

ACCESSIBLE BC ACT: OVERVIEW AND IMPLICATIONS FOR ORGANIZATIONS

In June 2021, the British Columbia government enacted the *Accessible British Columbia Act*, S.B.C. 2023, c. 19. (the “**Act**”) to support people with disabilities in meaningfully participating in their communities.¹ Currently, the Act applies to the provincial government and those organizations prescribed by regulation.²

This article provides an overview of the Act, highlights its key provisions, explains its application to public organizations and its relevance to organizations who are not currently subject to the Act.

RELEVANCE OF THE ACT TO PRIVATE ORGANIZATIONS

While the Act does not currently apply to private organizations, companies that supply services to affected public organizations may find it valuable to become knowledgeable about the Act and its potential impact on would-be vendors.

The Act currently applies to over 750 organizations pursuant to the *Accessible British Columbia Regulation*, BC Reg. 105/2022 (the “**Regulation**”). These

organizations are mostly public organizations and include regional districts, municipalities, school districts, and health authorities (health authorities will be prescribed effective September 1, 2024).³ These prescribed organizations may require third parties with whom they do business to do, or not do, certain things as a result of accessibility plans adopted pursuant to the Act. For example, a request for proposal issued by a prescribed organization may include knowledge of or experience with universal design as an evaluation criteria or require respondents to ensure that proposals comply with with any accessibility plan adopted by the organization.

Private organizations working with the prescribed organizations on the prescribed organization’s built environment – such as construction companies – may be especially impacted by the Act. For example, the District of North Vancouver’s draft Accessibility Plan states that one aspect of its accessibility plan is to “improve the physical accessibility of public infrastructure and spaces within our community”.⁴ It goes on to state that an example of carrying out this

plan would be to institute “policies with clear standards to be met for new construction and prioritize and assess existing infrastructure for accessibility upgrades.”⁵ Similar language is reflected in other accessibility plans of lower mainland municipalities. If they haven’t already, private organizations working with prescribed organizations may wish to become familiar with the principles of universal design, continue to educate themselves about how to best reduce barriers and remain aware of any standards adopted by prescribed organizations in order to best serve their clients.

It is important to note that, according to the province, accessibility does not only refer to physical accessibility but also includes the dismantling of systemic, communication or technological barriers.⁶ For example, websites that do not function with screen readers and discriminatory policies are also barriers to access.

In addition to prescribed organizations requiring or desiring the companies they work with to comply with accessibility plans, the Lieutenant Governor in Council may prescribe other organizations under the Act other than those already listed, meaning that certain private organizations may be asked to comply with all or parts of the Act in the future.

The Act shows that accessibility is a provincial priority. Accordingly, a private organization not currently subject to the Act may wish to consider its own accessibility policy and the accessibility of its services if it has not already done so.

OVERVIEW OF THE ACT

The Regulation lists over 750 organizations to which the Act applies. This list includes municipalities and regional districts, which are subject to the Act as of September 1, 2023.⁷

Broadly speaking, the Act requires prescribed organizations to:

- a) establish an accessibility committee⁸;
- b) create an accessibility plan⁹; and
- c) create a mechanism for receiving public feedback.¹⁰

Each of these requirements is discussed below in further detail.

The Act does not currently require prescribed organizations to demonstrably make their services more accessible. For example, prescribed organizations are not currently required to carry out any renovations to the built environment or provide accessibility services (such as interpretive services) beyond what is already required by law.

However, the Act does contemplate the inclusion of new standards, which may require prescribed organizations to take certain, positive steps.¹¹ These standards would take the form of regulations respecting the identification, removal or prevention of barriers.¹²

PREScribed ORGANIZATIONS — REQUIREMENTS UNDER THE ACT

1. Accessibility Committee

The Act requires prescribed organizations to establish a committee to identify, remove and prevent barriers to individuals.

The term “barrier” is defined, for the purposes of the Act, as “anything that hinders the full and equal participation in society of a person with an impairment”.¹³

As mentioned above, barriers go beyond just the built environment and, pursuant to the Act, can be:

- a) caused by environments, attitudes, practices, policies, information, communications or technologies, and
- b) affected by intersecting forms of discrimination.¹⁴

In order to address these barriers, the Act requires prescribed organizations to establish an accessibility committee to:

- a) assist the organization to identify barriers to individuals in or interacting with the organization, and
- b) advise the organization on how to remove and prevent barriers to individuals in or interacting with the organization.¹⁵

The Act requires that, to the extent possible, the accessibility committee should:

- a) have half of its members be persons with disabilities, or individuals who support persons with disabilities (institutionally or personally);
- b) include at least one Indigenous person;
- c) reflect the diversity of persons in British Columbia (including those members selected who are persons with disabilities or who support persons with disabilities).¹⁶

2. Accessibility Plans

An organization is required to develop an accessibility plan to identify, remove and prevent barriers to individuals in or interacting with the organization.¹⁷

This accessibility plan must be developed in consultation with the accessibility committee and must include

consideration of public feedback received in accordance with section 12 of the Act (discussed below).¹⁸

In addition, the accessibility committee must consider the following six factors when developing (and updating) its plan:

- a) inclusion;
- b) adaptability;
- c) diversity;
- d) collaboration;
- e) self-determination;
- f) universal design.¹⁹

In order to comply with the Act, the organization must review and update its accessibility plan at least once every three years.²⁰

Notably, the Act does not currently prescribe any requirements regarding the comprehensiveness or completeness of the accessibility plan. It also does not currently require results from the accessibility plan (ie. to demonstrably increase accessibility) to be reported or submitted.

However, the province emphasizes that it is taking a “phased approach” and has the power under the Act to impose standards and may do so in the future.²¹

3. Public Feedback

The Act requires that an organization establish a process for receiving comments regarding the organization's accessibility plan and barriers to individuals in or interacting with the organization.²²

PROVINCIAL REQUIREMENTS UNDER THE ACCESSIBLE BRITISH COLUMBIA ACT

Provincial Accessibility Plan

The province itself is also subject to the Act and accordingly required to develop an accessibility plan.

The Provincial Accessibility Plan for 2022-2025 offers some insight into the province's priorities related to accessibility. It identifies 5 priorities:

1. create a culture of accessibility and inclusion (including by establishing a Gender Equity Office);
2. remove barriers to informing and communicating with people (including more virtual services, connecting rural households with high-speed internet, ensuring government websites meet certain accessibility standards);
3. making buildings, infrastructure and public spaces more accessible for people, including potentially making changes to the BC Building Code;
4. employment in BC Public Service; and
5. equitable delivery of goods and services (including by providing supports to assist people with disabilities in overcoming barriers to participation in either training or employment).²³

The province mentions several ways it intends to deliver on its accessibility plan; however, two aspects of the province's accessibility plan may be particularly relevant to those in the construction industry. The province intends to:

1. continue working to incorporate accessibility criteria into procurement policies and practices; and
2. promote accessibility in buildings by having accessibility as an eligibility criterion to receive funding for capital projects under the grant programs for local governments and not-for-profit organizations.²⁴

Private companies who work with the provincial government should accordingly be aware that it may have a greater focus on accessibility than it may have had previously and may wish to prepare themselves accordingly.

PROVINCIAL GOVERNMENT — ADDITIONAL PROVINCIAL POWERS AND RESPONSIBILITIES UNDER THE ACT

In addition to the requirements applicable to all organizations to which the Act applies, the province has additional responsibilities and powers under the Act.

While a deep dive into all the province's responsibilities and powers is beyond the scope of this article, there are a few important powers and responsibilities to highlight. Under the Act:

1. the minister **must** promote accessibility in British Columbia²⁵;
2. the Lieutenant Governor in Council, has the power to prescribe organizations²⁶;
3. the Lieutenant Governor in Council may make regulations respecting the identification, removal or prevention of barriers²⁷; and

4. specifically, the Lieutenant Governor in Council may, by regulation, impose accessibility standards.²⁸

These standards may be developed in relation to the following:

- a) employment;
- b) delivery of services;
- c) the built environment;
- d) information and communications;
- e) transportation;
- f) health;
- g) education;
- h) procurement.²⁹

In developing a proposed accessibility standard, the provincial accessibility committee must consider the following principles:

- a) inclusion;
- b) adaptability;
- c) diversity;
- d) collaboration;
- e) self-determination;
- f) universal design.³⁰

In addition, the proposed accessibility standard must be developed in consultation with representatives of at least the following groups:

- a) persons with disabilities;
- b) individuals and organizations that support persons with disabilities;
- c) Indigenous peoples;

- d) organizations that might be affected by the standard;
- e) ministries of the government that might be affected by the standard.³¹

These standards have potentially wide-ranging impacts on prescribed organizations and their third-party vendors.

The minister must also meet certain reporting requirements and periodically review the effectiveness of the Act.³²

Under section 32 of the Act, the Lieutenant Governor in Council may make regulations prescribing for the purposes of section 8(b) [*application of Part 3*] a person, agency or other body or a class of persons, agencies or other bodies.³³ Accordingly, it is possible that, through regulation, this Act may apply to more organizations than those currently prescribed.

COMPLIANCE AND ENFORCEMENT

The compliance and enforcement provisions of the Act are not yet in force as of the date of this article; however, in the future, the Act will allow for inspectors to enter onto lands and premises (except for private dwellings without consent of the occupant) to ensure compliance with the Act.³⁴ In addition, a monetary penalty of up to \$250,000.00 may be imposed on non-compliant organizations.³⁵ The provisions of the Act dealing with inspections and enforcement will commence by regulation.

CONCLUSION

As of September 2023, the Act requires prescribed organizations to develop an accessibility committee, create an accessibility plan, and create a mechanism for receiving public feedback on its accessibility plan.

The Act contemplates the provincial government revisiting this plan, revising it and potentially making accessibility standards. It is reasonable for private corporations engaged by prescribed organizations to anticipate that those organizations might make a contractor's ability to meet certain accessibility requirements a larger part of their procurement and selection process or otherwise require contractors to address accessibility. When offering or providing services to a prescribed organization, third parties may be well served by reviewing the publicly available accessibility plan posted by the organization in order to be able to address the accessibility plan in the provision of such services.

Finally, given the province's stated priority to increase accessibility in the built environment, contractors may want to be aware that provincial accessibility priorities may result in further regulatory and legislative changes, including changes to the BC Building Code. Accessibility is increasingly becoming the standard by which public-facing organizations operate and even those organizations not currently required to have an accessibility plan in place would do well to consider how to make their products and services more accessible if they have not already done so.

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Footnotes:

1. British Columbia, *Accessibility Legislation* <<https://www2.gov.bc.ca/gov/content/governments/about-the-bc-government/accessibility/legislation>> accessed 7 September 2023.

2. *Accessible British Columbia Act*, SBC 2021, c 19, s. 8.
3. *Accessible British Columbia Regulation*, BC Reg 105/2022, s. 3.
4. District of North Vancouver, *Accessibility Action Plan 2023-2026* <<https://www.dnv.org/sites/default/files/edocs/accessibility-plan.pdf>> accessed 12 September 2023, page 22.
5. *Ibid*.
6. *Supra*, note 1.
7. *Supra* note 3, s. 3(b).
8. *Supra* note 2, see s. 9.
9. *Ibid*, see s. 11.
10. *Ibid*, see s. 12.
11. *Ibid*, see s. 13(1).
12. *Ibid*, see s. 13(1).
13. *Ibid*. s.2(1)
14. *Ibid*. s.2(2)
15. *Ibid*, s. 9(1).
16. *Ibid*, see s. 9(2).
17. *Ibid*, s. 11(1).
18. *Ibid*, see s. 11(4) and (5).
19. *Ibid*, s. 11(3).
20. *Ibid*, s. 11(2).
21. *Supra*, note 1.
22. *Ibid*, s. 12.
23. British Columbia, *AccessibleBC: B.C.'s Accessibility Plan 2022/23-2024/25* <<https://www2.gov.bc.ca/assets/gov/government/about-the-bc-government/accessible-bc/accessiblebc-plan.pdf>> accessed 10 September 2023.
24. *Ibid* page 45 and 36.
25. *Supra* note 2, s. 3(1)
26. *Ibid*, s. 32(2)(c).

27. *Ibid*, s. 13(1).
28. *Ibid*, see s. 13(2).
29. *Ibid*, s. 13(2).
30. *Ibid*, s. 17.
31. *Ibid*, s. 16.
32. *Ibid*, see s. 6 & 7.
33. *Supra* note 2, s. 32(c).
34. Bill 6, *Accessible British Columbia Act*, 2nd Sess, 42nd Parl, British Columbia, 2021 (assented to June 17, 2021), SBC 2021, see Part 5.
35. *Ibid*.



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Sara completed her law studies at Peter A. Allard School of Law at the University of British Columbia. She was called to the Bar of Ontario in 2018, after spending two years post-graduation working abroad in London, England as a legal advisor to a cyber security company. She hopes to use her experience and passion for local government to deliver outstanding legal advice to her clients as her practice continues to grow.

Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.

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