

THE CANADIAN HEARING SOCIETY



Submission to the
Canada Transportation Act Review Panel:
Recommendations for
Amending the Canada Transportation Act

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Introduction

In 1997 the Supreme Court of Canada granted intervenor status to The Canadian Hearing Society (CHS), the Canadian Association of the Deaf, and the Advocacy Resource Centre for Persons with Disabilities in *Eldridge v. British Columbia*. The Court ruled that the failure to provide sign language interpretation where it is needed for effective communication in the delivery of health care services, social services, education and training and employment, violates the rights of deaf consumers. Further, the Court stated that governments cannot escape their constitutional obligations by passing on the responsibility of policy implementation to private entities not directly under the jurisdiction of the *Canadian Charter of Rights and Freedoms*.

Recently, along with the Canadian Hard of Hearing Association and the Canadian Association of the Deaf, CHS was an intervenor in a case deaf lawyer Scott Simser planned to take before a tribunal of the Canadian Human Rights Commission against the Tax Court of Canada. Negotiations resulted in a mutually satisfactory out-of-court settlement. On September 5, 2000, the Tax Court announced a landmark policy that acknowledges and accepts responsibility for arranging and paying for accommodation for deaf, deafened and hard of hearing lawyers, articling students and any parties they represent. Accommodation not only comprises sign language interpretation and real-time captioning, but also embraces any other widely recognized method of satisfying the translation needs of deaf, deafened or hard of hearing persons. The Canadian Human Rights Commission is being encouraged to act systemically and have other court systems in Canada adopt similar policies.

Even with landmark decisions such as *Eldridge* and *Simser*, individual citizens still bear sole responsibility to fight for their right to access if employers or service providers fail to comply. This is costly in terms of time, money and dignity. CHS strongly supports amendments to the *Canada Transportation Act* that will strengthen enforcement mechanisms. The existing legislation is insufficient in this regard. The Act must establish standards for provincial, territorial, and municipal governments, the broader public sector and the private sector, so that intentional or unintentional practices of discrimination against persons with disabilities are eradicated.

CHS is pleased to have an opportunity to advocate on behalf of our deaf, deafened and hard of hearing consumers and is encouraged that the federal government is contemplating legislation to strengthen the *Transportation Act*. The recommendations we put forth in this paper support those contained in position papers being submitted to the Canada Transportation Act Review Panel by the Council of Canadians with Disabilities and the Canadian Association of the Deaf. Our recommendations, however, will focus specifically on the needs of persons who are deaf, deafened and hard of hearing.

Systemic Discrimination

Historically, Transport Canada's safety and hiring policies have excluded deaf job seekers from even unskilled positions in janitorial, maintenance and food services. In fact, deaf, deafened and hard of hearing individuals are represented in a variety of fields, including skilled occupations such as mechanical engineering and computer programming. The continued under-representation of these workers in the transportation industry is a result of deep-rooted systemic discrimination. Only strong amendments to the *Transportation Act* can remove the persistent barriers that prevent deaf, deafened and hard of hearing workers from becoming gainfully employed by Transport Canada and the corporations and agencies it regulates.

Deafness is not a threat to the safety of others. Studies have shown that deaf and hard of hearing drivers have better safe-driving records and better punctuality and attendance records in the workplace than their hearing counterparts. The record also shows that if a few simple precautions are followed, deaf, deafened and hard of hearing employees pose less of a safety risk on the job than employees with normal hearing. Many deaf people are employed by Boeing Aircraft in Winnipeg and by Bombardier Aerospace in Toronto.

Furthermore, deaf and hard of hearing workers have the lowest workplace accident rate. Recent studies indicate that hearing drivers and workers are at greater risk of accidents when they indulge in auditory distractions that are not available to deaf persons, such as talking into cell phones or playing with car radios or CD players. Indeed, according to the Canadian Medical Association, soundproof cabs pose a greater danger to driving safety than deafness.

Barriers to Accessibility

We need to do more as a society to remove existing barriers and prevent the erection of new ones. If, as the Canada Transportation Act Review Panel points out in its consultation paper, most able-bodied users and providers of transportation services understand the barriers faced by people with disabilities, it follows that these same users and providers should be willing to support a strong *Transportation Act*. Shouldn't the government demonstrate leadership by responding to the needs of people with disabilities? This can be accomplished by implementing binding regulations and conducting public education campaigns promoting barrier-free transportation and explaining the process for filing complaints.

Most public buildings regulated by Transport Canada, including airports and bus and train stations, lack sufficient TTY equipment. TTYs should be installed in the same areas as telephone booths, and TTY users should have the same payment options as telephone users.

Some airports have permanently affixed TTY equipment in their public areas; others make portable TTYs available. The "portable TTY" approach has not been as successful

because deaf, deafened and hard of hearing passengers are not made aware of the location of this equipment. Building personnel do not know where it is stored or how to use it. TTY equipment designed to be permanently installed is now readily available, and it is necessary for deaf, deafened and hard of hearing passengers in the same way that pay telephones are essential to hearing travellers.

Some Canadian airports have one or two TTY pay phones adjacent to a telephone bank. The “one TTY per floor” rule for public buildings is an improvement, but the Canadian Transportation Agency has included an exception that makes TTYs optional at telephone banks that are within 200 feet of a bank with a TTY. Two hundred feet is more than half the length of a football field—a long way to walk for deaf parents with children or deaf or hard of hearing seniors. Most TTY pay phones are not equipped with chairs or work surfaces that would enable users to type more easily.

Deaf, deafened and hard of hearing passengers frequently experience communication difficulties when booking tickets, changing reservations, applying for refunds, or when a flight is delayed or the departure gate is changed. They are denied access to information relayed over public address systems. They encounter this problem in airports, in train stations, and on subways. Personal notification from building employees is not always effective; built-in components, such as monitors, are much more reliable.

Deaf, deafened and hard of hearing passengers also have problems in-flight. The lack of captioning on in-flight monitors deprives them of vital information, such as emergency procedures, pilot’s announcements (of mechanical problems and other alerts, changes in arrival times, weather information) and the ability to partake of news and entertainment programming.

In the United States, several major carriers, including US Air, United Airlines and American Airlines, have closed captioning available on their in-flight monitors. As well, some flight attendants are trained in American Sign Language. Further, U.S. airports have TTY devices available in each public telephone area.

The *Transportation Act* does not address the accessibility needs of deaf, deafened and hard of hearing passengers. A number of passengers have filed human rights complaints with the Canadian Transportation Agency and the Canadian Human Rights Commission, but this is a slow and ineffective process. Currently, individual complaints have to reach the Supreme Court of Canada before change occurs. Even with landmark cases, individuals must bear the sole responsibility to fight for their rights if transportation service providers or Transport Canada does not provide access. This is costly in time, money and human dignity.

A private letter from the Canadian Transportation Agency to a deaf complainant on February 22, 2000, states that “With respect to the submission that the conduct of Air Canada is in violation of the Supreme Court of Canada’s decision in *Eldridge v. B.C. (A.G)*[1997] 3 R.C.S. 624, the Agency notes that although subsection 52(1) of the *Constitution Act, 1982 (Canada Act 1982, (U.K.), 1982, c. 11, Schedule B)* states “the

Constitution of Canada is supreme law of Canada”, subsection 32(1) provides that the Charter of Rights only applies to Parliament, provincial legislatures and government actions. Accordingly, the Charter of Rights does not apply to private action such as the omission by an air carrier to provide adequate information to a person with a disability.”

The decision goes on to note that, “ the Agency is also aware that in the United States of America, the *Air Carriers Access Act of 1986* provides for open captioning and sign language insets as being the preferred method. It should, however, be noted that where this is not feasible, non-video methods may be used as is the case in Canada.”

The decision further stated that “on the issue of the lack of closed captioning on in-flight monitors, the Agency determines that in light of the technical difficulties of implementing closed captioning and the alternative methods of providing safety information to deaf and hearing impaired passengers, there was no undue obstacle to a deaf passenger’s mobility.”

This is an example of the Canadian Transportation Agency’s disregard for the barriers to transportation facing deaf, deafened and hard of hearing passengers. Only strong amendments to the *Canada Transportation Act* can remove persistent barriers that prevent deaf, deafened and hard of hearing passengers from having full accessibility and from becoming gainfully employed in the transportation sector.

Recommendations

CHS strongly recommends that the *Canada Transportation Act* be amended to include the following:

1. Specifically name persons with disabilities, including deaf, deafened and hard of hearing users and providers of transportation services.
2. Specifically name persons with disabilities as a disadvantaged group.
3. Expressly state that a purpose of the Act is to identify and eliminate barriers to transportation experienced by persons with disabilities, including people who are deaf, deafened and hard of hearing users and providers of transportation services.
4. Ensure that each section of the Act dealing with employment or services recognizes the distinct kinds of complaints made by members of disadvantaged groups.
5. Endorse the view that everyone to whom the Act applies has a responsibility to take positive steps to promote equality.
6. Enforce accessibility standards.

7. Enforce provincial and federal transportation legislation to comply with the equality decisions of the Supreme Court of Canada (i.e., the *Eldridge*, *Meiorin* and *Grismer* decisions).

Furthermore, CHS recommends that regulations following from the *Canada Transportation Act* be amended to include the following practical suggestions:

1. Establish an action plan to remove existing barriers and prevent the creation of new barriers.
2. Implement access training on disability needs, including the legal rights of users and providers of transportation services who are deaf, deafened and hard of hearing.
3. Remove communication barriers that prevent the deaf, deafened and hard of hearing persons from accessing the transportation system.
4. Ensure that offices of the Canadian Transportation Agency and transportation service providers are staffed with accommodation coordinators.
5. Ensure prompt availability of qualified sign language interpreters and other communication supports for deaf, deafened and hard of hearing persons.
6. Use plain language in all communications directed at deaf, deafened and hard of hearing persons.
7. Remove legislative and other barriers that prevent deaf, deafened and hard of hearing persons from serving as staff of the Canadian Transportation Agency and transportation service providers.
8. Inquire about and satisfy the communication needs of deaf, deafened and hard of hearing consumers.
9. Become familiar with and use appropriate terminology to describe disabilities, including hearing loss and deafness.
10. Take disability, including hearing loss and deafness, into account when shaping transportation legislation.

Conclusion

The Canadian Hearing Society supports efforts to create an enforceable and effective *Canada Transportation Act*. Our experience suggests that the current Act is ineffective because it lacks the appropriate authority and necessary funding to ensure compliance. Equal access by the deaf, deafened and hard of hearing to transportation services can only be achieved if our recommendations are implemented.