

**Submission to the**

**Committee on the Rights of Persons with Disabilities**

**in preparation of the elaboration of the Committee’s General Comment on the right of persons with disabilities to work and employment**

**March 2021**

**Canadian Human Rights Commission**

# **THE CANADIAN HUMAN RIGHTS COMMISSION**

The Canadian Human Rights Commission (the Commission) is Canada’s national human rights institution. It has been accredited “A-status” by the Global Alliance of National Human Rights Institutions, first in 1999 and again in 2006, 2011 and 2016.

The Commission was established by Parliament through the *Canadian Human Rights Act* (CHRA) in 1977.[[1]](#footnote-1) It has a broad mandate to promote and protect human rights. The Constitution of Canada divides jurisdiction for human rights matters between the federal and provincial or territorial governments. The Commission, pursuant to the CHRA, has jurisdiction over federal government departments and agencies, Crown corporations, First Nations governments and federally-regulated private sector organizations. Provincial and territorial governments have their own human rights codes and are responsible for provincially/territorially-regulated sectors.

The Commission also conducts compliance audits under the *Employment Equity Act* (EEA).[[2]](#footnote-2) The purpose of the EEA is to achieve equality in the workplace so that no person is denied employment opportunities or benefits for reasons unrelated to ability, and to correct the historic employment disadvantages experienced by four designated groups: women, Indigenous peoples, persons with disabilities and racialized people.[[3]](#footnote-3)

In 2019, the Commission was mandated with several new responsibilities under the *Accessible Canada Act,* the *Pay Equity Act*, and the *National Housing Strategy Act*. The Commission was also designated as a body responsible for monitoring the Government of Canada’s implementation of the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD), in accordance with article 33.2 of the Convention.

The Commission’s efforts to promote and protect human rights include investigating discrimination complaints and representing the public interest in the mediation and litigation of complaints, issuing public statements, tabling special reports in Parliament, conducting research, developing policy, and consulting with rights holders and stakeholders. The Commission is committed to working with the Government of Canada, as well as domestic and international partners and stakeholders, to ensure continued progress in the protection of human rights, including those rights enshrined in the various United Nations human rights treaties to which Canada is a party.

In the spirit of constructive engagement, the Commission wishes to provide the following written submission to the Committee on the Rights of Persons with Disabilities (the Committee) for the elaboration of the Committee’s outline of the draft *General Comment on the right of persons with disabilities to work and employment* (General Comment).

The Commission welcomes and supports the Committee’s efforts to create guidance for States parties towards the implementation of article 27 on work and employment. We offer the following comments for the Committee’s consideration.

# **ACCESSIBILITY AND WORK AND EMPLOYMENT**

There is growing recognition – both domestically and internationally – that more needs to be done to promote, protect and ensure the full and equal enjoyment and participation of all people with disabilities in work and employment. The Commission emphasizes the important interrelation between articles 9 (accessibility) and 27 (work and employment). The Commission receives numerous complaints every year from people with disabilities that deal with barriers to accessibility in a variety of facets of everyday life, including in employment. It is clear that accessibility in employment remains a pre-eminent concern and a right yet to be fully realized for many people with disabilities in Canada.

In Canada, people with disabilities form a profoundly untapped body of skills and labour, yet they continue to face barriers and stigma in seeking work, in being fully included in the workplace, in accessing necessary accommodations, and in advancing their careers. It is, therefore, critical that historical and persistent barriers in employment be addressed.

To better understand and create a more complete picture of the employment-related experiences of people with disabilities, the Commission has consulted with human rights commissions from across Canada and various organizations and experts that advocate on behalf of people with disabilities. The barriers to employment highlighted through these consultations have included the following[[4]](#footnote-4):

* lack of physical workplace accommodation;
* failure to facilitate an effective return to work process;
* failure to approve a medical absence; and
* inadequate accommodation measures to address disability-related needs.

Most recently, in the Commission’s work as the National Monitoring Mechanism for the CRPD, we have engaged broadly with people with disabilities and organizations that advocate on their behalf and have heard that work and employment was one of the top three areas of concern.[[5]](#footnote-5)

In the Canadian context, the burden has typically been on an individual to request accommodations in order to make the workplace more responsive to their disability-related needs. With the passage of the ACA in 2019, the framework in Canada for promoting and protecting the rights of people with disabilities in employment and the provision of services is changing. The Commission is hopeful that these changes will help to promote an important culture shift that emphases inclusivity as a first principle, and tries to move from a reactive approach to addressing employment-related barriers towards a proactive approach. We believe that this shift may be useful for the Committee to consider in drafting its General Comment.

In order to address systemic accessibility issues – including those in the workplace – the ACA starts with the premise that systems should be designed inclusively from the start. It builds on the rights-based approach of the CHRA and the CRPD, and will require employers and service providers under federal jurisdiction to take proactive measures to identify and remove barriers to accessibility, as well as to prevent the creation of new barriers, with the objective of achieving the highest level of accessibility for all, and in particular for people with disabilities. This includes in relation to physical infrastructure, technological practices, and attitudinal barriers.

The successful implementation of the ACA will depend on the fundamental principle of inclusion of people with disabilities themselves, in line with the requirements of the CRPD. Those who are affected and whose rights are implicated need to be a critical part of the creation, implementation, and assessment of the legislation and the anticipated regulations that will flow from the legislation.

In the coming years, regulations will require that regulated entities develop and publish an accessibility plan in consultation and collaboration with the disability community, introduce a feedback mechanism, and report on progress made annually. These plans will require the identification, removal, and prevention of new barriers, in the following areas as regulations come into force: employment, the built environment, information and communications technologies, the procurement of goods and services, the delivery of programs and services, transportation, and communications (other than ICT).

The obligations recognized in the ACA place the onus of creating inclusive spaces, processes and institutions on regulated entities, rather than on rights holders; this means thinking about accessibility first, before accommodation, so that an accommodation request becomes the exception and not the norm. We anticipate that this will reduce the instances in which an employee or person seeking service is required to bring forward individual requests for accommodation.

Finally, we wish to reiterate that every person with a disability is unique. There is a diversity of disabilities and a diversity of people with disabilities who may encounter different barriers and experience barriers differently. The CRPD and the ACA recognize the fundamental principle of inclusion, and that people with disabilities are the experts of their lived experiences. Creating inclusive workplaces and services means creating environments where people can be themselves in their entire being without being hindered or discouraged in their expressions or actions.

# **3. RECOMMENDATIONS**

The Commission recommends that the interconnected and interrelated nature of article 9 (accessibility) and article 27 (work and employment) be given greater prominence in the General Comment. The Committee has an opportunity to further this shift in thinking, from reactive to proactive, and from individual accommodations to broader accessibility rights and inclusion for all. The result of this General Comment will hopefully be the adoption of a more proactive and inclusive interpretation of Article 27 that will address the systemic barriers that exclude people with disabilities in work and employment.

To that end, the Commission offers the following more specific recommendations for the Committee’s consideration on the draft General Comment that has been provided.

Recommendations:

1. In the Normative content section, we recommend that:
	1. the legal analysis include an overview not only of discriminatory legislation, but of current accessibility legislation, including the *Accessible Canada Act*, so that States parties can evaluate the various proactive models and note the shift away from reactive models;
	2. a subsection on accessibility be added prior to the interpretation of the various sub-articles as it is a proactive solution to addressing systemic barriers in work and employment and should be considered as a central concept in the interpretation of the sub-articles of article 27; and
	3. reasonable accommodations in the interpretation of article 27 (i) be framed as an exception to the rule, noting that the expectation should be for employers to proactively create accessible work environments.
2. Under the States parties’ obligations section, we recommend that:
	1. a paragraph on accessibility legislation be added to complement and broaden the current focus on legislation that is discriminatory or intended to prevent discrimination. This paragraph should also reflect that this model shifts the burden of addressing discrimination from the rights holder to the State; and that
	2. the existing paragraph on the provision of reasonable accommodation be amended to reflect that accessibility should be considered first, before accommodation, so that an accommodation request becomes the exception, not the norm.
3. In the section on the Relationship with other provisions of the CRPD, we recommend that a stand-alone paragraph on accessibility be added, highlighting the critical intersection with employment and the scope of barriers accessibility addresses, including attitudinal barriers. This paragraph should also acknowledge accessibility not only as a means to full participation, but as a human right.
1. Available at: [laws-lois.justice.gc.ca/PDF/H-6.pdf](http://laws-lois.justice.gc.ca/PDF/H-6.pdf). Although Canada’s human rights laws are not part of the Constitution, they are considered “quasi-constitutional” in nature, meaning that all other laws must be interpreted in a manner consistent with human rights law. [↑](#footnote-ref-1)
2. Available at: [laws-lois.justice.gc.ca/PDF/E-5.401.pdf](http://laws-lois.justice.gc.ca/PDF/E-5.401.pdf). [↑](#footnote-ref-2)
3. The Commission notes that the terms “visible minority” and “Aboriginal” are increasingly outdated, and as such, they are used only to reflect their official usage in Canadian legislation and in Statistics Canada survey data. Where other terms (such as Indigenous or racialized) can be used, the Commission supports this. [↑](#footnote-ref-3)
4. See *Roadblocks on the career path: Challenges faced by persons with disabilities in employment*, available at: <https://www.chrc-ccdp.gc.ca/eng/content/report-roadblocks-career-path-challenges-faced-persons-disabilities-employment>. [↑](#footnote-ref-4)
5. See *Infographics: Monitoring the CRPD – Preliminary Survey Results*, available at: <https://www.chrc-ccdp.gc.ca/eng/content/infographics>. [↑](#footnote-ref-5)