

Submitted by:

**National Coalition of People Who Use Guide and Service Dogs in Canada (HOOH)  
Council of Canadians with Disabilities (CCD)**

**Canadian Council of the Blind (CCB)**

**Barrier Free Canada (BFC)**

**Guide Dog Users of Canada (GDUC)**

February 10, 2023

To: **Canadian Transportation Agency Secretariat**

VIA e-mail: [secretariat@otc-cta.gc.ca](mailto:secretariat@otc-cta.gc.ca).

**RE: Case 22-41428 Letter Decision No. LET-AT-55-2022  
CTA Preliminary Decision on ESAs**

We are pleased to submit the following comments on the preliminary decision regarding the acceptance of ESAs in the passenger area. Also attached, please find a supporting document dated January 22, 2020, entitled CTA Phase II Consultation Submission.

**CTA Preliminary Decision states:**

- acceptance of a species other than a dog as an ESA would cause undue hardship for carriers;
- while dogs may generally be suitable as ESAs, the unrestricted carriage of ESDs would cause undue hardship for carriers due to health and safety risks, animal behaviour and welfare concerns and the impacts of fraudulent representation of pets as ESDs; and
- With appropriate conditions and safeguards, carriers could carry some ESDs without undue hardship.

**Our Response:**

**A service dog is a “working dog” defined by the ATPDR as a dog that has been individually trained by an organization or person specializing in service dog training; and. performs a task to assist a person with a disability with a need related to their disability. Service dog handlers are trained to manage the appropriate behaviour of their dog in public spaces. As ESDs and their owners generally lack such training, we define ESDs as “pets”. We are in agreement that if accepted for travel in the passenger area, ESDs are “pets” which must be crated at all times and the owner must manage the appropriate behaviour of their dog. this requirement must be strictly enforced. At airports and terminals, ESDs and pets must also be crated at all times from curb to cabin and reverse, as disruption to “working dogs” can occur in line ups, bathrooms, stairs, etc. before and after security.**

### **CTA Preliminary Decision states:**

The Agency is of the preliminary view that it would not be undue hardship to require carriers to accept ESDs for carriage in the cabin or passenger compartment under the following conditions:

1. The person with a disability provides the following documentation to the carrier, at least 96 hours in advance of travel:
  - a) Proof from a treating physician or medical health professional that the person has a mental health disability and requires an ESD as an accommodation for travel;
  - b) Proof from a veterinarian that the ESD's vaccinations are up to date; and
  - c) Veterinary certification, dated within one week of the initial departure date, attesting that the ESD is healthy enough to travel, including that it is free from contagious diseases, ticks and fleas, and current on its vaccinations.

If the request is made less than 96 hours in advance, the air carrier must make every reasonable effort to transport the person with a disability and their ESD.

### **Our Response:**

**ESDs are not generally trained to perform a task or tasks for a person with a disability, nor are their owners trained to manage the appropriate behaviour of their dog. It is our position that in varying degrees, all dogs provide emotional support for their owner. we define ESDs as "pets", which may be accepted for travel if the necessary requirements for "pets" set out by the carriers are met. We acknowledge that there are people with mental health conditions who would benefit from being able to travel with their dog and can provide documentation from a treating physician or medical health professional to support this, however, such medical professionals have no expertise in the training or behaviour of the dog. We recommend that there be a clear distinction between "working" service dogs and ESDs or "pets". In instances where the carrier chooses to accept supporting documents from a medical professional that a person requires an ESD, an accommodation can be provided by simply waiving the associated pet transportation fee. This distinction will also assist in refusing accommodation for dogs which are too large to travel in a crate.**

### **CTA Preliminary Decision states:**

2. While on board, the ESD travels in an appropriate pet carrier that must fit and be kept at the seat, or in the case of air travel, under the seat in front of the person with a disability for the duration of the trip. The pet carrier must meet the carrier's conditions and restrictions for carriage of pet carriers in the cabin.

### **Our Response:**

**We strongly agree that any dog other than a trained service dog must be crated at all times if they are accepted for travel in the passenger area. We also believe that**

any dog other than a trained service dog must be crated at all times from curb to cabin and cabin to curb.

**Guide dogs are trained to meet comprehensive international standards set out by the International Guide Dog Federation (IGDF), and schools that deliver the training are accredited by IGDF.**

<https://www.igdf.org.uk/>

**Comprehensive international training standards for service dogs have been set out by Assistance Dogs International), and schools or trainers that deliver the training are accredited by ADI.**

<https://assistancedogsinternational.org/>

**ADI defines a service dog as: “a dog that works for individuals with disabilities other than blindness or deafness. Service dogs are trained to perform a wide variety of tasks including but not limited to; pulling a wheelchair, bracing, retrieving, alerting to a medical crisis, and providing assistance in a medical crisis.**

**Service dogs that have been trained by a trainer that has not been accredited or have been self trained by their owners can be certified through ADI that they meet these international training standards. We recommend that only guide and service dogs that have been trained to meet IGDF or ADI standards be accepted for unrestricted travel in the passenger area.**

**CTA Preliminary Decision states:**

3. The person with a disability can demonstrate to the carrier that their ESD meets all travel, entry or exit requirements of the geographical location they travel to or from, which includes providing all required documentation, as applicable.

**Our Response:**

**We agree with this provision which applies to all “pets”. A considerable amount of work has been done to secure the rights and responsibilities of legitimate Guide and Service Dog handlers, and these rights and responsibilities are protected in the ATPDR. It is our position that rights and responsibilities go hand in hand, and before extending these same rights to persons owning ESDs it must also be demonstrated that the owner meet their responsibilities by managing the appropriate behaviour of their dog.**

For your further information, we have attached a joint submission that was made to the CTA in January 2020, reflecting community feedback that was in opposition to accepting ESAs for travel in the passenger area.

Respectfully submitted,  
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Attachment –CTA Phase II Consultation Submission

**Confidential and not to distributed  
CTA Phase II Consultation Submission**

**January 22, 2020**

Submitted by the Alliance for Equality of Blind Canadians, Canadian Council of the Blind, Guide Dog Users of Canada and the National Coalition of Persons who use Guide and Service Dogs.

**Introduction:**

Thank you for this opportunity to respond to the CTA Consultation Document in development of the Phase II Regulations.

There are currently areas that must be addressed before more regulations are in force. This may be in direction documents for implementation and added when regulations are being revised and new regulations are being developed. They are:

- 1) Address the current systemic barriers before they are duplicated and in Regulations for small and International Carriers.
  - Implementation of the 1Person 1Fare
    - Address the systemic barriers in the implementation of the 1P1F of each Carrier requiring a different medical form to be filled out.
    - These medical forms have upwards of 10 pages to be filled out, much of which is not relevant to the disability.
    - People with permanent disabilities are required to complete a medical form by their medical professional sometimes yearly. We believe this is a barrier to People in the Blind, low Vision, deafblind, intellectual and unseen disability community. It is a demeaning and punitive process currently.
    - When a support person is required for travel for people with episodic disabilities, ex: MS flareups, must be allowed without further medical reports. A person should not be permanently forced to use a support person every time they travel or to be expected to have a medical form approved every time they travel to determine the need or not for a support person. Once a person has been diagnosed by a medical professional as to their disability, and may have episodic relapses and flare ups, the person with the disability must be able to determine when they require a support person or attendant and when they do not.
    - There is a disconnect between the amount of time each carrier will approve authorization for the 1P1F for the same disability accommodation. It can be for 1 month, 6 months, one year or two years and there is no continuity of decision making. When travelling on several different systems in one trip, people are coming up against refusals of 1P1F as their approvals for one company may have expired but not on another.

- There is a cost for each medical form to be filled out for each company. This is in opposition to the intent of 1P1F, where the person with a disability is financially penalized for accommodation. This is especially true when having to accommodate each carriers request for information and adding more carriers will just compound the problem and create even more barriers.
- Many Canadians do not have access to a primary care physician and may experience delays to have tests performed by walk in clinic medical practitioners. The inconsistent approvals and time frames, number of transportation carriers that each need a different form, especially for documented permanent sensory and intellectual disabilities must be addressed.
- There should be no taxing on the fare for a support person, as it is an accommodation. We recommend the CTA negotiate that change with Revenue Canada.

### **Making reservations and checking in online.**

- Currently most carriers require people to contact the medical desk to make reservations and at the terminals are required to check-in, in person.
- One transportation provider, when calling the reservation line, consistently asks people with disabilities inappropriate and demeaning questions as well as asking for documentation that is not required.
- The websites must be updated to allow people with disabilities to book their travel and check-in online. It may be when we put in our authorization number and that generates the 1P 1F accommodation as requesting an in terminal assist does now for several carriers. We anticipate that once the kiosks are accessible this will change the now expected personal check-in at the terminals.

### **Terminal Accessibility**

- Many terminals are currently assessing how to ensure they are accessible. Many structural changes are being planned and renovations are happening at most.
- There is a developing a trend to do the minimum required rather than a concentrated effort to ensure accessibility for as many people as possible.
- This has been shown by the growing reliance on one organizations assessment model, rather than using Universal Design Principles as outlined in the UNCRPD.
- In discussions with several terminal decision makers, they have stated to several of us, there is no clear understanding of Universal Design in house and it is more expedient to do the best they can with what they are told by design consultants. They have stated they just need to know what is required to get a Gold rating by the Rick Hanson Foundation as a place they can start.

- They are aware this will not give them the amount of inclusion needed however they do not have the supports knowledge or financial supports in the industry to ensure Universal Design Standards are assessed and built to. We recommend that more support be given to terminals, transportation carriers and manufacturers with the expectation that Universal Design is the goal to ensure the highest level of inclusion possible.
- An example is the Vancouver Airport (YVR) that received the first Gold Rating of any airport in Canada by the Rick Hanson Foundation. There is evidence that the Management of YVR has worked very hard for years to develop and expand accessible spaces and services within the terminal. However, the Gold designation has not been inclusive of people in the blind, low vision, deaf, deafblind and intellectual disability communities to the degree required. The mobility centric assessment model used currently should be seen as a good beginning place and more work needs to continue to develop more inclusion using Universal Design. It also must include the environment and the intersectional understanding, knowledge of every vendor, worker at the terminals. It is not just about the physical environment it's the inclusion in all ways. Including the hiring of people with disabilities and the workplace inclusion. It's the entire inter connecting ecosphere of all systems that operate within the terminals and must be lead and believed from Senior management to every worker.
- We strongly recommend that Universal Design be in regulations as the goal and that any assessments, design, renovation and construction going forward be done to Universal Design Standards. And that the knowledgeable disability community and its constituents, be the ones advising in a transparent way.
- This impacts accessibility for travellers, and importantly it includes staff spaces, which will make them more accessible to hire people with disabilities. This includes review of the software programs and hardware used to ensure accessibility by all staff.
- Several people who use guide and service dogs have expressed concern about the new relieving areas beyond security, are being designed without the end users participation and expertise. We recommend that any direction documents include the requirement of knowledgeable people that use Guide and Service Dogs be hired and work with the terminal designers to ensure the relieving areas are built properly and meet the needs in how the dogs were trained. The people must have the expertise and a constituency they work and confer with and not be part of a corporate charity or business speaking on behalf of the community. This is very important.

**Responses to Questions asked in the 4 sections of the Phase II consultation document.**

## Section 1. ATPDR and Small Transportation Providers

### Questions

1. In extending the ATPDR to small transportation providers, what modifications to regulatory requirements, if any, are needed?

#### **Response:**

We know that passengers with disabilities already have the right to travel as any other passenger. An accommodation is required when the current system is not accessible through design, architecture, process or communication. When a small carrier cannot currently meet all obligations under the ATPDR, there needs to be a concentrated plan by government to support the carriers to meet these obligations.

There are two facts, the operating realities of smaller carriers and the rights of persons with disabilities to travel on them.

The issue at this time is people with disabilities are being asked to wait to be able to travel until accessibility allows them or will not be able to travel due to undue hardship of the carrier or terminal. That is the key issue. What needs to be done, how quickly can it be done and how is the disability community engaged in working with small and large carriers to accomplish the goals and implement the ATPDR is important factor in inclusion and accessibility.

Questions from the Blind, Deaf Blind and Guide Dog User community.

- What are the current plans and ideas for implementation that are already on the table?
- What is the process and supports being considered by the CTA and the Department of Transportation to ensure small carriers can comply with the ATPDR?
- Are there discussions regarding a process to support the small operators financially over time to make the changes that are required?
- Is making the Federal Transportation system accessible in all parts of the country a priority by developing support through grants, tax incentives and low or no interest loans to small carriers in discussion?
- Is there significant thought given to support for carriers that are the only viable transportation service to communities?

We believe it is the government's responsibility to find ways and means to support both the inclusion and accessibility of people with disabilities and to work with smaller carriers to achieve those goals when undue hardship has been proven.

Fitting larger wheelchairs and scooters onboard and/or in baggage compartments may pose difficulties. It will be important for the CTA to work closely with manufacturers so that today's new



reality will be taken into account when new equipment is being designed and manufactured. Using Universal Design is important to achieving those goals.

We believe the smaller carriers must accommodate immediate opportunities that specifically impact travel for people who are blind, deaf, deaf blind and have intellectual disabilities. Training for staff in communication, in ASL, and in the current use of apps, software programs, large print, braille, computers, iPads with screen readers to communicate information, efficient movement through the terminals and calm quieter areas to wait are examples of immediate things that can be done. Training, innovation and common sense, like developing working groups with knowledgeable people and organizations already involved on the CTA Accessibility committee can be done immediately.

2. What would be the appropriate time frame for small transportation providers to come into compliance with requirements (e.g., 1, 2, or 3 years)? Do any requirements in particular require more time?

**Response:**

- The timeframe for implementation parts of the ATPDR may be different for every carrier. It is difficult to choose a time frame when the unique operating differences may allow many parts of the ATPDR to be realized by some and the reality of the age and design of inaccessible transportation may not be able to be replaced within that timeframe.
  - There may be significant cost factors for the smaller carriers to implement the ATPDR. Undue hardship is not the point to stop. It is rather the beginning point of govt support to plan and realize the implementation of a Canadian Federal Accessible Transportation network in every part of Canada.
  - That may include programs to assist in funding through grants, tax breaks, low or no interest loans etc. However, whatever the solutions, it is not people with disabilities responsibility to find the solutions or to fund inclusion for transportation carriers.
  - The important factor is that implementation for accessible transportation for people with disabilities cannot be halted for any reason. It may be met in stages and as financial resources are made readily available and structural changes or replacements can be designed and purchased, however for people in the Blind, Deaf, Deaf/Blind, intellectual disability and Guide and Service Dog user community, much of the ATPDR implementation is attainable now.
  - We are concerned that implementation strategies of the ATPDR may place continued and/or new barriers for people with disabilities.
3. Are there any special accessibility-related challenges with small operators in any mode of travel in the federal network (airlines, tourist railway companies, bus operators, ferry operators) and the terminals that serve them, particularly in remote or northern areas of Canada? What solutions would help address these challenges?

## **Response:**

In developing assessment, plans, timelines, training and implementation plans, work with and include knowledgeable people with disabilities working together with regulators, carriers, terminals, to review the current findings, assess and determine what each transportation provider and terminal can comply with immediately and develop the plans and timelines for implementation. Publish all plans and findings from every sector on the CTA website with the progress reports. People with disabilities should know to what extent small carriers and terminals can accommodate them and that information should be on the CTA site as well. Knowledgeable people with disabilities must also be involved locally, regionally and nationally in the discussion, plans, monitoring and implementation of inclusion into the Transportation network.

## **Section 2. One Person, One Fare for International Travel and Small Transportation Providers**

### **Questions**

1. Should the 1p1f requirement apply to transportation to and from Canada? If so, should it apply to both Canadian and international transportation providers?

**Response:** The 1P1F is grounded in key human rights principles, including that persons with disabilities have a right to equal access to transportation; are entitled to be treated in the same manner regardless of the underlying reason for their disability; and should not be placed at an economic disadvantage as a result of their disabilities, including having to pay more for their transportation services than travellers who do not have disabilities, we believe:

- If a passenger requires the 1p1f determination of an extra seat or seats in domestic travel, including with small carriers, it is obvious this passenger would also require assistance on international travel, where the time onboard can be much longer
  - This should include all connecting flights to get to the persons final destination and return.
  - Thus, the 1 person 1 fare provision should be extended to all flights both Canadian and International carriers entering and leaving Canada within two years.
2. Achieving consistent approaches to accessibility for international air travel requires discussions and cooperation among many jurisdictions. Given this, it may not be possible to achieve the goal of completely barrier-free international travel through the CTA's regulations. What strategies -- as a complement or an alternative to changes to CTA regulations -- could be pursued to help remove barriers to Canadians with disabilities when they fly to or from other countries?

## **Response:**

- Work with countries that also signed the UNCRPD to develop a shared goal of accessibility and to work through the issues between our regulations and how many they can implement as part of their countries work on implementation of the UNCRPD.
- Utilize knowledgeable and representatives of the CTA Accessibility Committee to form and fund working groups with a cross section of industry and consumer groups to work on strategies, advice and identification of barriers of implementation both domestically and Internationally. This includes representatives from the consumer disability community to work with their counterparts in other countries working on travel in those countries. Like the European Guide Dog Federation and other blind and disability consumer groups.
- Look at the facts around Service Dogs. In Canada, there are approx 830-850 people who use a bone fide Service Dog as defined in the ATPDR.
- Just over 600 or 72.8% of those are People who use Guide Dogs from accredited Guide Dog Schools.
- Less than that number fly domestically including on small carriers and even less fly Internationally. The numbers of people, that require the 1P1F accommodation including people with Guide and Service Dogs to travel Internationally is small. Many countries have strict animal import laws and require specific testing and documentation for Service Dogs and that may include restrictions on where it was trained.
- It is important to be clear, as it was in 2008 when CTA implemented the 1P1F, that inclusion is not a hardship. Exclusion of people with disabilities is. Every delay to implementation of true accessibility and inclusion in the transportation system, will continue more undue hardship for people in the blind, low vision, deaf, deaf/blind and intellectual disability community.
- The 1P1F is one basic fundamental way to address a piece of that exclusion and is an economic loss we carry when we are unable to use the system. That is the message to bring to carriers flying Internationally into and out of Canada.

### **3. Should 1p1f apply to small transportation providers?**

## **Response:**

- Yes and they should be included by the June 25, 2020 ATPDR.
- If the carrier is successful in proving undue hardship, it is not the people with disabilities who require the 1p1f accommodation that should be denied access, but instead it is the government's responsibility to ensure they support the carrier to comply and remove the undue hardship.

- This may mean a grant to cover the costs of the extra seat or tax incentives. low interest or no interest loans to allow for some retrofitting of some seats where two adjoining or one larger seat is required.
- The government can and has developed programs supported under the Charter to ameliorate the undue hardship as stated in section 15 (2): Section (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of..... mental or physical disability.
- Financial hardship should not override the rights of people with disabilities but be a starting place for govt to find ways and means to remove the barrier and implement the law.
  - In terms of older equipment and buildings that were not universally designed, again there must be a process and timeframe in which to replace, retrofit and support the needed changes as quickly as possible.
- When discussing International and small carrier implementation look at the facts. That out of the approx.46.1 million people that flew domestically in Canada:
  - What is the data on the number of seats that were used by the 1P1F in a year by carriers?
  - How many were people with Guide or other Service Dogs? (NOT ESA's)
  - This information combined with other current statistics can produce more accurate information to look at what is assumptions or actual facts towards undue hardship calculations. This is serious for our constituency to be denied access because the 1P1F is not being implemented for a support person and or a Guide Dog.
- For instance, in Canada the population in 2019 was 37.6 million. The number people who identify as blind or low vision is 1.5 million (according to the CNIB) or 3.39% of the population. However that number also includes people using glasses and not specifically low vision with correction or people who are blind and deafblind.
- The number of people using Guide Dogs in Canada according to the Schools that serve Canadians is approx 600 or 0.04% of the blind or low vision community.
- The calculation for people using Service Dogs, using the definition in the ATPDR, other than Guide Dogs, is somewhere between 180-220 in Canada.
- Less than 850 people in Canada use Service Dogs and 600 are people from the blind and low vision community that trained with their dogs from accredited schools.
- Our community feels the implementation of the 1P1F for small carriers must be addressed as a first point of the implementation of the ATPDR by June 25<sup>th</sup> 2020.
- Any claim of undue hardship must be looked at realistically and use actual facts rather than assumptions and the onus is on the govt to remove the barrier with the carriers that legitimately may have difficulty rather than denying people from the disability community.

## Section 3. Emotional Support Animals and Service Animals Other than Dogs

### Questions

1. What do you think about a potential requirement for transportation providers to accept ESAs? What conditions, if any, should apply?

**Response:** We adamantly oppose the concept of transportation carriers providing any kind of recognition or special status to untrained emotional support animals. We recommend that to ensure the safety and well being of all travelers, the CTA only allow trained dogs to travel outside a travel carrier. Our reasons are set out below.

### I Untrained Animals May Pose Serious Risks

As far as our organizations are informed, emotional support animals do not receive any kind of specific training, and in particular, do not receive training on how to behave appropriately in public places. Placing an untrained animal in a transportation environment which may require being confined to small and cramped spaces surrounded by unfamiliar people may be stressful for the animal causing it to behave inappropriately. This situation may pose a safety risk for the animal, its owner, other passengers, transportation staff, and trained guide or service dogs accompanying passengers. For example, the members from all organizations have heard anecdotally from handlers about their guide and service dogs being attacked and in some cases injured by untrained emotional support animals while traveling on public transportation.

The use of ESAs is a relatively new concept in North America. The term was started in the United States when not addressing psychiatric dogs as being service dogs, and the term ESA to that category. We are unaware of any training/behavioural standards governing the use of such animals. While we do not take issue with the potential therapeutic value of an ESA, we contend that the lack of training standards, suitability assessments and fraud, makes it difficult to predict how such animals will behave in public. Over the past few years there has been a plethora of media reports (occurring mostly in the US) describing the inappropriate, obtrusive and sometimes threatening behaviours of some ESAs in public. Consequently, before such animals are allowed on Canadian public transportation systems, we believe that more information and research is needed on the role and benefits of such animals and how and if such animals can be accommodated outside of a travel carrier. Moreover, we argue that relevant training must be the guiding principle in determining which animals are permitted to travel in passenger areas outside a travel carrier. That includes extensive training of the handler.

Unlike ESAs, guide dogs are required to undergo extensive training which prepares them to perform in public. For this reason, it is vitally important that the CTA refrain from

regarding untrained ESAs to be the same as trained guide and service dogs. To illustrate our point, we wish to provide a brief overview of the training that all North American guide dog training facilities follow.

Guide dogs have been trained and in use for over 92 years in North America. Rigorous international training standards and accreditation of schools, have been developed to ensure that Guide dogs perform their work safely and appropriately while in public through the International Guide Dog Federation (IGDF). A Guide Dog begins its training as a puppy learning basic proper behaviours such as how to behave on leash, respectful etiquette when around people, appropriate times and places for relief, and how to lay or sit quietly in busy public places. And not get startled by large crowds. Upon completion of their training, a guide dog must be able to remain calm and handle a variety of situations, including sudden loud noises, the presence of other dogs or animals, working among strangers, negotiating complicated traffic conditions, and riding on many modes of transportation. They are extremely well socialized and are not allowed to be territorial, bark inappropriately or be allowed to sniff out and lick people. A puppy that does not excel in learning these basic behaviours will likely be cut from the program.

Once the dog has mastered basic behaviours, which is usually one year or more, it goes on to learn specific guiding skills such as learning to pull while in a harness, stopping at down and up curbs, being aware of traffic, learning to follow commands and how to work with a handler. That process can take 4-6 months or more. At anytime a dog can be cut from the program for failing to successfully meet any of these training standards. In fact according to Guide Dogs for the Blind approximately 50% of dogs in training are cut from training programs because of their unsuitability. This rigorous adherence to training standards underscores the importance of quality and excellence in all aspects of a guide dog's work including traveling on public transportation.

Service Dogs generally are trained to meet a high standard of behaviour and ability to perform tasks and their handlers trained to manage them. Most schools are accredited by the Assistance Dogs International, (ADI) and some are accredited by both International Organizations. Its important to note it is the school and its training that is accredited not the dog or the handler. There are countries that allow only Guide and Service dogs from these accredited schools. to enter their countries.

## **II Handlers Must be Capable of Managing their Animal's Behaviour**

Of equal importance is the handler's capability to responsibly manage the behaviour of a working dog. Again, to illustrate our point, we turn to the assessment and training protocols employed by guide dog training facilities. A guide dog handler must be able to responsibly manage the training, care and welfare of their dog at all times before they are allowed to work independently with their dog.

Prior to entering a guide dog training program, the perspective handler must undergo a comprehensive assessment. The assessment begins with a medical evaluation of a person's physical capacity to ensure they can successfully participate in the training program and manage a dog as well as their vision assessment. It is up to the trained professionals of the training facility to determine if the person could benefit from a guide dog and if they have the maturity and ability, orientation and mobility skills to manage and maintain the guide dog's training standards. A handler who is unable to manage a dog will either be required to participate in further training or be advised that working with a guide dog is not the best option for them. Most guide dog training facilities provide ongoing assistance throughout the partnership of handler and dog to ensure that they continue to work safely and effectively.

With respect to ESAs, it is our understanding that owners of emotional support animals generally do not receive any upfront training or any ongoing support on how to manage their animal's behaviour when in public. Moreover, we are unaware of any standards or protocols for determining who would benefit from an ESA or how and what animal would be best suited to their needs. We have heard of instances where doctors have written letters supporting a person's use of an emotional support animal. However and with the greatest of respect to the medical profession, we question whether this profession really has the required skills, training and experience to determine what animal would be most suitable, its necessary training and if the person has the capacity to manage/handle the behaviour of an animal.

### **\*III Human Rights Law Protects the Rights of Persons Who Use Service Animals**

Much of Canadian human rights law defines the term "service animal" to include the requirement that the animal be trained to perform a task or tasks related to a person's disability. For the record, we have never heard of a miniature horse or capuchin monkey being used as a service animal in Canada. According to our members, dogs are the only animals functioning as service animals in Canada.

Generally speaking, emotional support animals are not considered to be service animals. This is because they are not trained to perform specific tasks related to a person's disability. Although ESAs may provide comfort to their owners, their lack of training, particularly as it applies to public behaviour, puts them in the same category as any other pet. Thus we assume that owners of ESAs do not have the same human rights protection as handlers of guide dogs or service dogs.

Our Organizations and our experts, interprets Canadian Human Rights law to mean that handlers of guide and service dogs have a presumed right of access to all public places including transportation systems. We do not believe that this presumed right extends to persons with ESAs. We acknowledge that there may be certain situations, where a person

with a disability who has an ESA might be accommodated say to live at home with them. However, we contend that this would have to be considered on a case-by-case basis to determine the reasonability of the required accommodation.

We do not wish to appear unsympathetic to those who benefit from the presence of an emotional support animal. However, we fervently believe that the lack of training and the unpredictability of ESA behaviour in public may impose an undue hardship on the traveling public, making it difficult to accommodate persons who use such animals. Thus, we believe that all untrained animals (whether the person states is an ESA or pet) should only be permitted on public transportation if they are contained in a secure travel carrier.

#### **IV Canada Should Not be Influenced by the US**

In the US persons who use ESAs are not protected by the Americans with Disabilities Act. However, regulations under the US Department of Transportation allows persons with ESAs to travel on airlines. As mentioned above, this has resulted in a variety of media reports describing numerous problems caused by ESAs.

We recommend that the CTA refrain from following the DOT's current acceptance and actions until further research is available on how to ensure that ESAs can travel safely on public transportation. We further recommend that the CTA concentrate its current focus on its obligations under human rights law, The Canadian Charter of Rights and Freedoms, the Accessible Canada Act and the Convention on the Rights of Persons with Disabilities.

2. Should transportation providers be required only to accept certain species/animal types as ESAs (e.g., dogs, cats, and rabbits)? Or should transportation providers be required to accept all species excluding a few (e.g., insects and snakes)?

**Response:** As stated above, we believe that ESAs are no different than other carry on pets. We therefore see no reason to develop criteria to establish a specific ESA category.

3. As an alternative to a species-based approach, would it be preferable to have a criteria-based approach for the acceptance of ESAs? The criteria for carriers to accept or refuse to transport an animal could include habits of the species, age, size, or the potential allergy trigger to that the animal may create. For example, they could refuse to accept animals that gnaw, whose young age is likely to result in unacceptable behaviour, that pose a high allergen risk, or do not fit in a travel carrier or on the floor at a traveller's feet.

**Response:** As we have vigorously argued above, we contend that the critical analysis must be whether the ESA has been trained to travel safely and appropriately in public. Relying on criteria such as size, age, allergy-triggering and so on does not address the central issue of how the animal behaves in public. We therefore do not support any other criteria aside from high level relevant task training related to the disability that includes a



trained handler. In that case the dog would be considered a service dog under ATPDR and Human Rights Law.

4. Should all transportation providers be required to accept the same types of ESAs or should there be differences based on the mode of transportation (air, rail, marine, or bus)? If you think there should be differences based on mode, what differences?

**Response:** As previously stated, we have no opinion as to what types of animals should be allowed on different types of transportation. Our main concern is that untrained animals, no matter the mode of transportation, be properly and securely confined to travel carriers

5. Should the same requirements for ESAs apply to large and small transportation providers? Should consideration be given to the size or seating capacity of aircraft, rail car, bus, or ferry?

**Response:** Yes they should. As we believe an ESA is not a Guide or Service dog, they must be defined as pets. Transportation of smaller animals should be considered as pets and the carriers should have the right to refuse any they feel are inappropriate. Certainly size and seating capacity do play a factor and pets should be transported as space and safety allows as long as they are in proper carriers.

Further if a person who uses a Guide or Service Dog as defined by the ATPDR has reason to believe their dog is in danger by another, they must have the right to be heard when asking that the safety of their dog is paramount over a pet or a so called ESA and the aggressor dog be immediately removed. We have gathered mounting evidence of instances in the past year where handlers and their Guide and Service dogs have been lunged at, put in extreme danger and bitten by so called ESA's. Sometimes at the gate and sometimes on the plane before and after take off. Three of these incidents the person reported the aggression, it was witnessed by carrier staff, yet no one ensured these dogs were denied boarding or asked to leave the plane. Crews must have the authority and process to intervene and have the aggressor removed, just as they do with people. Four on the floor except when performing a task, leashed or harnessed and under the control of the handler. That is the behaviour expected of a Guide or Service dog and their handler. There cannot be exceptions to this basic principle.

6. In the United States, enforcement action is not taken if an airline refuses to transport more than three service animals for one traveller, including ESAs. In Canada, should there be a limit on the number of service dogs and/or ESAs that persons with disabilities can travel with on-board? If so, what limit?

**Response:** After careful study and research, our members could find no reason why a person would need more than one Service dog at any time. Further, given the number of dogs, and decades our members have used Guide and Service Dogs, no person has

encountered, heard of, or know of any circumstance where someone uses more than one dog. There are now dogs that are trained to perform multiple tasks such as helping a deaf person in a wheelchair with both mobility issues and alerting them to environmental cues. The management and control of more than one Service Dog is difficult and it is so rare as we could not find any compelling evidence to show how that would benefit a person. Therefore, our members believe the number should be restricted to one dog. Several people also believe the transportation carrier should have the right to make an exception an/or refusal in the very rare occasion, when a person presents with two dogs, based on evidence that more than one Service dog is required and both dogs are trained and the handler is trained to successfully manage two dogs in an appropriate and safe manner. This only applies to Service Dogs as defined in the regulations and a support person should not be used to manage the dog. The rights and the responsibility reside with the handler.

7. Under the ATPDR, transportation providers can require a person with a disability travelling with a service dog to provide documentation issued by an organization or person specializing in service dog training. The documentation must identify the person with the disability. It must also attest that the service dog has been individually trained by a specialized organization or person to perform a task to assist that traveller with a need related to their disability.
  - What documentation, if any, should transportation providers be able to request with respect to travel with ESAs with the aim of mitigating health, safety, or fraud concerns? For instance:
    - that the traveller requires the animal to travel, for medical reasons, as indicated by a health care practitioner who is treating the traveller and confirms that the traveller has a disability and needs the animal to travel for disability-related reasons;
    - that the animal will not need to relieve itself during transportation, and will not bark, growl, or act aggressively.

**Response:** \*As previously noted, we do not support an ESA category. It is either a Service Dog or it is not. Thus whatever documentation requirements are applied to carry on pets, should also be applied to ESAs. However, for the record, we would like to point out that the idea of relying solely on medical professionals to attest to the behaviour of an ESA seems inappropriate and misguided. While a medical professional may be able to determine that a person could benefit from an ESA, we highly doubt that they would have the required skill, experience or training to vouch for the behaviour of an animal. The medical profession is focused on patient care and not on animal husbandry.

Our position is that only Service dogs be allowed on any transportation provider outside of a crate.

8. The ATPDR allow transportation providers to require that persons with disabilities provide 48 hours' advance notice prior to departure for most services, including travelling with service dogs. In some situations, they may request up to 96 hours' notice to verify that documentation is in order and authorize an animal for travel. However, they must still make reasonable efforts to provide the service, even if notice is not given.

- How much notice would be appropriate with regard to ESAs?

**Response:** Given our previously stated opinion on ESAs, we have no opinion on this question. The transportation providers would need to determine the amount of notice, how many pets in carriers on any given route, and what types of pets they will allow. It was also suggested that passengers should be appraised when any unique species of pet is allowed on board in a carrier.

9. Would any of these requirements prevent travellers from using ESAs therapeutically?

**Response:** We have no opinion on this question. Apart from our position that an ESA be considered the same as pet and must be in a crate at all times. Existing accommodations for people requiring support to travel, does also include the provision in the 1P1F of a support person.

10. should transportation providers be obligated to accept service animals other than service dogs? If so, should any restrictions apply?

**Response:** There should only be dogs accepted. Given the almost century of training experience of many schools, Dogs are the only type of animal that can be successfully trained and are able to perform both the level of tasks required and be able to operate safely in public spaces, travel successfully outside in many weather conditions and ride on many transportation modes and keep their level of concentration and performance up and enjoy the work. There are animals such as monkeys that have been trained to support people within their homes and miniature horses to support people in rural areas. However, the level of concentration and skills sets needed to perform tasks well and consistently outside of a known environment is very much reduced when in public spaces. This includes planned relieving. Regarding a miniature horse, they are not physically set to lay down for long periods of time. Further they are prey animals and their eyes are set towards the sides of their heads to detect movement and as such they have a flight or fight instinct. They do not reason out their actions.

Dogs as predator animals, with eyes set at the front of their head, can see ahead very well, have the ability to think out problems quickly and make decisions. There is one very different ability for a dog that other species do not have. The ability to independently use intelligent disobedience. This is a key and distinctive quality of certain breeds of dogs and is very much why they can make very successful Guide Dogs and keep their handlers safe.

Finally, the latest information reported on January 22, 2020 from the Department of Transportation (DOT) in the USA, is stating they have started a 60 day consultation regarding the banning of all emotional support animals on carriers and only allowing Service Dogs to be accommodated. Further it appears they may be also considering a 1Person 1Fare approach for handlers of Service Dogs.

## **Section 4. Planning and Reporting Obligations under the Accessible Canada Act**

This part of our submission was written in partnership with ARCH Disability Law Centre, developed and co-created with people belonging to a cross section of disability consumer organizations. This work included members of the Canadian Council of the Blind, Alliance for Equality of Blind Canadians, Guide Dog Users of Canada and the National Coalition of Guide and Service Dog Users in Canada. This describes an inclusive policy framework that fits with the Principles stated in the actual legislation of the Accessible Canada Act.

Section 6, (F) under the Principles. It states: “persons with disabilities must be involved in the development and design of laws, policies, programs, services and structure.”

### **Five areas we determined that must be included in this section are:**

- 1) Add to the planning documents, the level and types of inclusion of people with disabilities that were and are involved in the development of plans, monitoring, training, timelines implementation and updating.
- 2) Post all the plans, updates and progress reports, including who or what department the public can contact. The format must be accessible and in an accessible searchable data base on the CTA website. This must include ASL, LSQ and certain other formats if requested. This would relieve the administrative burden of the smaller carriers to ensure they had a place to publish this information and give the public one place to find all the documents.
- 3) Identify the level and type of accessibility that travellers can expect in all aspects of the Federal Transportation network and post this information on the CTA website. Ex: What kind of wayfinding services does the terminal have including providing personal support, and both low and high tech options and how a person travelling can access them.
- 4) Use the Universal Design Principles as the expected standards in all aspects of development of regulations, both in process and physical architecture.
- 5) Ensure an assessment is done to identify immediate areas of change that can be accomplished and ensure new systemic and physical barriers are not created.

We chose not to answer every question and instead decided to describe the process and principles we feel must be in the regulations. They are as follows:

Persons with disabilities must be centrally involved in developing and monitoring implementation of the legislation and regulations. It is not enough to only consult.

Co-creation and co-design is critical. Without co-creation and co-design the credibility of the legislation and regulations is undermined. Further to re-address and change costly systemic and physical barriers caused by unintended outcomes of not involving the disability community will be greatly reduced. The CTA Accessibility Committee has member representatives are able to identify persons that can assist in the following:

Inclusive informed involvement of persons with disabilities in developing Accessibility Plans, Training, Implementation and Assessment and Identification of immediate changes that can be implemented.

- A facilitated, engaged process will work much better than a written process - this shifts the focus to co-creation of the accessibility plan and having an engaged conversation;
- Facilitators should be people who have worked with communities of people with disabilities before, so that they reduce barriers, rather than creating more of them;
- The organization holding the consultation should give participants accessible background information ahead of time so that they have the information they need to give helpful feedback;
- Organizations should go out to the community to conduct meetings – this would be better than conducting a process online or a written process;
- Organizations must make these in-person meetings as accessible as possible (for example, by having scribes and support persons available, by ensuring that meetings are held in accessibly designed spaces that can be reached easily by public transportation, by taking into account travel costs);
- Participants and facilitators must be compensated and provided with supports and fully accessible resources to help them overcome financial and informational barriers to participation;
- Organizations should consider whether their own staff should have some disability sensitivity training before conducting consultations and developing an accessibility plan;
- People with disabilities should be whenever opportunities are available, hired to bring an informed expertise into the assessment and decision making tables in all areas of the Federal Transportation Network. It is not enough to just consult. Inclusion means having people with lived experience and knowledge to support implementation strategies is vital to the success of an accessible Transportation system.

### **Community Monitoring**

- Community monitoring by people with disabilities, representing a diversity of perspectives, including most of all the consumer individuals and groups, allows for meaningful participation – it is important to include people with disabilities in the enforcement process.

- When an organization does its initial consultation on its accessibility plan, the organization could strike a monitoring committee made up of knowledgeable persons with disabilities, who would work with the organization
- This monitoring committee can assist with progress reports, monitoring how the organization is meeting its accessibility goals, and generally keep the organization accountable
- Community monitoring groups could also exist more generally at the level of a town or region or to monitor a particular industry
- Community monitoring groups do not need to be able to give fines. Instead they could contact the organization and work with them to help them follow accessibility requirements
- Given the time, expertise and work required for this task, there needs to be sufficient attention paid to ensure that there is capacity in the community to fulfill this role Community monitoring groups and monitoring committees would need to be paid for their time, work and expertise
- Government and the Transportation Network can support community monitoring groups by providing them with funding
- Community monitoring groups and monitoring committees would likely need training about the ACA and its regulations

## **Include Substantive Equality**

We believe that substantive equality is an important concept which must be included in the approach to regulatory development. Substantive equality should be thought of not as a stand-alone regulatory principle, but rather as an overarching objective for the entire legislative and regulatory scheme set out in Bill C-81. Indeed, the Bill itself requires this, since its Preamble, Purpose and Principles sections state that the goal of the legislation is the achievement of substantive equality for persons with disabilities in certain areas within federal jurisdiction.

Substantive equality is an important legal concept, which has been recognized by the Supreme Court of Canada and is part of the legal framework established by provincial and federal human rights statutes, the Canadian Charter of Rights and Freedoms, and Canada's international obligations under the Convention on the Rights of Persons with Disabilities. A useful description of substantive equality can be found in the Law Commission of Ontario's *A Framework for the Law as it Affects Persons with Disabilities*.<sup>[1]</sup> This framework is grounded in substantive equality as an underlying value or goal. The Law Commission describes substantive equality as follows:

Substantive equality requires government and private actors to take the steps necessary to advance access by all citizens to benefits, supports, programs, goods and services in a way that is responsive to their particular needs. Its goal might also be thought of as full "citizenship" in society. It incorporates but is not limited to non-discrimination, meaning that no distinctions are imposed upon disadvantaged persons that, in purpose or effect, withhold

or restrict access to opportunities, benefits or protection from the law, or impose burdens, obligations, or disadvantages that are not imposed on others. It also means, however, that persons with disabilities are not defined by the barriers they face, but are recognized as members of society who are able to make contributions and have obligations, as do other members. Substantive equality is about intangible concepts such as dignity and worth, but also about concrete opportunities to participate, have needs taken into account and have society and its structures and organizations develop in a way that does not treat persons with disabilities as outside mainstream society.<sup>[2]</sup>

Substantive equality also recognizes that persons with disabilities are diverse and that persons with disabilities experience much higher rates of poverty and exclusion from work than persons without disabilities. Therefore, efforts to achieve substantive equality must address barriers that result from intersectional discrimination and poverty.

As an overarching objective, substantive equality should be applied to the development of regulations in 2 concrete ways:

- First, it should influence the interpretation and meaning assigned to the regulatory principles that have been identified.
- Second, once the regulatory scheme has been developed, it should be evaluated to determine whether it advances the overarching objective of substantive equality for persons with disabilities.

It is important to explicitly include substantive equality as an overarching objective for this and future regulations. Identifying it explicitly in the regulatory concepts will help to ensure that the concept will be applied during the development and application of the regulations.

<sup>[1]</sup> Law Commission of Ontario, A Framework for the Law as It Affects Persons with Disabilities: Advancing Substantive Equality for Persons with Disabilities through Law, Policy and Practice. (Toronto: September 2012), available online: <https://www.lco-cdo.org/wp-content/uploads/2012/12/persons-disabilities-final-report.pdf>

<sup>[2]</sup> Ibid at p 65.

Arch Disability Law Centre <https://archdisabilitylaw.ca>