

July 9, 2021

Hon. Sarah Stoodley
Minister
Digital Government and Service NL

Dear Minister Stoodley:

Re: Buildings Accessibility Act Recommendations

On behalf of the Buildings Accessibility Advisory Board (BAAB), I want to congratulate you on your re-appointment as Minister of Digital Government and Service NL. We look forward to continuing to work with you and your staff on our collective goal of improving accessibility in the province.

The Buildings Accessibility Advisory Board was tasked in March 2018 to conduct a review of the **Buildings Accessibility Act** (the Act). The Board has completed a comprehensive review of the Act and our recommendations are attached.

As part of our review process, the Board engaged with key stakeholders from various organizations. These organizations represented persons living with disabilities; designers and builders from the construction industry; representatives of municipalities and the hospitality industry; the Provincial Advisory Council for Inclusion of Persons with Disabilities; and, government officials that are responsible for the infrastructure, inspection services and policy. The process was very enlightening and I am pleased to present the BAAB's recommendations with a shared goal to enhance accessibility for citizens of the province.

Thank you for the opportunity. We look forward to working with your team at Digital Government and Service NL to make meaningful changes to legislation and would therefore like to request a meeting with you to discuss further the enclosed recommendations.

Regards,



Dennis Gill, Chair
Buildings Accessibility Advisory Board

C: Honourable John Abbott
Minister responsible for Children, Seniors and Social Development

Attachment

Buildings Accessibility Act **Recommendations of the Buildings Accessibility Advisory Board**

Recommendation #1 – 1981 Exemption Clause

The biggest limitation to the advancement of accessibility in the Province is the 1981 exemption clause (section 5 – application to existing buildings) in the **Buildings Accessibility Act**, which states the following:

5. (1) This Act does not apply to buildings existing on December 24, 1981 except the buildings or class of buildings that the Lieutenant-Governor in Council may prescribe by regulation.

(2) Where, on December 24, 1981, a building conforms to the requirements of this Act and the regulations, the director shall, if of the opinion that a person is causing it to stop conforming with that requirement, direct the person to provide, within the reasonable period that the director may specify and in a manner satisfactory to him or her, the access or facilities in respect of which the building previously conformed to a requirement of this Act and the regulations.

As such, the Board recommends the following:

- All buildings shall meet the accessibility requirements in the Act, using a time-phased approach. The following timeline is recommended:
 - Within five years from Royal Assent, all buildings must have adequate accessible parking, walkways, entrances and washrooms, while ensuring access to main common areas.
 - Within ten years from Royal Assent, all buildings must have at least an additional 30 percent of the building square footage in compliance with the **Buildings Accessibility Act**.
 - Within twenty years, buildings must be 100 percent compliant with the **Buildings Accessibility Act**.
- The Minister to establish a tribunal process to assess exemption requests from building owners. The application for exemption should be for structural and property limitations only. The tribunal should incorporate persons with the appropriate knowledge and skills and consist of the Director of Engineering and Inspection Services; a member of the Newfoundland and Labrador Association of Architects; a representative of the accessibility community; and a member of the business community. The representative of the accessibility community should be someone with lived experience to ensure accessibility expertise, multiple disability perspectives and diverse backgrounds.
- Any building undergoing a major renovation that exceeds 50 percent of the replacement cost, must completely comply with legislation at the time of renovation. Replacement costs must be established by a commercial building appraiser and a robust evaluation process of the actual renovation cost and potential increase in

value to the building is required to ensure property owners do not maintain some form of exemption beyond the period that they could or should, simply because renovations and changes to a space are done on a project basis, instead of fully and at any particular time.

- Enhanced oversight is also required to ensure that changes in building occupancy, use, classification or ownership does not provide the property owner an exemption (loop hole) from the **Buildings Accessibility Act**.
- It is recognized that the impact of the costs often required to renovate a building so that it conforms with the **Buildings Accessibility Act** can be quite significant. As such, it is recommended that a tax incentive be established for accessibility renovations that is aligned with the phased-in approach suggested above.

Recommendation #2 - Fines

Currently section 33 (Offences) of the **Buildings Accessibility Act** describes the conditions with which someone can be found guilty of an offence and the subsequent penalties imposed are as follows:

- A natural person who is guilty of an offence is liable on summary conviction to a fine of not less than \$500 and not more than \$5,000 and as well shall be ordered to have the building which is the subject-matter of the action comply with the requirements prescribed by the Act and regulations within a specified time.
- A corporation that is guilty of an offence is liable on summary conviction to a fine of not less than \$1,000 and not more than \$25,000 and as well shall be ordered to have the building which is the subject-matter of the action comply with the requirements prescribed by the Act and regulations within a specified time.
- A natural person or corporation that is guilty of an offence is liable on summary conviction to a fine, in addition to a fine imposed under subsection (2) or (3), of not less than \$200 and not greater than \$2,000 a day for every day beyond the time specified for correction of the offence during which the offence continues.

The above penalties are not sufficient enough to encourage compliance. As such, it is recommended that the penalties be reviewed with the intent to increase as a means to encourage compliance. Based upon a review of fines charged in other jurisdictions (see attached), the following is recommended:

- A natural person who is guilty of an offence is liable on summary conviction to a fine of not less than \$1,000 and not more than \$10,000 and as well shall be ordered to have the building which is the subject-matter of the action comply with the requirements prescribed by the Act and regulations within a specified time.
- A corporation that is guilty of an offence is liable on summary conviction to a fine of not less than \$2,000 and not more than \$50,000 and as well shall be ordered to have the building which is the subject-matter of the action comply with the requirements prescribed by the Act and regulations within a specified time.

- A natural person or corporation that is guilty of an offence is liable on summary conviction to a fine, in addition to a fine imposed under subsection (2) or (3), of not less than \$400 and not greater than \$4,000 a day for every day beyond the time specified for correction of the offence during which the offence continues.

Additionally, it is recommended that all fines collected for contravention of the **Buildings Accessibility Act** be reinvested into accessibility initiatives.

Recommendation #3 - Language

The Act must be updated to ensure the use of inclusive language. It is therefore recommended that consideration be given to using language similar to that in the **Accessibility Canada Act**. Additionally, it is recommended that the title of the Act be renamed to “**An Act Respecting Accessibility to the Built Environment**”.

Recommendation #4 – Home-Based Businesses

Businesses operating from a residential property (e.g., home-based salons) requiring public access should not be exempt from the **Buildings Accessibility Act**.

Recommendation #5 – Residential Properties

It is recommended that the legislation be amended to clearly articulate requirements for residential properties to ensure that communities are built with accessible standards. The legislation at minimum should consider the following:

- Developers building multiple homes in a residential area should have to build a percentage of the homes that are fully accessible.
- All homes are constructed so that they meet minimum accessibility standards. This includes items such as 36” doorways throughout, wider hallways, and blocking in the walls to allow for the installation of grab bars or ceiling lifts. Industry has indicated that these options can be included in initial plans, with little to no cost, during construction.

Recommendation #6 – Full Service Family Washrooms

It is recommended that the legislation (as opposed to the regulations) require all buildings with an occupant load of 300 persons or more be equipped with a full service family washroom that incorporates an adult change table. This is a human rights issue that needs to be addressed immediately. It speaks to the heart of inclusion with dignity.

Recommendation #7 - Definitions

(suggested changes are highlighted in yellow)

Clarify section 2 (Definitions) of the Act as follows – suggested changes are highlighted in yellow:

(a) "apartment-type building" means a building intended for residential purposes in whole or in part that contains more than 4 residential units, and whether consisting in whole or in part of condominium units or rental units, **with a common primary entrance and an interior common access corridor;**

(c) "building" means

- (i) a public building,
- (ii) an apartment-type building,
- (iii) a hotel, and
- (iv) a building link,
- (v) private residential development;**

(l) "persons with disabilities" means persons with physical, sensory, **mental, intellectual, visual, hearing and other identifiable accessibility** disabilities;

Delete the following clause - (l.2) "persons with sensory disabilities" means persons with visual or hearing disabilities;

(m) "public building" means a building and includes the parking, walkway ~~or other facilities of that building~~ **exterior decks, or other components of the built environment** to which the public and employees employed in the building are admitted but does not include those buildings in a group prescribed by the regulations; and

(n) "tribunal" means the appeal tribunal appointed under section 20.

Add a definition of "**full service family restrooms**" and include the requirement for an adult change table.

Recommendation #8 - Enforcement

It is recommended that enforcement activities be strengthened to encourage compliance with the **Buildings Accessibility Act**; and that the Buildings Accessibility Advisory Board be mandated to develop an action plan for consideration by Government to support enhanced enforcement.

Recommendation #9 – Education and Awareness

It is recommended that efforts be strengthened to better inform, educate and raise awareness of all property owners, the general public, and enforcement officers of the requirements of the **Buildings Accessibility Act**, and that the Buildings Accessibility Advisory Board be mandated to develop an action plan for consideration by Government.

Jurisdictional scan - Buildings Accessibility Legislation - Reference to Offences			
Jurisdiction	Legislation	Offences Reference	Penalties
Alberta	Safety Codes Act (https://www.qp.alberta.ca/documents/Acts/S01.pdf)	Section 67	For a first offence, (i) to a fine of not more than \$100 000 and, in the case of a continuing offence, to a further fine of not more than \$1000 for each day during which the offence continues after the first day or part of a day, or (ii) to imprisonment for a term not exceeding 6 months, or to both fines and imprisonment, and (b) for a 2nd or subsequent offence, (i) to a fine of not more than \$500 000 and, in the case of a continuing offence, to a further fine of not more than \$2000 for each day or part of a day during which the offence continues after the first day, or (ii) to imprisonment for a term not exceeding 12 months, or to both fines and imprisonment.
Manitoba	The Accessibility for Manitobans Act: https://web2.gov.mb.ca/bills/40-2/b026e.php The Buildings and Mobile Homes Act (https://web2.gov.mb.ca/laws/statutes/ccsm/b093e.php#14)	AMA Sec. 34 (1) The Buildings and Mobile Homes Act Section 14	A person who is guilty of an offence under this Act is liable on summary conviction to a fine of not more than \$250,000. The Buildings and Mobile Homes Act: Any person who, in contravention of any provision of this Act or a regulation, requirement or order made or imposed thereunder, does or causes to be done or permits the doing of any of the things set out in subsection 2(1), or who contravenes or fails to observe any provision of this Act or a regulation, requirement or order made or imposed thereunder, is guilty of an offence and liable on summary conviction, for each day that the offence continues, to a fine not exceeding \$5,000.
Newfoundland and Labrador	Buildings Accessibility Act https://www.assembly.nl.ca/legislation/sr/statutes/b10.htm#33_	BAA Sec. 33	A natural person who is guilty of an offence is liable on summary conviction to a fine of not less than \$500 and not more than \$5,000 and as well shall be ordered to have the building which is the subject-matter of the action comply with the requirements prescribed by the Act and regulations within a specified time. A corporation that is guilty of an offence is liable on summary conviction to a fine of not less than \$1,000 and not more than \$25,000 and as well shall be ordered to have the building which is the subject-matter of the action comply with the requirements prescribed by the Act and regulations within a specified time. A natural person or corporation that is guilty of an offence is liable on summary conviction to a fine, in addition to a fine imposed under subsection (2) or (3), of not less than \$200 and not greater than \$2,000 a day for every

Jurisdictional scan - Buildings Accessibility Legislation - Reference to Offences			
Jurisdiction	Legislation	Offences Reference	Penalties
			day beyond the time specified for correction of the offence during which the offence continues.
New Brunswick	Community Planning Act https://canlii.ca/t/9075	Sections 137 and 138	Ranges between \$140 - \$5,200, as per Section 56 of Provincial Offences Procedure Act (https://canlii.ca/t/88kz).
Nova Scotia	NS Accessibility Act 2017 https://nslegislature.ca/sites/default/files/legc/statutes/accessibility.pdf	Sec. 68	Up to \$250,000
Ontario	Building Code Act (https://canlii.ca/t/2tl) Building Code Regulation 332/12 (https://canlii.ca/t/8r2f)		An individual who is charged and found guilty of an offence under the Building Code Act, 1992, such as building without a permit, can be fined up to \$50,000 for a first offence and up to \$100,000 for subsequent offences. For a corporation, a first offence could result in a maximum fine of \$500,000 and \$1,500,000 for subsequent infractions. https://www.ontario.ca/document/citizens-guide-land-use-planning/
PEI	Provincial Building Code Act https://canlii.ca/t/8dhl Barrier-Free Design Regulations, PEI Reg EC139/95 (https://canlii.ca/t/8dsl)	Sec. 17 (1)	Every person who contravenes any provision of this Act is guilty of an offence under this Act and on summary conviction, where a penalty for the offence is not otherwise provided, is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than twelve months or to both. Idem (2) Every person to whom an order is given under section 11 who fails to comply with it in accordance with its terms is guilty of an offence and on summary conviction is, in addition to the penalties mentioned in subsection (1), liable to a fine of not more than \$100 per day for every day upon which the offence continues after the order was given. Idem (3) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed shall be \$5,000. Offences substantially the same under Barrier-Free Design Regulations.
Quebec	Building Act https://canlii.ca/t/xg5	Chapter IX	Various; minimum \$2,919. Up to \$175,206. Fines may be tripled for repeat offences; fines may be indexed according to Consumer Price Index.

Jurisdictional scan - Buildings Accessibility Legislation - Reference to Offences			
Jurisdiction	Legislation	Offences Reference	Penalties
Quebec (Public Buildings)	Public Building Safety Act http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/S-3	Division VII	Every owner of a public building who infringes any provision of this Act or the regulations thereunder or whose building does not comply with any of the provisions thereof is guilty of an offence and is liable to a fine of \$275 to \$625 in the case of a natural person, and \$625 to \$1,225 in the case of a legal person. In the case of a second or subsequent conviction, the offender is liable to a fine of \$550 to \$1,225 in the case of a natural person, and \$1,225 to \$2,450 in the case of a legal person.
Saskatchewan	The Uniform Building and Accessibility Standards Act (https://www.saskatchewan.ca/business/housing-development-construction-and-property-management/building-standards/legislation-and-regulations)	Section 22	(a) in the case of an individual, to a fine of not more than \$25,000 and, in the case of a continuing offence, to a further fine of not more than \$5,000 for each day or part of a day during which the offence continues; and (b) in the case of a corporation, to a fine of not more than \$200,000 and, in the case of a continuing offence, to a further fine of not more than \$20,000 for each day during which the offence continues. (4) A person to whom an order is given pursuant to subsection (3) who fails to comply with the decision, order or directive within the specified period is guilty of an offence and liable on summary conviction: (a) in the case of an individual, to a fine of not more than \$5,000 for each day during which the non-compliance continues; and (b) in the case of a corporation, to a fine of not more than \$10,000 for each day during which the non-compliance continues.