

The Nova Scotia Legislature

The Law Amendments Committee

Committee Meeting to Consider Bill No. 59: The Accessibility Act

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A Note of Appreciation and Caution:

- **Nova Scotia is beginning to make progress** in providing more recognition of the rights of persons with disabilities.
- The recent concession by the Government that the *Incompetent Persons Act* was unconstitutional and the determination to draft contemporary legislation was welcome.
- The willingness of the Government to consider an *Accessibility Act* is also a positive step.
- From the Government, Kevin Murphy and Minister Bernard are among the many people who should be singled out for helping to advance the rights of persons with disabilities ,but neither their, nor our, work as citizens, is done by the introduction of Bill 59.
- **Bill 59 now needs exacting public scrutiny and major modifications, as its current iteration is simply inadequate**

Overall Assessment of Bill No. 59:

- **The Bill is too weak.** It does not adequately protect and advance the human rights of persons with disabilities in Nova Scotia and it does not go as far as other comparable provincial statutes, such as in Ontario and Manitoba.
- **See the critique of the Accessibility for Ontarians with Disabilities Alliance, posted on November 6, 2016: "If enacted as is, it would be the weakest such law that is in effect in any province..."**
- **The Bill does not live up to the spirit nor the letter of the 2015 Report, "Access and Fairness for All Nova Scotians" with its eleven key principles.**
- Recent efforts to apprise persons with disabilities about the Bill and to **consult** with them, their advocacy organizations and allies have been woefully **inadequate**. The consultation process seems to have been truncated when it should be expanded.
- The Bill appears to be being **rushed through the Legislature**. Hurrying through such an important piece of legislation is inconsistent with the obligation that the Province has to ensure that the rights of a vulnerable minority are respected.
- **It would be better to refrain from advancing this Bill and to consider it more as a White Paper**, which could be part of the foundations of a renewed commitment to introduce legislation to implement the spirit and the letter of the *Convention on the Rights of Persons with Disabilities (CRPD)*.
- **The breadth of the Act is somewhat uncertain.** The definition of disability is broad, under s. 3(1)(h), and the Act also has a wide definition of "barrier" ,under s. 3(1)(c), but the Act as a whole seems to lean more towards barriers which may be more physical or sensory in nature. However important these are, **I am particularly concerned about persons with mental health problems and intellectual disabilities and those with dual diagnoses**. These often invisible impairments and the social and economic barriers they face, such as poverty and stigma, may be much harder to conceptualize than other obstacles. The notion of "universal design" may be more elusive for such marginalized groups. Although the Bill says that any other enactment that "provides a higher level of accessibility for persons with disabilities " prevails, under s. 4(2), Nova Scotia has no Mental Health Promotion and Illness Prevention statute, nor does it yet have a statute for persons labelled with an intellectual disability, such as the Manitoba *Vulnerable Persons Living with a Mental Disability Act*, so Bill 59 may not really assist such groups. **The Convention requires the recognition of the diversity of persons with disabilities." Preamble (i)**

Particular Problems with the Bill

Improving the Consultation Process

- The most **recent** aspects of the consultation process are **entirely unsatisfactory**.
- **The notice** of the Bill going to Law Amendments was **far too short** to permit thorough input from persons with disabilities and the public in general.
- **The spirit of the *Convention* has always been: "Nothing about us, without us."**
- The Convention states in several places that "States Parties shall **closely consult with and actively involve persons with disabilities**" "In the development and implementation of legislation and policies." (Article 4 (3))
- **This obligation is continuous**, through every aspect of lawmaking and enforcement, from drafting through to implementation. (Article 33 (3))
- **The public should be involved in the scrutiny of the Bill through an inclusive process.**

The Preamble

- The Preamble does mention the accessibility provisions (see Article 9) of the CRPD, which on the one hand is welcome, but **the Convention has many other highly relevant Articles** which may have been usefully inserted in which would have thereby provided a richer range of recitals.
- For example, **Article 1** of the CRPD says its purpose "is to promote, protect and ensure **the full and equal enjoyment** of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for **their inherent dignity**."
- Article 3 establishes the general principles of the Convention, including, in addition, (a) "**Respect for inherent dignity, individual autonomy** including the freedom to make one's own choices, and independence of persons;" "(c) Full and effective **participation and inclusion in society**;" and "(d) **Respect for difference acceptance of persons with disabilities** as part of human diversity and humanity;"
- Moreover, although the Bill does mention some socioeconomic facts, such as "the number of Nova Scotians with disabilities is likely to rise", it unfortunately omits what I think is the most crucial aspect of the reality which people with disabilities face. To use the language of the Convention, "**The majority of persons with disabilities live in conditions of poverty**, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities" (Preamble (t))

"The purpose of this Act (s.2)

- S. 2(a) only mentions "public sector bodies", which could have the effect of ignoring some of the "General obligations" which bind States Parties under Article 4(e) of the CRPD, wherein Canada has agreed "(c) To take all appropriate measures to **eliminate discrimination on the basis of disability by any person, organization or private enterprise;**"
- In s.2 (b), the goal is said to be "to improve accessibility" whereas that seems to fall completely short of the mark of the CRPD "States Parties shall take appropriate measures **to ensure** to persons with disabilities access." (Article 9 (1))
- In the same vein, the Ontario Act says "**to achieve accessibility**" (s. 1(a)), a far stronger goal. So does Manitoba, in s. 2(1).

The Definitions

- The definition of disability in section 3 (1) (h), which parallels the concepts of the CRPD, could be improved **by providing examples**, such as was done in the Ontario statute, in section 2.
- In s. 2(k), the "Minister" responsible is the Minister of Community Services. **As a human rights promoting statute, any accessibility law should be administered by the Minister of Justice.**

The Duties of the Minister, s.7, and also under the Enforcement Provisions, ss.45-62

- This section should be strengthened, to include an obligation to see that the legislation is **enforced**, as part of the obligations of States Parties under the CRPD "to ensure and promote the full realization of all human rights and fundamental freedoms." (Article 4 (1))
- Enforcement is discussed in sections 45 to 62, but there are serious questions to be asked about whether any enforcement should be done by persons who are, under section 45, appointed by the Minister, rather than by persons who have **greater independence**.
- Similarly, anyone subject to an order under section 51, may ask for a **Ministerial review**. This may not be an optimal review procedure, given the Minister's political role.
- The **duties** of the Minister on the whole in the section should be re-examined to see whether the **economic, social and cultural rights** enshrined in the Convention are adequately covered here and in the statute in general.

The Accessibility Directorate, s.10

- Part of the role of the Accessibility Directorate includes implementation and addressing “broader disability related initiatives”, which suggest respectively that the Directorate should have a role, on behalf of the Minister, in **enforcement** and, on behalf of the Government in general, in monitoring the full range of rights under the CRPD, including **the economic, social and cultural rights**. This should be explicit.

The Accessibility Advisory Board, s.13

- The statute could be **explicit** about the nature of “the skills and assets the Minister considers necessary” for appointments to the Board. (s. 13(1)(a)).
- **The Board should be explicitly charged with the responsibility of monitoring the extent to which the Accessibility Act conforms with the Convention on the Rights of Persons with Disabilities.**
- Given the importance of the Board in advising and making recommendations, its **annual report** under section 16 should be **made to the Legislature directly, not merely to the Minister.**
- Under s. 18, the Minister may “establish **standard development committees** to assist the Board”, whereas this **should be a required feature** of standard development, to ensure the deep involvement of persons with disabilities in setting forth the applicable standards, given their expertise.
- Under section 22 (2) (a), an accessibility standard must include “**an economic impact assessment**”, a **requirement which should also contemplate any economic impact of NOT implementing the standard.**
- **Moreover, there should be a required assessment of the human rights promoting impact of either adopting, changing or rejecting any standard.**
- Under section 25, the standard recommendations are submitted “to the Minister”, which seems to deny the public the opportunity for immediate scrutiny. **The standards and recommendations** are to be made “publicly available”, under s. 33, but this should happen **sooner**, particularly as the Minister is not obliged to accept any recommendations, under section 26.
- In general, the development of standards should be conducted by the Board in a manner which **enables the public to participate from start to finish.**
- Any accessibility standard should be **mandatorily reassessed on a specified regular basis**, to ensure that it continues to live up to best practice guidelines, particularly as may be implemented in other jurisdictions.
- There are **periodic reviews** under s. 64 of the Act as a whole, but these should not take the place of individual accessibility standards. The overall review of the Act should also come **sooner** than the Bill presently provides for, 4 years initially and 5 thereafter.