



**Council of Canadians
with Disabilities**

A VOICE OF OUR OWN

**Conseil des Canadiens
avec déficiences**

CETTE VOIX QUI EST LA NOTRE

September 29, 2016

Via E-Mail: scott.streiner@otc-cta.gc.ca

Mr. Scott Streiner
Chair and CEO
Canadian Transportation Agency
Ottawa, Ontario
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Dear Mr. Streiner:

The Council of Canadians with Disabilities (CCD) is a national human rights organization of people with disabilities that works for an accessible and inclusive Canada. In every decade since the 1970s, CCD has played a crucial role in advancing the status of Canadians with disabilities. CCD has played the role of:

- CONVENOR - bringing together the disability community, governments and others to remove barriers and create greater inclusion;
- INNOVATOR – informing and facilitating understanding of access and inclusion as it has evolved over the decades; and
- CONSENSUS BUILDER - developing a shared vision that facilitates progress and change.

As a result, CCD has demonstrated leadership on accessible and inclusive transportation, including:

- Providing expert testimony in the *Clariss Kelly v. VIA Rail* case decided by Canadian Transportation Commission in 1979;
- Participating in the Roadcrusier project which made accessible intercity buses a reality in Canada;
- Providing expert testimony on accessibility to the Parliamentary Committee on the Status of the Disabled and the Handicapped, which led to important recommendations concerning transportation in the ***Obstacles Report***;
- Being consulted by the Transport Minister during the development of the National Policy on Accessible Transportation in 1981;

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- Participating in research and development projects with the Transportation Development Center;
- Being consulted by the Government of Canada in the development of the *National (now Canada) Transportation Act 1987*;
- Co-chairing the Ministerial Advisory Committee on Accessible Transportation;
- Publishing *Moving Backwards: Canada's State of Transportation Accessibility in an International Context* (2005);
- Removing undue obstacles to mobility through litigation: *CCD v. VIA Rail* and *CCD v. Air Canada & WestJet*;
- Initiating a conversation in the disability community about the need for the Minister of Transport to develop accessibility regulations for the federally regulated modes of transportation and 45 disability organizations added their voices to CCD's call for regulation.

CCD has reviewed the CTA's document "Canadian Transportation Agency's Regulatory Modernization Initiative Accessible Transportation." In this submission, CCD identifies its concerns regarding some of the proposals presented in the consultation document and presents recommendations for how the Agency can advance barrier removal in the federally regulated transportation system.

Goals

The goals of the Regulatory Modernization Initiative are:

- Ensuring that industry's obligations are clear, predictable, and relevant to a range of existing and emerging business practices.
- Ensuring that the demands associated with compliance are only as high as necessary to achieve the regulations' purposes.
- Facilitating the efficient and effective identification and correction of instances of non-compliance.

CCD is concerned that the goals are too focused on efficiency. CCD proposes that the first goal should be ensuring that there are no undue obstacles in the federally regulated transportation system to the mobility of people with disabilities.

Current Legislative and Regulatory Context

CCD notes that the discussion paper fails to recognize that disability is included as a prohibited ground of discrimination under the *Canadian Human Rights Act* and Canada's *Charter of Rights and Freedoms*. In addition, Canada has ratified the *Convention on the Rights of Persons with Disabilities (CRPD)* and in doing so has agreed to follow a human rights approach to resolve issues of concern to Canadians with disabilities. The articles of the *Convention* that relate most directly to the mandate of the CTA are as follows:

- Article 2, Definitions, particularly the definition of universal design ("Universal design means the design of products, environments, programmes and services to be useable by all people, to the greatest extent possible, without the need for adaptation or specialized design.");
- Article 3, General Principles;
- Article 4, General Obligations; and
- Article 9, Accessibility.

CCD continues to prefer regulations over codes of practice.

CCD recommends that the CTA's regulations address human rights issues, not just undue obstacles to mobility, and provide for remedies similar to those that can be ordered by the Canadian Human Rights Tribunal (CHRT) under the *Canadian Human Rights Act*. Until legislation allows for this, the Agency and the CHRC must work collaboratively to resolve both undue obstacles and human rights issues.

Scope of Modernized Accessibility Standards

CCD is in favor of comprehensive accessibility regulations. CCD does not agree with lessening comprehensiveness by excluding certain providers from the regulatory regime. Exclusions from the protection which is afforded under the *Canadian Human Rights Act* and the *Charter* only prolong the existence of barriers to the mobility of persons with disabilities. To be comprehensive, the regulations need to apply to air carriers' using aircraft with 30 or fewer passenger seats and foreign carriers as well. In addition, regulations should also cover commuter and tourist rail.

CCD recommends that the regulation modernization process should establish that access regulations are minimum standards and the presence of these standards does not prevent a human rights complaint from establishing that a higher standard of access must be provided.

Approach to Modernizing the Accessibility Standards

Regulatory modernization should not mean dismantling the CTA's jurisdiction. The CTA's jurisdiction is strong and broad. The problem has been with how the Act has been administered by the Agency.

CCD finds the following proposed amendment to Part VII of the ATR unacceptable, "Recognizing that some aircraft are unable to carry mobility aids that do not fit through the door to the cargo hold." This amendment would violate the mobility rights of persons with disabilities, which are established in the *Charter of Rights and Freedoms* and the *Convention on the Rights of Persons with Disabilities*. It is CCD's position that carriers must accommodate passengers with disabilities by providing sufficient space for the safe and dignified travel of persons with disabilities and their mobility aids, whether that is a wheelchair or a service animal. People with disabilities must be able to travel with the confidence that when they arrive at their destination that their mobility aid, whether it is a wheelchair or service animal, is functional.

Carriers need to incorporate the space requirements of mobility aids into the standards that they set for new aircraft. Recalling the Supreme Court of Canada decision in the *CCD v. VIA Rail* case, which ruled against the creation of new barriers by a transportation provider, CCD recommends that the CTA prohibit airlines from introducing any new airplanes which have cargo doors that are too small to accommodate personal mobility aids.

As mobility aids are an extension of the person with a disability, the mobility aid must travel on the same aircraft as the passenger with a disability. It is an undue obstacle to the mobility of persons with disabilities to expect passengers with disabilities to travel without their personal mobility aid and use another aid when they arrive at their destination. Mobility aids are not one-size-fits-all; they are customized to meet the needs of a particular user. Using a mobility aid that was not customized to the needs of the user could cause a serious injury to the individual.

As part of the procurement process, air carriers should be requiring airline contractors to deliver aircraft that have sufficient space in both the seating and cargo areas to accommodate the needs of travelers with

disabilities. Furthermore, companies such as Bombardier, which construct inaccessible aircraft, should not receive subsidies from the Canadian government. Canadian tax dollars should not be used to support manufacturers who produce products that do not follow the principles of universal design.

CCD favors converting the Agency's Codes of Practice in their entirety into regulations.

In the consultation document, the following is stated:

A lot has changed since the mid-1990s. Travel, especially by air, has become more and more global, interconnectivity between modes of travel has increased, and the demand for travel, including by persons with disabilities, has increased in all sectors. It is essential that Canada's accessible transportation standards reflect these new realities and meet the growing demand for a consistent and reliable level of accessibility within the federal transportation network. Although the Agency monitors the implementation of the codes and actively promotes compliance with them through education and outreach, there is no certainty that the standards will be met and there is no legal mechanism to address non-compliance. (p. 4)

CCD believes that this new reality described in the consultation document provides a rationale for strengthening the CTA's capacity.

Services

In order that passengers with disabilities experience a consistent and reliable level of accessibility within the federal transportation network, CCD recommends that the Modernization Initiative develop regulations that require the following:

Assistance to Next Point of Departure – When the flight itinerary of a traveler with a disability includes multiple departures, carriers should be required to provide assistance to the passenger to connect with the carrier at the next point of departure, even if it is in a different terminal of the same airport.

Curbside Meeting and Assistance – All modes of transportation (air, rail, bus and marine) should be required to provide the service of meeting travelers with disabilities at the curbside and providing them with assistance from that point. This type of service should be available at terminals/stations/stops. As carriers are expecting passengers to book in advance, transportation providers will have the information they need to provide this service and information and communication technology will make it easier to deliver this service.

Relief Areas for Service Animals – Terminals should be required to provide convenient relief areas, located both inside and outside secure zones, for service animals. This service is particularly important for passengers transferring from one aircraft to another.

The CTA should require that on ferries a relief station for service animals be located on the upper decks in an accessible area remote from cars, as vehicle emissions can inhibit a service animal's willingness to relieve itself in a designated area.

Communication

Communication Among Carriers – CCD recommends a regulation that requires communication among modes of

transportation so that travelers with disabilities can have a seamless transportation experience. For example, if a passenger with a disability arrives by bus to a ferry, the bus driver should inform the ferry that a passenger with a disability has arrived and requires assistance. While there are operational considerations, such as cell phone usage by drivers, these are resolvable issues. The modes of transportation need to be pushed to communicate with each for the purpose of ensuring that people with disabilities do not encounter obstacles due to communication breakdowns.

W3C – CCD recommends that it be required by regulation that carriers' websites follow the most current W3C standard.

Kiosks – CCD recommends that in the federally regulated transportation system it be required by regulation that all kiosks, such as kiosks used for the purchase of tickets or for printing boarding passes and tagging luggage, follow the principles of universal design so that they are fully accessible and usable by people with various disabilities. Examples of essential accessibility features for these devices are way-finding cues so that people with disabilities can locate kiosks and audio output/voice command capacity.

Training

CCD recommends that the PTR include a requirement for yearly staff education on how to assist persons with disabilities. It is insufficient to train a staff person once at the onset of his/her career, as accessibility is an evolving concept. CCD also recommends that CTA plays a role in the evaluation of staff by undertaking spot checks to determine how effective carrier and terminal personnel are in providing assistance to persons with disabilities.

International Air Services

It is CCD's view that flights that originate in Canada should follow Canadian requirements on access and that the CTA's regulations should be applied to foreign carriers. Waivers can be issued where there is a conflict between a Canadian regulation and a regulation followed by an international carrier when it is not possible to follow both. CCD recommends that Canadian passengers be able to challenge waivers and carriers should have to prove that it is not possible for them to implement both regulations.

Rail

CCD recommends that as part of the modernization process that the CTA curtail unstaffed stations, particularly when advanced bookings have been made by a traveler with a disability, as unstaffed stations are an undue obstacle to the mobility of some travelers with disabilities and put the safety of travelers with disabilities in jeopardy.

Unstaffed stations create barriers for people with various disabilities. Staff at rail stations provides necessary information and assistance to travelers with vision impairment. If a person with vision impairment disembarks at an unstaffed station, he/she may be in the situation of being completely alone on the platform and without anyone to assist him/her find the route to the exit, a connecting vehicle, or other features of the station. Station staff provides necessary information and assistance to people with intellectual disabilities and anxiety disabilities who may need to receive clarification from staff regarding departure and arrival times, the point of embarkation, procedures relating to luggage, the availability of food, seating and so on. In other jurisdictions, travelers with disabilities have reported that unstaffed stations make travel impossible for some people with disabilities.

Unstaffed stations are a safety concern, as people with disabilities can be victimized by perpetrators of bullying, hate crimes, abuse, and violence, and this is a particular concern for women and girls with disabilities.

Marine

CCD recommends that the regulations for marine operators require that whenever ferries are put out of service for upgrades, that retrofitting for access also be undertaken.

Interprovincial Bus

In the air mode, it has been established that adequate space is to be provided for both the passenger with a disability and his/her service animal. This is not the case on interprovincial bus. CCD recommends regulation of interprovincial bus to ensure that there is adequate space for both the service animal and the passenger with a disability.

Systemic Issues

In this section, the document draws attention to the concern that the Agency's decisions are only binding on the carrier named in the complaint. CCD is of the view that on its own motion the Agency should require carriers to show cause that they cannot remedy a barrier that another carrier has been required to remedy.

CCD recommends that the CTA have the authority to:

- Award robust corrective remedies for pain and suffering and any losses caused by discrimination in the transportation system creating an undue obstacle to the mobility of a person with a disability;
- Grant interim injunctions related to the purchase of new equipment that would create new barriers;
- Issue prospective orders requiring carriers to pay the legal costs of persons with disabilities; and,
- Make systemic cost orders.

Currently, many settlements have confidentiality agreements. CCD recommends that confidentiality agreements be abolished so that all settlements resolving undue obstacles to mobility are made public and published on a website, where anyone can review decisions. By making settlements public, information about how obstacles are being addressed would be available to other people with disabilities who are seeking to have barriers addressed through the complaints process. Having the full decisions made public, once they are rendered, informs other carriers about what is, and is not, acceptable and what is expected of them with respect to removing barriers to access for travellers with disabilities.

The *Pathways: Connecting Canada's Transportation System to the World* report states, "As noted in Chapters 8–10 on the different modes, the Review is recommending that applications be restricted to persons, or their representatives, who have traveled and experienced an obstacle." Complaints brought forward in the public interest have successfully eliminated undue obstacles to the mobility of persons with disabilities. Organizations, such as CCD, should be able to have standing before the CTA in order to remedy undue obstacles to the mobility of travelers with disabilities.

One Person, One Fare

VIA Rail and Greyhound had one person, one fare policies prior to the Air Canada, Air Canada Jazz and WestJet decision, which required these carriers to adopt a one person, one fare policy. The purpose of the complaint was to establish the policy for the air mode and to ensure that backsliding did not occur in other modes.

The consultation document states,

Recognizing the broad range in sizes of operations, differences in markets served, and the related competitive pressures and financial realities that can exist (especially with respect to passenger air travel); the Agency is interested in hearing from stakeholders about options for addressing the issue. These could include a policy whereby qualifying passengers with disabilities are never charged for extra seats required to accommodate their disability or a policy whereby qualifying passengers with disabilities are refunded fares paid for additional seating when it is determined that there were empty seats on their particular trip. (p. 10)

CCD is in agreement with the proposal for "a policy whereby qualifying passengers with disabilities are never charged for extra seats required to accommodate their disability..."

The document "Canadian Transportation Agency's Regulatory Modernization Initiative Accessible Transportation" states, "... a policy whereby qualifying passengers with disabilities are refunded fares paid for additional seating when it is determined that there were empty seats on their particular trip." CCD strongly disagrees with any proposal whereby passengers with disabilities requiring an additional seat would be charged for that seat and then would have to seek reimbursement. Persons with disabilities have the same right as travelers without disabilities to take advantage of seat sales or travel during peak times. Persons with disabilities should not have to travel standby to see if a flight is full in order to make use of the one person, one fare policy. The proposal would further disadvantage a group that faces disproportional rates of poverty.

Allergies

WestJet has the current best practices with respect to allergies. WestJet's practices include:

- Allowing passengers with allergies to pre-board to wipe down his/her seat;
- Consulting with passengers with allergies to get specific information regarding his/her allergy and reaction and location of EpiPen;
- Making an announcement to the entire flight regarding abstinence during flight (for airborne allergies);
- Flight attendants will have a conversation with the passengers in rows surrounding the individual with allergies, if requested;
- Flight attendants know how to identify allergic reactions and the protocol for EpiPen administration.

Any future actions by the CTA should not have the effect of lowering the standard set by WestJet.

CCD offers the following additional comments:

- A one row buffer is ineffective for inhalant or airborne allergies;
- Airline personnel should be trained in emergency response to allergic reactions;

- While individuals should carry out their practice as per a typical day, it has to be recognized that being on an airplane is not typical for most people. For individuals with inhalant allergies, creating work and school spaces free from those allergens is part of daily life;
- For non-inhalant allergies, wiping down the seat and going over protocol is critical;
- Being aware of the ingredients in the food that is served on the aircraft is critical for the safety of passengers with allergies;
- Educating the public is a big step in creating accessibility and inclusion for people with disabilities, and this includes educating people that some allergies are inhalant in nature. Members of the public should be educated not to wear perfumes or scented products in enclosed and medical spaces. Just as the public has been educated not to smoke in certain spaces, the public can also be educated regarding how inhalant allergies affect individuals.

Accessible In-flight Entertainment

To achieve nondiscrimination, carriers with flights originating in Canada need to offer passengers in-flight entertainment devices that are designed in a way that they are usable by people with vision impairment and hearing impairment. As a result of a human rights complaint, Air Canada's in-flight entertainment units will be accessible to persons with vision impairment but the decision does not affect other carriers. The CTA should be working hand-in-hand with the Canadian Human Rights Commission (CHRC) to extend the impact of this, and other, CHRC decisions to other carriers. On its own motion, the CTA should require Canadian carriers to show cause that they cannot remedy a barrier that another carrier has been required to remedy as the result of a human rights decision. Such an approach would achieve more systemic solutions.

Reporting, Monitoring and Compliance

In this section, the Agency addresses "multi-year accessibility plans". CCD is of the view that carriers' accessibility plans should not limit remedies in human rights cases or decisions by the CTA.

Sincerely,



/for

Bob Brown
Co-Chair
CCD Transportation Committee

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