

Saskatchewan Human Rights Commission
Accessibility Rights of Persons with Disabilities
Public Transportation

Access to equal, dignified transportation is essential to the achievement of equality for persons with disabilities.

1. 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 definition 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.

2. 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.

3. 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.

Public transportation – or the lack of it – touches the lives of many Saskatchewanians. Access to transportation can make the difference in access to work or education. Accessible transportation also has major consequences for people who need to get to health care and other important appointments. Accessible transportation reduces isolation and loneliness and permits full participation of all individuals in their communities. Employment, education, and health-care may be unavailable to persons with disabilities unless transportation barriers are removed. Making public transportation available to everyone allows every citizen to be a contributing member of their community.

4. 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.

5. 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.

6. The law - accessible transit to the point of undue hardship

Persons with disabilities have a human right to adequate, dignified public transportation services on an equal basis. The *Code* guarantees the right to equal treatment with respect to services without discrimination based on disability. Transportation is a service. Therefore, people with disabilities have the right to accessible transportation without discrimination. A failure to provide equal access to transportation services is a violation of the *Code* and can be the subject of a human rights complaint.

The only defense to this discrimination is to prove that providing accessible transportation services would constitute **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 the organization or the workplace¹.

The Supreme Court of Canada² has noted the need to “fine-tune” society so that its structures and assumptions do not exclude persons with disabilities from participation in society. Accessible transportation is a good example of an area where society must be “fine-tuned” so people with disabilities are not excluded from many aspects of life by their inability to attend. Transportation is a foundation to full, equitable participation in the communities we live in.

7. Commission work – accessible transportation

Over the years the Commission has undertaken work to outline the human rights responsibilities of transit providers, and to promote and enforce greater

¹ This list is demonstrative, not exhaustive.

² *Eaton v. Brant County Board of Education*, [1979] 1 S.C.R. 241.

accessibility in transit services. For example, in 1992 the Commission participated in the National Transportation Agency's inquiry into Canada's extra-provincial bus system. The Commission, in its presentation, noted that discriminatory attitudes and physical barriers to national public transportation arbitrarily deny hundreds of thousands of Canadians their right to travel using the country's bus service. The Commission stressed that universal accessibility is long overdue, and that, as a society, we are required – morally, legally and economically – to provide it.

Sadly, accessible transportation – or the lack of it - is still an issue today. Advances have been made since 1992, many as the result of tribunals across the country finding transportation companies to be in violation of human rights legislation. In 2009 in recognition of enduring accessible transportation issues, the Commission commenced discussions with the City of Saskatoon and the City of Regina about accessible transportation. The work is ongoing. The Commission commends these cities for their willingness to undertake this progressive work.

Increasing the accessibility of public transportation in rural Saskatchewan presents significant challenges. Saskatchewan's harsh weather often acts as an added barrier. In communities where accessible transportation exists, snow and ice may prevent a person from getting to those services – which means they are not truly accessible. The Commission is interested in pursuing discussions with rural municipalities to identify methods of increasing access to public transportation in rural Saskatchewan.

8. Recommendations

The Commission believes that the achievement of equality for persons with disabilities in access to transportation services would best be met by:

- the provision by government of sufficient funding for accessible transit, and
- a commitment by transit providers to comply with the requirements and principles of the *Code*. The Commission acknowledges the commitment made by certain public transportation providers in this regard. The Commission encourages others to make this commitment, and urges everyone to keep working on this important initiative.

For public transportation providers to commit to *Code* compliance and advancing substantive equality rights for people with disabilities, the Commission recommends that transit providers:

- Set as a goal full integration and accessibility of services,
- Design inclusively when:
 - developing new policies, procedures, or programs,
 - creating new services, or
 - building, renovating or purchasing new buildings or capital equipment.

- Develop and continue plans to accomplish full integration and accessibility,
- Ensure that planning for and implementing accessibility is respectful of the dignity of all persons. For example, persons with all types of disabilities, older persons, and families with young children, and
- Take all steps short of undue hardship to achieve integration and full accessibility.