

 **Canadian Human Rights Commission

Submission to the**

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

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

**December 2021**

# THE CANADIAN HUMAN RIGHTS COMMISSION

The Canadian Human Rights Commission (the Commission; CHRC) 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’s efforts to promote and protect human rights include screening and, where possible, mediating discrimination complaints, representing the public interest in the litigation of complaints, developing policy and conducting research in consultation with rights holders and stakeholders, issuing public statements, and tabling special reports in Parliament. 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 Canada’s implementation of the rights and obligations enshrined in the various human rights treaties to which Canada is a party.

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* (ACA)*,* 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.

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 development of the Committee’s draft *General Comment on the right of persons with disabilities to work and employment* (General Comment). This submission follows the Commission’s previous written contribution to the Committee in March 2021, for the elaboration of the Committee’s outline of the draft General Comment.[[4]](#footnote-4)

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 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 emphasizes 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 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. 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.

# 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:
2. the legal analysis on the right to work include an overview 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; and
3. reasonable accommodations in the interpretation of article 27(1)(i) – paragraphs 49 and 50 – be framed as an exception to the rule, noting that the expectation should be for employers to proactively create accessible work environments. For instance, it should be noted that accessibility should be considered first, before accommodation, so that an accommodation request becomes the exception, not the norm.
4. In the “States Parties Obligations” section, we recommend that 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. This could be added to and expanded upon in paragraph 65.
5. In the “Relationship with other specific articles of the Convention” section, we recommend that the stand-alone paragraph on accessibility – paragraph 82 – acknowledge accessibility not only as a means to full participation, but as a human right. We further note that this paragraph should also highlight the scope of barriers accessibility addresses, including attitudinal barriers.
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. This written contribution can be found on the Committee’s website at the following link: <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/GeneralDiscussions.aspx>. [↑](#footnote-ref-4)