



House of Commons
Canada

GETTING BACK ON THE ROAD: PASSENGER TRANSPORTATION AND PERSONS WITH DISABILITIES

**REPORT OF THE HOUSE OF COMMONS
STANDING COMMITTEE ON HUMAN RIGHTS AND
THE STATUS OF DISABLED PERSONS**

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BRUCE HALLIDAY, M.P.
Chairman

June 1993

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STANDING COMMITTEE ON HUMAN RIGHTS AND
THE STATUS OF DISABLED PERSONS**

BRUCE HALLIDAY, M.P.
Chairman

June 1993

**The Standing Committee on Human Rights and the
Status of Disabled Persons**

Chairman: Bruce Hellyar
 Vice-Chairman: Joe-Lac Jones
 Neil Young

Members

has the honour to present its

Members

Tom Clifford
 Louis Bellavance
 Frank Jeffrey
 Allan Kewy
 Bob Pritchard—(S)

REPORT

In accordance with its mandate under Standing Order 108(3)(b), your Committee examined the question of Transportation for Disabled Persons including consideration of specific aspects of the Report from the National Transportation Review Commission entitled: *Competition in Transportation, Policy and Legislation*, in reviews relating to disability and other matters concerning transportation of disabled people, and has agreed to report the following:

STANDING COMMITTEE ON HUMAN RIGHTS AND THE
STATUS OF DISABLED PERSONS

Chairperson: Bruce Halliday

Vice-Chairmen: Jean-Luc Joncas
Neil Young

Members

Terry Clifford
Louise Feltham
Beryl Gaffney
Allan Koury
Beth Phinney—(8)

(Quorum 5)

Lise Laramée

Clerk of the Committee

COMITÉ PERMANENT DES DROITS DE LA PERSONNE ET
DE LA CONDITION DES PERSONNES HANDICAPÉES

Président: Bruce Halliday

Vice-présidents: Jean-Luc Joncas
Neil Young

Membres

Terry Clifford
Louise Feltham
Beryl Gaffney
Allan Koury
Beth Phinney—(8)

(Quorum 5)

La greffière du Comité

Lise Laramée

The Standing Committee on Human Rights and the Status of Disabled Persons

has the honour to present its

SIXTH REPORT

In accordance with its mandate under Standing Order 108(3)(b), your Committee examined the question of Transportation for Disabled Persons including consideration of specific sections of the Report from the National Transportation Act Review Commission entitled: *Competition in Transportation, Policy and Legislation in review*, relating to disability and other matters concerning transportation of disabled people, and has agreed to report the following:

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INTRODUCTION

Shortly after the Thirty-Fourth Parliament began its life in 1988, this Committee undertook to study the economic integration of persons with a disability. During the past five years, we have heard the heartfelt testimony of hundreds of witnesses from all parts of Canada. In every available forum, including this Committee, persons with disabilities — with increasing precision — have told other Canadians of the changes that are needed — and why. In this report, we have tried to analyze these observations and to make constructive recommendations to the government.

By and large, both the Members of this Committee and our witnesses identified the same issues that were outlined in the landmark overview, *Obstacles*, that was prepared over a decade ago by the Special Committee on the Disabled and Handicapped. Our initial findings, as set out in 1990 in our report, *A Consensus for Action*, showed Canadians that we are still a long way from living up to our commitments to those among us who have disabilities. This is the case with transportation, no less than with other necessities that allow people to participate fully in society and in the economy.

When we wrote *A Consensus for Action*, this Committee summed up the situation as we saw it. The three years that have elapsed since then have not caused us to change our assessment. We pointed out that:

...it has become plain to us that disabled persons on their side and governments and business for their part, sincerely believe that each has not given sufficient weight to the legitimate claims or achievements of the other. . . Parliamentary committees, such as this one, feel caught in the middle. Our own great frustration is not that anybody says the wrong thing, but nobody does the right thing. This is particularly true of government departments, agencies and private corporations which have appeared before us.¹

Three years ago, we cited the impasse in access to transportation as a prime example of the way that government departments and agencies have delayed addressing the issues of people with disabilities. *The National Transportation Act* was amended in 1988 to

¹ Standing Committee on Human Rights and the Status of Disabled Persons, *A Consensus for Action*, June 1990, p. 9.

send a clear signal to all parties that greater accessibility to the Canadian transportation system remains an integral part of the overall policies of federally-regulated transportation rather than a concession, favour or add-on.²

These amendments gave the National Transportation Agency the authority to issue regulations to improve not only the terms and conditions of carriage for persons with disabilities but also the physical accessibility of transportation facilities (both terminals and equipment). Among other things these regulations might settle the one-person-one-fare issue and the status of an attendant accompanying a traveller with a disability.

In *A Consensus for Action*, this Committee pointed out that access to transportation "has long been an item that falls high on the agenda of the disability community." In 1990, we stated that the delay in producing regulations — at that point two years — had given the opposite signal to that which Parliament intended in amending the *National Transportation Act* in 1988. Instead of inclusiveness, people with disabilities have been left to deal yet again with the frustration of unfulfilled expectations. What this Committee described as unacceptable in 1990 has become almost scandalous — given the further delay of three years. In the meantime, the reports, responses, studies, briefing books that have been produced by parliamentary committees, royal commissions, and review commissions, have consumed as much time and energy as it would have taken to act.

² In October 1983, the Minister of Transport announced the establishment of a National Policy on Transportation of Disabled People. This Policy set out the goals of the government with respect to people with disabilities. As part of this Policy, amendments were made to the *National Transportation Act* in 1988. Although these amendments did not create a legislative power for ensuring equality of access to all modes of transportation for persons with a disability, they did give the National Transportation Agency an expanded mandate with regard to the transportation needs of these people. The Agency received full authority under sections 63.1 and 63.3 of the Act to remove undue obstacles to the mobility of persons with disabilities either in response to an individual complaint or through the enactment of regulations.

CHAPTER 1

MAKING A START

During the past five years, some measurable progress has taken place in giving people with disabilities access to passenger transportation. At the same time, Canadians should all recognize that most of the changes have resulted less from voluntary initiatives than from prodding by Parliament, especially by this Committee.

I – THE NATIONAL STRATEGY ON THE INTEGRATION OF PERSONS WITH DISABILITIES

When this Committee tabled its report, *A Consensus for Action*, we recognized that a large part of the attractiveness of the *Americans with Disabilities Act* (ADA) lay in the way it linked the discrimination experienced by disabled people to the social costs of such discrimination for all citizens of the United States. Supporters of the ADA pointed out that estimates of the cost of modifying policies and practices were small compared to the economic benefits that would accrue from increased tax revenues and overall savings as people with disabilities contributed to the economy.

While we live in a different country with a different system of political values and institutions, progress should be as easily achieved here as in the United States. Not only do we have a unique constitutional commitment to the rights of disabled persons that is embodied in *The Canadian Charter of Rights and Freedoms*, but we have an established tradition of working for social justice through government action.

Accordingly, our 1990 report recommended that the government establish a national action strategy that involves an effective federal mechanism that ensured the ongoing and consistent monitoring, advocacy and coordination on behalf of disabled persons in relation to all policy, legislation and regulations.

Things moved forward when the federal National Strategy for the Integration of Persons with Disabilities was launched on 6 September 1991. With this commitment, the federal government dedicated \$158 million to be spent by ten federal departments over five years. The aim of the Strategy is to assist in bringing people with disabilities into the social and economic mainstream of Canadian life.

A. THE DEPARTMENT OF TRANSPORT

As part of the National Strategy, the Department of Transport agreed to direct \$24.6 million of new funding over five years to transportation operators, manufacturers and advocacy groups. In October 1991, the Department made public, "Access for All," a policy

statement that set out Transport Canada's views on accessible transportation. In it, Transport Canada promised to set the pace by providing financial assistance and funds for research and demonstrations, consultation and public education. The policy stated:

- the government's responsibility to ensure the right of access to all persons and for disabled persons to be treated with dignity;
- the aim of instituting terms and conditions of carriage which do not subject people with disabilities to unreasonable terms or additional charges or fares;
- the need to meet seniors' concerns;
- the assumption of self-reliance with respect to services unless the passenger states otherwise;
- the need for integration of transport for elderly and disabled travellers with regular services; and
- the need for refining the definition of accessibility as goals evolve.

With the money from the National Strategy, the Department decided to address 14 specific measures. These are:

1. intercity buses: install lifts and other accessible devices;
2. trains and commuter planes: purchase boarding devices;
3. airport shuttle buses and taxis: retrofitting;
4. rental cars at airports: equip with hand controls;
5. staff training: educate to meet needs of disabled travellers;
6. technology: test and demonstrate technology for accessibility;
7. more information: data base on experiences of disabled travellers;
8. accessible vehicles in small communities: financial assistance;
9. *Independence '92*: demonstrate progress;
10. improvements for travellers who are blind: joint venture with CNIB;
11. improvements for travellers with visual and hearing impairments: awareness workshops;
12. accessible transport in small communities: assist in providing services for disabled persons;
13. charter buses: assist in development of a charter bus; and
14. urban buses: low floor buses.

The Disabled Persons Unit of Transport Canada is also responsible for the Advisory Committee to the Minister on Accessible Transportation.

B. THE NATIONAL TRANSPORTATION AGENCY

Following the announcement of the National Strategy on 6 September 1991, the government agreed to give the National Transportation Agency (NTA) additional resources to help develop and to put in place regulations that address the issue of accessibility to transportation services. The new resources amounted to \$0.9 million.

When the first two sets of regulations authorized by the 1988 amendments to the *National Transportation Act* were published for comment in March 1992, the NTA stated in its press release that this was part of the "accelerated" regulatory program made possible by the Agency's participation in the Strategy.

C. ACCOUNTABILITY

In the other reports that this Committee has tabled in Parliament, we have constantly repeated that coordination and accountability must form part of the National Strategy. In our report, *A Consensus for Action*, we stated that "the history of the recommendations of parliamentary committees concerned with disability have shown us that what is needed now is more muscle at the centre of government. . . disabled persons' units, directorates and secretariats appear to function on the margin of their respective departments. In short, they are not effectively integrated into the central decision-making process of government."³ Most recently, in our report on Aboriginal people with disabilities, we pointed out that "any comprehensive policy framework in the area of disability. . . remains incomplete if it does not include some measure of accountability as well as some monitoring mechanism. Citizens should know that their concerns are being appropriately considered and integrated into the overall policy and program development of all government departments. They also have a right to know how the money that is spent either through normal government programming or through the National Strategy is providing direct benefits to them."⁴

This Committee believes that the concept of accountability must apply to the Department of Transport and the National Transportation Agency, as well as the other government departments and agencies that participate in the National Strategy or that, like Treasury Board, exercise powers within their mandate that affect the functioning of the National Strategy. In its study, *Disability and Transportation in Canada*, the Hickling Corporation found that, despite the initiatives undertaken by Transport Canada and the National Transportation Agency related to the National Strategy, "transportation services under federal jurisdiction are still largely inaccessible today. . . Due to the variety of 'players in the game' (including federal departments and operators), federal policy has continued to remain unfocused, at least until recent announcements" (p. 28).

³ *A Consensus for Action*, pp. 18-19.

⁴ Standing Committee on Human Rights and the Status of Disabled Persons, *Completing the Circle: A Report on Aboriginal People with Disabilities*, May 1993, pp. 24-26.

This Committee has commented before that because the "National Strategy has received political support at the highest levels, turf wars among bureaucrats should not prevent this initiative from benefiting people with disabilities."⁵ We have addressed this issue in our report, *Completing the Circle*, where we noted that, since the federal government has not yet put into place an accountability mechanism, this Standing Committee would attempt to fill the gap temporarily. We proposed and recommended in that report that the Minister Responsible for the Status of Disabled Persons and all other ministers involved in the National Strategy and in disability issues prepare an annual report to Parliament. After tabling in the House of Commons, this report should be referred to this Standing Committee and to other appropriate parliamentary committees. For greater clarity and emphasis, we therefore recommend that:

RECOMMENDATION 1

The President of the Treasury Board, the President of the Privy Council, the Minister of Transport and the Chair of the National Transportation Agency should cooperate with the Minister Responsible for the Status of Disabled Persons in order to ensure immediate action to co-ordinate federal programs and activities that have an impact on the transportation of persons with disabilities. The Minister Responsible for the Status of Disabled Persons should make public a specific plan of action to deal with the co-ordination of federal activities related to the transportation of people with disabilities no later than 31 December 1993.

RECOMMENDATION 2

On behalf of the Government of Canada, the Minister Responsible for the Status of Disabled Persons should table in Parliament an annual report on the National Strategy for the Integration of Persons with Disabilities and other government activities related to persons with disabilities. This annual report should contain details of grants and contributions, as well as program and policy initiatives related to persons with disabilities. The annual report to Parliament should be referred to this Standing Committee and its successors, as well as to other relevant parliamentary committees.

RECOMMENDATION 3

The Clerk of the Privy Council and Secretary to the Cabinet, the Secretary of the Treasury Board and the Secretary to the Cabinet for Federal-Provincial Relations should each name one senior official with sole and specific responsibility for all persons with disabilities. In the case of the Treasury Board, this official should report through the Program Branch.

⁵ Ibid., p. 22.

II – BILL C-78 AND THE CANADIAN DISABILITY RIGHTS COUNCIL

When we tabled our report, *A Consensus for Action*, the members of this Committee recommended that “all federal departments, Crown corporations and agencies be required. . . to review and, where necessary, reform legislation and regulations to ensure the comprehensive inclusion of disabled persons.” By including this in our report, we were, in essence, attempting to stimulate a comprehensive re-thinking of the place of persons with disabilities similar to that provoked by the *Americans with Disabilities Act* (ADA) in the United States. We recognized, as did the framers of the ADA, that “educational measures and advisory bodies, have only a limited effect” in achieving progress.⁶ *A Consensus for Action* gave the government one year to complete these activities and recommended a deadline of June 1991 for completion of the review.

When the government responded to this report in November 1990, it agreed to undertake the comprehensive review that the Committee recommended in order to identify legislative action that is required to eliminate barriers to the social and economic integration of persons with disabilities. The government later specified that the Secretary of State, as Minister Responsible for the Status of Disabled Persons, in collaboration with the Minister of Justice would coordinate the review that would involve some 12 federal departments and agencies. The government also promised that consultation with the disability community would form an integral part of the review process.

As part of the consultation process, the Canadian Disability Rights Council (CDRC) made a number of recommendations in September 1991, for changes to legislation including several that dealt with the *National Transportation Act, 1987*.⁷ The CDRC proposed that:

- references in the Act to “disabled persons” should be changed to “persons with disabilities”.
- the declaration section of the Act should state that an accessible transportation system is a goal of the legislation. The Act should commit the government to provide “safe, reasonable and equitable access to transportation by people with disabilities in Canada through the removal of all physical and other barriers”.
- section 63.1 of the Act that permits the National Transportation Agency to make regulations “for the purpose of eliminating undue obstacles . . . to the mobility of disabled persons” should be changed to require the Agency to eliminate all obstacles to the mobility of people with disabilities. The law should require these regulations to be made within six months.
- extra-provincial busing should be included in the national access regulations notwithstanding the delegation of these federal powers to the provinces.
- the Act should require the National Transportation Agency to establish a standing committee of three of its members to advise the Agency on barriers to transportation of people with disabilities. It should conduct public hearings,

⁶ *A Consensus for Action*, pp. 13, 35.

⁷ Canadian Disability Rights Council, “Legislative Reform for People with Disabilities — Proposals for Change,” September 1991.

including as witnesses members of disability organizations and publish and distribute information relating to accessible transportation. Its report and recommendations should be public and it should be required to report within one year of the enactment of the requirement and every three years after that. The Act should specifically mention public interest funding (an Accessible Transport Fund) to facilitate participation by people with disabilities in the consultation process.

- regulations relating to accessibility should be made available in an accessible format.
- the Act should provide for increased fines for contravention of the accessibility regulations and money collected as fines should be paid into the Accessible Transport Fund.

The results of the legislative review recommended by this Standing Committee were contained in Bill C-78, *An Act to amend certain Acts with Respect to Persons with Disabilities*, popularly known as the Omnibus Bill. This legislation received Royal Assent on 18 June 1992 and fulfils promises made in the government response to *A Consensus for Action*. Among other things, Bill C-78 altered the declaration made in section 3 of the *National Transportation Act* to read:

3(1) It is hereby declared that a safe, economic, efficient and adequate network of viable and effective transportation services accessible to persons with disabilities... is essential to serve the transportation needs of shippers and travellers, including persons with disabilities.

The rest of the CDRC's proposals regarding transportation were not enacted. Despite the long period of consultation that had occurred with the disability community, the other proposals for legislative change were left to be 're-reviewed' by the Royal Commission on National Passenger Transportation and by the National Transportation Act Review Commission.

Significantly, when Bill C-78 was making its way through the legislative process, both the initial proposals for an Omnibus Bill made by CDRC and Bill C-78 itself were seen by the disability community, and by the government, as the beginning of a process — not the end of the line. When he appeared before this Committee on the subject matter of Bill C-78, the Secretary of State told us that "these important announcements [of additional measures] and the provisions of Bill C-78 underscore the government's commitment to continued collaboration toward further legislative reform."⁸ For its part, CDRC reluctantly commented that "there is a lot of understandable disappointment, in the sense that it [the bill] doesn't include many of the items introduced into the process by our proposal. There is a kind of

⁸ *Minutes of Proceedings and Evidence of the Standing Committee on Human Rights and the Status of Disabled Persons*, (hereafter, *Proceedings*), 3rd Session, 34th Parliament, Issue No. 21, p. 7.

emotional. . . sadness in our community that some of the other things have not been included in this bill.”⁹ At the same time, the Disability Rights Council allowed that the disability community would use the bill as a precedent to build on.

III – LEGISLATIVE AND REGULATORY REFORM

The various departments of government and federal agencies that deal with the issue of transportation, must recognize that they have the levers of change within their grasp. The onus is currently on them, and on the various carriers, to act quickly and efficiently to ensure access to transportation for people with disabilities. The point has been made before. As the Royal Commission on National Passenger Transportation pointed out, the relevant provisions of both the *Canadian Charter of Rights and Freedoms* and the *Canadian Human Rights Act* “require the traveller with a disability to seek access, rather than placing the onus on service providers to ensure it. Furthermore, knowledge of lack of access is not sufficient grounds to seek redress, a person with a disability must first have been refused access.” But — and it is an important distinction — the *National Transportation Act 1987* provides authority to initiate action to require transportation carriers to eliminate undue obstacles.¹⁰

As a result of the National Transportation Agency’s failure to use the powers that it has been given by its own Act, federal standards still rely primarily upon people with disabilities who initiate claims against transportation systems under the *Canadian Human Rights Act* and the Charter. This puts tremendous pressure on individuals. Apart from the Clarisse Kelly case that was brought before the Canadian Transport Commission in 1980, people with disabilities have not been able to act as a group to affect the accessibility of transportation by taking legal action against various modes of transport. Apart from the difficulties of individuals in gaining enough information to lodge a complaint, few people with disabilities can afford the energy or money that legal action might require.

Nonetheless, for want of progress, people with disabilities are exploring the possibilities of turning to the courts to clarify and to confirm their right of access to transportation. Since the equality guarantees in Section 15 of the *Canadian Charter of Rights and Freedoms*, apply to transportation, these people are ready to undertake the arduous process of going to court. As we stated in *A Consensus for Action*, this Committee believes that too many issues are being settled through Charter challenges and human rights complaints because the political and bureaucratic system is unwilling to deal with disabled persons’ concerns.

Given the five year delay by the National Transportation Agency in exercising its responsibilities and promulgating regulations under its Act, Canadians are entitled to ask why. The reasons are murky because no one wants to accept responsibility. When they appeared before this Committee, organizations of persons with disabilities felt that the two sets of regulations that have been published for public comment had met bureaucratic

⁹ Ibid., Issue 22, p. 5.

¹⁰ Royal Commission on National Passenger Transportation, *Directions*, Final Report, October 1992, Volume 1, p. 199.

barriers. These included not just hold-ups and inefficiency in the National Transportation Agency but also delays by the central agencies (the Privy Council Office and the Treasury Board) that deal with regulations. And yet neither of these two latter bodies had consulted with organizations of people with disabilities — and we wonder, have they dealt similarly with representatives of the various modes of transportation. When this Committee considered similar circumstances relating to the Department of Finance, we pointed out in our report, *As True as Taxes*, that:

policy cannot be made successfully by officials working in ivory (or glass) towers. Because the [Finance] Department's position is a critical one, senior (and junior) officials. . . should be actively involved in discussions with the community, with other levels of government and with individuals.

This statement and our conclusion apply in the same measure to the Treasury Board and to the Privy Council Office. Officials working for the central agencies would do well to consider the broad implications of the American experience. Primarily, they should recognize that it involved more than just a commitment to writing, simplifying or eliminating regulations.

For example, when this Committee visited Washington, we noted the role that disabled persons' organizations had played in developing the *Americans with Disabilities Act*. Both government and the disability organizations themselves benefitted from this exercise. By participating in the process, disabled persons' organizations in the United States had to confront certain realities and form certain partnerships. They had to re-evaluate their own objectives and their own priorities in light of decisions that they made themselves about *realistic* priorities and actions. In order to get the ADA through Congress, the representatives of the organizations of disabled persons negotiated modifications to their original "wish-list" directly with elected officials and bureaucrats as well as with the business community. They sat face-to-face with their opponents and presented arguments based on research and on hard facts.

In the area of transportation, at least, the equivalent Canadian process has not been as transparent. Currently, line departments, like Secretary of State or even the National Transportation Agency, are rightly or wrongly being held accountable by the public for all delays. Because these are the bodies which conduct the consultations with the community about an issue, they are the bodies whose proposals, in the public mind, form the basis for decisions. At the same time, our hearings have led us to conclude that central agencies like the Treasury Board or the Privy Council Office — who have not been part of the public consultation — ultimately make or veto, the decisions and recommendations made by the departments who conducted the public part of the process. This pseudo-consultative mechanism camouflages the reality of where the buck stops and leads to public frustration when agreements fall apart or when legislative and regulatory results do not meet legitimate public expectations.

It is not outside the realm of Canadian experience to make some of the process of drawing up regulations more transparent. When Labour Canada began reviewing Part II of the Occupational and Health Regulations under the *Canada Labour Code*, the Department followed a longstanding and different practice. As it has with other parts of the Code, the

department reviewed Part II by calling together federal employers, employees (unions) and persons with disabilities to discuss, negotiate and seek consensus on recommendations for changes. This review was completed on 23 March 1993. This is a standard operating procedure in the Department but it was the first time that it was applied to removing barriers for disabled persons. The obvious weakness of securing quick approval is that the central agencies were not involved in these discussions; nonetheless, the Department can present proposed changes as a consensus that enjoys business and labour support. This provides a considerable argument in favour of quick approval by both the Treasury Board and the Privy Council Office.

We therefore recommend that:

RECOMMENDATION 4

Given the agreement that access to transportation is a basic human right and that achieving this right is a priority for people with disabilities, the President of the Treasury Board, the President of the Privy Council and the Chair of the National Transportation Agency should ensure that their officials hold consultations with representatives from disabled persons' organizations and carriers at the earliest opportunity but not later than 1 September 1993. The President of the Treasury Board, the President of the Privy Council and the Chair of the National Transportation Agency should instruct their officials to reach an agreement for a timetable for the promulgation of the regulations pre-published by the National Transportation Agency and all other draft or proposed regulations regarding the transportation of disabled persons. The priority in these discussions should be to reach an agreement on proceeding with the promulgation of a regulation on the "one person-one fare" issue. The decision on a timetable to promulgate all regulations that are currently in progress or proposed should be made public not later than 1 October 1993.

RECOMMENDATION 5

Given the longstanding experience of Labour Canada in involving business, labour and other interested parties (such as persons with disabilities) in negotiating changes to the Regulations under the *Canada Labour Code*, the Chair of the National Transportation Agency, the President of the Treasury Board and the President of the Privy Council should collaborate with the Minister of Labour to apply the practices of that Department to the regulatory process regarding the transport of persons with disabilities.

RECOMMENDATION 6

The Government of Canada should evaluate the process whereby the National Transportation Agency makes regulations. This evaluation should include an assessment of the efficiency of the National Transportation

Agency in drawing up, publishing and promulgating regulations. It should also make recommendations about eliminating or streamlining the process whereby the Agency's regulations are subject to review by the Privy Council Office and by the Treasury Board. The results of this evaluation should be made public not later than 31 December 1993.

RECOMMENDATION 7

The National Transportation Agency should establish a Committee on Access to Transport for Disabled Persons that includes disabled persons. The mandate of this Committee should be set out in a formal manner in a document such as the Agency's Rules of Procedure. This Committee's mandate should include, but not be restricted to, advising the Commission about actions that lie within the Commission's overall jurisdiction that may remove barriers to passenger transportation for people with disabilities. Specifically, every three years, this Committee should, on behalf of the Agency, automatically review barriers to the transportation of disabled persons.

RECOMMENDATION 8

The National Transportation Agency should ensure that during any public consultations or any public involvement in reviewing or creating regulations, organizations of disabled persons and seniors should be provided with funds from the Agency so that they do not suffer any disadvantage compared to other participants in the process.

CHAPTER 2

A PAPER CHASE

I – THE STUDIES

Since Bill C-78 became law in June 1992, the government has had ample information on which to base immediate action to improve access to transportation for persons with disabilities. This Committee hopes that our recommendations which are based on an analysis of the recent reports of the Royal Commission on National Passenger Transportation, the National Transportation Act Review Commission and the National Transportation Agency's study on intra-provincial busing, will not just sit on the shelf like the multitude of other reports and studies that have been produced over the years. As Mr. John Gratwick, a Commissioner from the National Transportation Act Review Commission put it, we should "get on with it. The homework has been done and there are a number of things that can now happen which would significantly reduce those barriers [for people with disabilities]".

A. THE ROYAL COMMISSION ON NATIONAL PASSENGER TRANSPORTATION

The Royal Commission on National Passenger Transportation was established under the chairmanship of Louis Hyndman in October 1989, and issued its final report entitled *Directions* in October 1992. As part of the Commission's mandate to report upon a national integrated intercity passenger transportation system, it examined access to transportation for people with disabilities. After conducting public hearings and reviewing submissions, the Commission reported its findings and recommendations in Chapter 9 of its final report.

People with disabilities, the Commission stated, ask ". . . for the same access, comfort and dignity that other Canadians take for granted."¹¹ After noting that roughly 10 percent of the adult population (or about 1.9 million people) have transportation-relevant disabilities, and that this percentage is likely to rise as the population ages, the Commission went on to make several recommendations.

¹¹ Royal Commission on National Passenger Transportation, *Directions*, Final Report, Ottawa, October 1992, vol. 1, p. 195.

As an overall objective, the Commission recommended that "governments establish a goal that all travellers in Canada have access to public transportation in a safe, reasonably comfortable and dignified fashion irrespective of physical or mental ability." Furthermore, it recommended that the National Transportation Agency establish minimum standards in consultation with the various concerned groups.¹²

Regarding equipment, the Commission said that demand alone will never be enough to warrant installing the expensive equipment needed to improve accessibility. The costs involved in removing all obstacles to accessible transportation would undermine carriers' viability.

In trying to reach the long-term goal of one system catering to all needs, the Commission recommended that carriers ensure that new equipment and infrastructure "provide people with disabilities" . . . continuing improvements in accessibility to their services." It also recommended that retrofitting be done where practicable.¹³

At the same time, it recommended that the National Transportation Agency take more active responsibility for ensuring that transportation services become more accessible.¹⁴ Once again, the issue of costs came into play. It was recommended that the carriers decide how best to meet performance standards, and be given a reasonable period of time to improve accessibility.¹⁵

At the individual level, the Royal Commission believed that coded identification cards be devised to indicate the level of assistance required or whether an attendant is needed when people with disabilities travel.¹⁶ It also felt that the National Transportation Agency should mediate disputes, that the carrier should pay an attendant's fare if required, and that carriers should coordinate their policies. It also recommended training personnel to deal sensitively with travellers with disabilities.¹⁷

In the area of intercity buses, the Commission recommended that provincial and territorial governments implement more uniform and adequate accessibility standards for intercity buses. If this does not occur, the Commission recommended that the federal government take back its delegated responsibility in this area.¹⁸

Finally, the Commission recommended setting up "advisory and coordinating groups to ensure that new services, equipment and infrastructures adequately serve those for whom they are intended," and to ensure that the recommendations are implemented.¹⁹

¹² Ibid., p. 202.

¹³ Ibid., p. 204.

¹⁴ Ibid., p. 205.

¹⁵ Ibid., p. 206.

¹⁶ Ibid., p. 207.

¹⁷ Ibid., p. 208-9.

¹⁸ Ibid., p. 209.

¹⁹ Ibid., p. 211.

B. THE NATIONAL TRANSPORTATION ACT REVIEW COMMISSION

The National Transportation Act Review Commission was established to examine the effects of the *National Transportation Act (NTA), 1987* five years after implementation. Under the chairmanship of Gilles Rivard, it spent nearly a year consulting and deliberating, and in January 1993 the Commission issued its final report entitled *Competition in Transportation*. As part of its review, the Commission dealt with persons with disabilities, and recognized the "...responsibility of government to play the lead role in breaking down barriers to access to transport facilities by Canadians with disabilities."²⁰

The Commission asked the specific question: "Has the community of persons with disabilities benefitted from the provisions of the *NTA, 1987*?" The short answer, the Commission concluded, was "yes, but not enough."²¹ The Commission noted that it had taken the government five years to publish — but only for comment — regulations on aircraft procedures and on programs for training transport industry personnel. It recommended that the federal Cabinet pursue the passage of regulations promoting access for persons with disabilities.²²

In commenting on the transportation proposals submitted by the Canadian Disability Rights Council (CDRC), the Commission agreed that disparities should be reduced in interprovincial busing regulations. But on the subject of legislative amendments, the Commission thought that "...pro-active administration of existing legislative powers. ..." was preferable to legislating absolute rights of access. In agreeing with the general thrust of the CDRC's proposals, the Commission felt that the mandate of the Minister's Advisory Committee on Accessible Transportation should be enhanced so that it, along with concerned groups, could play a consultative, interpretive and co-ordinating role.²³

The Commission's Research Report emphasized compromise in reconciling the demands of disabled people with the financial constraints of both governments and carriers. The legislative base appears to be "...sufficient to allow for significant progress."²⁴ Added to this, Transport Canada has established, and the National Transportation Agency claims to have established, advisory committees that allow representation from stakeholders.

The Report concluded that "because attitudes are so important in this area, solutions must be acceptable to the different parties affected. Consequently, consultation and negotiation should be given the best possible opportunity to improve transportation accessibility."²⁵

²⁰ National Transportation Act Review Commission, *Competition in Transportation*, Minister of Supply and Services, Ottawa, 1993, vol. I, p. 38.

²¹ *Ibid.*, p. 39.

²² *Ibid.*, p. 40.

²³ *Ibid.*, p. 41.

²⁴ *Ibid.*, vol II, p. 171.

²⁵ *Ibid.*, p. 172.

C. THE NATIONAL TRANSPORTATION AGENCY AND EXTRA-PROVINCIAL BUSES

Starting in the fall of 1991, the National Transportation Agency (NTA) studied the accessibility of extra-provincial motor coach services. It examined the current level of accessibility, the needs of people with disabilities for accessible services, and the financial impact of a national standard. After conducting a national fact-finding inquiry, which included pre-consultations with major stakeholders followed by public hearings in 17 Canadian cities, it issued in early 1993, a report entitled *The Road to Accessibility: An Inquiry into Canadian Motor Coach Services*.

The Agency recommended the establishment of a national standard for motor coach accessibility which would be based on the following principles:

- consistent service for people with disabilities whenever, and wherever, they travel by motor coach in Canada;
- training staff to deal with people with disabilities;
- designing motor coaches with built-in accessibility features such as lifts, wheelchair spaces and washroom facilities, and features for travellers with sensory and cognitive disabilities;
- integrating accessibility into regular motor coach services;
- implementing the national standard as a federal regulation;
- the government is assisting industry with capital costs associated with acquiring accessible equipment; and
- industry paying for ongoing operating costs.

The Agency also recommended a timetable for implementing the changes which would see service and training requirements take effect as soon as possible; accessibility standards apply to equipment requirements applying to new equipment purchased after 1 January 1995, 10 per cent of motor coaches used by operators of 10 or more coaches within 3 years, and all motor coaches used in scheduled services be accessible within 12 years. Terminals would be modified to accommodate travellers with disabilities by 1 January 2000. Beginning in 1995, new or extensively renovated terminals should incorporate accessibility features.²⁶

II – WHERE NEXT?

The hearings that this Committee held on the issue of transportation brought together representatives from industry, from government and from the disability community. We asked them to evaluate these recent reports from their perspective in order to give us the opportunity to make recommendations about where immediate action is required. In

²⁶ National Transportation Agency of Canada, *The Road to Accessibility: An Inquiry into Canadian Motor Coach Services*, Minister of Supply and Services Canada, Ottawa, 1993.

summing up the testimony, David Baker of the Advocacy Research Centre for the Handicapped (ARCH) noted that there was a very high level of consensus among these disparate interests. The witnesses agreed on several critical items:

- the importance of transportation for all Canadians including Canadians with disabilities;
- the acceptance of the goal of equality of access;
- the recognition that market forces have not and will not produce access;
- the phasing in of access over a period of time will minimize the cost and dislocation within the passenger transportation industry; and
- the need for standards and the current failure to produce standards.

The earlier part of this report has provided our view of the importance of passenger transportation for Canadians with disabilities. We feel that the extensive treatment of this issue by the Royal Commission, the Review Commission and by the NTA in establishing its study of accessibility in the bus industry supports our perspective of the issue. The acceptance of the idea of equality of access will go a long way to eliminating the need for legislation and regulation. In the meantime, this Committee shares the views — and has reflected them in our earlier recommendations — of the Royal Commission that the National Transportation Agency must take a more active role in ensuring that transportation services become more accessible.

A. STANDARDS AND TIMETABLES

As legislators, we have often found that the threat of regulation or legislation can accomplish nearly as much as passage of a law or a regulation. Our hearings showed this fact in the testimony of Mr. David Long from the Canadian Bus Association who told us that “two years ago this whole issue of disabled transportation was a low, low priority. It’s not that much of a low priority any more. We’re on the cusp of change with people, in looking better at the customer out there we are realizing that there may be some opportunities in this area, as opposed to threats.”²⁷ But, and it is an important causal factor, it was the threat of legislation and regulation that moved disability from its place as a low priority of the bus industry.

We are, however, not quite as sanguine as the National Transportation Act Review Commission about the current effectiveness of leaving the assurance of progress to the “pro-active administration of existing legislative powers” rather than legislating absolute rights of access. In the best of all possible worlds, this might be the case. But accepting this hypothesis in the area of transportation, particularly extra-provincial bus travel, begs an adequate answer to the question of the reasons for the delay in promulgating regulations to eliminate barriers that were authorized by the *National Transportation Act* five years ago. It also does not deal adequately with the question of accountability, given that Ministers of the

²⁷ Proceedings, Issue 36, p. 36.

Crown and NTA members and chairs must ration their energy to deal with many diverse issues. This Committee, therefore, feels that trusting in goodwill that will produce pro-active results is too utopian at this point in time.

These are the reasons that in the case of bus transportation, this Committee supports the recommendations that were made by the National Transportation Agency in its report, *The Road to Accessibility: An Inquiry into Canadian Motor Coach Services*. We feel that the NTA report represents a balance between consideration of the needs of people with disabilities and the bus industry which itself has stated that "it can be soundly argued that basic inter-city transportation should be a right for all Canadians."²⁸ Jim Derksen from the Coalition of Provincial Organizations of the Handicapped (COPHO) put this sentiment another way when he told this Committee that:

I want my rights of access to be recognized in functioning regulations, as they currently are in the Charter. . . We have very fine human rights and Charter guarantees, but what effect have they, if we don't have the regulations that make them operate? And what kind of intention and what kind of planning is it, if we cannot say that we will do this by this point in time?²⁹

We also accept the Agency's view that "if there are no mandatory requirements for accessibility, progress will continue to be slow and it is unlikely that a consistent level of service will be reached for persons with disabilities."³⁰ In giving the disability community's viewpoint, Jim Derksen noted that disabled persons "no longer have any patience with an industry or any regulatory authority who is unwilling to act on its good intentions by putting forward a plan with definite timetables, definite dates." He also supported the NTA's proposed timetable by noting that it was "quite reasonable in that it was somewhat parallel to the turnover time of rolling stock." He also commented that:

twelve years is a long time [for completely accessible bus transportation] but it's the light at the end of the tunnel that makes all the difference. It's the sense that somebody is serious about wanting to change things that makes all the difference. If we don't have some kind of timetable, we don't have a plan, and then we might as well just keep on talking and listening to our own selves talk about high-sounding ideals.³¹

Needless to say, these sentiments were echoed by the Canadian Disability Rights Council, the Canadian Paraplegic Association and the TransAction Coalition of Ontario.

With regard to federal jurisdiction, Warren Everson, Executive Director of the National Transportation Act Review Commission, commented about the situation in the bus industry. In light of conflicting views as to whether the NTA possesses jurisdiction over the extra-provincial bus industry, Mr. Everson said that:

²⁸ Ibid., p. 33.

²⁹ Ibid., p. 51.

³⁰ *The Road to Accessibility*, p. 119.

³¹ *Proceedings*, Issue 36, p. 52.

The legal advice we had. . . [concluded that] the federal government had the power to impose the standards in a number of delegated acts, to leave them with the provinces for administration. . . If there are going to be national standards, then the standards have to be set by the national government.³²

We therefore recommend that:

RECOMMENDATION 9

- a. As proposed by the National Transportation Agency in its report, *The Road to Accessibility*, the Government of Canada in consultation with the provincial and territorial governments and with groups representing people with disabilities and industry, should establish a national standard for motor coach accessibility. This national standard should comprise terms and conditions of carriage, staff training, accessibility standards for equipment and terminals, as well as a fully integrated system. This standard should be appropriately established by legislation or by federal regulation. If necessary, the federal government should reassume jurisdiction that has been delegated to the provinces by the *Motor Coach Vehicles Transportation Act* for the purposes of assuring consistent access to bus transportation for persons with disabilities.
- b. As recommended by the National Transportation Agency in its report, the national standard should contain deadlines to allow for immediate progress as well as phasing in of other requirements. The National Transportation Agency, in consultation with people with disabilities and with the industry, should agree to a timetable for the implementation of the national standard. If agreement on an earlier implementation date cannot be secured, the national standard should come into force, as the Agency recommended (i.e. all new coaches ordered, purchased or leased after 1 January 1995 be lift-equipped; operators of ten or more motor coaches should be required to ensure that a minimum of 10 per cent of their fleet is accessible by 1 January 1998 and all motor coaches operated in scheduled service should be required to be accessible over a 12 year cycle or by the year 2007).
- c. All motor coach terminals designed, constructed or substantially altered after 1 January 1995 should be made accessible and all motor coach terminals should be required to contain certain minimum accessibility features by 1 January 2000.
- d. All ambiguous terms in the National Transportation Agency's report or recommendations on motor coach services, (such as the definition of accessibility, or 'substantial alterations', as well as performance

Ibid., pp. 14-15.

standards) should be identified, clarified and agreed to by representatives of the National Transportation Agency, organizations of disabled persons and the industry by 31 December 1993.

- e. The National Transportation Agency should monitor the implementation of the national standard by submitting an annual report to the Minister of Transport and the Minister Responsible for the Status of Disabled Persons. The NTA report on the national standard should comprise part of the annual report to Parliament on government activities related to persons with disabilities (see recommendation 1) and thereby be referred to this Committee and other relevant Parliamentary Committees.

B. COSTS AND SUBSIDIES

A report such as this cannot escape dealing with the bottom line. How much will accessibility cost? Who should pay? These questions, this Committee has no doubt, are the nub of the issue of accessibility in transportation. They are also, we suspect, the reasons for the delay in issuing the regulations that we discussed in the earlier section of this report. The costs have taken a higher profile because in the recent past, Canada's passenger transportation industry has undergone a difficult period.

This Committee recognizes that the cost issue must be resolved in a manner that is fair to all concerned; nonetheless, a focus on costs cannot obscure the fact that equality rights have an important place in the equation. Federal departments, central agencies, and regulatory bodies, as well as the passenger transportation carriers, should realize that using costs as an excuse to delay a resolution of the issue of accessibility will lead to Charter and human rights challenges in the courts. They also should know that court-enforced accessibility could prove far more costly to them than phased-in and reasonable, albeit regulated, measures.

Before dealing with the testimony that this Committee heard recently, we should like to point out that Canadians have already expressed their views on this issue. In a survey that was conducted by Environics Research during October 1987, a representative sample of 2,013 Canadians overwhelmingly approved changes to benefit persons with disabilities. In this survey, 70 per cent of the respondents agreed to support a \$50 tax increase if that was the requirement for integrating public transportation.

With regard to the bus industry, the cost of accessibility has been contentious and troubling. Transport Canada, based on the results of its demonstration project with Canada Coach Lines, estimated the cost to be \$0.07 per ticket. The Canadian Bus Association argued that Transport Canada's estimate ignored costs that the industry would face. During its inquiry into motor coach services, these conflicting views led the National Transportation Agency to hire Price Waterhouse to analyze the financial statistics. This study found that:

...the overall performance of the motor coach industry over the last five years has been weak. However, while the results indicate the industry as a whole has not performed well, certain companies showed a profit. Moreover scheduled carriers are doing better than charter companies.³³

At most, the overall cost for achieving accessibility would fall in the neighbourhood of a 1.5 per cent passenger fare increase. The NTA recommended softening its impact through the timetable for accessibility that this Committee endorsed in Recommendation 9. In addition, as the NTA pointed out:

other variables such as mass production of lift equipment could have an impact on the cost of making motor coach services accessible. For example, by 1996-97 in the U.S., if the new standards under the *Americans with Disabilities Act, 1990* (ADA) require the purchase of accessible motor coaches, the price per unit could drop as the manufacturing industry would benefit from economies of scale.³⁴

This Committee has neither the desire nor the resources to second-guess the experts. We feel, however, that the NTA has made a reasonable and fair assessment that keeps the costs in line with the financial state of the industry. If the costs prove to be less, as Transport Canada claims, so much the better.

Should the various levels of government subsidize the costs of accessibility for the motor coach industry, or not? The National Transportation Agency decided in the affirmative and recommended that the federal government assist the industry with the capital costs associated with acquiring accessible equipment. Already subsidy plans have been put in the works. The Department of Transport has allocated \$3.5 million under the National Strategy to fund 75 per cent of the incremental capital costs of accessible coaches up to a maximum of \$50,000 per coach. Obviously, this would not make the industry accessible and, in this Committee's opinion, could create bad feelings as the money is distributed among carriers.

During our hearings, we listened to witnesses express several differing views on subsidies. Commissioner John Gratwick of the National Transportation Act Review Commission stated that in his view:

...it is much better that as far as possible that subsidy money should go to the people who are supposed to be the beneficiaries rather than be given to the transport system to distribute or administer. Many of our problems in other parts of the system come from the fact that sometimes we use transport as a delivery system of support, which doesn't necessarily achieve the end-objects.

³³ *The Road to Accessibility*, p. 131.

³⁴ *Ibid.*, p. 136.

To support this position, he pointed out that the people who get the benefit of the subsidy are those who travel — in reality, a small number of people who travel a great deal. The effect of a subsidy, then, is to benefit some people and not others. This is particularly contentious with regard to leisure travel — should the government subsidize holidays?³⁵

As an unsubsidised carrier, the Canadian Bus Association (CBA) reported that for every \$40 fare on VIA Rail, Canadian taxpayers subsidise the traveller to the tune of \$134. In terms of promoting accessible buses, David Long of the CBA favoured government participation (i.e. subsidies) and suggested diverting some of the subsidy that is currently provided to VIA Rail. According to his statistics, “if you took all of the subsidy that is money for rail transportation and put it into bus transportation. . . all the people who are currently travelling by rail and all of the people who are currently travelling on inter-city coaches would travel for free, if they all went by bus.”³⁶

Yet another view came from the disability community. Jim Derksen of COPOH pointed out different instances of cross-subsidization where the bus industry already bears the cost. For example, it takes more fuel to transport a large person than a slight person even though they pay the same fare. At the same time, fares on less popular routes are subsidized by those on routes where the buses are full. Derksen criticized the NTA report that recommends federal subsidizes because, as he argued:

. . .it smacks of the charitable kind of context that disabled people have often found themselves trapped in. . . . [and] it is often the case that it is the crumbs from the table. It is often the case that in economic hard times discretionary giving is cut back.

The precedent, he pointed out, could lead to leaving “people with disabilities and their aspirations for equality hostage to the ability of our society to use the public purse to finance those changes.” In answer to the large federal subsidies given to VIA Rail, he argued that:

if we use the public purse to support a transportation modality, it should surely be for the public good. If we’ve done that with VIA Rail because we value passenger rail in this country and we think it’s in the public interest to support passenger rail, if those factors exist in regard to buses, then let’s, by all means, support them. But let’s not attach disability to it.³⁷

Long before our hearings on transportation, this Committee has had to deal with similar arguments. When we began our study of the economic integration of persons with disabilities, we heard some telling arguments from Marcia Rioux, Director of the Roeher Institute, who stated that:

³⁵ *Proceedings*, Issue 36, p. 10.

³⁶ *Ibid.*, pp. 36-37.

³⁷ *Ibid.*, p. 50.

the problem we start with in looking broadly at disability is that most of the programs and policies that are in place were established as add-ons to programs that did not have the issues involved in disability in mind when they were conceived.³⁸

This Committee's own conclusion bears repeating here:

By treating disabled persons as individuals with 'special' needs, rather than as citizens with the same rights as others, debate has centred around how money can be distributed to fill the needs of this 'special' group. We notice that the argument which segregates out disabled persons is most often used to deny them resources or to 'throw money' at them.³⁹

In our view, add-on subsidies combined with segregation of the needs of people with disabilities from those of other travellers will result in on-going disputes that will, for the foreseeable future, pit the transportation industry against people with disabilities. In this situation, the government will shift from the role of referee, to fairy god-mother, to Scrooge. It is not a pleasant picture. Therefore, we recommend that:

RECOMMENDATION 10

In light of the fact that the estimated cost of making interprovincial buses accessible to people with disabilities is from 1 to 1.5 per cent of the current fare structure, any national accessibility standards that are applied to bus or train equipment or terminals should follow the current example of aircraft and airports and not be linked with subsidies that the federal government may provide to the carriers. In the airline industry, any resolution of such issues as attendant travel should not involve subsidization by the federal government.

During the course of its hearings, this Committee became aware that the money spent by Canadian passenger transport carriers should, on the whole, benefit Canadian citizens. Throughout this report, we have mentioned with approval the *Americans with Disabilities Act* and the positive impact it should have in assuring access to disabled travellers in the United States. The ADA has set timetables that are suited to American circumstances and given the head start in the United States, the timetables for accessibility are in advance of those that we have recommended for Canada.

We are concerned about the possible impact of the ADA on Canadian carriers. When the United States regulations come into force, the passenger transportation industry will be replacing its trains and buses with accessible models. As a result, U.S. carriers will be left with a large amount of inaccessible equipment. We feel that it is important not to delay the changes in the Canadian system by increasing the number of inaccessible coaches just prior to Canadian regulations coming into effect. The Canadian Bus Association also told the Committee that Canadian companies who carry passengers into the United States would have to conform to the accessibility requirements of the ADA. This raises the

³⁸ *Proceedings, 2nd Session, 34th Parliament, Issue 24, p. 22.*

³⁹ *A Consensus for Action, p. 25.*

potential problem that as Canadian carriers make their equipment accessible, it might be diverted to service routes that go into the United States and, thereby, leave Canadian travellers without an accessible system. We therefore recommend that:

RECOMMENDATION 11

In an effort to ensure that the application of national standards to passenger transportation is maintained, the National Transportation Agency and the Department of Transport should immediately begin an examination of the implications to Canadian passenger transport of the *Americans with Disabilities Act*. This examination should include, but not be restricted to, the potential dumping of inaccessible equipment (rail, bus and air) in Canada as the American regulations are implemented. It should also specifically comprise a study of the possible re-routing of accessible Canadian transport equipment from domestic services to carry passengers on routes that fall under the accessibility rules imposed by the *Americans with Disabilities Act*.

C. DEFINITIONS

In this Committee's experience, many desirable initiatives in the area of disability are hamstrung at the outset by everyone's desire to nail down a definition of disability before beginning the task at hand. As a consequence, almost every federal law, regulation, policy, program and service has its own definition of disability. When applied in the long term after initial circumstances have evolved, these definitions have too often turned into barriers that, in effect, contradict the objective of providing access.⁴⁰

There is a reason for this. Problems of defining 'disability' arise when the focus of the definition shifts from an individual's medical situation to the rights of disabled persons in areas such as employment or social benefits — or transportation. Given the implications for social and economic participation or justice, defining 'disability' is not primarily a technical or medical matter but instead, is a question open for political decision. While they may not have articulated the issue in quite this way, persons with disabilities have shown by their lobbying and by their concern about definitions that they recognize this fact. On the other hand, politicians, bureaucrats, and business leaders have used definitions for their own political purposes but, at the same time, have denied the inherently political nature of the definitional issue. Rather than deal with the political question, they have used technical or medical considerations as camouflage.

Another problem arises when the definition of disability is linked to the elimination of a handicap by reason of technological advances. Regulations that include too stringent specifications of appropriate technology can also lead to rigidity and ultimately, to barriers.

⁴⁰ The World Health Organization has attempted to provide a more long-lasting and generic definition. It isolates three elements:

- an impairment which embraces any disturbance or interference with the normal structure or functioning of the body
- a disability is the loss or reduction of functional ability and activity caused by impairment
- a handicap is a disadvantage either social or environmental arising from a disability

During its hearings, this Committee was concerned that initiatives to make Canada's passenger transportation systems accessible to people with disabilities may get bogged down in the definitional questions. The Canadian Bus Association, for example, mentioned the need for a definition of accessibility and linked this to the need for a definition of disability. We are afraid that by continuing to on this path, the industry may be mixing apples and oranges. The Royal Commission on Passenger Transportation also made observations that implied tying a definition too closely to medical and technical concerns. We believe that disabled persons must, as much as possible, define themselves and remain their own interlocutors. Logically then, we cannot support the Royal Commission in its recommendation that they carry identification cards.

We therefore recommend that:

RECOMMENDATION 12

Persons with disabilities who wish to use any mode of passenger transportation should not be required to produce any identification or proof of disability but should be accepted as having a disability on the basis of self-identification.

RECOMMENDATION 13

Carriers who are subject to regulations on accessibility of persons with disabilities that are promulgated by the National Transportation Agency, should be subject to performance standards that are not based primarily on technological or definitional considerations.

RECOMMENDATION 3

The Clerk of the Privy Council and Secretary of the Cabinet, the Secretary of the Treasury Board and the Secretary of the Department of Provincial Relations should each name one official with one specific responsibility for all persons with disabilities. In the case of the Treasury Board, this official should report through the Program Branch. (page 11)

RECOMMENDATION 4

Given the agreement that access to transportation is a basic human right and that achieving this right is a priority for people with disabilities, the President of the Treasury Board, the President of the Privy Council and the Chair of the National Transportation Agency should ensure that their officials hold consultations with representatives from disabled persons' organizations and carriers at the earliest opportunity but not later than 1 September 1988. The President of the Treasury Board, the President of the

LIST OF RECOMMENDATIONS

RECOMMENDATION 1

The President of the Treasury Board, the President of the Privy Council, the Minister of Transport and the Chair of the National Transportation Agency should cooperate with the Minister Responsible for the Status of Disabled Persons in order to ensure immediate action to co-ordinate federal programs and activities that have an impact on the transportation of persons with disabilities. The Minister Responsible for the Status of Disabled Persons should make public a specific plan of action to deal with the co-ordination of federal activities related to the transportation of people with disabilities no later than 31 December 1993. (Page 6)

RECOMMENDATION 2

On behalf of the Government of Canada, the Minister Responsible for the Status of Disabled Persons should table in Parliament an annual report on the National Strategy for the Integration of Persons with Disabilities and other government activities related to persons with disabilities. This annual report should contain details of grants and contributions, as well as program and policy initiatives related to persons with disabilities. The annual report to Parliament should be referred to this Standing Committee and its successors, as well as to other relevant parliamentary committees. (Page 6)

RECOMMENDATION 3

The Clerk of the Privy Council and Secretary to the Cabinet, the Secretary of the Treasury Board and the Secretary to the Cabinet for Federal-Provincial Relations should each name one senior official with sole and specific responsibility for all persons with disabilities. In the case of the Treasury Board, this official should report through the Program Branch. (Page 6)

RECOMMENDATION 4

Given the agreement that access to transportation is a basic human right and that achieving this right is a priority for people with disabilities, the President of the Treasury Board, the President of the Privy Council and the Chair of the National Transportation Agency should ensure that their officials hold consultations with representatives from disabled persons' organizations and carriers at the earliest opportunity but not later than 1 September 1993. The President of the Treasury Board, the President of the

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Privy Council and the Chair of the National Transportation Agency should instruct their officials to reach an agreement for a timetable for the promulgation of the regulations pre-published by the National Transportation Agency and all other draft or proposed regulations regarding the transportation of disabled persons. The priority in these discussions should be to reach an agreement on proceeding with the promulgation of a regulation on the "one person-one fare" issue. The decision on a timetable to promulgate all regulations that are currently in progress or proposed should be made public not later than 1 October 1993. (Page 11)

RECOMMENDATION 5

Given the longstanding experience of Labour Canada in involving business, labour and other interested parties (such as persons with disabilities) in negotiating changes to the Regulations under the *Canada Labour Code*, the Chair of the National Transportation Agency, the President of the Treasury Board and the President of the Privy Council should collaborate with the Minister of Labour to apply the practices of that Department to the regulatory process regarding the transport of persons with disabilities. (Page 11)

RECOMMENDATION 6

The Government of Canada should evaluate the process whereby the National Transportation Agency makes regulations. This evaluation should include an assessment of the efficiency of the National Transportation Agency in drawing up, publishing and promulgating regulations. It should also make recommendations about eliminating or streamlining the process whereby the Agency's regulations are subject to review by the Privy Council Office and by the Treasury Board. The results of this evaluation should be made public not later than 31 December 1993. (Pages 11-12)

RECOMMENDATION 7

The National Transportation Agency should establish a Committee on Access to Transport for Disabled Persons that includes disabled persons. The mandate of this Committee should be set out in a formal manner in a document such as the Agency's Rules of Procedure. This Committee's mandate should include, but not be restricted to, advising the Commission about actions that lie within the Commission's overall jurisdiction that may remove barriers to passenger transportation for people with disabilities. Specifically, every three years, this Committee should, on behalf of the Agency, automatically review barriers to the transportation of disabled persons. (Page 12)

RECOMMENDATION 8

The National Transportation Agency should ensure that during any public consultations or any public involvement in reviewing or creating regulations, organizations of disabled persons and seniors should be provided with funds from the Agency so that they do not suffer any disadvantage compared to other participants in the process. (Page 12)

RECOMMENDATION 9

- a. As proposed by the National Transportation Agency in its report, *The Road to Accessibility*, the Government of Canada in consultation with the provincial and territorial governments and with groups representing people with disabilities and industry, should establish a national standard for motor coach accessibility. This national standard should comprise terms and conditions of carriage, staff training, accessibility standards for equipment and terminals, as well as a fully integrated system. This standard should be appropriately established by legislation or by federal regulation. If necessary, the federal government should reassume jurisdiction that has been delegated to the provinces by the *Motor Coach Vehicles Transportation Act* for the purposes of assuring consistent access to bus transportation for persons with disabilities.
- b. As recommended by the National Transportation Agency in its report, the national standard should contain deadlines to allow for immediate progress as well as phasing in of other requirements. The National Transportation Agency, in consultation with people with disabilities and with the industry, should agree to a timetable for the implementation of the national standard. If agreement on an earlier implementation date cannot be secured, the national standard should come into force, as the Agency recommended (i.e. all new coaches ordered, purchased or leased after 1 January 1995 be lift-equipped; operators of ten or more motor coaches should be required to ensure that a minimum of 10 per cent of their fleet is accessible by 1 January 1998 and all motor coaches operated in scheduled service should be required to be accessible over a 12 year cycle or by the year 2007).
- c. All motor coach terminals designed, constructed or substantially altered after 1 January 1995 should be made accessible and that all motor coach terminals should be required to contain certain minimum accessibility features by 1 January 2000.
- d. All ambiguous terms in the National Transportation Agency's report or recommendations on motor coach services, (such as the definition of accessibility, or 'substantial alterations', as well as performance standards) should be identified, clarified and agreed to by representatives of the National Transportation Agency, organizations of disabled persons and the industry by 31 December 1993.

- e. The National Transportation Agency should monitor the implementation of the national standard by submitting an annual report to the Minister of Transport and the Minister Responsible for the Status of Disabled Persons. The NTA report on the national standard should comprise part of the annual report to Parliament on government activities related to persons with disabilities (see recommendation 1) and thereby be referred to this Committee and other relevant Parliamentary Committees. (Pages 19-20)

RECOMMENDATION 10

In light of the fact that the estimated cost of making interprovincial buses accessible to people with disabilities is from 1 to 1.5 per cent of the current fare structure, any national accessibility standards that are applied to bus or train equipment or terminals should follow the current example of aircraft and airports and not be linked with subsidies that the federal government may provide to the carriers. In the airline industry, any resolution of such issues as attendant travel should not involve subsidization by the federal government. (Page 23)

RECOMMENDATION 11

In an effort to ensure that the application of national standards to passenger transportation is maintained, the National Transportation Agency and the Department of Transport should immediately begin an examination of the implications to Canadian passenger transport of the *Americans with Disabilities Act*. This examination should include, but not be restricted to, the potential dumping of inaccessible equipment (rail, bus and air) in Canada as the American regulations are implemented. It should also specifically comprise a study of the possible re-routing of accessible Canadian transport equipment from domestic services to carry passengers on routes that fall under the accessibility rules imposed by the *Americans with Disabilities Act*. (Page 24)

RECOMMENDATION 12

Persons with disabilities who wish to use any mode of passenger transportation should not be required to produce any identification or proof of disability but should be accepted as having a disability on the basis of self-identification. (Page 25)

RECOMMENDATION 13

Carriers who are subject to regulations on accessibility of persons with disabilities that are promulgated by the National Transportation Agency should be subject to performance standards that are not based primarily on technological or definitional considerations. (Page 25)

Request for a Government Review **List of witnesses**

Organizations	Issue	Date
Advocacy Research Centre for the Handicapped David Baker.	26	Thursday, May 27, 1993
Canadian Bus Association David Long, Executive Director.		
Canadian Disability Rights Council Monique Beaudoin, Member of the Board of Directors; and Rosalind Currie, Legal Counsel.		
Canadian Paraplegic Association Greg Pyc, Coordinator of Public Affairs.		
Coalition of Provincial Organizations of the Handicapped Jim Derksen, Past Chairman.		
Department of Transport E.R. Cherrett, Director General, Policy and Coordination Group.		
National Transportation Act Review Commission Warren E. Everson, Executive Director; and John Gratwick, Commissioner.		
National Transportation Agency of Canada Nicole Forget, Q.C. Member of Quebec Regional Office; Gavin Currie, Director General, Air and Accessible Transportation Branch.		
Trans-Action Coalition of Ontario John Feld, Director.		
Via Rail Canada Robert Guiney, Vice-president & Chief of Transportation; and Jean Patenaude, General Counsel.		

Request for a Government Response

TUESDAY, JUNE 8, 1983

Your Committee requests that the Government table a comprehensive response to this Report within 150 days of its tabling, in accordance with the provisions of Standing Order 109.

A copy of the relevant Minutes of Proceedings and Evidence (*Issues Nos. 36 and 38*) is tabled.

Respectfully submitted,

BRUCE HALLIDAY, M.P.
Chairman

Minutes of Proceedings

TUESDAY, JUNE 8, 1993

(65)

[Text]

The Standing Committee on Human Rights and the Status of Disabled Persons met at 3:43 o'clock p.m. this day, in Room 536, Wellington Bldg., the Chairman, Bruce Halliday, presiding.

Members of the Committee present: Louise Feltham, Bruce Halliday, Jean-Luc Joncas, Allan Koury and Neil Young.

Acting Member present: Jim Jordan for Beth Phinney.

In attendance: From the Research Branch of the Library of Parliament: William Young, Research Officer.

Witnesses: From the Coalition of Provincial Organizations of the Handicapped (COPOH): Francine Arsenault, Chairperson; Laurie Beachell, National Coordinator. *From the National Educational Association of Disabled Students (NEADS):* Frank Smith, Coordinator. *From the Canadian Council of the Blind:* Geraldine Braak, Chairperson. *From the Canadian Association of Independent Living Centres (CAILC):* Tracy Walters, Executive Director. *From the Canadian Association for Community Living (CACL):* Norma Collier, Board Member; Pierre Quenneville, Board Member. *From the Canadian Association of the Deaf:* Fern Elgar

In accordance with its mandate under Standing Order 108(3)(b), consideration of the Economic Integration of Disabled Persons. (See *Minutes of Proceedings and Evidence, dated Thursday, June 13, 1992, Issue No. 2*).

Francine Arsenault, Laurie Beachell, Pierre Quenneville, Norma Collier, Tracy Walters, Geraldine Braak, Frank Smith and Fern Elgar made statements and answered questions.

On motion of Neil Young, seconded by Allan Koury, it was agreed, — That the brief presented to the Committee entitled "A Community Perspective", be included in the Committee's draft report, and that this draft report, as amended, be adopted as the Committee's Fifth Report to the House and that the Chairman present it to the House.

On motion of Jim Jordan, seconded by Louise Feltham, it was agreed, —, That the Chairman be authorized to make such grammatical and editorial changes to the Report as may be necessary without changing the substance of the Report.

At 4:53 o'clock p.m., the meeting was suspended.

At 4:55 o'clock p.m., the meeting resumed *in camera*.

The Committee commenced consideration of its draft report on the question of Transportation for Disabled Persons including consideration of specific sections of the Report from the National Transportation Act Review Commission entitled: "Competition in Transportation, Policy and Legislation in review, relating to disability and other matters concerning transportation of disabled people".

On motion of Allan Koury, seconded by Neil Young, it was agreed, — That the draft report, as amended, be adopted as the Committee's Sixth Report to the House and that the Chairman present it to the House.

On motion of Neil Young, seconded by Allan Koury, it was agreed, — That the Chairman be authorized to make such grammatical and editorial changes to the Report as may be necessary without changing the substance of the Report.

On motion of Neil Young, seconded by Allan Koury, it was agreed, — That, pursuant to Standing Order 109, the Committee request the Government to table a comprehensive response to the Report within 150 days.

On motion of Neil Young, seconded by Allan Koury, it was agreed, — That, in addition to the 850 copies printed by the House, the Committee print 2, 150 copies of its Report.

The Committee resumed consideration of its future business.

At 5:00 o'clock p.m., the Committee adjourned to the call of the Chair.

Lise Laramée
Clerk of the Committee

