

Senate Standing Committee on Social Affairs, Science and Technology

Clause by Clause Amendments

May 2, 2019

Executive Summary:

On May 2, 2019, the Senate Standing Committee on Social Affairs, Science and Technology met to do clause by clause amendments on Bill C-81. They made several significant changes to the bill, including:

1. Adding timelines to the bill to achieve full accessibility "on or before January 1, 2040."
2. Including American Sign Language, Quebec Sign Language, and Indigenous Sign Language as the official languages of Deaf people in Canada.
3. Updating language on intersectionality to account for multiple and intersecting forms of disability and discrimination.
4. Clarifying that nothing within this Act or its regulations lessens a regulated entity's duty to accommodate under any other Act of Parliament.

A complete break down of the proposed amendments are as follows:

Senator Forest-Neising proposed an amendment to add the words "without delay" to line 15 on page 1. The paragraph would read:

"Whereas a proactive and systemic approach for identifying, removing, and preventing barriers to accessibility, without delay, complements the rights of persons with disabilities under the *Canadian Human Rights Act*,"

The amendment was carried.

Senators Donna Dasko and Judith Seidman proposed identical amendments to change section 5, line 13, to include, "on or before January 1, 2040." The paragraph would read:

"The purpose of this Act is to benefit all persons, especially persons with disabilities, through the realization, within the purview of matters coming within the legislative authority of Parliament, of a Canada without barriers, on or before January 1, 2040, particularly by the identification and removal of barriers, and the prevention of new barriers, in the following areas:"

The amendment was carried.

Senator Forest-Neising proposed an amendment to section 5.1 to include ASL, LSQ and Indigenous sign languages on page 4. Senator Seidman indicated that she was proposing the same amendment. Senator Seidman said she did not include Indigenous Sign Language, so she indicated she would prefer Senator Forest-Neising's amendment. The paragraph would read:

"5.1 (1) The area of communication referred to in paragraph 5(c.1):

a. Includes use of American Sign Language, Quebec Sign Language, and Indigenous sign languages

b. Does not include *broadcasting* as defined in subsection 2(1) of *the Broadcasting Act* or *telecommunications* as defined in subsection 2(1) of the *Telecommunications Act*.

(2) Recognizes American Sign Language, Quebec Sign Language and Indigenous Sign Language as the primary languages for communications by Deaf persons in Canada."

The amendment was carried.

Senator Seidman proposed an amendment to include a section 5.2 on page 4, line 5, with a sub amendment from Senator Forest-Neising to include the words "without delay" to Senator Seidman's original amendment. The proposed amendment with sub amendment would read:

"5.2 Nothing in this Act should be construed as requiring or authorizing the delay in the removal or barriers or the implementation of measures to prevent new barriers as soon as is reasonably possible."

The amendment was carried.

Senator Megie proposed an amendment to Section 6 (b) to remove lines 12, 13 and 14 on page 4 and include a section on intersectionality in line 23 on page 4. The proposed amendments would read:

"6 This Act is to be carried out in recognition of, and in accordance with, the following principles:

(b) all persons must have the same opportunity to make for themselves the lives that they are able and wish to have regardless of their disability;

(e) laws, policies, programs, services and structures must take into account the disabilities of persons and the different ways that persons interact with their

environment and the multiple and intersecting forms of marginalization and discrimination faced by persons;

(f) Persons with disabilities must be involved in the development and design of laws, policies, programs, services and structures;

(g) The development and revision of accessibility standards "

The amendment was carried.

Senator Dasco proposed an amendment to Section 6 on page 4 that would replace line 6 with the following:

"6 (1) This Act is to be carried out in recognition of, and in," and (b) by adding the following after line 29

6 (2) For greater certainty in the event of any inconsistency between the provisions of this Act and the Canadian Human Rights Act, the provisions of that Act prevail to the extent of the inconsistency."

The amendment was defeated.

Note: Senator Dasko said the provisions of the Accessible Canada Act are new and gives jurisdiction to the CRTC and CTA which don't have a lot of experience in these areas. She said this provision would ensure the Human Rights Act prevailed between provisions of the two acts, and the body of case law under that act would help adjudicate cases until this law became more established and mature. Senator Munson said he had a similar amendment down the road which went more broadly to ensure that the duty to accommodate provision goes beyond the Canadian Human Rights Act and applied to all aspects of parliament.

Senator Forest-Neising proposed an amendment to add the words "without delay" to clause 11, page 6 line 5, to the Minister's mandate. The amendment would read:

11 (1) The Minister's mandate is the realization, without delay, of a Canada without barriers.

The amendment was defeated.

Senator Forest-Neising proposed an amendment to change the word "may" to "must" in clause 11, page 6 lines 6 and 7. The paragraph would read:

"(2) In carrying out his or her mandate, the Minister must, among other things:"

The amendment was defeated. Note: Senator Munson asked James Van Raalte what the word "must" means in this context. He said the "may" provisions are legal drafting precedents around the observance of not tying the hands of the Crown. He said drafting traditions are "may" but this does not diminish the requirements of any of the provisions within the legislation.

Senators Seidman and Dasco proposed a subsequent amendment to their amendment to include a timeline in clause 11, page 6 line 6. Their amendment would read:

"11 (1) The Minister's mandate is the realization of a Canada without barriers on or before January 1, 2040."

The amendment was passed.

Senators Seidman and Dasco proposed a subsequent amendment to their amendment to include a timeline in Section 18, page 7 line 15. Their amendment would read:

"18 The Standards Organization's mandate is to contribute to the realization of a Canada without barriers on or before January 1, 2040."

The amendment was passed.

Senator Marty Deacon proposed including the words "training guidelines" to 18 (c) on page 7 line 20. Her proposed amendment would read:

"(c) the provision of information, training guidelines, products and services in relation to the accessibility standards that it has developed or revised."

She withdrew the amendment after departmental officials said the word "information" would provide more flexibility in terms of how CASDO can, in consultation with the community, determine how to meet the needs of the community and the needs of the regulated entities. Senator Deacon agreed, she said with reservation, to put the training guidelines in an observation.

Senator Munson proposed an amendment to clause 94 that would replace lines 9 to 17 on page 54 with the following:

Delete clause 94 (4). Note: Senator Munson said with this clause delated, members of the RCMP would be able to file a complaint with the accessibility commissioner. James Van Raalte said this was a drafting error caught by legal review.

The amendment was passed.

Senator Munson proposed an amendment to Section 121, line 21 on page 67, to read:

"121.1 For greater certainty, nothing in any provision of this Act or the regulations limits a regulated entity's duty to accommodate under any other Act of Parliament."

The amendment was passed.

Senator Munson proposed a subsequent amendment dealing with the RCMP in clause 143, line 10 on page 77, that would read:

"Subsection 94(5), 96(1), 100(2) or 103(3).

He said this were housekeeping amendments following the earlier amendment. The amendment was passed.

Senator Munson proposed an amendment to Section 172 by:

(a) replacing lines 37 on page 88 with the following:

Section 172 of the act is replaced by

(b) replacing lines 3 to 12 on page 89 with the following:

the remedies (2) on determining that there is an undue barrier to the

(c) replacing lines 34 and 35 on page 89 with the following:

Compliance with regulations (3) if the agency is satisfied that regulations made under subsection 171 (1) that are applicable in relation to a matter that have been complied with or have not been contravened, the agency may determine that there is an undue barrier in relation to that matter, but if it does so, it may only require the taking of appropriate corrective measures.

(d) replacing line 25 on page 90 with the following

172.2(1) For the purposes of paragraphs 172 (2) (d) and (e) replacing the line 5 on page 91 with the following:

Paragraphs 172(2)(b) and (c) and 172.12(2)(b) and (c) and (f) renumbering the remaining clauses and amending all references to them accordingly."

Note: Senator Munson said these amendments were made because of concern expressed that the subsection 172(2) may prevent the CTA from considering whether a company has met its duty to accommodate to the point of undue hardship. James Van Raalte said in the absence of this amendment, should somebody seek a duty to accommodate under transportation regulations, they would have to go to court as it

would go above and beyond the tribunal powers of the CTA. Senator Dasko, with support from Senator Deacon, proposed removing clause 172 all together. James Van Ralte said keeping Section 172 as amended would introduce a threshold of undue barrier and duty to accommodate requirement. He said repealing clause 172 would mean losing that.

The amendment was accepted.

It was decided by the Senators that they would send their observations to the Clerk and the Clerk would circulate them. The bill, as amended and with observations, will be reported to the Senate.