the bodies that exercise each governance function, the ways in which they are exercised and the manner in which they interact with human rights laws and values are provided in Appendix B.

The research findings determine that there are two main types of accessibility standard: a) standards that are established independent of antidiscrimination legislation but which depend on antidiscrimination legal concepts, such as those created in the Canadian provinces and b) standards that are created within an antidiscrimination legal regulatory framework, such as the standards developed for transport, education and premises in Australia. Both types of standard have the potential to create confusion, particularly as the accessibility legislation in many jurisdictions contain a clause protecting the right of the person with a disability to obtain greater protection offered by another law. From a review of the tools used in other jurisdictions, the author proposes ways to alleviate this confusion while preserving the distinct proactive standard-setting approach that has been developed in three provinces.

Based on the research findings, several recommendations are also made regarding the complete set of governance functions examined. These recommendations include: incorporating a mechanism for public enforcement within the enforcement of accessibility standards, incorporating human rights supports and technical expertise within the development of standards, strengthening the statutory language to ensure an inclusive equality approach, avoiding confusion between reactive and proactive approaches to accessibility legislation by keeping the two systems distinct, and, establishing a Commissioner to take leadership in promoting awareness and systemic culture change, in encouraging compliance and in public education both across the federal government and with the general public. (A Summary of Recommendations, which provides a list of all recommendations, is available in the report). Other key considerations derived from the research that the federal government should keep in mind include: the potential benefits of working with familiar statutory terminology, using the language of accessibility and inclusion, keeping a place for federal provincial and territorial consultation, and the question of whether to use the Canadian Human Rights Commission to administer the proposed federal accessibility legislation.

Finally, throughout this report, the author argues that all administrative governance functions in the proposed federal accessibility legislation should be guided by and promote an inclusive equality approach. Inclusive equality is a theoretical framework put forward by the UN that focuses on recognizing the intersectionality of individuals with disabilities in their experiences of disability discrimination. Power relations and the socio-historical context surrounding legal efforts to realize

equality by people with disabilities within a reactive regulatory (complaints-based and adjudicative) system should also be considered through this lens.

As a piece of proactive legislation, the proposed federal accessibility legislation has the hefty objective of addressing barriers to accessibility in the federal sphere and to ensure that they are dismantled, preferably before they pose a problem to people within the disability community. Through the very nature of creating standards to dismantle barriers, accessibility legislation generally concerns the structural and systemic inequalities faced by people with disabilities. While a proactive regulatory system such as that of the proposed federal accessibility legislation has the potential to realize the equality rights of people with disabilities by creating standards to break down barriers, it can only be successful if designed within a framework that is attentive to the social reality in which people with disabilities live, as well as to the social context in which disability equality claims arise.

The author thanks Employment and Social Development Canada (Government of Canada) (ESDC) for its support of this research. The views expressed in this document are those of the author and not those of ESDC.

2) Glossary of Terms

AAB	Accessibility Advisory Board (MB)
AAC	Accessibility Advisory Council (MB)
ADA	<i>Americans with Disabilities Act of 1990 (as amended by ADA Amendments Act of 2008)</i>
ADO	Accessibility Directorate of Ontario
AHRC	Australian Human Rights Commission
AHRCA	<i>Australian Human Rights Commission Act, 1986 (Cth)</i>
AMA	<i>Accessibility for Manitobans Act</i>
AODA	<i>Accessibility for Ontarians with Disabilities Act</i>
ASAC	Accessibility Standards Advisory Council (ON)
CHRC	Canadian Human Rights Commission
CRPD	Convention on the Rights of Persons with Disabilities (UN)
DDA	<i>Disability Discrimination Act, 1992 (Cth) (Australia)</i>
DDA, 1995	<i>Disability Discrimination Act, 1995 (UK)</i>
DDA, 2005	<i>Disability Discrimination Act, 2005 (UK)</i>
DIO	Disability Issues Office (MB)
DOJ	Department of Justice (US)
DOT	Department of Transportation (US)
FAL	The proposed federal accessibility legislation (Canada)
IASR	<i>Integrated Accessibility Standards Regulations</i>
LAT	Licensing Appeal Tribunal (ON)
LGIC	Lieutenant Governor in Council
MHRC	Manitoba Human Rights Commission
NSAA	<i>Accessibility Act (NS)</i>
NSAD	Accessibility Directorate, Nova Scotia
PSVAR	<i>Public Service Vehicles Accessibility Regulations 2000</i>
PWD	Person with disabilities
RVAR 2010	<i>Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010</i>
SDC	Standard Development Committee

Final Report

3) Background

In the background document that outlines the nature and purpose of this study, Employment and Social Development Canada (ESDC) identified the importance of looking at the interplay between human rights legislation and accessibility legislation in Canada and internationally, highlighting the need for clarification:

During the consultation process for this legislation that took place from June 2016 to February 2017, stakeholders identified the interaction between existing human rights laws and the planned federal accessibility legislation as a key issue for consideration. Jurisdictions that have implemented both human rights laws and accessibility laws, like Ontario and Manitoba, were highlighted as learning opportunities. Indeed, the interplay between the *Accessibility for Ontarians with Disabilities Act* (AODA) and the Ontario *Human Rights Code* was a key theme in the consultations for the second legislative review of the AODA, revealing both confusion about the practical differences between human rights and accessibility laws, and the need for more clarity about how these two laws interact.¹

This concern for clarity has raised two distinct issues, both of which have been examined in this study. The first is how human rights laws are understood and, in practice, put into operation to support accessibility legislation in Canada. The second looks at the interaction between human rights laws and accessibility legislation in other jurisdictions, calling into play an understanding of what human rights laws are and how they may operate that is sometimes different than the conceptions under Canadian law. Both are questions that require not only analysis of the statutes and other legislative instruments² but an on-the-ground appreciation of how governments and civil servants interpret, use and apply the relevant concepts.

¹ Memorandum of Understanding (MOU) between The University of Windsor (Ontario) and Employment and Social Development Canada (Government of Canada) for the research project: "Interplay Between Human Rights and Accessibility Laws: Lessons Learned and Considerations for the Planned Federal Accessibility Legislation" at 1-2. The author thanks Employment and Social Development Canada (Government of Canada) (ESDC) for its support of this research. The views expressed in this document are those of the author and not those of ESDC.

² And relevant case law where applicable.

Based on the approach taken in other Canadian jurisdictions (Ontario, Manitoba and Nova Scotia), the proposed federal accessibility legislation (FAL) will likely follow the pattern of putting in place a system to enable the creation and implementation of regulatory standards. As with the accessibility legislation enacted in the provinces, the authority to design and implement the standards will likely be designated to various entities (such as standard development committees, directors, inspectors, etc.). However, the federal accessibility legislation will focus only on areas within federal legislative jurisdiction.³

4) The Issues

The following issues have been examined in this report:

- The interplay between accessibility / disability legislation and human rights / antidiscrimination laws with respect to authorities , roles and responsibilities, particularly related to:
 - public education, awareness, and systemic culture change;
 - complaint/dispute resolution processes;
 - compliance and enforcement;
 - of the law;
 - of decisions made by an investigative and/or oversight authority;
 - [of] mechanisms to monitor actions and report on adherence to the law(s); and
 - governance and government machinery, including potential overlap and rationale for the precedence of a specific law.

The following six jurisdictions have been examined for this report:

- Australia;
- the United Kingdom;
- the United States;
- the provinces of:
 - Ontario;
 - Manitoba; and
 - Nova Scotia.

The attached tables in Appendix B provide detailed information on the interplay between accessibility/disability legislation and human rights/antidiscrimination laws with respect to the functions specified above. The first table for each country sets out the functions examined, the body that

³ See the proposed federal accessibility legislation consultation report, Government of Canada (Employment and Social Development Canada), *Creating new federal accessibility legislation: What we learned from Canadians* Release date: May 29, 2017 (online: <https://www.canada.ca/en/employment-social-development/programs/planned-accessibility-legislation/reports/consultations-what-we-learned.html>).

exercises or the bodies that exercise each function and how each function is executed. The second looks more closely at how human rights/antidiscrimination laws are incorporated in the execution of those functions, considering statutory language, case law and interviews with current or previous government officials from the jurisdiction. In these tables, any distinctions made between “human rights laws” and “antidiscrimination laws” are identified when such a legal distinction is made in the jurisdiction.⁴

5) Key Findings

This research study is based on a review of relevant legislation and jurisprudence, pertinent literature emanating from the disability community, scholars, and Statistics Canada among other sources, and interviews conducted with past and present key government officials in the jurisdictions examined to obtain a better understanding of how the law has been/is being applied. Further to this data collection and analysis, the following key findings have been made with respect to each of the issues listed above. The findings are presented in an order that traces the issues (including additional subtopics) that emerged as the most pressing during the review.

a) Theoretical Framework – An Inclusive Equality Approach

It is useful to have a theoretical framework that can assist in understanding and prioritizing the issues of substantive equality for people with disabilities that need to be addressed in developing the proposed federal accessibility legislation (FAL). As a piece of proactive legislation, FAL has the hefty objective of addressing barriers to accessibility in the federal sphere and to ensure that they are dismantled, preferably before they pose a problem to people within the disability community. Through the very nature of creating standards to dismantle barriers, accessibility legislation generally concerns the structural and systemic inequalities faced by people with disabilities. While a proactive regulatory system such as that of the proposed federal accessibility legislation has the potential to realize the equality rights of people with disabilities by creating standards to break down barriers, it can only be

⁴ This arises notably in Australia where human rights laws refer to laws emanating from international treaties such as the *Convention on the Rights of Persons with Disabilities* Convention on the Rights of Persons with Disabilities G.A. Res. 61/106, U.N. Doc. A/RES/61/106 (Jan. 24, 2007), (13 December 2006, United Nations, Treaty Series, vol. 2515), online: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx> (CRPD). Antidiscrimination laws in Australia, by contrast, refer only to domestic laws. Australia has accepted the CRPD in so far as many of the responsibilities that exist already within its domestic laws replicate the obligations set out in the CRPD. The practical importance of tracing these threads is to recognize that exercises of discretion under the Australian *Disability Discrimination Act, 1992* (Cth) (DDA), which may result in the execution of any of the functions examined, will be guided by principles developed under the DDA and which recognize similar obligations under the CRPD. The situation is similar in Canada in that many of the rights and obligations imposed by the CRPD dovetail with obligations that were already in place through our *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11* (Charter) and human rights statutes. This is not to say that there are not places where Canada could do more to live up to the expectations of the CRPD within the discretion of the government under the Constitution and statutes which seemingly provide duplicative rights and obligations.

successful if designed within a framework that is attentive to the social reality in which people with disabilities live, as well as to the social context in which disability equality claims arise.

An appropriate theoretical framework for this endeavour is the inclusive equality approach proposed by the United Nations Committee on the Rights of Persons with Disabilities. The inclusive equality approach was recently laid out by the UN Committee on the Rights of Persons with Disabilities in its General Comment on Article 5 ('Equality and Nondiscrimination') of the CRPD in August, 2017. The inclusive equality approach emphasizes the following goals:

- a) A recognition of multiple and intersectional discrimination which realizes that individuals experience discrimination as members of "a (or several) social group(s) and that these groups are not homogenous. Nondiscrimination measures should recognize that all members of the disability community are individuals with multiple layers of identity statuses and life circumstances".⁵ This is in keeping with the fact that the CRPD is the first UN convention to explicitly address intersectionality;⁶
- b) The need to take into account individual, structural and intersectional dimensions of discrimination as well as *power relations*.⁷
- c) A recognition that human rights are interdependent, interrelated and inseparable.⁸

In addition, the Committee identified a need across the globe for greater inclusion of the disability community in the development of laws and policies that affect them as well as for more effective redress mechanisms for discrimination.⁹

In short, disability may be only one of several layers of an individual's identity. Disability law and policy should take the diversity of the person with disabilities into account. By drawing upon an inclusive equality approach, there is a greater chance for equality law to foster substantive and transformative change.

The socio-historical context from which accessibility legislation has arisen in Canada is also important to take into account. It presents foundational structural and systemic elements that should be acknowledged in an inclusive equality approach. In Canada, accessibility legislation is a response to the difficulties of having the equality rights of people with disabilities recognized through a reactive regulatory system. Reactive regulatory systems aim to provide redress for wrongdoing when those issues of wrongdoing are brought to an adjudicator. They are not designed to capture, avoid or fix

⁵ See United Nations Human Rights Office of the High Commissioner, "Draft General Comment on the right of persons with disabilities to equality and non-discrimination (article 5)", available online: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/CallPersonsDisabilitiesEqualityResponsability.aspx> (General Comment on Equality and Non-discrimination) at paragraph 10.

⁶ The Convention is the first human rights treaty to acknowledge explicitly intersectional discrimination (at article 6 and preamble p).

⁷ See the General Comment on Equality and Non-discrimination at paragraph 10 (emphasis added).

⁸ See the General Comment on Equality and Non-discrimination, *supra* paragraph 11.

⁹ See the General Comment on Equality and Non-discrimination, *supra* paragraph 3.

barriers before they become a problem for members of the disability community.¹⁰ Reactive regulatory systems effectively allow barriers to persist until a person with a disability brings forward a claim to have that barrier removed. On a practical level, this places a burden on individual members of the disability community to bring litigious claims forward.

Within a reactive system, people with disabilities can only vindicate their rights if they are in a position to bring claims forward. Yet, in many cases, the financial resources to hire legal counsel or the legal skills required to be an effective self-represented litigant are not readily available. Working-aged people with disabilities live below the poverty line at a rate that is approximately twice that of Canadians without a disability.¹¹ People with disabilities also disproportionately experience barriers to education.¹² A significant percentage of persons with disabilities are left trying to represent themselves before tribunals and courts on issues relating to their disabilities,¹³ and within an unequal power dynamic. The imbalance of power is particularly acute when people with disabilities are up against well-resourced, legally represented respondents.¹⁴ The stressfulness of the situation is aggravated by having to defend one's case while also being required to explain the nature of one's disability and how the situation giving rise to the conflict has had an impact on them. This confluence of circumstances can be devastating to one's case and may also have negative implications for one's health.

¹⁰ See generally on reactive and proactive regulatory systems in the design of accessibility legislation, Laverne Jacobs, "'Humanizing' Disability Law: Citizen Participation in the Development of Accessibility Regulations in Canada" (2016) *Revue Internationale des Gouvernements Ouverts* 93 (online: <http://ojs.imodev.org/index.php/RIGO/article/view/49>). For a history of the social movement resulting in the first proactive piece of legislation, see David Lepofsky, "The Long, Arduous Road to a Barrier-Free Ontario for People with Disabilities: The History of the *Ontarians with Disabilities Act* -- The First Chapter" (2004) *National Journal of Constitutional Law* 125.

¹¹ See Statistics Canada, *Low income among persons with a disability in Canada*, Report by Katherine Wall (Release date: August 11, 2017) (online: <http://www.statcan.gc.ca/pub/75-006-x/2017001/article/54854-eng.htm>). The Institute for Research and Development on Inclusion and Society has also found that "working-age people with disabilities are about twice as likely as other Canadians to live below the poverty line". See Institute for Research and Development on Inclusion and Society, "Looking Into Poverty: Income Sources of Poor People with Disabilities in Canada" (2013) (online: <http://www.ccdonline.ca/en/socialpolicy/poverty-citizenship/demographic-profile/income-sources-of-poor-people-with-disabilities>) at 1.

¹² See the Canadian Human Rights Commission, *Left Out: Challenges faced by persons with disabilities in Canada's schools* (online: <https://www.chrc-ccdp.gc.ca/eng/content/left-out-challenges-faced-persons-disabilities-canadas-schools>). See Institute for Research on Public Policy (IRPP), *Inclusive Employment for Canadians with Disabilities: Toward a New Policy Framework and Agenda*, Report by Michael J Prince (Release date: August, 2016) (online: <http://irpp.org/research-studies/study-no60/>).

¹³ See Laverne Jacobs, "The Universality of the Human Condition: Theorizing Transportation Inequality Claims by Persons with Disabilities in Canada, 1976-2016" (2018) *Canadian Journal of Human Rights* (forthcoming) (online: <https://works.bepress.com/laverne-jacobs/4/>) and its related dataset.

¹⁴ See eg the discussion on the correlation between self-representation and success before the tribunal in the 2015-16 BC Human Rights Tribunal Annual Report. The Report notes at 7-8: "Our numbers show that, for complainants, access to legal representation may be a determining factor in the success of their complaint. Complaints were dismissed or rejected far more frequently where complainants were self-represented. The picture is less stark for respondents, who generally had greater levels of legal representation." This was observed earlier as well. See, for example, the 2006-7 BC Human Rights Tribunal Annual Report at 17 (available online: http://www.bchrt.bc.ca/shareddocs/annual_reports/2006-2007.pdf) and the 2007-8 BC Human Rights Tribunal Annual Report at 18 (available online: http://www.bchrt.bc.ca/shareddocs/annual_reports/2007-2008.pdf).

More importantly, when it comes to human rights issues, disability discrimination constitutes the most frequently alleged ground of discrimination before human rights commissions and tribunals in Canada.¹⁵ Legal aid is also generally not available for human rights cases.¹⁶ People with disabilities are therefore caught in the dilemma of having the largest number of matters brought before human rights commissions and tribunals in Canada yet also systemically being unable to avail themselves of legal aid to support them in making their claims. This poses a particular access to justice problem.¹⁷ Furthermore, many human rights claims are settled, with confidentiality orders attached, leaving an information void where there should be public understanding of how barriers to inclusion have been handled. Even when equality cases are successful, there have been issues around the enforcement of court decisions, reinforcing the persistence of barriers.¹⁸ With new barriers arising every day from such things as technology, a reactive regulatory system simply does not provide the most effective path to achieving disability equality.

To be transformative, accessibility legislation should work to further an inclusive equality model of human rights and be attentive to the socio-historical context that has affected people with disabilities in their attempts to realize their equality rights.

It can be instructive to consider the proposed federal accessibility legislation with an eye to determining how its governance functions may promote an inclusive (and transformative) human rights approach to equality for persons with disabilities. This theoretical framework will therefore be kept in mind as the governance functions of other jurisdictions are examined below.

¹⁵ See eg the Canadian Human Rights Commission 2016 Annual Report which indicates that 60 percent of all complaints filed at the CHRC that year were on the ground of disability discrimination. This far exceeds the next most common ground of alleged discrimination, namely, race, a ground which made up 17 percent of all complaints received by the CHRC that year. (See *People First: The Canadian Human Rights Commission's 2016 Annual Report to Parliament* at 57 (online: <https://www.chrc-ccdp.gc.ca/eng/content/annual-report-2016>).

¹⁶ See eg *Portman v Northwest Territories (Department of Justice)*, 2016 CanLII 47992 (NT HRAP), <http://canlii.ca/t/gsq30>, rev'd by *GNWT v Portman*, 2017 NWTSC 61 (CanLII), <http://canlii.ca/t/h5tmg>, on appeal (regarding a woman with multiple sclerosis in a continuous battle to obtain legal aid for her disability discrimination in employment claim before the human rights tribunal. At issue is whether the Legal Services Commission's blanket policy to not provide legal aid for matters before the human rights tribunal causes systemic discrimination to people with disabilities; also at issue is whether legal aid assistance should be provided by the Human Rights Commission).

¹⁷ This problem may be contrary to the CRPD, article 13(1) on access to justice, which states: "1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages."

¹⁸ See the Supreme Court of Canada case of *Eldridge v British Columbia (Attorney General)* [1997] 3 SCR 624 further to which the government took considerable time to implement interpretation services for the Deaf community in hospitals.

b) The Creation of Accessibility Standards

i. Models for Creating Accessibility Standards

Two dominant models exist when it comes to institutional choices for the creation of standards. In the first model, the creation of accessibility standards is directed by a centralized minister. The areas in which standards will be developed are designated in the statute or decided at the discretion of this responsible minister, though consultation with other ministers may be mandated in the statute or completed as a practice. The minister is responsible for setting the terms of reference and for establishing the standard development committees. This model was used in Ontario. Australia also has a centralized minister responsible for the development of standards in its *Disability Discrimination Act*.

Two additional features of this model have developed in practice. Firstly, members of the human rights commission of the jurisdiction are generally involved in the development of the accessibility standards. In Ontario, members of the Human Rights Commission worked with the standard development committees as they created their standards. In Manitoba, there has also been a close connection to the Human Rights Commission in the development of standards. This is due in part to the size and structure of government in that province which facilitates a natural alignment between the human rights commission and the Disability Issues Office. Human rights expertise can be useful for clarifying obligations under the human rights legislation at an early stage. It can also be useful for ensuring an inclusive equality perspective in the standards. Technical expertise – for example, through the assistance of the Canadian Standards Association – is sometimes also brought into the standard development process.

The second model for creating accessibility standards shares the leadership for the development of standards amongst many subject-matter ministers or heads of portfolios. The *Americans with Disabilities Act*¹⁹ provides a clear example. Under the ADA, technical standards for architecture, transportation, medical diagnostic equipment, etc. are delegated to the US Access Board. In designing these standards, the Access Board works in tandem with many different departments of government, and has representatives from these departments as members of the Board. The Access Board is known as a technical leader in accessible design standards.²⁰

Both models integrate a degree of consultation in that people with disabilities and government are involved in designing the standards. The Canadian models tend to place emphasis on consultation between the members of the disability community and those who will be subject to the Act. The US Access Board places more emphasis on bringing people with disabilities and government agencies together with individuals with technical expertise. It is recommended that the federal government should maintain the consultative approach to developing standards, particularly as it is in keeping with

¹⁹ *Americans with Disabilities Act* (as amended by *ADA Amendments Act* of 2008), 42 USCS, online: <https://www.ada.gov/pubs/adastatute08.htm>.

²⁰ More on the Access Board may be found on its website: <https://www.access-board.gov/the-board>.

the CRPD requirements to include people with disabilities in the development of laws and policies that affect them.²¹ But, more technical expertise could also usefully be brought into the development of standards so that the burden of finding the right technical tools does not rest on members of the disability community who may not necessarily have that technical knowledge.

In conclusion, the federal government should consider sharing responsibility for developing standards among ministers with relevant subject portfolios. The federal government minister or agency responsible for taking the lead on accessibility standards development should consult with relevant subject matter ministers. This will assist in making accessibility issues pervasive across the relevant social areas. The federal government should also make efforts to ensure that both human rights law experts (who could be members of the Canadian Human Rights Commission (CHRC)) and technical experts participate in the design of standards.

ii. The Connection between Accessibility Standards and Antidiscrimination Law

There are at least two types of accessibility standard: a) standards that are established independent of antidiscrimination legislation but depend on antidiscrimination legal concepts and b) accessibility standards that are created within an antidiscrimination legal regulatory framework. With regard to the first type of accessibility standard, Canada has now developed a unique and robust culture of standard-setting as a proactive means of combating disability discrimination. This can be seen through the *Ontarians with Disabilities Act*²², the *Accessibility for Ontarians with Disabilities Act, 2005*²³ the *Accessibility for Manitobans Act*²⁴ and Nova Scotia's *Accessibility Act*²⁵. The accessibility legislation established in these three provinces has been designed as a distinct regime that enables persons with disabilities to have a voice in creating the accessibility standards. These statutes include people with disabilities in the design of the future of the province through a consultative framework that brings those who will be affected by the ultimate standards to the table as well. Typically, the accessibility legislation cross-references the human rights legislation (the antidiscrimination legislation) of the province. At the very least, in its preamble, the accessibility legislation identifies the human rights legislation as one of the foundational human rights laws respected in its regime. The accessibility legislation also generally focuses on the same social areas as the human rights legislation. Finally, there is usually a provision in the statute that references, either explicitly or implicitly, the relationship between the two laws by indicating that protection under the human rights legislation of the province, if

²¹ See CRPD, Preamble o) and Art. 4(3).

²² *Ontarians with Disabilities Act, 2001*, SO 2001, c 32, online: <https://www.ontario.ca/laws/statute/01o32> . This statute has had sections repealed and will be repealed fully on a date to be set by the legislature. See: *Accessibility for Ontarians with Disabilities Act, 2005*, SO 2005, c 11, s 42, online: <https://www.ontario.ca/laws/statute/01o32> .

²³ SO 2005, c 11 (AODA).

²⁴ CCSM c A1.7 (AMA).

²⁵ *Accessibility Act*, SNS 2017 c 2 (NSAA).

greater than the protection under the accessibility legislation, will be accorded to the individual seeking the benefit of the law.²⁶

The second type of accessibility standard is also proactive in nature but is created within the framework of a reactive regulatory antidiscrimination regime. Examples are the three disability standards created under the Australian *Disability Discrimination Act*²⁷ and standards created by the US Access Board under the auspices of the *Americans with Disabilities Act*.

Both types of standard present challenges on the ground. One challenge is confusion by members of the public subject to the Act as to whether satisfying their obligations under the standards will equally satisfy their antidiscrimination obligations under human rights legislation. Certainly, in Ontario, where standards are created independently of provincial human rights legislation, we have witnessed this confusion by businesses and others.²⁸ Interestingly, this is not an unusual situation. Laws such as the ADA also provide that those receiving the benefit of the statute may avail themselves of greater legal protections if such protection is provided under another law applicable in the jurisdiction.²⁹ A useful suggestion for addressing this confusion is to provide funding for information centres that can be set up to offer the general public, businesses and others who will be subject to the regulations with information on how to comply. The advantage of these information centres is that those affected by the standards can ask questions and explore options for compliance without revealing themselves to the government regulator.³⁰

Another difficulty, which arises with the second type of accessibility standard, is confusion over the role of the standards themselves. In Australia, case law interpreting the standards has unfortunately not shown the standards to bear enough weight to set a path for interpreting the broader antidiscrimination legislation. Indeed, although there are only a few cases, decisions such as *Haraksin v Murrays Australia Limited (No 2)*³¹ show that breach of the standards do not even count as a definitive violation of the disability discrimination law. Furthermore, debate has arisen in the Australian context as to whether the standards can ever be understood to go beyond the scope of the current discrimination law that enables them. Adopting the idea of placing regulatory standards within antidiscrimination law could provide similar limitations, restricting innovation in the development of future legal standards.

However, the second type of accessibility standard comes with an even greater difficulty. Housed within a reactive regulatory system, the second type of accessibility standard presents a confusing regulatory

²⁶ See eg AODA, s 3.

²⁷ In Australia, three standards have been developed, for Transport, Education and Premises. See *Disability (Access to Premises — Buildings) Standards 2010 (Cth)*, online: <https://www.legislation.gov.au/Details/F2011C00214>, *Disability Standards for Accessible Public Transport 2002, as amended (Cth)*, online: <https://www.legislation.gov.au/Details/F2011C00213>, *Disability Standards for Education 2005 (Cth)*, online: <https://www.legislation.gov.au/Details/F2005L00767>.

²⁸ See Mayo Moran, *Second Legislative Review of the Accessibility for Ontarians with Disabilities Act, 2005* (Release date: November, 2014), online: <https://www.ontario.ca/document/legislative-review-accessibility-ontarians-disabilities-act>.

²⁹ See ADA §12201(b). See also the *Accessibility for Manitobans Act*, SM 2013 c 40, CCSM c A1.7 [AMA] at s 21.

³⁰ Such centres exist in the US in relation to the ADA. See the ADA National Network – <https://adata.org/>.

³¹ [2013] FCA 217.

landscape which may not be well received by the disability community or the government officials tasked with running it. The purpose of the social movement toward accessibility standards legislation was to establish a distinct, proactive means of realizing equality for people with disabilities. Placing accessibility standards within a reactive regulatory system may give the perception of weakening the distinction whose creation was long fought.³² Indeed, in the jurisdictions maintaining standards within a reactive regulatory system, stronger, distinct processes for dealing with dissatisfaction with the standards themselves or with their violation would be helpful.

iii. The Language of the Statute and the Standards

In order to promote inclusive equality, the wording of the statute and standards should reflect an intersectional approach. For example, the proposed federal accessibility legislation could state that: ***“Having regard to gender identity, race, sexual orientation, age, religion, family status, and other social markers, it is a ground of discrimination to deny to persons with disabilities, on an equal basis with others, access to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”***

If terms of reference are used to direct standard development committees, an intersectional approach to standard-setting should be required by members of the standard development committees and this requirement indicated in the terms of reference as well. Finally, the standards themselves should incorporate an intersectional stance with wording that reflects it.

A way to solidify the idea of accessibility as a human right is to state expressly in the statute that there is a human right to accessibility. The government should consider stating in the FAL: ***“It is a ground of discrimination not to provide accessibility and inclusion to people with disabilities to the point of undue hardship”***.

c) The Enforcement of Accessibility Standards

Standard-setting legislation can only effect social change if there is a mechanism to enforce the standards in situations when they need to be enforced. While it is wise to encourage voluntary compliance to promote a shift in Canadian culture toward understanding the importance of accessibility as a social norm, there will be circumstances where voluntary compliance will need to be supplemented by a plan for enforcement.

³² Indeed, in interviews for this study, when the theoretical prospect of placing standards within the human rights agencies, the idea was generally met with confusion or resistance because of the move away from a reactive system that had prompted the standard-setting movement in the first place.

A piece of advice received from a province that has enacted accessibility legislation is that the federal government should think through the enforcement regime carefully in advance. Indeed, there are valuable lessons that can be learned from the experiences of the provinces that have already put accessibility legislation in motion.

For example, Ontario and Manitoba have fairly similar structures, though there are minor differences in the details. The enforcement process starts with voluntary compliance by entities subject to the standard.³³ It then provides for inspections and the ordering of administrative penalties with the entity under inspection having the ability to appeal.

The systems in Ontario and Manitoba rest significantly on government discretion. It will be at the government's discretion that inspectors are put out to investigate potential violations of the standards, that administrative penalties are ordered, and that reporting to the public of contraventions of the statute will be done. Government discretion fuels any audits that may be made to ensure that accessibility plans and accessibility reports are filed. In Ontario, in 2014, freedom of information requests led to media reports that 70% of companies had not filed a report, representing 36,000 businesses across the province and that they also had not been audited.³⁴ By 2016, the Ontario government had improved compliance monitoring measures. In its 2016 *Accessibility Compliance and Enforcement Report*, the Compliance and Enforcement Branch of the Accessibility Directorate of Ontario reported having conducted over 1500 audits.³⁵ One lesson that should be learned from Ontario's experience with the AODA is that lack of political will to enforce accessibility standards can effectively obstruct the philosophical and social goals of an accessibility standards statute.³⁶

³³ See attached tables in Appendix B. Likely due to the longer period of time during which the AODA has been in place, the province of Ontario has a much more robust set of processes and procedures than Manitoba for monitoring compliance reporting. Reporting can be done through an online system and a number of guidance documents have been produced by the Compliance and Enforcement Branch of the Accessibility Directorate of Ontario. These documents provide information to persons and organizations completing reports and include informational webpages (see, for example, "Accessible workplaces", online: <https://www.ontario.ca/page/accessible-workplaces>) and guides (see, for example, *A Guide to the Integrated Accessibility Standards Regulation*, online: <https://dr6j45jk9xcmk.cloudfront.net/documents/4845/guidelines-to-iasr-english.pdf>).

³⁴ See eg Laurie Monsebraaten, "Ontario vows to enforce accessibility law: Businesses flout requirements to report on how they are meeting needs of customers with disabilities, while enforcement strategy lags" *Toronto Star*, February 20, 2014 (online: https://www.thestar.com/news/gta/2014/02/20/ontario_vows_to_enforce_accessibility_law.html).

³⁵ See "Accessibility compliance reporting activities and trends for 2016" in Government of Ontario, *Accessibility compliance and enforcement report 2016* (online: <https://www.ontario.ca/page/accessibility-compliance-and-enforcement-report-2016>). In total there were 1205 Phase 1 audits (i.e. those that focus on ensuring that organizations have submitted their self-certified accessibility compliance reports) and 361 Phase 2 audits (i.e. those in which "documents are requested and reviewed for the purposes of verifying compliance with other requirements beyond reporting") conducted in 2016.

³⁶ This has been noted elsewhere. Please see Laverne Jacobs, Victoria Cino and Britney DeCosta, "The *Accessibility for Manitobans Act*: Ambitions and Achievements in Antidiscrimination and Citizen Participation", (2016) 5 *Canadian Journal of Disability Studies* 1, online: <http://cids.uwaterloo.ca/index.php/cids/article/view/313>

It would be beneficial to have a complementary mechanism to welcome and address public complaints so that the system of enforcement does not rely entirely on governmental discretion. Members of the disability community should be able to identify and bring attention to entities that are noncompliant.

What should happen if a member of the public complains that a standard has not been met?

Complaints should do at least one of three things:

- a) they could trigger inspections, especially if a significant or set number of complaints have been received about the same violation. Currently, the Nova Scotia *Accessibility Act* is the only accessibility legislation in Canada that allows for inspections to take place in response to a complaint, though it's too early in the life of the Nova Scotia legislation to know how this provision will work in practice;³⁷
- b) they could lead to public enforcement for injunctive relief (i.e. to have the standard respected; not for compensatory damages) on the part of the complainants. This could be particularly helpful when dealing with repeat offenders. Public enforcement could be undertaken by a class of prosecutors established under the statute and the matters could be brought before the Canadian Human Rights Tribunal. The prosecutors could be cross-appointees from a federal government body that has expertise in bringing public interest human rights matters before the Canadian Human Rights Tribunal –specifically, from the Canadian Human Rights Commission. Public enforcement can ensure that large organizations comply with the standards. A lesson that can be learned from the US is that there is value in triaging public enforcement complaints so that those that are at the top of the list are of importance to the disability community (which may, for example, be determined by the volume of complaints against one organization) and/or significant cases that will provide public education and promote culture change. It seems a natural fit to have the Canadian Human Rights Tribunal determine public enforcement cases given the Tribunal's long-standing experience deciding disability matters. It also offers the opportunity to place these matters before a body that can approach the issues from an intersectional and inclusive equality lens; or
- c) at the very least, they could lead to a mechanism through which members of the disability community who believe that they have encountered a violation of a standard can register their complaint and receive information as to where they might go to have their concerns addressed (a system navigator).

In summary, as a first resort, and similar to what exists in the provinces, there should be a set of procedures for encouraging voluntary compliance under the proposed federal accessibility legislation. When it comes to potential violations of the standards, a public complaints mechanism would allow for input by members of the public who encounter barriers, and could also prevent the inspection for potential violations from resting entirely in the hands of governmental discretion.

In Canada, the enforceability of accessibility standards and the enforceability of antidiscrimination legislation are two distinct things. This is not the case in all jurisdictions. The distinction is important to note as in some jurisdictions, such as Australia, violations of accessibility standards can coincide with a

³⁷ See *Accessibility Act*, SNS 2017 c 2, s 48.

breach of the antidiscrimination legislation in an individualized context. Canada has set a unique and commendable path for developing proactive legislation that deals solely with large-scale standards in order to help advance social inclusion at a faster rate. While issues about standard enforcement are addressed in this section, this section is not meant to address individualized complaints of discrimination. Irrespective of the existence of accessibility legislation in the federal sphere, there will undoubtedly still be instances in which individuals suffer personalized discrimination. These matters should still be pursuable through the *Canadian Human Rights Act*.

As seen by the Ontario example above, audits are another tool that may be used for determining compliance with standards. Currently, auditing processes are not detailed in any Canadian accessibility legislation. Instead, they are designed by the government officials responsible for overseeing compliance with accessibility standards and their enforcement. Ontario, which has had the most extensive experience with audits, has instituted a two-phase system of auditing. Phase 1 audits focus on ensuring that entities have met their reporting requirements. During a Phase 2 audit, the Compliance and Enforcement Branch of the ADO aims to verify an organization's compliance with the substantive requirements of the standards.³⁸ The Compliance and Enforcement Branch reports that its audit exercise in 2016 was effective. In particular, 95% of the organizations audited at Phase 1 complied with reporting requirements and did not need to be subjected to a Phase 2 audit.³⁹

Auditing may be a useful exercise within the implementation of the proposed federal accessibility legislation. A lesson to be taken from the United States is that knowing that the government is serious about pursuing violations can help greatly with encouraging overall compliance.⁴⁰ Under the proposed federal accessibility legislation, audits could be initiated by the Office of Disability Issues or a similarly placed government department. In order to bring forward human rights principles and values in the auditing process, the federal government could collaborate with the Canadian Human Rights Commission. Their experience with auditing, especially in the areas of employment and pay equity, could be beneficially transferred to the context of accessibility standard compliance auditing. Moreover, the Canadian Human Rights Commission's assistance could further the goals of addressing intersectional concerns and striving for inclusive equality in the implementation of the accessibility legislation governance system.

In conclusion, as a first resort, and similar to what exists in the provinces, there should be a set of procedures for encouraging voluntary compliance under the proposed federal accessibility legislation. Auditing may be a useful tool to have within the implementation processes of the proposed federal accessibility legislation. A robust standard enforcement process should also have a place for complaints by members of the public. Public enforcement cases may be prosecuted by the Canadian Human Rights

³⁸ See "Accessibility compliance reporting activities and trends for 2016" in Government of Ontario, *Accessibility compliance and enforcement report 2016* (online: <https://www.ontario.ca/page/accessibility-compliance-and-enforcement-report-2016>).

³⁹ *Ibid.*

⁴⁰ Interview with John Wodatch, October 10, 2017. This comment was made generally with respect to compliance and enforcement and not with respect to auditing specifically. In fact, audits are not generally performed in the United States under the ADA, but rather only by a few states including Hawaii and Texas.

Commission, which would act on behalf of the complainant, and the complaints could be determined by the Canadian Human Rights Tribunal. In terms of outcomes, injunctive relief requiring compliance with the standard is appropriate. This enforcement system would not preclude individuals from pursuing individualized complaints based on violations of the *Canadian Human Rights Act* or another pertinent human rights related statute.

d) The Enforcement of Decisions

Accessibility legislation in Canada does not deal with individual complaints of disability discrimination. The system does not receive individualized complaints about discrimination; nor does it place the principal burden of identifying violations of regulatory standards on members of the public. In this way, the process is dissimilar to the systems in Australia, the US and the UK.⁴¹ In the Canadian provinces that have enacted accessibility legislation (namely, Ontario, Manitoba and Nova Scotia), directors of compliance or inspectors may issue orders requiring an individual or organization to comply with a standard, pay an administrative penalty or both. The discussion in this section therefore relates to the enforcement of orders that have been imposed on noncompliant entities.

Although there may be some variation across the provinces of Ontario, Manitoba and Nova Scotia, the steps pertinent to compliance orders typically involve⁴²:

- first, the issuing of an order of compliance,⁴³ with or without an order for an administrative penalty,⁴⁴ for not meeting reporting requirements or for a substantive violation of the standard; a notice that further administrative penalties may result from the failure to comply will also be given;

⁴¹ The UK has a hybrid system. Standards for disability access may arise through "anticipatory reasonable adjustments" (specifically, under the *Disability Discrimination Act, 1995* (DDA, 2005) and the *Equality Act, 2010*). As interpreted through codes of practice and confirmed by the courts "anticipatory reasonable adjustments" are defined as modifications that must be made if it is foreseeable that practices, policies or procedures will pose barriers to persons with disabilities. Service providers may be required to provide assistive auxiliary aids and means to overcome obstacles created by the physical features of their buildings or premises if that is reasonable and readily achievable. Anticipatory reasonable adjustments are generally identified and enforced through decisions rendered under the DDA or the *Equality Act*. Standards for disability access may also be developed through regulations created under these statutes. Violations of these regulations are generally enforced as criminal prosecutions (see, for example, *Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010*). In the UK, individualized complaints about discrimination and public prosecutions are both available avenues depending on the circumstances. (See Table 2.1 in Appendix B for more information).

⁴² For more information, please see Appendix B – Tables of Governance Functions in Canadian and International Accessibility Laws.

⁴³ There are variations as to who issues the initial order. It may be the inspector (Manitoba) or it may be the director of compliance and enforcement (Ontario).

⁴⁴ In Ontario, the AODA permits the director to order administrative penalties at the outset either alone or in addition to a compliance order (see AODA, ss 22(3),(4)).

- an opportunity for the entity that has received the order to ask for a review or reconsideration from the director of compliance who, in turn, may confirm, vary or rescind the order ;⁴⁵
- a further opportunity for an appeal to an external tribunal or the superior court. In Ontario, this appeal is done by the Licensing Appeal Tribunal (LAT); in Manitoba and Nova Scotia, an appeal may be sought before the superior court;
- further administrative penalties may be ordered for lack of compliance with the previous order if no appeal to the external body has been made, or after a decision has been made on appeal and there is still a failure to comply;⁴⁶

Moreover, administrative penalties are enforceable at the superior court by being filed with the court registrar. Decisions of administrative actors are also generally enforceable by registering them in court⁴⁷ and this would include tribunal decisions and compliance orders.

As a final stage, the accessibility legislation in all three provinces allows for the noncompliant entity to face prosecution for an offence. In Ontario, failing to comply with an order made by a director or the Tribunal is one of a number of offences listed under the AODA. Conviction for the offence can lead to a maximum fine of \$50,000 a day for individuals or \$100,000 a day for corporations.⁴⁸ In Manitoba, the AMA states that failing to comply with accessibility standards can lead to an offence with a maximum fine of \$250,000. However, the placement of the offence within the steps of the enforcement process is less clear. In particular, the AMA does not specify whether prosecution for the offence may only be pursued after an appeal has been decided.⁴⁹ In Nova Scotia, the NSAA states that if a person or organization has paid an administrative penalty for an incident of non-compliance, they may not be charged with an offence with respect to that non-compliance unless the non-compliance continues after the penalty has been paid.⁵⁰ Conviction for repeat violations of the Act, of the standards or of orders that have been issued can lead to a maximum fine of \$250,000.⁵¹

⁴⁵ Note that in Ontario, there is an additional opportunity for the allegedly noncompliant entity to be heard: before the director issues an order, those receiving the order are given notice of the nature of the order and the steps that must be taken to comply as well as an opportunity to make submissions to explain the alleged contravention (see AODA, s 22).

⁴⁶ Note that in Ontario, additional administrative penalties may also be ordered even before the matter is taken on appeal (see AODA, ss 22(5)). In Manitoba and Nova Scotia, by contrast, administrative penalties are used as part of a graduated system of enforcement. Compliance orders are first issued, followed by administrative penalties issued at the discretion of the director for failure to comply with an order to remedy the contravention of the standard. Administrative penalties are issued in Manitoba and Nova Scotia only after the period for appealing has passed or after a decision has been made on appeal (see AMA, ss 29 and NSAA, ss 52 and 55).

⁴⁷ See Cristie Ford, "Dogs and Tails: Remedies in Administrative Law" in Colleen M. Flood and Lorne Sossin, *Administrative Law in Context* (Toronto: Emond Montgomery, 2013) at 96-98.

⁴⁸ See AODA, s 37.

⁴⁹ See AMA, s 34.

⁵⁰ See NSAA, s 58.

⁵¹ See NSAA, s 68. Readers may also be interested know that in Israel, violations of accessibility laws may be addressed by a civil action brought by the plaintiff for tort damages. The individual must complain to the organization, business etc. that has violated the law first before filing a tort action for damages. Most plaintiffs prefer to register their complaints with the Commission on Equal Rights for People with Disabilities (Ministry of Justice) as the Commission may join the plaintiff's action or bring a lawsuit itself. The Commission possesses

One question that arises is how to ensure that those who have committed violations do not simply pay administrative penalties and fines without fixing the compliance issue. It is here that public enforcement and the publicity it draws may be valuable.

Finally, with respect to the incorporation of human rights laws and values in the enforcement of decisions, all administrative actors, including the LAT, must ensure that their decisions comply with and uphold the human rights legal principles applicable in the province further to the Supreme Court of Canada decision in *Tranchemontagne v Ontario (Director, Disability Support Program)*⁵². Administrative actors and the courts will also be subject to the *Charter* in rendering their decisions.

e) Encouraging Compliance

In many jurisdictions, compliance with accessibility standards is encouraged through a variety of tools: the use of technical assistance manuals directed at the public by US agencies, making relatively plain language textbooks on the law available to the public in Australia, the use of ADA National Networks in the US which are independent government-funded entities that provide information to those subject to the standards on how to comply, US tax breaks, incentive agreements under the AODA, and providing information to entities in Ontario that will soon be subject to new standards.⁵³ These are all strong tools for encouraging compliance that the federal government should consider. At the federal level, all of these tools could be adopted with modification to suit. They could also be infused with information about human rights law, such as the fact that it is quasi-constitutional and primordial, its main concepts, and that it informs the accessibility legislation.

f) Raising Public Awareness (and Promoting Systemic Culture Change)

There are several ways in which public awareness is raised about accessibility and disability rights in various jurisdictions. In Australia, the Disability Discrimination Commissioner develops an agenda of systemic disability topics to research and address. The Commissioner may work together with commissioners for other human rights at the Australian Human Rights Commission, such as the Sex Discrimination Commissioner, the Commissioner for Aboriginal and Torres Strait Islander Social Justice, and the Commissioner for LGBTI issues, which helps to develop understanding of disability issues from an intersectional perspective.

extensive powers of investigation (similar to the powers entrusted to inspectors under Canadian provincial accessibility legislation), the ability to issue compliance orders and has prosecuted for offences if the compliance issue remains unresolved.

⁵² [2006] 1 SCR 513.

⁵³ For more information, please see Appendix B – Tables of Governance Functions in Canadian and International Accessibility Laws.

In Ontario, the ADO is working on awareness-raising with children in order to spread messages about inclusion and accessibility to those who are in their early years so that they will grow up with an understanding of these ideas as part of the norm. For the most part, the degree to which human rights laws concepts and values are infused into public awareness activities are at the discretion of those responsible for the public awareness activities. However, in the context of the proposed federal accessibility legislation, this could be made a requirement by incorporating it into the statute.

In order to ensure that there is an office dedicated to raising public awareness of disability issues and to promoting a culture change in favour of inclusion of difference, it would be helpful to have a dedicated Commissioner for Accessibility and Inclusion. This proposed Commissioner would be responsible for research, education and promoting awareness. In a manner similar to the approach taken in Australia, where the Disability Discrimination Commissioner works with other commissioners to promote awareness and conduct public education of systemic issues, the proposed Commissioner for Accessibility and Inclusion could work with the Canadian Human Rights Commission in order to promote intersectional perspectives on disability issues in the federal sphere. It would also be effective to have a statutory requirement that every federal government department have an office dedicated to accessibility which would work with and consult the proposed Commissioner to promote awareness and culture change across the federal sphere.

g) Public Education

The jurisdictions examined in this study employ several effective public education methods. For example, in the early years of public enforcement, the US Department of Justice chose to bring law suits in high profile cases of disability discrimination. Public enforcement was used to ensure that the Empire State Building and that the Safeway supermarket store chain became accessible. These cases not only helped ensure compliance but taught the general public about the importance of disability rights.

Closer to home, in Ontario, the ADO has created a video on the relationship between the AODA and the Ontario *Human Rights Code*. This public education tool was made widely available to assist the general public in recognizing its obligations. In Manitoba, the Disability Issues Office regularly uses the language of antidiscrimination drawn from principles derived under human rights jurisprudence (like reasonable accommodation and undue hardship) in the training sessions about accessibility standards that it delivers around the province.⁵⁴

As with raising public awareness and promoting systemic culture change, the degree to which human rights laws, concepts, and values are infused into public education activities are at the discretion of the government officials responsible for those activities. This could be made more concrete in the statute by

⁵⁴ For more information, please see Appendix B – Tables of Governance Functions in Canadian and International Accessibility Laws.

creating a Commissioner as discussed in the previous section. It also means paying attention to the expertise and values that the person appointed should bring to the job and specifying the expertise and values required in the statute.

Some examples include the following from the statutory language appointing the Australian Disability Discrimination Commissioner. The *DDA* states:

Part 6—Disability Discrimination Commissioner

113 Disability Discrimination Commissioner

(1) There is to be a Disability Discrimination Commissioner, who is to be appointed by the Governor-General.

(2) A person is not qualified to be appointed as the Disability Discrimination Commissioner unless the Minister is satisfied that the person has appropriate qualifications, knowledge or experience.

The example from the DDA provides a significant amount of discretion to the Minister. An example of a more detailed set of requirements is found in the *Canadian Human Rights Act*⁵⁵ :

48.1 Qualifications for appointment of members [of the Canadian Human Rights Tribunal]

(2) Persons appointed as members of the Tribunal must
have experience, expertise and interest in, and sensitivity
to, human rights.

The proposed Commissioner should have experience in disability rights, advocacy, research, public education, community affairs and relevant law. They should also possess the ability to move an agenda forward that will bring the disability community, the public and public servants to work together with the Commissioner to advance disability, accessibility and inclusion issues. Language similar to the appointment provision under the *Canadian Human Right Act* for members of the Canadian Human Rights Tribunal could be fashioned to establish a Commissioner with appropriate qualifications under the proposed federal accessibility legislation.

⁵⁵ R.S.C., 1985, c. H-6, s 48.1(2), online: <http://laws.justice.gc.ca/eng/acts/H-6/FullText.html> .

6) Other Lessons Learned– Successes, Challenges & Key Considerations for the Federal Government

One piece of advice received from another jurisdiction was that it can be useful for a country to work within the types of laws that are familiar. While this does not mean refraining from being innovators in combating disability discrimination, the point is that this jurisdiction had had success in using familiar statutory language from legislation that became redundant once the newer disability law was in effect.

Other key considerations raised by interviewees include the name of the statute. The Australian Disability Discrimination Commissioner mentioned, for example, that calling their Act the *Disability Discrimination Act* and the Commissioner the Disability Discrimination Commissioner had a negative spin, inspiring people to think that the job was all about finding people who had done wrong. This could be avoided with a more positive sounding name. This builds on ideas coming out of Ontario that the mobilizing language today is about inclusion and accessibility. At the same time, one wonders if there may be concerns by the disability community about losing the momentum gained to protect disability rights by incorporating those rights into a somewhat broader envelope. If time permits, this may be an issue to consult on or to consider in light of any previous consultations that may have touched on this question.

Suggestions were also made for collaboration across federal, provincial and territorial governments in discussing standards so that an individual with a disability in a location such as Ottawa, where more than one jurisdiction may apply, can have greater uniformity in the law.

A final large consideration was presented by the Canadian Human Rights Commission. They have raised the question of whether the administration of the proposed federal accessibility legislation should form part of the work of the Canadian Human Rights Commission. The rationale given for doing this is, in part, that the Commission is the National Human Rights Institution for UN matters including those related to the CRPD. The Commission also has expertise in human rights and audits, as mentioned above. There are institutional benefits that can be gained by having the functioning of the proposed federal legislation coincide with the Canadian Human Rights Commission's work. There are definitely roles that the Canadian Human Rights Commission can play, including a role in assisting with intersectionality and inclusive equality. However, it would be wise to consult or consider the opinions of members of the disability community and organizations dedicated to disability issues before the large amount of work that has been done to obtain a distinct proactive legislation through standard-setting is attached to a system known for reactive regulation. In this study, the idea of having human rights commissions take charge of accessibility legislation was met by confusion if not surprise by government official interviewees, as the proactive system was a response to the challenges of the reactive regulatory approach of the commissions.

In summary, working with familiar statutory terminology, using the language of accessibility and inclusion, keeping a place for federal provincial and territorial consultation and the possibility of using

the Canadian Human Rights Commission to administer the proposed federal accessibility legislation are additional considerations derived from interviews conducted with government officials for this study.

7) Summary of Recommendations

In conclusion, the following recommendations are based on the research findings of this study:

1. Ensure that all governance functions in the proposed federal accessibility legislation (FAL) promote inclusive equality—a theoretical framework put forward by the UN that focuses on recognizing the intersectionality of individuals with disabilities in their experiences of disability discrimination. Power relations and the socio-historical context surrounding legal efforts to realize equality by people with disabilities within a reactive regulatory system should also be considered through this lens.
2. Analyze all the functions of the proposed federal accessibility legislation with an eye to determining whether they promote an inclusive approach to equality for persons with disabilities.
3. In order to promote inclusive equality, the wording of the statute and standards should foster an intersectional approach. The proposed federal accessibility legislation could state, for example, that: ***“Having regard to gender identity, race, sexual orientation, age, religion, family status, and other social markers, it is a ground of discrimination to deny to persons with disabilities, on an equal basis with others, access to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas.”***
4. To solidify the idea of accessibility as human right, the federal government should state expressly in the new statute that there is a human right to accessibility. The government should consider stating in the federal accessibility legislation: ***“It is a ground of discrimination not to provide accessibility and inclusion to people with disabilities to the point of undue hardship”***.
5. The federal government should share responsibility for developing standards among ministers with relevant subject-matter portfolios. The federal government minister or agency responsible for taking the lead on accessibility standards development should consult with relevant subject matter ministers. This will assist in making accessibility issues pervasive across important social areas.
6. The federal government should maintain the consultative approach to developing standards that has been established in the accessibility legislation in Ontario, Manitoba and Nova Scotia, particularly as it is in keeping with the CRPD requirements to include people with disabilities in the development of laws and policies that affect them.
7. More technical and human rights supports should be brought into the development of standards. Technical expertise could usefully be brought into the development of standards so that the burden of finding the right technical tools does not rest on members of the disability community who may not necessarily have that technical knowledge. The federal government

should also make efforts to ensure that human rights law experts (who could be members of the Canadian Human Rights Commission (CHRC)) participate in the design of standards.

8. With respect to the connection between accessibility standards and antidiscrimination (human rights) law, it is not unusual for accessibility legislation to provide that persons with disabilities may avail themselves of any greater legal protections provided to them under other laws applicable in that jurisdiction, such as human rights law. The *ADA*, *AODA*, and *AMA* also have similar provisions. A recommendation for regulating confusion amongst the public that can arise with this situation is that the federal government should make funding available for information centres that can provide the general public and those who will be subject to the regulations with information on how to comply. The advantage of these information centres is that those affected by the standards will be able to ask questions and explore options for compliance without revealing themselves to the government regulator.
9. The federal government should be hesitant to move away from a framework in which standards are created as part of a proactive regulatory system. At the very least, before joining a standard-setting regime with a reactive regulatory system, the federal government should seek more insight from the disability community. If housed within a reactive regulatory system, accessibility standards may present a confusing regulatory landscape which may not be well received by the disability community or the government officials tasked with running it. The purpose of the social movement toward accessibility standards legislation was to establish a distinct proactive means of realizing equality for people with disabilities. Placing accessibility standards within a reactive regulatory system may give the perception of weakening the distinction that has been long fought in its creation.
10. Placing regulatory standards within antidiscrimination law may also restrict innovation in the development of future legal standards. In particular, a legal debate has arisen in the Australian context as to whether the standards can ever be understood to go beyond the scope of the current discrimination law that enables them.
11. With respect to the enforcement of accessibility standards, as a first resort, there should be a robust system of encouraging voluntary compliance, with audits initiated by the Office of Disability Issues or a similarly placed government department which collaborates with the Canadian Human Rights Commission. The Canadian Human Rights Commission's experience with auditing, especially in the areas of employment and pay equity would have value in the disability context, bringing an intersectional lens to concerns and promoting an inclusive equality approach.
12. The systems of standard enforcement in Ontario and Manitoba rest significantly on government discretion. It would be beneficial to have an additional mechanism incorporated to welcome and address public complaints. Complaints should do at least one of three things: a) trigger inspections; b) lead to public enforcement for injunctive relief; or c) provide system navigation to the person with concerns.
13. There should be strong support for members of the disability community who wish to bring forward complaints about breaches or violations of standards. A public enforcement process similar to the one in the US should be adopted. Prosecutors should be cross- appointees from the Canadian Human Rights Commission and the matters should be brought before the

Canadian Human Rights Tribunal. Cases that are important to the disability community should be among those highly prioritized for support through public enforcement. The public enforcement mechanism should lead to injunctive relief to ensure that the standards are respected. Individual should still be able to bring complaints about personalized cases of discrimination through the regular channels of the regulatory reactive system under the *Canadian Human Rights Act* or another human rights related statute, in order to receive the available relief.

14. With respect to the enforcement of decisions (ie the enforcement of orders already imposed on noncompliant entities), one question that arises is how to ensure that those who have committed violations do not simply pay administrative penalties and fines without fixing the compliance issue. It is here that public enforcement (as discussed in the enforcement of accessibility standards) and the publicity it draws can be valuable. Beyond that, the approach taken in the provinces should be followed as it is more relevant than those of the foreign jurisdictions studied and shows potential for effectiveness.
15. There are several strong tools for encouraging compliance that exist in other jurisdictions and which the federal government should consider. All of the tools identified for encouraging compliance in this study could be infused with information about human rights law, the fact that it is quasi-constitutional and primordial, its main concepts, and that it informs the accessibility legislation.
16. There are several ways in which public awareness is raised about accessibility and disability rights in various jurisdictions. In order to ensure that there is an office dedicated to raising public awareness of disability issues and to promoting culture change in favour of inclusion of difference, it would be helpful to have a dedicated Commissioner responsible for research, education and promoting awareness. In a manner similar to the approach taken in Australia, where the Disability Discrimination Commissioner works with other commissioners to promote awareness and conduct public education of systemic issues, the proposed Commissioner could work with the Canadian Human Rights Commission(er) in order to promote intersectional perspectives on disability issues in the federal sphere.
17. It would also be effective to initiate a statutory requirement that every federal government department have an office dedicated to accessibility which would work with and consult the Commissioner to promote awareness and culture change across the federal sphere.
18. As with raising public awareness and promoting systemic culture change, the degree to which human rights laws, concepts, and values are infused into public education activities are at the discretion of the government officials responsible for those activities. This could be made more concrete in the statute by creating a Commissioner as discussed in the section on public education.
19. Attention should also be paid in the statute to the expertise and values that the person appointed as Commissioner should bring to the job. The proposed Commissioner should have experience in disability rights, advocacy, research, public education, community affairs and relevant law. They should also possess the ability to move an agenda forward that will bring the disability community, the public and public servants to work together with the Commissioner to advance disability, accessibility and inclusion issues. Language similar to the appointment

provision under the *Canadian Human Right Act* for members of the Canadian Human Rights Tribunal could be fashioned to establish a Commissioner with appropriate qualifications under the proposed federal accessibility legislation.

20. Working with familiar statutory terminology, using the language of accessibility and inclusion, safeguarding a place for federal provincial and territorial consultation and the possibility of using the Canadian Human Rights Commission to administer the proposed federal accessibility legislation are additional considerations that could be explored in developing the proposed federal accessibility legislation.

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Appendix A- Interview Questions and List of Interviewees

Interview Topic Guide

The Interplay between Human Rights Law and Accessibility Laws

Interviews were conducted with past and current government officials who have worked closely on the administration and enforcement of accessibility standard legislation. Interviews were semi-structured, allowing for the participants to expand on their answers. Depending on the jurisdiction and the background information available, not every question needed to be explored in-depth with every interviewee.*

1. Questions relating to the implementation of the accessibility legislation.
 - a. When was it enacted?
 - b. What was the impetus for it to be enacted?
2. Questions relating to the interviewee's role in the implementation of the accessibility legislation.
 - a. How were you involved in its enactment? (Or if it is currently being enacted question should be in present tense-how are you involved in its enactment?)
 - i. what was your job title at the time of your work on the enactment of the accessibility legislation? (Or question to be posed in present tense if applicable)
 - ii. how long did you work in this position? (Or question to be posed in present tense if applicable)
 - iii. what was the nature of your duties? (Or question to be posed in present tense if applicable)
 - iv. who (i.e. what position or job title) did/do you report to?
3. In what ways does the accessibility legislation interact with human rights legislation?
 - a. Interaction between the accessibility legislation and human rights legislation at the regional (e.g. municipal, state, provincial, etc) level?
 - b. Interaction between the accessibility legislation and human rights legislation at the national level?
 - c. Interaction between accessibility legislation and human rights legislation at the international level (i.e. bringing in the CRPD or any other international treaties that affect disability)
 - d. In cases where there was interaction between the two laws, which law took precedent?
 - e. Was the fact of either law taking precedent in keeping with the principles set out in the law itself?

* In addition, officials from the Canadian Human Rights Commission were interviewed for more information on how the Canadian Human Rights Commission worked and their views on how the proposed federal accessibility legislation may work with the *Canadian Human Rights Act*.

- f. Was the government ever involved in promoting one law over another?
 - i. If so,
 1. why did it do so?
 2. how did it do so?
 - ii. If not,
 1. why did it not do so?
4. Questions relating to the interaction between the accessibility legislation and human rights legislation in specific aspects of governance. In what ways did the accessibility legislation interact with human rights legislation, or more specifically, did one law take precedence over the other with respect to:
- a. *public education on accessibility matters, raising awareness of accessibility issues, and promoting systemic culture change;*
 - b. *In the resolution of complaints regarding accessibility?*
 - c. *In complaint/dispute resolution processes;*
 - d. *compliance and enforcement;*
 - i. *of the law;*
 - ii. *of decisions made by an investigative and/or oversight authority;*
 - iii. *mechanisms to monitor actions and report on adherence to the law(s);*
 - e. *Governance and government machinery, including potential overlap and rationale for the precedence of a specific law*

For each of the questions in this section, the following was asked, if necessary:

- i. please provide an explanation of how the interplay works from the perspective of government aims and objectives for [this governance function] and the means of achieving those objectives (i.e. what tools to the government put in place to achieve those objectives and how do they connect to accessibility and human rights law)
 - ii. Do you feel that this approach was successful? Why or why not?
- 5. Questions relating to perceived challenges in the development of accessibility legislation.**
- a) What lessons would you pass on from the experience in your jurisdiction of enacting accessibility legislation, particularly as it relates to the interplay with human rights law?
 - b) What considerations would you suggest that the Canadian federal government pay attention to in establishing accessibility legislation?

6. Is there anything else that you would like to add?

List of Interviewees

Australia	Alastair McEwin	Disability Discrimination Commissioner for Australia
United States	John Wodatch	Former Chief of the Disability Rights Section in the Civil Rights Section of Department of Justice (Retired)
Israel*	Zvia Admon	Drafted the customer service regulation for the Commission on Equal Rights for People with Disabilities, Ministry of Justice
Ontario	Alf Spencer	Director of the Outreach & Strategic Initiatives Branch, Accessibility Directorate Ontario
Nova Scotia	Gerry Post	Executive Director of the Accessibility Directorate, Nova Scotia
Manitoba	Yutta Fricke	Executive Director of the Disabilities Issues Office, Manitoba
Canadian Human Rights Commission	<ul style="list-style-type: none"> a. Natalie Dagenais, Director b. Marcella Daye, Senior Policy Advisor c. Rebecca Gowan, Senior Policy Advisor 	Policy, Research and International Division, Promotion Branch

* This interview provided useful background information. However, due to the unavailability of an official version of the Israeli laws in English, it was not possible to complete a full analysis of the laws in this jurisdiction.

Appendix B – Tables of Governance Functions in Canadian and International Accessibility Laws

Tables of Governance Functions in Canadian and International Accessibility Laws

Accessibility Standards, Models of Administrative Governance and Human Rights

1. Australia

1.1 Australia - Functions Examined

Statute(s): *Disability Discrimination Act, 1992 (Cth)*¹ (DDA); *Australian Human Rights Commission Act, 1986 (Cth)*² (AHRCA)

Power or Responsibility	Body that exercises the power or responsibility	How power or responsibility is executed
Power to create accessibility standards	Power resides within accessibility legislation, exercised at discretion of responsible minister	<i>s. 31 DDA -The Minister may, by legislative instrument, formulate standards, to be known as disability standards, in relation to any area in which it is unlawful ...for a person to discriminate against another person on the ground of a disability of the other person.</i>
Power to enforce accessibility standards	The antidiscrimination legislation creates civil wrongs similar to torts. ³ Individuals must bring claims if they believe they have been subjected to disability discrimination, including breach of the disability standards (ss. 46P and 46PO AHRCA). There is no public enforcement (ie no prosecution of the Act by public officials).	Two-stage enforcement model: a) complaint must first be lodged at the governmental agency (Australian Human Rights Commission (AHRCA) at the Commonwealth level or the equivalent State or Territory agencies (Equal Opportunity Commissions or Anti-discrimination Boards)), which can investigate and conduct conciliation but is not a court and cannot make a determination as to whether discrimination has occurred; b) if the complaint cannot be resolved, the person

¹ Online: <https://www.legislation.gov.au/Details/C2017C00339>.

² Online: <https://www.legislation.gov.au/Details/C2017C00143>.

³ Neil Rees, Simon Rice & Dominique Allen, *Australian Anti-Discrimination Law* 2nd edition (Federation Press: Sydney, 2014) at 1.3.1.

		who launched the complaint may choose to proceed to a court or tribunal for adjudication. ⁴ Section 46PO(4) of the (AHRCA) provides remedies of damages, performing and refraining from actions etc
Power to enforce decisions	Federal Court	AHRC conciliations are not 'enforceable'. Due to constitutional separation of powers, the AHRC cannot register and enforce its own decisions. ⁵ If conciliation is not reached or if conciliation is reached and not obeyed, the complainant can bring the matter to the Federal Court to have it heard <i>de novo</i> . The Disability Discrimination Commissioner can be made an <i>amicus curiae</i> to the court.
Power to encourage compliance	AHRC	DDA, ss. 67(1)(g); Part 3, DDA on action plans & DDA, ss. 67(1)(f)
Responsibility to raise public awareness (and promote systemic culture change)	AHRC, Disability Discrimination Commissioner ⁶	AHRCA, s. 11(1)(g)
Responsibility for public education	AHRC, Disability Discrimination Commissioner ⁷	AHRCA, s. 11(1)(g),(h) AHRC Legal Department publishes web textbook, <i>Federal Discrimination Law</i> , ⁸ on its website to assist the public understand the law and meet its obligations

⁴ *Ibid* at 1.3.2, 1.3.3.

⁵ See *Brandy v Human Rights and Equal Opportunity Commission*, (1995) 183 CLR 245 and the *Human Rights Legislation Amendment Act (No 1) (1999)*.

⁶ Interview with Commissioner, October 30, 2017.

⁷ Interview with Commissioner, October 30, 2017.

⁸ <http://www.humanrights.gov.au/our-work/legal/publications/federal-discrimination-law-2016>.

1.2 Australia - The Incorporation of Human Rights/Antidiscrimination Laws

Relevant Legislation: CRPD, DDA and AHRCA (definition of “human rights” in AHRCA and DDA incorporates Australia’s obligations under the CRPD)⁹

Power or Responsibility	How Human Rights/Antidiscrimination Laws Are Incorporated	Useful Notes
Creation of accessibility standards	Under the AHRCA, Australia defines “human rights law” as law generated by international convention such as the CRPD. (“Antidiscrimination laws” are those enacted under domestic law, such as AHRCA and DDA.) Australia’s AHRC considers many of the obligations in the CRPD to exist already in the DDA. ¹⁰ Its creation of disability standards would necessarily be guided by Australia’s obligations under the CRPD. Since the standards are formed by virtue of the DDA, standards would also need to conform to the laws and antidiscrimination principles developed under the DDA. (See also Useful Notes column and comments in the next row).	One particular issue that arises is whether the standard can ever go beyond the scope of the DDA, its enabling statute. This could be a problem for any jurisdiction that wants to create legislative standards that are broader than the enabling legislation. There may be ways around this issue through legislative drafting. Note that in Australia, antidiscrimination legislation does not occupy a quasi-constitutional role like it does in Canada. This too might limit the scope of any standards created as delegated legislation under the DDA, more so than in Canada.
Enforcement of accessibility standards	There are 3 accessibility standards (for Transport, Education and Premises). Breach of a standard does not mean discrimination under the DDA. General breaches of the antidiscrimination	Recent cases include <i>Haraksin v Murrays Australia Limited (No 2)</i> [2013] FCA 217 at para 86; <i>Innes v Rail Corporation of NSW (No 2)</i> 2013 FMCA 36.

⁹ See AHRCA, ss 11(1)(f), 20(1).

¹⁰ See AHRC, “Fact Sheet 7: Australia and Human Rights Treaties”, online: <https://www.humanrights.gov.au/human-rights-explained-fact-sheet-7australia-and-human-rights-treaties>.

	legislation result in application of the principles developed under the antidiscrimination law (DDA)	
Enforcement of decisions	Federal Court should be guided by Australia's obligations under the CRPD in interpreting the DDA and AHRCA.	
Encouraging compliance	Would be guided by Australia's obligations under the CRPD. Would also need to conform to the antidiscrimination laws and principles developed under the AHRCA and DDA.	See ss. 67(1)(g) DDA; Part 3, DDA on Action plans & DDA, ss. 67(1)(f) See also the AHRC's encouragement of organizations to create proactive Action Plans ¹¹
Raising public awareness (and promoting systemic culture change)	Would be guided by Australia's obligations under the CRPD. Would also need to conform to the antidiscrimination laws and principles developed under the AHRCA and DDA.	Disability Discrimination Commissioner develops agenda of topics to research and publicly raise. May work in tandem with Commissioners for other human rights at the AHRC, such as the Sex Discrimination Commissioner. See also AHRC's encouragement of organizations to create proactive Action Plans on website ¹²
Public education	Would be guided by Australia's obligations under the CRPD. Would also need to conform to the antidiscrimination laws and principles developed under the AHRCA and DDA.	Disability Discrimination Commissioner develops an agenda of topics to research and publicly raise. May work in tandem with Commissioners for other human rights at the AHRC, such as the Sex Discrimination Commissioner.

¹¹ <http://www.humanrights.gov.au/disability-discrimination-act-action-plans-guide-business>

¹² <http://www.humanrights.gov.au/disability-discrimination-act-action-plans-guide-business>

2. United Kingdom

2.1 UK - Functions Examined

Statute(s): *Disability Discrimination Act, 1995* (as amended by *DDA, 2005*) (DDA, 1995); *Equality Act 2006*, *Equality Act, 2010*

Power or Responsibility	Body that exercises the power or responsibility	How power or responsibility is executed
Power to create accessibility standards	<p>Standards are created as regulations under the DDA, 1995 by the Secretary of State.</p> <p>The DDA, 1995 and the <i>Equality Act, 2010</i> also allow for “anticipatory reasonable adjustments”. As interpreted through codes of practice and confirmed by the courts “anticipatory reasonable adjustments” are defined as modifications that must be made if it is foreseeable that practices, policies or procedures will pose barriers to persons with disabilities. Service providers may be required to provide assistive auxiliary aids and means to overcome obstacles created by the physical features of their buildings or premises if that is reasonable and readily achievable.</p>	<p>For example, standards relating to transportation for persons with disabilities have been created in the <i>Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 (RVAR 2010)</i> and the <i>Public Service Vehicles Accessibility Regulations 2000 (PSVAR)</i>.</p> <p>See DDA, 1995 ss 21 (“disabled persons”), <i>Equality Act, 2010</i>, s 20, Disability Rights Commission, <i>Code of Practice- Rights of Access: services to the public, public authority functions, private clubs and premises</i> (2006), ss 6.14-6.16,¹³ <i>Roads v Central Trains Ltd</i> [2004] EWCA Civ 1541, and <i>Ross v Ryanair Limited and Stansted Airport Limited</i> [2004] EWCA Civ 1751.</p>

¹³ The relevant ideas under this Code have been brought forward under the *Equality Act, 2010*. See Equality and Human Rights Commission, *Services, public functions and associations Statutory Code of Practice* (2011), Chapter 7; online: <https://www.equalityhumanrights.com/en/publication-download/services-public-functions-and-associations-statutory-code-practice>

Power to enforce accessibility standards	<p>Disability access standards are enforced by the industry-related governmental agency.</p> <p>Individuals must bring claims if they believe they have been subjected to disability discrimination.</p> <p>The Equality and Human Rights Commission may assist individuals with disability discrimination claims that fall under the <i>Equality Act</i>.</p>	<p>For example, the Office of Rail and Road is responsible for enforcing the <i>Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010</i> using powers conferred on it under the <i>Health and Safety at Work etc Act 1974</i> (RVAR 2010, s. 6). (See also Office of Rail and Road, <i>Health and safety investigation and enforcement powers</i>¹⁵.)</p> <p>Penalties ranging from fines to imprisonment may be imposed for breach of regulations. See, for example, <i>RVAR 2010</i>, s. 6.</p> <p><i>Equality Act, 2006</i></p> <p>The remedies available to the claimant vary depending on the area in which the discrimination has arisen. For example, with respect to employment, the tribunal may make a declaration, order compensation or required the respondent to perform specific action (DDA, 1995). With regard to the</p>

¹⁵ <http://orr.gov.uk/rail/health-and-safety/health-and-safety-enforcement>

	<p>The Commission may provide legal assistance to victims of discrimination, intervene in or institute legal proceedings, including judicial review, and make applications to court for injunctions¹⁴</p>	<p>provision of goods and services, the DDA, 1995 creates civil wrongs that lead to a claim in tort law with similar remedies. (See section 25 DDA, 1995).</p> <p>The Commission also provides claimants with information on the Equality Advisory and Support Service (EASS). The EASS is a government funded helpline. It is independent of the Commission, but “ it works with the Commission by referring cases it thinks might be strategic and sharing information to inform [...] wider work on equality and human rights”.¹⁶</p>
Power to enforce decisions	<p>The Equality and Human Rights Commission may assist an individual who is or may become a party to legal proceedings relating to disability discrimination under the <i>Equality Act</i>.</p>	<p>The matters are brought to a court or tribunal on first instance, or, on judicial review, to a court. The decisions are enforceable.</p> <p>The Commission does not assist with every case but develops and follows a strategic litigation policy created through a public consultation.¹⁷</p>

¹⁴ Taken from the Equality and Human Rights Commission website, “Commission powers”, online: <https://www.equalityhumanrights.com/en/court-action> . See also *Equality Act 2006*, s. 28.

¹⁶ See “Legal Assistance”, online: <https://www.equalityhumanrights.com/en/court-action> and the EASS website: <https://www.equalityadvisoryservice.com/> .

¹⁷ <https://www.equalityhumanrights.com/en/legal-responses/strategic-litigation/strategic-litigation-policy> .

Power to encourage compliance	Equality and Human Rights Commission	<p>The Equality and Human Rights Commission has an enforcement action plan.</p> <p>Where attempts to encourage compliance have failed, the Commission may take formal enforcement action, including: inquiries, investigations, and issuing unlawful act notices, agreements, assessments and compliance notices.¹⁸</p>
Responsibility to raise public awareness (and promote systemic culture change)	Equality and Human Rights Commission	The Commission develops and undertakes specific research and awareness-raising projects.
Responsibility for public education	Equality and Human Rights Commission	The Commission provides information to the public on human rights.

2.2 UK - The Incorporation of Human Rights/Antidiscrimination Laws

Disability Discrimination Act, 1995 (as amended by *DDA, 2005*) (DDA, 1995); ***Equality Act 2006, Equality Act, 2010***

Power or Responsibility	How Human Rights/Antidiscrimination Laws Are Incorporated	Useful Notes
Creation of accessibility standards	Standards such as the <i>Rail Vehicle Accessibility (Non-Interoperable Rail System) Regulations 2010 (RVAR 2010)</i> are created by virtue of the DDA, 1995. The DDA, 1995 does not indicate	<p>DDA, 1995, s 46</p> <p>DDA, 1995, s 46 (11) states: "Before making any regulations under subsection (1) or section 47 the Secretary of State shall consult the</p>

¹⁸ Taken from the Equality and Human Rights Commission website, "Inquiries, investigations and wider powers", online: <https://www.equalityhumanrights.com/en/our-powers/inquiries-investigations-and-wider-powers>.

	that antidiscrimination principles are to apply to their design by the Secretary of State responsible for the industry. That is left to the discretion of the Secretary of State . However, the Secretary of State must “consult the Disabled Persons Transport Advisory Committee and such other representative organisations” as the Secretary of State thinks fit.”	<i>Disabled Persons Transport Advisory Committee and such other representative organisations as he thinks fit.”</i>
Enforcement of accessibility standards	Under the DDA, 1995, provision is made for how the standards will be enforced. Standards developing through the application of the anticipatory reasonable adjustments doctrine will be enforced using human rights principles.	For example, the DDA, 1995 provides that breach of the <i>RVAR 2010</i> is punishable as a criminal offense. There is no interaction foreseen with the antidiscrimination laws and principles.
Enforcement of decisions	Decisions relating to standards are enforced through the court or tribunal designated by the DDA, 1995.	
Encouraging compliance	The Equality and Human Rights Commission works within a human rights framework.	
Raising public awareness (and promoting systemic culture change)	The Equality and Human Rights Commission works within human rights framework.	
Public education	The Equality and Human Rights Commission works within a human rights framework.	

3. United States

3.1 US - Functions Examined

Statute(s): *Americans with Disabilities Act of 1990 (as amended by ADA Amendments Act of 2008)*¹⁹(ADA)

Power or Responsibility	Body that exercises the power or responsibility	How power or responsibility is executed
Power to create accessibility standards	<p>Power finds its authority in the ADA (eg ss 12163 and 12164), and is exercised by the US Access Board.</p> <p>The US Access Board comprises 25 members. 12 members are representatives of various federal departments. 13 members are members of the public and people with disabilities who are appointed by the President of the United States. It develops accessibility guidelines and standards under various pieces of legislation and is a leader in accessible design. It is established as a coordinating body among federal government agencies.</p>	<p>The Access Board creates standards relating to the built environment, transit vehicles, telecommunications equipment, medical diagnostic equipment, and information technology.(ADA Section 12204(b))</p> <p>It follows a procedure that allows for notice and comment from the public (pursuant to the <i>Administrative Procedures Act</i>). It also organizes advisory committees or regulatory negotiation committees as part of this process to allow stakeholders and interested parties to develop consensus recommendations on the substance of a rule. A regulatory impact assessment is also done.²⁰</p>
Power to enforce accessibility standards	<p><i>Note that the following departments enforce both the accessibility standards created by the US Access Board and the ADA antidiscrimination provisions relating to the subject matter of the title:</i></p> <p>i) Employment – U.S. Equal</p>	<p>DOJ (Public Accommodations) used as example. Public enforcement, where the government agency acts on behalf of person with a disability, is possible, particularly for cases where the PWD is suing a large chain/commercial entity.</p>

¹⁹ 42 USCS, online: <https://www.ada.gov/pubs/adastatute08.htm> .

²⁰ This information has largely been taken from the Access Board website. See in particular: <https://www.access-board.gov/the-board> and <https://www.access-board.gov/the-board/rulemaking> .

	<p>Employment Opportunity Commission (EEOC)</p> <p>ii) Public entities, including state and local government agencies, and public transportation²¹ – DOJ & Dept of Transportation (DOT)</p> <p>iii) Public Accommodations & Commercial Facilities – Dept of Justice (DOJ).²²</p> <p>iv) Communications</p>	Matters are brought as civil suits before the courts. Prior to that, parties engage in mediation. Mediators are trained mediators. DOJ pays for all mediators but is not involved in individual cases. DOJ can only bring a lawsuit if negotiations have failed.
Power to enforce decisions		<p>If mediation settlements are not complied with, the public entity may be taken to court by DOJ or the individual may obtain a right to sue letter from DOJ.</p> <p>Civil suits are enforceable by the courts.</p> <p>Under title III, the Department of Justice may also obtain civil penalties of up to \$55,000 for the first violation and \$110,000 for any subsequent violation.²³</p>
Power to encourage compliance	DOJ (Public Accommodations used as an example): 42 USC § 12188(b)(1)(A)(i) permits DOJ to “undertake periodic reviews of compliance of	After inspection, agreement may be reached between DOJ and the public entity. It may be stated in the settlement agreement that, if there is a violation, a civil action will be

²¹ Note that antidiscrimination air travel regulations are created under the *Air Carrier Access Act* (not the ADA) but enforced by the administrative regime created through DOT, with appeal to the courts. There are exceptions for intercity and commuter rail (See Mark C Weber, *Understanding Disability Law* (Durham: Carolina Academic Press, 2012).

²² See also the enforcement related provisions in the *Americans with Disabilities Act Title III Regulations*, 28 CFR Part 36.

²³ https://www.ada.gov/enforce_footer.htm

	<p>covered entities".</p> <p>In practice, these inspections are only undertaken after a complaint is made by the individual. There is no regular audit function.²⁴</p> <p>DOJ Publishes the ADA Title III Technical Assistance Manual for the public to know its rights and obligations and in order "to promote voluntary compliance". See also generally ADA, §12206(3)</p>	<p>pursued.²⁵</p> <p>ADA National Network centers are run by the Department of Health and Human Services. (ADATA.org) . The ADA National Network centers provide businesses with information on how to comply with the ADA.</p>
Responsibility to raise public awareness (and promote systemic culture change)	DOJ (Public Accommodations used as an example). Responsibility shared with other agencies.	<p>DOJ chose high profile cases of disability discrimination in public places to bring law suits in order to draw attention to the importance of access (key cases like Empire State Building and Safeway supermarket chain).</p> <p>Responsibility shared with other agencies such as Health and Human Services (above) and the federal government which provides small businesses tax breaks in order for them to become compliant.</p>
Responsibility for public education	DOJ (Public Accommodations used as an example)	<p>ADA Technical Assistance Manuals- ADA, §12206(3).</p> <p>The high-profile cases (see above under public awareness) were also simultaneously used as opportunities to educate the public about the need for accessibility and the rights of people</p>

²⁴ Exceptionally, there are a few states that do perform audits with inspectors including Texas, California and Hawaii. (Interview with John Wodatch, October 10, 2017).

²⁵ Such settlements are posted on the ADA.gov website. See, for example, *Altamarea, LLC Settlement Agreement -- re: making goods and services at a restaurant available to people with disabilities* (8/19/15), online: https://www.ada.gov/altamarea_sa.html

	ADA National Network Centers run by Department of Health and Human Services.	with disabilities. ADA National Network Centers run by Department of Health and Human Services.
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3.2 US - The Incorporation of Human Rights/Antidiscrimination Laws

Relevant Legislation: ADA. Human rights statutes do not exist consistently across all states or cities. The US has also not ratified the UNCRPD.

Note, however, that the ADA does not limit any equal or greater protections that exist under federal, state or local law²⁶ (similar to the AODA).

(No table necessary.)

²⁶ ADA, § 12201(b).

4. Canada

4.1 Ontario

4.1.1 Ontario - Functions Examined

Statute(s): *Accessibility for Ontarians with Disabilities Act, 2005*²⁷ (AODA)

Power or Responsibility	Body(-ies) that exercise(s) the power or responsibility	How power or responsibility is executed
Power to create accessibility standards	Minister, Standard Development Committees (SDCs), Accessibility Directorate of Ontario (ADO), Accessibility Standards Advisory Council (ASAC)	Minister sets terms of reference and with the assistance of ADO establishes SDCs which develop the standards; ASAC advises the Minister on the process and progress of standard development; standards come into force at varying dates; overall date for province to be accessible is 2025.
Power to enforce accessibility standards	Director (appointed by the Deputy Minister (s 30)), ADO, Inspectors, Licence Appeal Tribunal (LAT)	Those subject to the standards are to file accessibility reports with a director (s 14); a director may review an accessibility report to determine whether a standard has been complied with, requesting additional information as necessary (ss 16, 17). One or more inspectors shall be appointed by the Deputy Minister within a reasonable time after the creation of the first standard to assist with any aspect of the AODA or the

²⁷SO 2005, c 11, online: <https://www.ontario.ca/laws/statute/05a11> . The Accessibility Standards themselves are created as regulations under the AODA. Currently, all Ontario accessibility standards are located within in the *Integrated Accessibility Standards - O. Reg. 191/11* [IASR], online: <https://www.ontario.ca/laws/regulation/110191>. There are five subject matter standards: the Information and Communications Standards; the Employment Standards; the Transportation Standards; the Design of Public Spaces Standards (Accessibility Standards for the Built Environment); and the Customer Service Standards.

		standards created through it (s 18). Inspectors may carry out inspections to determine whether standards have been complied with (s 19); administrative penalties may be issued if there is lack of compliance (ss 21, 37); the entity subject to compliance may appeal to the LAT (s 27)
Power to encourage compliance	Minister, ADO	Incentive agreements, s 33; the Minister, inspectors and directors are involved in the creation and enforcement of incentive agreements. The ADO will consult and assist entities with preparation if they must submit accessibility reports or if subject to future standards (ss 2(3)(d),(f),(g))
Power to enforce decisions	ADO	No individual complaints; decisions relate to orders imposed on noncompliant entities. If a director or the LAT orders an administrative penalty to be paid by a noncompliant entity, the order may be enforced through the Superior Court as a judgment of the court (ss 23(1),(2),(3)). If an order to pay an administrative penalty is appealed, the requirement to pay is stayed until the appeal has been determined (s 23(4))
Responsibility to raise public awareness (and promote systemic culture change)	ADO, ASAC	The ADO conducts research on the purpose and implementation of the AODA.(ss 32(3)(e)). It also consults with organizations (including schools, school boards, colleges, universities, trade or occupational

		<p>associations and self-governing professions) on the provision of information and training respecting accessibility within those organizations (ss 32(3)(f))</p> <p>ASAC advises the minister on programs of public information related to the AODA, s 31</p>
Responsibility for public education	ADO, ASAC	<p>The ADO conducts research on the purpose and implementation of the AODA (ss 32(3)(e)). It also consults with organizations (including schools, school boards, colleges, universities, trade or occupational associations and self-governing professions) on the provision of information and training respecting accessibility within those organizations (ss 32(3)(f)).</p> <p>ASAC advises the minister on programs of public information related to the AODA, s 31</p>

4.1.2 Ontario - The Incorporation of Human Rights/Antidiscrimination Laws

Relevant Legislation: *AODA, Ontario Human Rights Code, Canadian Charter of Rights and Freedoms (for public sector action), CRPD*

Power or Responsibility	How Human Rights/Antidiscrimination Laws Are Incorporated	Useful Notes
Creation of accessibility standards	Through discretion. OHRC members participated in development of every standard. ²⁸	
Enforcement of accessibility standards	The Compliance and Enforcement Branch of	Examples of material produced by the

²⁸ Interview with Alfred Spencer, Director of the Outreach & Strategic Initiatives Branch, Accessibility Directorate Ontario, October 13, 2017.

	the ADO has created a series of webpages, guidelines and other material to assist those completing compliance reports. These materials are implicitly based on human rights legal principles and values. Some of these materials also explain explicitly that the human rights code is a separate legal instrument and that it may provide greater protection that must be followed by those subject to the Act.	Compliance and Enforcement Branch of the ADO include “Accessible workplaces” ²⁹ and A <i>Guide to the Integrated Accessibility Standards Regulation</i> ³⁰
Enforcement of decisions	The decisions being enforced do not relate to individualized complaints but rather to concerns about enforcement against non-compliant entities. Nevertheless, all administrative tribunals, including the LAT, must ensure that their decisions comply with and uphold the human rights legal principles applicable in the province further to the Supreme Court of Canada decision in <i>Tranchemontagne v Ontario (Director, Disability Support Program)</i> [2006] 1 SCR 513	n/a
Encouraging compliance	ADO has created initiatives such as the public education video on the interplay between the AODA and the Ontario <i>Human Rights Code</i> ³¹ and the You Tube video: “Who do we benefit when we make Ontario accessible” ³² . Another example is the EnAbling Change Program, which provides funding for	As per ss 32(3)(e), done at the direction of the minister.

²⁹ <https://www.ontario.ca/page/accessible-workplaces>.

³⁰ <https://dr6j45jk9xcmk.cloudfront.net/documents/4845/guidelines-to-iasr-english.pdf>.

³¹ <http://www.ohrc.on.ca/en/learning/working-together-code-and-aoda>.

³² <https://www.youtube.com/watch?v=AfjaFWSNnZs>. This video was created for the 10 year anniversary of the AODA, which was celebrated in 2015.

	<p>nonprofit organizations to produce projects that will educate industries about accessibility compliance.³³</p> <p>These initiatives are useful for encouraging compliance, raising public awareness and for public education.</p>	
Raising public awareness (and promoting systemic culture change)	<p>ADO has created initiatives such as the public education video on the interplay between the AODA and the Ontario <i>Human Rights Code</i>³⁴ and the You Tube video: “Who do we benefit when we make Ontario accessible”³⁵.</p> <p>Another example is the EnAbling Change Program, which provides funding for nonprofit organizations to produce projects that will educate industries about accessibility compliance.³⁶</p> <p>These initiatives are useful for encouraging compliance, raising public awareness and for public education.</p>	As per ss 32(3)(e), done at the direction of the minister.
Public education	<p>ADO has created initiatives such as the public education video on the interplay between the AODA and the Ontario <i>Human Rights Code</i>³⁷ and the You Tube video: “Who do we benefit when we make Ontario accessible”³⁸.</p> <p>Another example is the EnAbling Change Program, which provides funding for nonprofit organizations to produce projects</p>	As per ss 32(3)(e), done at the direction of the minister.

³³ <http://www.grants.gov.on.ca/GrantsPortal/en/OntarioGrants/GrantOpportunities/PRDR006997> .

³⁴ <http://www.ohrc.on.ca/en/learning/working-together-code-and-aoda> .

³⁵ <https://www.youtube.com/watch?v=AfjaFWSNnZs>. This video was created for the 10 year anniversary of the AODA, which was celebrated in 2015.

³⁶ <http://www.grants.gov.on.ca/GrantsPortal/en/OntarioGrants/GrantOpportunities/PRDR006997> .

³⁷ <http://www.ohrc.on.ca/en/learning/working-together-code-and-aoda> .

³⁸ <https://www.youtube.com/watch?v=AfjaFWSNnZs>. This video was created for the 10 year anniversary of the AODA, which was celebrated in 2015.

	that will educate industries about accessibility compliance. ³⁹ These initiatives are useful for encouraging compliance, raising public awareness and for public education.	
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4.2 Manitoba

4.2.1 Manitoba - Functions Examined

Statute(s): *Accessibility for Manitobans Act*⁴⁰ (AMA)

Power or Responsibility	Body(-ies) that exercise(s) the power or responsibility	How power or responsibility is executed
Power to create accessibility standards	Minister, Accessibility Advisory Council (AAC), SDCs established by AAC with members appointed by AAC, DIO (Disability Issues Office) [Secretary to the AAC], Lieutenant Governor in Council (LGIC).	Minister sets terms of reference, AAC considers terms of reference and makes recommendations after consulting with affected stakeholders including PWDs (ss 8-9 AMA). AAC may create SDCs to assist (s 16). Minister proposes an accessibility standard and makes the proposed standard and the recommendations of the AAC available to the public for comment. After final revisions, the standard is approved by the LGIC (s 10); significant progress towards achieving accessibility is to be made by 2023 (s 8).
Power to enforce accessibility standards	(Compliance) Director, Inspectors	Organizations must prepare and keep records (s 18); inspectors may be appointed by the

³⁹ <http://www.grants.gov.on.ca/GrantsPortal/en/OntarioGrants/GrantOpportunities/PRDR006997> .

⁴⁰ *Accessibility for Manitobans Act*, CCSM c A1.7 [AMA]. The Accessibility Standards themselves are created as regulations under the AMA. To date the Customer Service Standard Regulation is the only standard that has been enacted. The second accessibility standard to be enacted is the employment accessibility standard.

		Minister and may assist with determining compliance and verifying the accuracy of records (ss 23-24). Inspectors issue compliance orders to noncompliant entities (s 27); a review of the order may be requested from the director (s 28); the director may impose administrative penalties for failing to comply with an order (s 29); a further appeal may be made to the court (s 30); offences (s 34).
Power to enforce decisions	(Compliance) Director	Administrative penalties are enforceable in court (s 31), compliance orders are enforceable through superior court similar to the orders of most administrative bodies;
Power to encourage compliance	Minister, DIO	DIO provides training to educate obligated sectors about compliance.
Responsibility to raise public awareness (and promote systemic culture change)	Minister	Minister's Annual Plan Minister has a general mandate to raise awareness about barriers, and to encourage their prevention and removal (s 5).
Responsibility for public education	DIO, Minister	DIO provides training to educate obligated sectors about compliance.

4.2.2 Manitoba - The Incorporation of Human Rights/Antidiscrimination Laws

Relevant Legislation: *AMA, Manitoba Human Rights Code, Canadian Charter of Rights and Freedoms* (for public sector action)

Power or Responsibility	How Human Rights/Antidiscrimination Laws Are Incorporated	Useful Notes
Creation of accessibility standards	<p>A strong network in a small government centre: DIO and the Manitoba Human Rights Commission (MHRC) communicate generally and support each other, work in close physical and conceptual proximity, have had shared staff (Chair of MHRC was at one point simultaneously Chair of AAC).</p> <p>In the standard itself, there is language directing those subject to the standard to comply with the <i>Human Rights Code</i>.</p>	<p>Generally, the AMA permits antidiscrimination laws and principles to be intertwined at the discretion of the responsible minister, the committees and the public offices creating the standards.</p> <p>For example, the Customer Service Standard directs the organizations subject to it that their: “actions must be consistent with the purposes and principles of the Act and its obligations — including the obligation to make reasonable accommodations — under The Human Rights Code”⁴¹</p>
Enforcement of accessibility standards	Preamble of AMA states: “a systemic and proactive approach for identifying, preventing and removing barriers complements <i>The Human Rights Code</i> in ensuring accessibility for Manitobans”.	N/A-data not yet available.
Enforcement of decisions	At the time of writing, decisions have not yet been enforced but courts and tribunals need to comply with human rights law and the <i>Charter</i> in enforcing decisions.	N/A-data not yet available.
Encouraging compliance		MB is emphasizing educating into compliance.

⁴¹ See *Customer Service Standard Regulation*, Regulation 171/2015, ss. 4(3).

Raising public awareness (and promoting systemic culture change)	Through ministerial discretion.	MB is emphasizing educating into compliance.
Public education	Training about <i>The Human Rights Code</i> must be incorporated into training about the AMA and the Customer Service Standard (see Customer Service Standard Regulation, ss 13(2)(b))	Human rights law concepts such as reasonable accommodation are brought into all public education training performed by the DIO.

4.3 Nova Scotia

4.3.1 Nova Scotia - Functions Examined

Statute(s): *Accessibility Act*⁴² (NSAA)

Power or Responsibility	Body(-ies) that exercise(s) the power or responsibility	How power or responsibility is executed
Power to create accessibility standards	Gov. in Council, Accessibility Advisory Board (AAB), Minister of Justice, SDCs, subcommittees of technical experts and other individuals.	Gov. in Council appoints the AAB on recommendation of the Minister of Justice (s 13). The AAB sets priorities for the establishment and content of accessibility standards and their implementation timelines (ss 17(c)). The AAB can establish SDCs with the approval of the minister. The AAB may also establish a subcommittee of technical experts and other individuals to assist with the development of standards (s 18). The AAB makes recommendations to the minister on proposed accessibility standards after having consulted with stakeholders (ss 21, 23). After a notice and comment period, the Minister

⁴² *Accessibility Act*, SNS 2017 c 2 [NSAA]. The Accessibility Standards themselves are created as regulations under the NSAA.

		<p>may make revisions to the proposed standard and recommend it to the GIC for approval as a regulation (ss 33-35).</p> <p>Unlike the other Canadian provinces, the responsible minister is designated to a specific minister, the Minister of Justice (s 3(l)), emphasizing a rights approach and keeping NSAA matters from shifting to different responsible ministers and portfolios over time.</p> <p>Goal of achieving an accessible province by 2030.</p>
Power to enforce accessibility standards	Director of Compliance and Enforcement (Director) (appointed by Minister(s.45)), Inspectors, NS Accessibility Directorate (NSAD)	<p>Records must be kept by individuals and organizations subject to the standards and must be presented for examination. (s 36)</p> <p>An inspector may carry out an inspection in response to a complaint or as directed by the Director (s 48). Inspectors possess wide investigative powers including powers under the <i>Public Inquiries Act</i> (s 49).</p> <p>Inspectors issue compliance orders to noncompliant entities (ss 52(1)); if an inspector has not issued an order, the Director may initiate and perform a review (s 53); those named in an order may request the Director to review it (s 54); the Director may impose administrative penalties for failing to comply with an order (s 55); a further appeal may be made to the superior court (s 60).</p>

		Director shall maintain a database of all complaints of non-compliance, inspector visits, orders issued, Director reviews, notices of administrative penalties and appeals and shall provide the Minister with a summary report at least annually. Offences for repeat behaviour etc. (s 8)
Power to enforce decisions	Director of Compliance and Enforcement, superior court	Administrative penalties may be enforced through the superior court (s 57).
Power to encourage compliance	Minister, Governor in Council	The minister may recommend that the Governor in Council prescribe incentive-based measures to encourage an individual or organization to meet or exceed an accessibility standard (s 38).
Responsibility to raise public awareness (and promote systemic culture change)	Accessibility Directorate, Nova Scotia (NSAD)	NSAD will conduct research and develop and implement programs of public education and awareness on the purpose of the NSAA (s 12)
Responsibility for public education	Minister, NSAD	<p>The Minister may issue public reports disclosing details of orders and decisions made and administrative penalties issued (s 64).</p> <p>NSAD will conduct research and develop and implement programs of public education and awareness on the purpose of the NSAA (s 12)</p>

4.3.2 Nova Scotia -The Incorporation of Human Rights/Antidiscrimination Laws

Relevant Legislation: NSAA, *Human Rights Act*⁴³, *Canadian Charter of Rights and Freedoms* (for public sector action), CRPD. The preamble of the NSAA refers to the CRPD, the *Canadian Charter of Rights and Freedoms* and the *Nova Scotia Human Rights Act*. However, it is too early in the life of the statute to determine how, if at all, these instruments will be brought into the implementation of the Act.⁴⁴

(No table necessary.)

⁴³ *Human Rights Act* RSNS 1989, c 214.

⁴⁴ The Nova Scotia Accessibility Directorate website indicates that it is developing a strategy and implementation plan outlining how they will achieve an accessible Nova Scotia by 2030. The plan is scheduled to be released by the Minister of Justice in September 2018. See: <https://novascotia.ca/accessibility/> (last accessed on January 28, 2018).