PRINT PAGE 1

**F**EDERAL **A**CCESSIBILITY **L**EGISLATION **A**LLIANCE

**A**LLIANCE **P**OUR **U**NE LOI FÉDÉRALE **S**UR **L**’ACCESSIBILITÉ

My Canada Includes Me – Je fais partie de mon Canada

# Recommendations to the Senate

February, 2019

PRINT PAGE 2

## Establish an Effective Complaints Management Process

**The Accessibility Commissioner must have the authority to establish, monitor and enforce a standardized process for receiving, responding to, and resolving complaints. This process must be imposed on all federally regulated entities. The Accessibility Commissioner must provide details of this process within 180 days of commencing his/her mandate and publicly release each year a complaints summary report listing the types of complaints, organizations involved, compliance orders issued, monetary penalties/settlements, and resolutions.**

### Background

There is a legitimate concern that if the Accessible Canada Act comes into law, people with disabilities can get caught up in the bureaucracy of the complaints process. All of us have had the experience of being told to talk to one person and then that person says oh no, you should talk to someone else and before you know it, you’re chasing your tail.

No one wants that.

However, it is a bit tricky with the proposed Accessible Canada Act. Not all complaints go directly to the Accessibility Commissioner, the person tasked in Bill C-81 to enforce most of the Act. For example, the Federal Public Sector Labour Relations and Employment Board would deal with complaints in its area. The Canadian Radio-television and Telecommunications Commission would deal with complaints in its area. And the Canadian Transportation Agency would deal with complaints in its area. So, you can imagine how it could be difficult if you have made a complaint in one place, but really you are supposed to make the complaint somewhere else. Or, if you have made a complaint and that particular complaints department isn’t doing anything.

FALA wants complaints resolved quickly with no “red tape”. People should not have to fight a complicated system to have their right to a barrier free life.

When presenting to the HUMA Standing Committee of the House of Commons we told them about our concerns regarding the complaints process. Bill C-81 was changed to recognize that people who present complaints may need additional time to submit an appeal. An appeal could be made in a time period of 60 days instead of what was originally 30. As well, the independent appeal review process has been amended to allow for more than one person to be involved.

We were also told that the Government of Canada is developing a streamlined complaints process referred to as the “No Wrong Door” concept. The idea is that no matter which place you go to make your complaint, it will be dealt with efficiently and in a timely manner.

We want to make sure that it is written right into the Bill that the Accessibility Commissioner is the person in charge regarding the complaints process. The Accessibility Commissioner creates the process and holds all other federal regulated entities accountable to the process.

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### FEEDBACK

An independent disabled adult person was flying from Canada to London England and the airlines made them wear a sign around their neck. If they refused they would not be allowed to fly as the airline would have cried it was a "safety issue ". Federal Human Rights would not take the case stating CTA could handle this. Federal Human Rights told us we had to exhaust the CTA system, and only then would they look at the case, but that did not mean they would take it. CTA does not handle discrimination but classified the 22+ hours of wearing a sign around one’s neck in public an undue obstacle.

END TEXTBOX.

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## Strengthen the Terminology Used in Bill C-81

**Use the term “shall” instead of “may” in Bill C-81 to make it clear that specific actions are required to remove barriers.**

### Background

We all want an Accessible Canada Act that is strong and effective. One way to make sure this happens is to state clearly what is expected from the people who are to follow the law. We don’t want wiggle room in the Act so that some people can go all piggly-wiggly and do what they want.

FALA made recommendations to the HUMA Standing Committee of the House of Commons and here’s what has already changed in Bill C-81:

The term “Canadians with a disability” has been changed to “persons in Canada” to be inclusive of people who are not citizens but live in Canada.

The Bill C-81 definition of disability has been expanded to include conditions that are invisible.

FALA thinks those are pretty good changes. There were some other changes, too.

* The word “including” was added to the definition of disability in Bill C-81 to signify that the list of conditions is not exhaustive.
* The Bill C-81 definition of disability was expanded to include “cognitive”.
* The word “abilities” was removed from the Preamble and from the Principles sections of Bill C-81 to be clear that the focus is on the recognition and removal of barriers experienced by people with disabilities.
* The term “emotional harm” was changed to “psychological harm” to be more inclusive of a range of conditions.

All good news, FALA thinks, but our original HUMA recommendation was not fully addressed.

In many parts of Bill C-81 the word “may” is used. FALA doesn’t think there should be an option and prefers the word “may” to be replaced with “shall”. According to our partner – ARCH Disability Law Centre – in their presentation to the HUMA Standing Committee, specific changes should be made to sections 117, 4, 111(1), 16, 95, 75(1) and 93 to make the Bill stronger and more effective. Please review their recommendations for specific changes to the use of the words “may” and “shall”.

BEGIN TEXTBOX:

### FEEDBACK

This recommendation is critical to the success of the Accessible Canada Act. By amending the act to introduce an obligation to implement and enforce the Accessible Canada Act, the government will ensure that future governments will be required to maintain the momentum of the legislation, and will help ensure that legislation continues to realize its goal of a Canada without barriers.

END TEXTBOX.

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## Apply Compliance and Enforcement

**The Accessible Canada Act must empower the Accessibility Commissioner to actively promote and enforce compliance by all federally regulated entities. Funding recipients may not create new barriers with federal funds.**

### Background

In Bill C-81, federally regulated entities (every organization, agency and commission the government oversees) will have to create Accessibility Plans. These plans will outline how each entity will remove barriers to improve their own access and inclusion.

Some will say, “How do we know they will be good plans?” And this is a legitimate concern. The Accessibility Commissioner has the power to enforce the Act. We think the Accessibility Commissioner should also have the power to ensure that Accessibility Plans will be good plans.

In another FALA recommendation (Effective Complaints Management) we call for the Accessibility Commissioner to have the power to establish, monitor and enforce a standardized process for receiving, responding to and resolving complaints to be used by all federal entities.

But what if an entity doesn’t follow through with its plans and continues to have barriers? Or almost worse, what if it takes federal funds and makes further barriers? Is it going to be up to us, people with disabilities, to register complaints and follow it all through? The Act explains that enforcement will be led by the Accessibility Commissioner and not be left up to individuals with disabilities. Yes, we will register our own complaints, but be gone the days where we have to fight to get resolutions.

As well, when the Government was first developing Bill C-81 and asking for our feedback, many of us said the new Act would have to have teeth. They put in a fine with a bite of up to $250,000. This will hopefully help with compliance.

Another issue with the proposed legislation is that there is wiggle room in Bill C-81 that enables some entities to be exempt from following through on Accessibility Plans or removing barriers in general. Not good. After we (and a bunch of other organizations) reported to the HUMA Standing Committee of the House of Commons our displeasure with this loop hole, the Bill was changed to say there is a three-year time limit on exemptions. Another change was made that required entities looking for exemptions to describe their rational through a public statement.

Here’s another tricky bit in the legislation: If a province or territory already has an Accessibility Act, which rules do federally regulated entities follow – the provincial / territorial or federal Act? The Government told us that a clarification was added to the Bill stating that the Minister is required to make every reasonable effort to collaborate with provincial and territorial governments around harmonizing accessibility requirements across different jurisdictions. As well, an amendment was added to Bill C-81 with a new principle to signal that the intention of the Act is to ensure the greatest level of accessibility is called for as each standard is developed and each regulation is made. It sure would be great if Canada’s provinces/territories and federal government used the same best rules for access and inclusion.

FEEDBACK

Having an effective enforcement system for the Accessible Canada Act is critical for ensuing that people with disabilities are able to fully engage in Canadian societal life without barriers. If the government is not able to ensure that obligated organizations, agencies, government department are complying with the regulations set out in the act (and the requirements of creating an accessibility plan), then people with disabilities would not observe or experience any tangible changes to their daily lives.

Considering all these things, FALA makes its recommendation.

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### FEEDBACK

Having an effective enforcement system for the Accessible Canada Act is critical for ensuing that people with disabilities are able to fully engage in Canadian societal life without barriers. If the government is not able to ensure that obligated organizations, agencies, government department are complying with the regulations set out in the act (and the requirements of creating an accessibility plan), then people with disabilities would not observe or experience any tangible changes to their daily lives.

END TEXTBOX.

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## Strengthen the Role of CASDO and the Chief Accessibility Officer

**The Canadian Accessibility Standards Development Organization (CASDO) and the Chief Accessibility Officer must be independent of the government and have staff, board and committees that are disability/accessibility savvy, diverse, inclusive (including Indigenous people) and have a representation of 2/3 of people with disabilities.**

### Background

In Bill C-81, a new organization is to be developed called: The Canadian Accessibility Standards Development Organization (CASDO). This organization will create all the rules (standards and regulations) for the Accessible Canada Act.

FALA believes that CASDO must be able to operate without the Government of Canada being able to influence decisions. This would also mean that the Government of Canada will be held accountable for removing and preventing barriers, just like all federally-regulated entities that will be required to follow the rules.

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### **FEEDBACK**

I support this recommendation and that I also strongly feel the person becoming the Chief Accessibility Officer must be a person with a disability and has deep knowledge of the issues of discrimination, barriers and effect it has on mental health.

END TEXTBOX.

FALA also believes that people with disabilities must be part of CASDO. We are the experts regarding access and inclusion. As the saying goes: Nothing about us, without us. But that being said, there should be representation from other stakeholders who are instrumental in putting the standards into practice. By having other stakeholders at the table, people with disabilities can address others’ issues and concerns directly.

Another new position introduced in Bill C-81 is the Chief Accessibility Officer. This person’s job is to be the lead advisor to the Government of Canada on systemic or emerging accessibility issues. Just like CASDO, we believe that this person must be able to operate without the Government of Canada getting all in their accessibility business. We want this person to be able to tell it like it is, and speak the truth. We also think this role is for someone with a disability.

We told the HUMA Standing Committee of the House of Commons all of the above. The Government listened and Bill C-81 was amended to recognize a need for diversity of disability representation on the CASDO Board of Directors.

But we don’t think that is quite enough.

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### **FEEDBACK**

This recommendation will insure that people with disabilities have a continuing role in the development of accessibility standards. Far too often, others have placed us in a minority position. Having strong representation from our community insures that we cannot be ignored again.

END TEXTBOX.

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## Fund Lived Experience Expertise

**The Accessible Canada Act implementation must include funding to properly compensate people with disabilities and disability organizations for their leadership and consulting contributions in all areas of the design and implementation of the Act, and include funding for the development of toolkits, guides, education programs etc. to assist with implementation.**

BEGIN TEXTBOX:

### **FEEDBACK**

As a disabled person I have endured countless hours volunteering to giving advice and doing report work for organizations when I should have been paid to do it. This experience happens to many others with disabilities and it’s time to put a stop to this.

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### **FEEDBACK**

Like many people with disabilities, I have often found myself providing knowledge to people without any consideration for the time I take and the cost of getting to the location. If people refuse to pay us when they will gladly pay someone who does not have a disability, it is a reflection of how little value they place on what we can offer. This attitude must change and funding must be provided to set an example for others who perpetuate the idea that our knowledge is of less value because of our disabilities.

END TEXTBOX.

### Background

In Bill C-81, there is recognition that the active involvement of people with a broad range of disabilities is essential to the successful implementation of the Accessible Canada Act.

So, FALA believes if you need us, then compensate us. Pay people with disabilities and organizations of, and for, people with disabilities. If we are giving our valuable contributions just pay us like any other consultant offering expertise would be paid.

People with disabilities are asked/expected to contribute our expertise on a volunteer basis. It happens all the time.

It’s not cool.

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### **FEEDBACK**

For years, I have struggled, like other people with disabilities, to be recognized and paid for our expertise. If Bill C-81 is a good example of promoting the expertise of people with disabilities, other organizations should follow suit and pay for consultants living with limitations, like any other consultant hired with a service contract and a consultant.

END TEXTBOX.

PRINT PAGE 7

## Create a Culture of Inclusion and Equity

**Bill C-81 must state that all federal employees, including parliamentarians and their staff, must participate in an education program, designed and delivered by people with disabilities, that ensures staff understand and implement inclusive attitudes and equitable policies and practices. Further, Bill C-81 must require the Government of Canada to recruit people with disabilities as employees to ensure that the government’s workforce reflects the diversity of the Canadian population.**

### Background

We know that to improve access and inclusion, it all begins with people having the right attitude. This includes people with and without disabilities. As long as people are keen for change, change can happen.

When it comes to the Accessible Canada Act, people with disabilities are the experts. And with the title comes responsibility. We are working together to advise Parliament through our recommendations.

When FALA presented to the HUMA Standing Committee of the House of Commons about creating a culture of inclusion and equity, we had an impact. The Government of Canada has now told FALA that they are in the process of developing a strategy to educate parliamentarians, their staff and federal public sector employees. A good news story.

But it isn’t law.

And there are other concerns. There is no word the Government is hiring us (not FALA – the big US – people with disabilities) to do the training. How will policies and practices be implemented to eradicate ablest attitudes? There is no commitment to ensure that the Government’s workforce reflects the diversity of the Canadian population.

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### **FEEDBACK**

Failure to adopt such an approach will perpetuate where people will continue to talk at us and not to us. Adding this recommendation is another example of getting things right the first time so that we avoid fixing things through an arduous process when we can easily fix a problem the first time.

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### **FEEDBACK**

This recommendation is important, because it could lead to core and meaningful changes at the federal and organizational levels, which, in turn, would shift the culture itself towards a more inclusive, accessible and diverse environment.

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### **FEEDBACK**

I have always respected the needs of individuals with disabilities and the right to accommodate to promote the inclusion of this community. But I never fully understood their basic needs and what we need to think about when we accommodate for these individuals until I had employees with mobility needs. Now, before I make any changes at the operation level my first task is to seek the input and guidance of my staff who have a disability.

END TEXTBOX.

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## Address All Barriers Equally

**The Accessible Canada Act must address barriers equally in all seven priority areas of the Act and include a commitment to assisting people who experience multiple and intersecting forms of marginalization and discrimination.**

### Background

Bill C-81 has identified seven priority areas to focus on removing barriers. FALA wants to make sure that all seven areas receive equal attention during the implementation of Bill C-81.

* The seven areas include:
* Employment
* The built environment
* Information and communication technologies
* The procurement of goods and services
* The delivery of programs and services
* Transportation
* Communication (new area added following an earlier recommendation)

As well, many people with disabilities also experience multiple and intersecting forms of marginalization as they belong to other communities which sometimes face discrimination such as LGBTQ, Indigenous, women, etc. FALA believes there needs to be special considerations built into Bill C-81 to ensure people who face multiple barriers are supported.

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### **FEEDBACK**

As a practitioner in northern Alberta, many contracted public service agencies - such as Canada Post, provincial registry offices, and health services do not have barrier-free built environments, and there are attitudinal barriers on the part of property owners that prevent potential employers from hiring qualified and capable staff who have disabilities, as well as restricting the access to services by persons who are marginalized. Besides, this recommendation is just right.

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### **FEEDBACK**

As a group that regularly experiences exclusion based on access to information, blind people need to be sure that any action by an organization receiving federal funds must not in any way prevent us from expressing our opinions. Without this recommendation, there will be no guarantee that we can make any meaningful contribution to insure our opinions are heard and considered.

END TEXTBOX.

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## Set Timelines for Achieving a Barrier-Free Canada

**The Accessible Canada Act must set a deadline date within a five-year period of the Act coming into force for approving ALL initial standards and regulations. The Accessible Canada Act must set a date for the implementation of each standard and regulation following their approval within an 18-month period.**

### Background

FALA proposes deadlines be set to make sure that work related to the Accessible Canada Act moves forward and does not stop nor stall. We have waited a long time for the Government of Canada to take decisive action to protect our right to actively participate in all aspects of society. We have high hopes that we will experience real and meaningful change in our lives within the first few years of the Accessible Canada Act becoming law.

After FALA presented to the HUMA Standing Committee of the House of Commons (along with many other organizations), the Government of Canada committed to have the following positions up and running within 12 months:

* Canadian Accessibility Standards Development Organization (CASDO)
* Chief Accessibility Officer
* Accessibility Commissioner

The Government made another change by setting a timeline in Bill C-81 that requires the Canadian Transportation Agency, the Canadian Radio and Telecommunications Commission and the Minister responsible for the Act, to make at least one regulation relating to reporting requirements within two years of the Act coming into force. On one hand, this two-year deadline kick-starts the timing for the five-year parliamentary review. This means that substantial progress should be achieved in the first seven years. On the other hand, it’s a two-year wait for possibly only one regulation.

To be fair, there will be a lot of back-end work to set up the infrastructure for the Accessible Canada Act. It won’t be like the Act passes and then *Voila* – accessibility abounds. Nope. A lot of work will need to happen beforehand. That being said, two years seems like a long time and one regulation does not seem like enough.

Once the Act comes into force, the Government promises to conduct a review of progress every three years. This review will result in a public report on progress of the Accessible Canada Act. The intention is that this report will lead to constant improvement.

The last change to report is that the Government removed the word “progressive” from the phrase “progressive realization” in Bill C-81. The intent is to recognize that accessibility is an ever-evolving task over time.

All this being said, FALA believes that more can be done to get the standards and regulations in place lickety split.

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### **FEEDBACK**

People with disabilities need change today, not 20 years down the road when government gets around to it. We've had enough excuses, now we need some action.

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### **FEEDBACK**

Very important to be clear on the indicators for success; very important to set up some momentum in the first few years; very important to establish clear and detailed commitments.

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## Recognize ASL and LSQ Language

**The Accessible Canada Act must recognize ASL and LSQ as the languages of people who are Deaf in Canada, with full and equal legal and civic recognition, protection, and promotion.**

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### **FEEDBACK**

Since Canada ratified UNCRPD agreement in 2010, there is no justification or reason for the Federal Government not to include the recognition of ASL and LSQ for Deaf People across Canada.

END TEXTBOX.

The following information has been provided to us by the Canadian Association of the Deaf – Association des Sourds du Canada.

### Background

To date, the Canadian government has not formally recognized that American Sign Language (ASL) and Langue des Signes Québécoise (LSQ) are the languages of Canadians who are Deaf.

We believe that the Government of Canada needs to rectify this issue. Article 2 of the Convention on the Rights of Persons with Disabilities states that Sign languages and spoken languages are equal. Canada has ratified this Convention and endorsed the Optional Protocol. Articles 2, 9, and 21 underline the need of federal involvement with regard to Sign languages and accessibility.

Deaf culture has its own defining characteristics, which include Sign language, cultural norms, historical traditions and heritage. Deaf people want it acknowledged through recognition of their language. More than 45 other countries have already done so. These countries include Greece, Scotland, Italy, Uganda, Mexico, New Zealand and the Philippines.

Canada is not on the list. What prevents Canada from joining other countries that recognized their own Sign languages through federal legislation?

The explanation we have received is that the Official Languages Act (1969) gives French and English equal status as the only official languages. These two languages have preferred status in law over all other languages.

But we are not asking to make ASL and LSQ official languages of Canada. We are asking that they be recognized as the languages of people who are Deaf.

The United Nations is making the same request. On May 8, 2017, the UN Committee on the Rights of Persons with Disabilities released its Concluding Observations on the initial report of Canada. In reference to Article 21 - Freedom of expression and opinion and access to information, it says:

The Committee is concerned by:

* The lack of official recognition of sign languages and that the training programmes for sign language interpreters do not meet minimum requirements to provide a high quality of interpretation;

The Committee recommends that the State party:

* Recognize, in consultation with organizations of deaf persons, American Sign Language and Quebec Sign Language (Langue des signes Québécoise) as official languages and their use in schools and establish jointly with organizations of deaf persons a mechanism to certify the quality of interpretation services and ensure that opportunities for continuous training are provided for sign language interpreters.

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## Provide Communication Accommodation and Supports

**Communication accommodation and supports as required (e.g. ASL/LSQ, CART/captioning, plain language, large print, hearing loop systems, intervenor services, intermediary services and other formal and informal communication assistance) must be made available to anyone who needs these services within federally regulated entities.**

### Background

People with communication disabilities and people who are Deaf, deaf- blind and hard of hearing require accommodations and supports that enable their full participation in all aspects of community life. The Accessible Canada Act must make this a requirement for all federally regulated entities.

FALA supported Communication Disabilities Access Canada’s recommendation to the HUMA Standing Committee of the House of Commons that “Communication” to be added to the priority areas of Bill C-81. They listened and changed Bill C-81 to include Communication as a priority area to be addressed. Woot Woot.

But we still want to emphasize the need for accommodation and supports. To have captioning, CART, ASL/LSQ, plain language, large print, hearing loop systems, intervenor services and other forms of communication assistance will mean equal access to information and resources including video, live federal leader debates, and emergency alert announcements. These are just a few examples of important forms of communication that do not reach some members of our community.

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### **FEEDBACK**

For too long, organizations and individuals have advocated for accessibility to communications. New technologies have created obstacles whereas it should have been the opposite. It took court action and case law to justify the need for accessibility in communication. There are now books on inclusive literacy. Whether it's LSQ / ASL, subtitling, plain language, alternative formats, document formats, websites, people with disabilities need to work with designers, policy makers, governments, the private sector and the community. We need to develop inclusive communication, in both languages, if possible, across Canada.

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### **FEEDBACK**

Such a recommendation means that where necessary, blind people would also have equal access to information in various formats, including Braille.

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### **FEEDBACK**

Not having communication and information access included in the Accessible Canada Act would mean the Act is not truly and fully accessible for Deaf, Deaf-Blind and hard of hearing Canadians. Please ensure that access to communication and information is included as an essential part of the Act. Thank you.

END TEXTBOX.

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## Include Indigenous Peoples

**The implementation of the Accessible Canada Act that includes Canada’s First Nations communities, or a distinct First Nations Accessibility Legislation applicable to Canada’s First Nation communities, must be established without delay. Regardless of which legislation is implemented, it must ensure inclusion of a comprehensive disability lens covering policies, programs, funding, etc. in order to fully remove barriers identified within all First Nations, Metis, and Inuit communities across Canada.**

The following background information regarding this recommendation has been provided to us from two of the FALA Leadership Team partners: Native Women’s Association of Canada (NWAC) and British Columbia Aboriginal Network on Disability Society (BCANDS).

### Background

Among Indigenous groups in Canada, people with disabilities held respected and valued positions in traditional societies. With the imposition of Western worldviews and discriminatory systems, today Indigenous people with disabilities experience significant barriers, discrimination, and social exclusion in Canadian and Indigenous societies.

Indigenous Peoples of Canada experience a disability rate twice that of the overall population with life expectancy up to 10 years shorter than non-Indigenous Canadians. Indigenous women and children experience the highest rates. The diabetes rate among First Nations is four times higher than within Canada’s non-First Nation population, leading to chronic disability and health conditions. Across Canada, Indigenous Peoples face inequalities in health, housing and living conditions, employment, education, justice and more.

Understanding these factors, FALA believes that the accessibility barriers faced by Canada’s over 630 First Nation communities must be a priority in the Accessible Canada Act. If this is not accepted, then priority for First Nations peoples with disabilities has to be included within the distinct First Nations Accessibility Legislation, and implemented without delay. This has been requested by the Assembly of First Nations - Resolution No. 98/2017 and NWAC’s Accessibility Legislation recommendations.

Additionally, the Accessible Canada Act, or the distinct First Nations Accessibility Legislation, must include formal recognition of Indigenous rights and the unique relationship between the Government of Canada and First Nations, Métis and Inuit Peoples. This will ensure the equitable inclusion of women, youth, and gender-diverse people.

FALA supports that the final legislation will recognize the fiduciary responsibility owed by the Government of Canada to Indigenous Peoples and their well-being, with special consideration of Indigenous women, youth and elders with disabilities.

2019 marks the year that, “First Nations last”, can no longer be allowed.

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### FEEDBACK

No one should be “left behind”. Inclusive legislation should include all Canadians.

END TEXTBOX.

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BEGIN PRODUCER’S NOTE :

Many logos are presented here, which are

Spinal Cord Injury Canada / Lésions Médullaires Canada

Native Women’s Association of Canada / L’Association des femmes autochtones du Canada

Canadian Association of the Deaf / Association des Sourds du Canada

British Columbia Aboriginal Network on Disability Society (BCANDS)

Canadian Hard of Hearing Association / Association des malentendants canadiens

Council of Canadians with Disabilities

CDAC / Communication Disabilities Access Canada

END PRODUCER’S NOTE.

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