

TOWARDS A BARRIER-FREE CANADA

The Federal Accessibility Commissioner's 2022 Annual Report to the
Minister of Employment, Workforce Development and Disability Inclusion



Canadian Human Rights Commission

344 Slater Street, 8th Floor Ottawa, Ontario K1A 1E1

Toll Free: 1-888-214-1090 | **TTY:** 1-888-643-3304 | **Fax:** 613-996-9661 | www.chrc-ccdp.gc.ca

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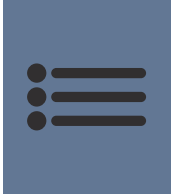


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Commissioner's message

As Canada's Federal Accessibility Commissioner, I am pleased to present you with my first Annual Report.

I was honoured to be appointed Canada's Accessibility Commissioner in May 2022, and have been fortunate to join and lead a bright and dedicated team of people within the Accessibility Unit here at the Canadian Human Rights Commission. We have had a meaningful and productive year of working to fully implement the Accessible Canada Act (the ACA).

The ACA became law in July 2019. That historic milestone was the result of many years of tireless advocacy by thousands of Canadians from the disability community, their families and allies. The ACA acknowledges that the principles of human rights will never be realized for people with disabilities until physical, social, economic and attitudinal barriers are removed. It supports the agency of people with disabilities, individually and collectively, by requiring that they are included and consulted throughout the process. From developing standards and regulations, to providing feedback, to taking their rightful place in (soon to be accessible) workplaces and communities, the ACA seeks to empower people with disabilities to participate on their own terms, in their own unique way.

It is those principles that inform my mandate as the Accessibility Commissioner: to promote compliance with the ACA and the Accessible Canada Regulations; to take enforcement measures where necessary; to receive and resolve complaints of non-compliance, and to report to the Minister on my activities.

As you will read in this report, my team has been working hard laying the groundwork for the full implementation of this law. But we are not alone in carrying out this important work in Canada. We are working closely with other agencies that are implementing the ACA and its regulations. This includes the Canadian Transportation Agency (CTA), the Canadian Radio-television and Telecommunications Commission (CRTC), Accessible Standards Canada (ASC) and the many other public, private and not-for-profit organizations who are committed to making Canada barrier-free. I also have the responsibility to work closely with the Chief Accessibility Officer to support her oversight role.

With the first set of regulations coming into force in 2021, my office has begun inspections and assessments to ensure that entities have complied with their regulatory obligations. Our goal is to undertake assessments that will dig deep into this first batch of accessibility plans and challenge federally regulated private and public sector organizations to consider the quality of their plan:

- Is this a realistic plan of action that can be evaluated?
- Does it identify barriers and set out the steps and timelines to remove them?
- Were people with disabilities consulted during the development of the plan?
- Will people with disabilities be able to provide feedback?
- Who within the organization is responsible for achieving the outcomes?

I am happy to report that our initial findings have been generally positive. We have found a high level of compliance by regulated organizations. In some cases, we identified areas that need to be strengthened. So far, regulated organizations have been accepting our feedback on their compliance. I would like to express my gratitude to the Commission's Compliance and Enforcement Division for their professionalism and dedication to this work.

On the Complaints side, my office works with the CRTC, CTA, FPSLRB and the Commission's Complaints Services Branch to ensure that complaints filed by members of the public are referred to the right place. Our Accessibility Complaints and Resolution Division has done some amazing initial work in developing a streamlined complaint process. In the coming months, we will undertake stakeholder consultation to assess whether the drafts we have developed are responsive to people's needs and expectations. Ultimately, the complaint process under the ACA should not be simply another human rights dispute resolution mechanism, but rather a targeted way of ensuring compliance with the ACA and Regulations and providing effective remedies where harm has resulted.

As Accessibility Commissioner, I have unique procedural powers under the ACA for carrying out investigations and conducting hearings. The objective is to ensure an understandable, fair, timely and effective process. From early consultations on the ACA, stakeholders were clear that they did not want a complicated, procedurally heavy process. They said there should be a focus on early resolution, with the goal of practical outcomes. My role as Commissioner also includes helping regulated entities understand their obligations under the ACA and the Accessible Canada Regulations, and how my office will interpret and apply the law. People with disabilities must be able to understand our enforcement approach, as well as their rights and responsibilities should they choose to file complaints with us under the ACA. Access to justice, which applies to the ACA, is based on a shared understanding of respective roles and responsibilities, the limits and potential of the legislation, and ensuring that processes are fair, timely and responsive to users' experiences.

It is important to remember that the ACA is a framework. It establishes a mechanism through which accessibility standards can be developed. It sets out how regulations can be enforced. It sets out the consequences for federally regulated private and public sector organizations if they fail to meet their legal obligations. The enforcement mechanism in the ACA sets it apart from other accessibility statutes in Canada.

For the ACA to be effective it needs additional regulations. Regulations which require substantive changes to the built environment, to the way goods and services are delivered and to the way transportation and broadcast services are provided. Standards that remove barriers to employment, communication, digital platforms and others must follow. Otherwise, the ACA will be remembered as simply another aspirational set of principles that did not lead to real change.

With a productive year behind us, I now look forward to continuing my outreach activities. It is so heartening to meet with individuals who are working every day to advance accessibility in their workplaces and communities. I continue to learn from every encounter and am always on the lookout for opportunities to collaborate with community groups, public and private sector organizations alike.

We are at a point where there is opportunity. There is a focus on accessibility and the momentum to remove disabling barriers. It is critical that we seize this moment, to the benefit of people with disabilities and Canadian society more broadly. The path to a barrier-free Canada will take a collective effort. I am so very honoured to be able to play a part in driving this journey towards an accessible Canada.

Sincerely,

Michael Gottheil
FEDERAL ACCESSIBILITY COMMISSIONER
CANADIAN HUMAN RIGHTS COMMISSION



The Accessible Canada Act

The Accessible Canada Act (ACA) aims to identify, remove and prevent barriers facing people with disabilities. The ACA applies to federally regulated private and public sector organizations, as well as parliamentary institutions.

The ACA takes a new approach to accessibility. Instead of waiting for people with disabilities to ask for barriers to be removed, organizations must proactively work to find, remove and prevent barriers. Under the ACA, federally regulated organizations must:

- consult people with disabilities
- publish accessibility plans about how they are finding, removing and preventing barriers
- set up ways to receive and respond to feedback about accessibility
- publish progress reports about how they are following their accessibility plans

Organizations must also notify the Accessibility Commissioner when they publish their plans, feedback process descriptions and progress reports.

The first set of Accessible Canada Regulations came into force in December 2021.



Our work to date

The Accessibility Unit is focused on the following priority areas:

- developing tools and resources for federally regulated private and public sector organizations
- promoting compliance and developing a strategy to inspect federally regulated organizations to verify their compliance with the ACA and the Accessible Canada Regulations
- establishing a process to handle accessibility complaints
- engaging with rights holders, stakeholders, and partner organizations who are also responsible for implementing the ACA
- inspecting the first accessibility plans and feedback processes of various federal government organizations

Developing tools and resources

The Accessibility Unit provides information and resources to help organizations understand their responsibilities under the ACA. To this end, we developed a suite of tools and resources to explain the requirements in the ACA and to help organizations determine how to meet their regulatory obligations.

Information

The Accessibility Unit's main platform for explaining and sharing information about the ACA and the Accessible Canada Regulations is the Accessible Canada Act section of the Canadian Human Rights Commission's website. The site provides clear and concise information about the requirements and timelines for organizations, and their applicability to different organizations. The site also includes information about notifying the Accessibility Commissioner, accessing voluntary self-assessment tools and our approach to enforcement.

In 2021, the Accessibility Unit produced two videos related to the ACA:

- a three-minute animated video directed at the general public, explaining the ACA and the importance of accessibility
- an 11-minute video directed at Commission staff, explaining the principles of the ACA and how to apply them

These videos have proven to be valuable resources for raising awareness and providing guidance internally and externally.

Compliance self-assessment tools

Two principal requirements of the ACA are that organizations must prepare and update accessibility plans and develop a feedback process. Creating an initial accessibility plan from scratch can be a challenge for any organization, large or small. The Accessible Canada Regulations set specific criteria for how accessibility plans and feedback process descriptions must be published and what they must include.

The Accessibility Unit created a suite of online compliance self-assessment tools to support organizations during this process. The tools are designed to help organizations create their accessibility plans and feedback processes in compliance with the ACA and the Accessible Canada Regulations.

There are four self-assessment tools, one for each of the four groups of regulated entities designated by the ACA:

- regulated entities that carry on broadcasting undertakings
- regulated entities that are Canadian carriers and telecommunications service providers
- regulated entities in the transportation network
- other federal public sector and federally regulated private sector regulated entities

My Accessibility Portal

Under the ACA, organizations must notify the Accessibility Commissioner within 48 hours of publishing their accessibility plans, progress reports and feedback process descriptions. To help facilitate receiving and processing these notifications, the Commission developed an online platform called My Accessibility Portal. The Portal is designed to help organizations fulfil their notification requirements under the ACA.

Through the Portal, an organization can:

- create an organizational profile
- securely exchange information with the Accessibility Commissioner
- notify the Accessibility Commissioner when it publishes its accessibility plan, description of its feedback process and its progress reports
- receive confirmation that its notification was received and monitor the status of its notifications

Although we are only in the early stages of compliance, 182 organizational profiles have already been created in the Portal and 136 notifications have been received through the Portal.

Promoting, monitoring and enforcing compliance

The Accessibility Commissioner is responsible for:

- promoting compliance with the ACA
- monitoring federally regulated organizations to verify if they meet their accessibility obligations
- taking enforcement action to help bring organizations into compliance
- receiving, investigating and ruling on complaints filed under the ACA

Promoting compliance

The Accessibility Unit's goal is to promote compliance and encourage organizations to take proactive steps to identify, remove and prevent barriers to accessibility. We gather and analyze data and information to identify promising practices, challenges, and systemic and emerging trends and issues.

One of the Accessibility Commissioner's first priorities upon joining the Commission was to get the message out that organizations must begin the work of preparing their accessibility plans to meet their first fast approaching deadline. The Commissioner's message was shared on the main page of the Accessible Canada Act section of the Commission's website, and on the Commission's various social media platforms.

To extend the reach of the Accessibility Commissioner's message even further, the Accessibility Unit launched a bilingual email campaign targeting public and private sector organizations and reminding them of their respective deadlines to publish their plans. The first letter was sent to approximately 150 public sector organizations to remind them of their December 31, 2022 deadline. The second letter was sent to approximately 1,780 private sector organizations, with a reminder of the June 1, 2023, and 2024 deadlines. The Accessibility Unit also mailed a hardcopy version of this letter to a further 3,800 organizations.

The letters discussed the principles of the ACA, responsibilities and key deadlines for organizations and how to reach the Accessibility Unit for support and more information.

Monitoring compliance

The Accessibility Unit's compliance monitoring and enforcement role will evolve over time as new regulations are introduced, and the program adapts in response to these expanded responsibilities. As we are in the early stage of this new federal program, we are focusing on promoting compliance and verifying if organizations are meeting their initial regulatory responsibilities as they relate to accessibility plans and feedback processes.

To inform current and future compliance monitoring efforts, the Commission is developing a risk-based inspection strategy. This approach to planning inspections will help us decide:

- which organizations to inspect
- when to carry out inspections
- what to focus on in our inspections

Inspections may be virtual, on-site, or a combination of both. For example, the Commissioner may inspect an organization's website to verify if the organization's accessibility plan is published in a way that meets the requirements set out in the Regulations.

Other factors we are considering as we develop our inspection strategy include:

- emerging issues or trends
- new regulatory requirements
- inspection plans of our implementation partners
- participation by external parties with relevant technical expertise (e.g., web accessibility experts) and people with disabilities (e.g., those who have lived experience or can assist with specific technical inspections.)

Through this process, the Accessibility Unit will collect and analyze data and report on how organizations are complying with the Accessible Canada Regulations. We may identify sectors that are showing leadership through innovative practices, or others that are struggling to meet their obligations. By gathering this data, we will be able to identify gaps and report on areas that need improvement.

The deadline for government organizations to publish their first accessibility plans was this past December 31, 2022. Therefore, the Accessibility Unit is just beginning the work of assessing whether this first group of organizations is meeting its obligations.

Enforcing compliance

While compliance promotion is a key ongoing element of any compliance and enforcement program, the ACA provides for enforcement mechanisms that may be used when entities fail to meet their obligations under the regulations. The ACA allows for a graduated and proportionate approach to enforcement. As we continue to verify compliance with regulatory requirements, our strategy will evolve to ensure our compliance promotion efforts are effective, and that entities are taking their responsibilities to make meaningful change seriously.

Currently, we are assessing the tools available to enforce compliance and developing a strategy that will inform which tool to use, taking into consideration the severity of violations and the risks they present to people with disabilities. Tools for enforcing compliance include:

- production compliance and inspection orders
- notices of violation (with warnings or administrative monetary penalties)
- compliance agreements to replace all or part of a penalty in exchange for compliance and investments in accessibility
- corrective action plans which set out actions and timelines for addressing non-compliance

In the coming years, our compliance strategy will evolve as more regulations are introduced.

Preparing our complaint process

At this time, the Commissioner only deals with complaints about harm people suffered because federally regulated organizations did not meet their requirements about accessibility plans, feedback processes and progress reports. Future regulations will broaden the Commissioner's scope in dealing with complaints.

The Commission is developing an accessibility complaints process. As a first step, we are building a complaints process to deal with contraventions of the Accessible Canada Regulations. The complaints process will include early resolution and mediation, investigations, as well as adjudication.

The process will reflect our collaborative partnership with the Canadian Transportation Agency, the Canadian Radio-television and Telecommunications Commission and the Federal Public Sector Labour Relations and Employment Board. The goal is to implement an efficient and transparent referral process to ensure that complaints are directed to the appropriate organization.

Working with partners

Many people and federal organizations are working together to implement the ACA. Collaboration among these partners is essential to its successful implementation.

Three regulations have been made under the ACA to date. Oversight is provided by three different organizations:

- the Accessible Canada Regulations, enforced by the Accessibility Commissioner
- the Accessible Transportation Planning and Reporting Regulations, enforced by the Canadian Transportation Agency (CTA)
- the Canadian Radio-television and Telecommunications Commission Accessibility Reporting Regulations, enforced by the Canadian Radio-television and Telecommunications Commission (CRTC)

The Commission continues to work with these partners, as well as with Employment and Social Development Canada (ESDC), to align our policies and practices around accessibility. We participated in consultations on regulations led by ESDC and continue to work together to develop guidance.

Inquiries

The Commission's Accessibility Unit has been receiving and responding to a growing number of questions about the ACA and its requirements. Organizations are reaching out to better understand their responsibilities.

In the past year, we received and responded to 203 inquiries from organizations, the majority of which were received in the months leading up to the compliance deadline for federal government organizations.

Outreach and engagement

The Accessibility Unit has conducted numerous outreach activities to raise awareness, build relationships and gather input to inform our planning and reporting. We are working closely with other federal government organizations that have responsibilities under the ACA to share information on priorities and align our outreach efforts.

Since the start of his mandate in May 2022, the Accessibility Commissioner and members of the Accessibility Unit have met with over 50 organizations from across the disability community, as well as with several organizations that represent large, regulated entities such as the Office of Public Service Accessibility and Federally Regulated Employers - Transportation and Communications (FETCO).

The Accessibility Commissioner attended engagement events with the Chief Accessibility Officer (CAO) and the CEO of Accessibility Standards Canada to leverage outreach opportunities and share information, best practices and resources.

The Commissioner has also used his platform to speak at numerous events throughout the year, from conferences, to fireside discussions, and academic discussions. In May 2022, the Commissioner participated as a panelist at the Canadian Congress on Disability Inclusion organized by ESDC. The panel discussion focused on inclusive design. The Commissioner shared his insights on how the ACA and Regulations will help shift the culture from accessibility as an afterthought, to accessibility and inclusion as integral pillars in the creation of laws, policies, programs, services and structures. In November 2022, the Commissioner participated in the B.C. Indigenous Disability Network conference in Victoria.

Inspecting the first accessibility plans

Accessibility plans explain how federally regulated organizations are identifying, removing and preventing barriers in their policies, programs and services.

The ACA and its regulations require that accessibility plans include information about:

- how to contact the organization
- how the organization consulted people with disabilities
- how the organization identified and plans to remove and prevent barriers in its policies, programs and services in certain areas

People with disabilities are often also members of other equity-deserving groups – including women, Indigenous people, racialized groups and 2SLGBTQI+ communities. Therefore, organizations must also consider the unique barriers faced by individuals from diverse communities and with different lived experiences. Entities must take care not to exclude certain people with disabilities because they have failed to appreciate diversity, in its broadest sense.



Reporting obligations

The Accessible Canada Act requires the Accessibility Commissioner to report on the following activities:

- inspections carried out
- orders made (orders requiring a regulated entity to make any record available, and orders to terminate a contravention of the ACA)
- notices of violation issued
- complaints filed
- information prescribed in regulations
- observations about systemic or emerging accessibility issues

The first deadline for federal government organizations to publish their accessibility plans and description of feedback processes was December 31, 2022. Therefore, the Accessibility Unit has only recently started to conduct inspection activities.

The following information is up to date as of **March 31, 2023**.

Notifications

- 136 federal government organizations have notified the Accessibility Commissioner of the publication of both their accessibility plans and feedback processes.
- 182 federal government organizations have created a profile in the My Accessibility Portal. The majority have notified the Commissioner using the Portal. The Commissioner strongly encourages all organizations to use this platform.

Inspection activities

Inspection activities to verify compliance with requirements regarding:

- Notifications of Accessibility Plans = 136
- Notifications of Feedback Process Descriptions = 136
- Publications of Accessibility Plans = 136
- Publications of Feedback Process Descriptions = 136
- Accessibility Plans inspections = 21
- Feedback Process Descriptions inspections = 21

Orders and notices of violation

No orders have been made and no notices of violation have been issued.

Complaints

At this time, the Accessibility Commissioner only deals with complaints about harm people suffered because federally regulated organizations did not meet their requirements about accessibility plans, feedback processes and progress reports.

As of March 31, 2023, no complaints have been filed with the Accessibility Commissioner.

Corrective action plans

27 corrective action plans, which set out actions and timelines for addressing non-compliance, have been initiated with organizations that did not notify the Accessibility Commissioner of the publication of their accessibility plans and description of their feedback processes.

Systemic or emerging accessibility issues

Given the staggered implementation of the ACA, and that only a small portion of federally regulated organizations are required to comply with the Accessible Canada Regulations at this point, it is too early to identify systemic or emerging accessibility issues in this report. However, the Accessibility Commissioner has begun to analyze published accessibility plans and feedback process descriptions and has made the following preliminary observations:

- Many regulated entities have primarily consulted internally.
- Many regulated entities have emphasized the importance of training on accessibility.
- Some regulated entities have proactively published in alternate formats.
- Some regulated entities have published executive summaries in ASL and LSQ.
- Many regulated entities did not use the headings prescribed in the Accessible Canada Regulations, which can make accessibility plans more difficult to follow.
- Many accessibility plans identified objectives for improving accessibility instead of clearly identifying barriers.
- Many feedback processes include service standards for acknowledging receipt and identify a senior management position as responsible for receiving feedback from people with disabilities on the accessibility plans.