

Saskatchewan Human Rights Commission

Accessibility Rights of Persons with Disabilities

Building Standards

Introduction

Canada ratified *The United Nations Convention on the Rights of Persons with Disabilities* (the Convention) on March 11, 2010. The Convention adopts a broad categorization of persons with disabilities and reaffirms that all persons with all types of disabilities must enjoy all human rights and fundamental freedoms.

In addition to the Convention, *The Saskatchewan Human Rights Code* (the Code) and *The Canadian Charter of Rights and Freedoms* (the Charter) protect people with disabilities from discrimination and protect and promote equality rights.

Renewed Vision

Canada is a signatory to the Convention. Based on Canada's new obligations under the Convention, and the guarantees in the Code and the Charter, the Commission has renewed its commitment to promote the accessibility rights of persons with disabilities.

Addressing Barriers

Persons with disabilities face barriers on a daily basis. The barriers can be physical, attitudinal or systemic. It is most effective to identify and remove barriers voluntarily and proactively rather than respond to individual accommodation requests or complaints. The Commission investigates complaints where barriers have not been identified and removed. Barriers to public services can result in discrimination against people with disabilities.

The Business Case

It makes good business sense to identify and remove barriers. Barrier removal allows for fuller participation by all members of society. Examples of persons who benefit from accessibility measures include older persons, people of short or tall stature and families with young children.

Accessibility is not a one-way street. Businesses, public services, and society as a whole benefit from accessible transportation. A shift in perceptions and attitudes is required to realize this. Adopting the concepts of **accommodation** and **accessibility** through **universal access** and **barrier-free design** will benefit all members of the community.

Addressing barriers is not only about the provision of barrier-free, equitable lifestyles for people currently living with disabilities. It is also about future planning. Saskatchewan has an aging population and due to medical advancements people are living longer. We need to proactively plan for the future.

Substantive equality not technical compliance

Accessibility should not just be a matter of whether or not it is possible for persons with disabilities to perform tasks, but also whether it is possible to perform tasks in a dignified and easy way. The Commission endorses the concept of **substantive equality** which strives for equal rights and opportunities and the recognition of the dignity and worth of every person.

Legislation and the Law

People who obtain a building permit are often unaware of their additional legal obligations under the *Code*. The Commission recognizes this is a problem. This is one reason for the Commission's renewed focus on accessibility.

This information guide outlines considerations that pertain to **accessibility rights, building standards** and **human rights law** in Saskatchewan. In particular, it looks at the relationship between the *Code* and *The Uniform Building and Accessibility Standards Act* (UBAS) which adopts *The National Building Code* (NBC), a model code for Canada.

The table below introduces the main differences between the *Code* and NBC/UBAS. The remainder of this information guide explains these differences, the complementary nature of the two pieces of legislation, and changes the Commission endorses to promote substantive equality and accessibility rights of persons with disabilities.

The Code	NBC/UBAS
<ul style="list-style-type: none"> • Deals with human rights 	<ul style="list-style-type: none"> • Deals with building standards
<ul style="list-style-type: none"> • Applies to old and new buildings if they house a public service 	<ul style="list-style-type: none"> • Applies to 'new' (post 1988) public buildings, as well as to public buildings which have undergone major renovations and additions
<ul style="list-style-type: none"> • Requires efforts short of undue hardship, to accommodate people with disabilities 	<ul style="list-style-type: none"> • Requires compliance with detailed accessibility requirements in the UBAS regulations
<ul style="list-style-type: none"> • Accommodation is determined on a case-by-case basis, depending on the circumstances of a service provider 	<ul style="list-style-type: none"> • Uniform standards are strictly enforced
<ul style="list-style-type: none"> • There are no exceptions to the <i>Code</i>, but a service provider may argue undue hardship 	<ul style="list-style-type: none"> • There are major exceptions within UBAS – i.e. exception for additions and renovations under 600 square metres in area
<ul style="list-style-type: none"> • Complaint-based – law is only enforced if a complaint is filed 	<ul style="list-style-type: none"> • Proactive – legislation is enforced through building permit

	and inspection processes
<ul style="list-style-type: none"> The <i>Code</i> has precedence over UBAS under section 44 of the <i>Code</i>. There may be a breach of the <i>Code</i> even where a building complies with narrower UBAS requirements. 	<ul style="list-style-type: none"> Section 15 of UBAS states a permit issued in accordance with UBAS does not authorize the breach of any other law

NBC and UBAS

The National Building Code (NBC) is a national model code published by the National Research Council of Canada. As a model code the NBC is unenforceable unless adopted through provincial legislation. In Saskatchewan UBAS became law in 1988. UBAS adopted the NBC as the basis for Saskatchewan’s building and accessibility standards. The UBAS regulations contain some alterations to the NBC, but the majority of the NBC is adopted in UBAS.

The NBC and UBAS establish **minimum standards** to ensure that buildings in Saskatchewan are accessible. UBAS sets out detailed accessibility requirements for the construction of new commercial buildings and major renovations or additions. These requirements are enforced through the building permit and inspection processes. By “building in accessibility” when construction begins, UBAS makes many public buildings accessible in the most cost-efficient manner. However, UBAS has limited scope.

The accessibility requirements of UBAS do not apply to renovations or additions to existing buildings if they are less than 600 square metres in area. The Commission considers this to be a problem. Recent complaints lead the Commission to believe that some buildings or additions are deliberately kept just under the 600 square metre cut-off, in order avoid the UBAS accessibility requirements. Given this “trend”, the Commission believes it has an obligation to inform Saskatchewan residents about the Convention, *Code* requirements and the business case for accessibility.

The Saskatchewan Human Rights Code

The provisions of the *Code* take precedence over UBAS. Under the *Code* any building open to the public must be accessible. Where discrimination is on the basis of disability, the *Code* requires a service provider to take steps to **accommodate** the needs of people with disabilities unless those steps cause **undue hardship**. What constitutes undue hardship varies from case to case. Some factors the courts have considered to determine what constitutes undue hardship include:

- A threat to health or safety,
- Major economic impact,
- Past efforts to accommodate, and

- Facilities and size of organization or workplace¹.

Since the *Code* is complaint-based, the duty to accommodate is only enforced when someone files a complaint of discrimination. However, remedies for individual complaints often benefit many people. In the vast majority of cases, the parties negotiate accommodating measures that are within the businesses' means and are acceptable to the person with the disability.

Accessibility rights confirmed in law

In February 1996, the Saskatchewan Court of Appeal released an important decision that confirmed the accessibility rights of persons with disabilities under the *Code*. At the same time, it clarified the relationship between the *Code* and UBAS. The Court of Appeal held that accessibility can be required by the *Code* in some situations where UBAS does not apply.²

As already mentioned, the accessibility requirements of UBAS do not apply to renovations or additions to existing buildings if they are less than 600 square metres in area. Because the renovation was less than 600 square metres, the business owner did not have to comply with UBAS' accessibility requirements to get a building permit. A wheelchair user filed a human rights complaint. Evidence at the initial hearing established that the business owner knew, while his renovations were still under construction, that the wheel-chair user who ultimately filed the complaint, wanted access to his facility.

The Court of Appeal found there was no operational conflict between UBAS and the *Code*. It also held that if a conflict existed, the *Code* would prevail because of **section 44 of the Code**³, which declares the *Code* takes precedence over inconsistent provincial legislation. The court noted that **section 15 of UBAS**⁴ specifically states that a permit issued in accordance with UBAS does not authorize the breach of any other law.

Complementary legislation

UBAS and the *Code* together can provide a workable legislative scheme for promoting accessibility without placing an undue burden on small businesses. There is no inconsistency between UBAS and the *Code*. Each statute simply applies in some situations where the other does not.

UBAS applies to new buildings and major additions or renovations (undertaken after 1988), while the *Code* focuses on public services. The *Code* requires a

¹ This list is demonstrative, not exhaustive.

² *Ryan v. Ripplinger* 1996 CanLII 4913 (SK CA).

³ 44. Every law of Saskatchewan is inoperative to the extent that it authorizes or requires the doing of anything prohibited by this Act unless it falls within an exemption provided by this Act or unless it is expressly declared by an Act of the Legislature to operate notwithstanding this Act.

⁴ 15. A permit issued in accordance with this Part does not authorize any person to construct a building that does not comply with the provisions of any other Act or law.

service provider to make efforts to accommodate people with disabilities up to the point of undue hardship, as already discussed.

Where both UBAS and the *Code* apply to new buildings or large renovations in which public services are offered, their accessibility requirements are very similar. However, *Code* requirements may be higher in some situations which UBAS does not adequately address or anticipate.

Recommendations

1. Address the gaps

Though UBAS and the *Code* complement each other, problems can arise because UBAS is limited in scope and the *Code* is complaint-based rather than proactive. Despite the fact that the Commission can take proactive measures, the budget allocated for such measures is minimal. The “Accessibility Project” which this document is part of, is one example of the Commission taking a proactive step to educate the public about rights and obligations under human rights law.

2. Expand UBAS and promote substantive equality

In 1996 the Commission identified strong arguments to support expanding UBAS so its accessibility standards apply to smaller additions and renovations. The Commission continues to support those arguments today. The arguments, as they relate to the current 600 metre square exception, are:

- They weaken the positive impact of UBAS for people with disabilities,
- They can create confusion for people who may be required to renovate if human rights complaints are filed against them, and
- When business owners apply for building permits, they are automatically informed of any accessibility requirements they have under UBAS. If they fall within an exception to UBAS they may assume that they have no further accessibility obligation.

The Commission further recommends that all UBAS requirements be reviewed to ensure equal accessibility rights for people with disabilities. As it currently exists, it is possible to achieve technical UBAS compliance without advancing substantive equality or complying with the *Code*.

3. Universal design

The concept of universal design is larger than either of accessibility or barrier-free design. **Universal design** is the design of products and environments to be useable by all people, to the greatest extent possible, without the need for adaptation or specialized design⁵.

⁵ From http://www.ncsu.edu/www/ncsu/design/sod5/cud/about_ud/about_ud.htm, citing Ron Mace.

The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost. Universal design benefits people of all ages and abilities.

Current building codes tend to focus on the needs of people with mobility impairments, i.e. wheelchair users. This has led to inadequate design requirements and has in some cases created problems for individuals with other types of disabilities. Some examples include:

- Curb ramps which have neither tactile nor visual cues making them dangerous for people with visual impairments,
- Water fountains at only one height making them difficult to use for tall people, people in wheelchairs, or people of small stature.

The Commission supports the concept of universal design. Universal design encourages recognition of each person's uniqueness along with their interdependence on other members of society. On that basis, society needs to develop a concept of special needs which is not based on a piecemeal accommodation of the "norm" for the few, but on designing an adaptable world suitable for all⁶.

Conclusion

Society has a moral and ethical responsibility along with a legal requirement to make Saskatchewan accessible. There is also a strong business case to do so. The *Code* protects people with disabilities from discrimination in public services through a complaint-based system. UBAS sets minimum building standards through the proactive issuance of permits. While the *Code* and UBAS deal with different areas of the law, they do in fact complement one another. It is possible, however, to discriminate against a person with a disability under the *Code* and be fully compliant with UBAS. One of the major problems is with the exception under UBAS to new buildings, renovations, or additions of less than 600 square metres. A change to this exception would advance substantive accessibility rights in Saskatchewan. Finally, the Commission promotes the concept of universal design and encourages a societal shift in thinking when it comes to building or renovating new structures.

⁶ Zola, I.K. (1989). "Toward the Necessary Universalizing of a Disability Policy." *The Milbank Quarterly*, Vol. 67, Suppl. 2, Pt. 2, 1989 (pp.401-428).