



# **Getting to Work**

**Final Comments on the Proposed  
Accessible Employment Standard**

**February 10, 2017**

# Executive Summary

## Introduction

Manitobans with disabilities face extensive barriers when seeking a job, and once employed, in keeping their jobs and advancing in their careers. Accordingly, persons with disabilities have among Manitoba's lowest employment rates and highest unemployment rates.

Recognition of this pointless waste of human and economic potential led to the government's decision to prioritize the early development of an accessible employment standard to address these longstanding barriers as part of its implementation of the landmark *Accessibility for Manitobans Act* (AMA).

Manitoba's Accessibility Advisory Council released a discussion paper in mid-November 2016 that presents the initial proposal for the accessible employment standard. This report presents Barrier-Free Manitoba's findings from our review of the discussion paper.

Our review considers the strengths and limitations of what is being proposed within a much broader context than was provided in the discussion paper.

Our review is based on our best efforts to answer one essential question:

- If implemented as described, will the proposed employment standard ensure that substantial progress toward a fully accessible labour market is achieved by 2023 as required under the AMA?

Our answer to this question, as detailed in the body of our full report, is an unequivocal 'No'. While what is proposed in the discussion paper may 'inch' us forward, achieving the substantial progress that is required under the Act will depend on much stronger and considerably expanded measures.

This conclusion was confirmed by the feedback from stakeholders on a preliminary version of this report and in virtually all the comments that

were shared at the in-person consultation session held by Manitoba's Accessibility Advisory Council in Winnipeg on January 18, 2017.

The development of a strong and effective accessible employment standard provides a remarkable chance for Manitoba to fulfill its human rights responsibilities that are enshrined in provincial, national and international law while meaningfully contributing to the economic prosperity of all Manitobans. Anything less would represent an expensive and regrettable lost opportunity.

## **Legislative Context**

*The Accessibility for Manitobans Act (AMA)* is landmark provincial accessibility-rights legislation that was enacted following a determined five+ year community campaign spearheaded by Barrier-Free Manitoba. The campaign culminated in December 2013 with the Third Reading passage of the Act through a unanimous, all-member and all-party vote in the Manitoba Legislature.

The AMA has been described as 'game-changing' legislation in its transformative intent. It represents the most significant initiative taken in Manitoba over the past half century to promote and protect the human rights of the almost 200,000 citizens with disabilities.

The AMA is the second accessibility-rights act to be passed in Canada. The AMA was developed based on *The Accessibility for Ontarians with Disabilities Act (AODA)* that was passed in Ontario in 2005, more than eight years earlier.

The federal government has now committed to enacting a national Canadians with Disabilities Act, and the Government of Nova Scotia has introduced a bill to establish its own provincial accessibility-rights act. Disability community initiatives are also actively working to secure strong and effective accessibility-rights legislation in the Newfoundland and Labrador, Saskatchewan and British Columbia.

Since Barrier-Free Manitoba began its work back in 2008, the importance and transformative potential of strong and effective accessibility-rights legislation has become widely recognized across Canada.

The critical questions no longer revolve around whether accessibility-rights legislation is needed. The critical questions now relate to how standards can best be designed to achieve full accessibility over the shortest reasonable period of time. Indeed, this is the central challenge before Manitobans in the development of a strong and effective accessible employment standard.

## **The Significance of the Challenge**

The barriers to labour market success faced by Manitobans with disabilities have been evident for decades. These barriers are pervasive and deeply ingrained in systems, policies and attitudes. Substantial progress in addressing these barriers by 2023, as required under the AMA, will be a huge challenge.

The most fundamental indicator that employment barriers have been addressed will be reaching parity or near parity in employment rates between Manitobans with and without disabilities. This benchmark has been selected because it is what the Act intends, it represents a straightforward measure of progress and it also sets an aspirational target that decision-makers and all stakeholders should strive to reach.

To achieve this parity in employment rates, we estimate that a total of 67,344 Manitobans with disabilities will need to be employed. This represents an additional 18,214 Manitobans with disabilities, a 37% percentage increase from the number who were employed in 2012.

A large and growing body of research has identified many of the major barriers that will need to be addressed to achieve parity in employment rates. These include but are not limited to:

- Misguided employer attitudes based on myths related to persons with disabilities.
- Lack of employer knowledge about their human rights responsibilities related to prospective and current employees with disabilities.
- Lack of employer knowledge of accommodation options and experience with employees with disabilities.

- Lack of available expertise and support for employers in making reasonable accommodation.
- Employers' lack of accessible employment policies, practices and procedures.
- Perceived concerns of prospective and current employees with disabilities related to discrimination and to sharing information about their disabilities as part of the hiring process or once on the job.
- Government policies that create barriers and disincentives for persons with disabilities in seeking employment.
- Lack of a robust government policy and program framework required to support a major increase in employment among persons with disabilities.

## **The Human Right to Accessible Employment**

For more than 40 years, provincial law has guaranteed Manitobans with disabilities the right to equal treatment in employment without discrimination based on disability. That includes the right of employees and job applicants with disabilities to have their employment-related needs reasonably accommodated up to the point of undue hardship by the employer.

These human rights also impose the legal obligation on employers to proactively identify and remove existing workplace barriers, and to prevent the creation of new ones. The Supreme Court has held that human rights such as these are to be interpreted broadly. Exceptions to them are to be interpreted narrowly and strictly.

*The Human Rights Code* also provides for affirmative action and other special programs to address serious disadvantages that have been caused by past discrimination.

Every year for over the last fifteen years, disability discrimination has been the number one reason for the formal complaints made to the Manitoba Human Rights Commission (MHRC). Indeed, disability discrimination has accounted for more complaints than for almost all

the other twelve grounds in *The Human Rights Code* combined. Based on discussions with the MHRC, most disability discrimination complaints relate to employment.

## **The Economic and Business Cases**

Addressing the pervasive barriers to equitable employment faced by Manitobans with disabilities is not only the right thing to do; it also makes extraordinary economic and business sense.

Developing and implementing the measures needed to achieve equitable employment may represent the best opportunity to achieve three of the Manitoba government's major priorities.

- Rebuild our economy
- Put our province back on fiscal track
- Make Manitoba the most improved province in Canada.

In contrast, not taking the measures to eliminate the barriers to employment today will mean having to devote substantial financial resources well into the future to continue covering the costs associated with the waste of human and economic potential.

The primary benefits that will accrue to Manitoba's economy through the elimination of employment barriers will come in three chief areas:

- Increased employment by persons with disabilities will be key to addressing the huge labour force shortage that is associated with the aging of baby boomers.
- Employment incomes in the province would increase by an estimated \$260 million if the gap in employment rates between Manitobans with and without disabilities was decreased by 50%. The estimated increase in employment incomes associated with reaching full parity in employment rates is more than \$520 million.
- A reduction in the number of Manitobans with disabilities reliant on the provincial Employment and Income Assistance (EIA) program would result in substantial cost savings and increased tax revenue. Ontario research estimates that a reduction of 5,000

persons with disabilities reliant on its social assistance program would save that province \$69.5 million and generate \$5.3 million in additional taxes.

The business case for employing persons with disabilities is every bit as compelling as the economic case for strong government action to address the employment barriers faced by persons with disabilities. Research has demonstrated substantial improvements in the following areas for employers that hire persons with disabilities:

- Employee turnover and absenteeism
- Job performance and productivity
- Innovation and team dynamics
- Size of customer base
- Overall business performance.

## **Recommendations**

Based on our review of the discussion paper, Barrier-Free Manitoba is making 19 recommendations to ensure the effectiveness of the proposed standard, as well as the full and timely implementation of the Act.

The full report includes a detailed discussion of the recommendations and why each is so important. Only the highlights of the actual recommendations are presented below (see Appendix 1 for a full listing of the recommendations).

### **The Proposed Standard**

Barrier-Free Manitoba is making 16 recommendations to build on key strengths, to address significant limitations and for further work that will be needed to establish and implement a strong and effective accessible employment standard in Manitoba.

#### **Strengths**

Consistent with the discussion paper, Barrier-Free Manitoba recommends that:

- Three-year phased-in compliance dates be established for the standard:

- One year for the Government of Manitoba
  - Two years for designated public sector organizations
  - Three years for all other obligated organizations.
- The standard place fewer documentary requirements on small employers with less than twenty employees.

### **Limitations**

In addition to the measures proposed in the discussion paper, Barrier-Free Manitoba recommends that:

- Employers be required to establish accessible employment policies.
- Employers be required to orient all staff to their accessible employment policies and to provide training to all personnel with duties related to the standard.
- Focused research and consultations be conducted to provide the basis for detailed requirements that will be set out in the standard.
- Employers be required to include agencies that provide employment-related services to Manitobans with disabilities in their recruitment activities.
- Consideration be given to expanding the standard to address the process of barrier prevention and removal as part of the collective bargaining process and in collective agreements.
- Consideration be given to expanding the standard's coverage to include volunteer and internship positions.
- The standard be expanded to require employer participation in a measurement and monitoring system that will provide the basis for assessing progress toward a fully accessible labour market.
- The government develop and adequately resource a robust implementation strategy that includes increased support to employers and persons with disabilities and the removal of government's own policy and program barriers.



## **Related**

Barrier-Free Manitoba recommends that the government commit to the development of an accessible education standard to address the myriad of barriers that continue to limit the educational opportunities and outcomes of Manitobans with disabilities and that result in lasting labour market disadvantages.

## **The Accessibility for Manitobans Act**

Barrier-Free Manitoba continues to have serious concerns related to limited progress to date in government's implementation of the Act. These concerns include but are not limited to the delay in government meeting the first of its own compliance requirements and its minimalist compliance to date with the second.

Based on these concerns, Barrier-Free Manitoba recommends that:

- The government review and commit to providing the level of resources required to ensure the full and timely implementation of the Act.
- The government provide resources to Manitoba disability communities required to support their full and equal participation in the implementation of the Act.
- The government take immediate and dedicated action to develop plans for a strong and effective compliance regime under the Act.

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# 1. Introduction

Manitobans with disabilities face extensive barriers when seeking a job, and once employed, in keeping their jobs and advancing in their careers. Accordingly, persons with disabilities have among Manitoba's lowest employment rates and highest unemployment rates. When employed, Manitobans with disabilities also earn significantly less than those without disabilities.

Recognition of this pointless waste of human and economic potential led to the government's decision to prioritize the early development of an accessible employment standard to address these longstanding barriers as part of its implementation of the landmark *Accessibility for Manitobans Act* (AMA).<sup>1</sup>

A multi-sector committee<sup>2</sup> was established by the Accessibility Advisory Council (the Council) in October 2015. The committee was charged with the responsibility for developing initial recommendations for a standard that would ensure the proactive removal of employment barriers and the prevention of new ones. The standard, to be reviewed every five years, was also to be designed to ensure that substantial progress toward a fully accessible labour market is achieved by 2023.

The Council released a discussion paper in mid-November 2016 that presented the initial proposal for the accessible employment standard.<sup>3</sup> The Council has invited comment and feedback from stakeholder groups and the public.

This report presents Barrier-Free Manitoba's (see Appendix 3 for a brief overview of our initiative) findings from our review of the discussion paper. Our review considers the strengths and limitations of what is

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<sup>1</sup> The Accessible Customer Service Standard was the first standard developed under the AMA. It came into force in November 2015.

<sup>2</sup> The committee's membership was chosen based on member expertise and representation of key stakeholder groups.

<sup>3</sup> A link to the discussion paper is posted at:  
<http://www.accessibilitymb.ca/index.html>

being proposed within a much broader context than was provided in the discussion paper.

Our review is based on our best efforts to answer one essential question:

- If implemented as described, will the proposed employment standard ensure that substantial progress toward a fully accessible labour market is achieved by 2023 as required under the AMA?

Our answer to this question, as will be detailed in the body of our report, is an unequivocal 'No'. While what is proposed in the discussion paper may 'inch' us forward, achieving the substantial progress that is required under the Act will depend on much stronger and considerably expanded measures.

This conclusion was confirmed by the feedback from stakeholders on a preliminary version of this report and in virtually all the comments shared at the in-person consultation session held by Manitoba's Accessibility Advisory Council in Winnipeg on January 18, 2017.

The development of a strong and effective accessible employment standard provides a remarkable chance for Manitoba to fulfill its human rights responsibilities enshrined in provincial, national and international law while meaningfully contributing to the economic prosperity of all Manitobans. Anything less would represent an expensive and regrettable lost opportunity.

## 2. Legislative Context

The most striking feature of the discussion paper is its brevity. The proposal for a standard of such incredible importance is presented in a mere 13 pages.

Clearly, the paper's emphasis on concise and plain language is one of its strengths – this makes the paper very accessible and easy to read.

However, the discussion paper's brevity is also one of its chief limitations as the paper provides little if any background information on, nor rationale for, the proposed standard. The paper does not provide any context as to why a standard is being developed in the first place. The discussion paper also provides scant information on the rationale for choices made or in the options and alternatives considered in recommending specific elements in the standard.<sup>4</sup>

This section of our report presents some of the important background information that the discussion paper simply left out – an overview of *The Accessibility for Manitobans Act (AMA)*, the legislative basis for the proposed standard.

### **The Accessibility for Manitobans Act**

*The Accessibility for Manitobans Act (AMA)* is landmark provincial accessibility-rights legislation that was enacted following a determined five+ year community campaign that was spearheaded by Barrier-Free Manitoba.

The case that Barrier-Free Manitoba made for provincial accessibility-rights legislation back in September 2008 was based on the expansive gap that continues to exist between the existing human rights of

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<sup>4</sup> Summaries of discussions from committee and Council meetings when the proposed standard was considered provide limited but helpful indications of considerations on some of the specific elements. These are posted on the province's Accessibility for Manitobans Act at:  
<http://www.accessibilitymb.ca/employment-standards.html>

Manitobans with disabilities, on the one hand, and their lived experience, on the other.<sup>5</sup>

- Manitobans with disabilities face a myriad of barriers that limit their participation in basic life activities that most others take for granted. These barriers substantially reduce the quality of their lives and their rights as citizens.
- Many, if not most, of the barriers contravene the rights of persons with disabilities enshrined in provincial, national and international law. While these legal protections are of critical importance, the mechanisms in place have not provided and cannot be expected to provide for the comprehensive prevention or removal of these barriers.
- These barriers create enormous human and economic costs for Manitobans with disabilities, their families and their communities, as well as for the overall province. The barriers provide absolutely no benefits to anyone.
- Many, if not most, of these barriers can be removed at no cost or at limited cost that can be easily managed with measures taken over time. Even better, all new barriers can be prevented at no cost by not creating them in the first place.
- International experience clearly demonstrates that mandatory standards are the only way to resolutely, equitably and efficiently introduce full accessibility over a reasonable period of time.

Thousands of concerned Manitobans and hundreds of coalitions, associations, federations and individual service and advocacy agencies actively supported the campaign.

The campaign culminated in December 2013 with the Third Reading passage of *The Accessibility for Manitobans Act* through a unanimous, all-member and all-party vote in the Manitoba Legislature.

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<sup>5</sup> Copies of our initial brief, A Barrier-Free Manitoba, that we submitted to the Province are posted at the bottom of:

<http://www.barrierfreemb.com/bfmbmaterials>

## Thumbnail Overview

The purpose of the AMA is to achieve accessibility by preventing and removing barriers that disable people with respect to:

- a. Employment
- b. Accommodation
- c. The built environment, including
  - i. Facilities, buildings, structures and premises
  - ii. Public transportation and transportation infrastructure
- d. The delivery and receipt of goods, services and information
- e. A prescribed activity or undertaking.

The AMA defines a barrier for a person who has a physical, mental, intellectual or sensory disability as anything that interacts with a person's disability in a way that may hinder his/her full and effective participation in society on an equal basis.

Five examples of barriers included in the AMA are:

- a. A physical barrier
- b. An architectural barrier
- c. An information or communications barrier
- d. An attitudinal barrier
- e. A technological barrier

The AMA sets out four basic principles for achieving accessibility:

**Access:** Persons should have barrier-free access to places, events and other functions that are generally available in the community.

**Equality:** Persons should have barrier-free access to those things that will give them equality of opportunity and outcome.

**Universal design:** Access should be provided in a manner that does not establish or perpetuate differences based on a person's disability.



**Systemic responsibility:** The responsibility to prevent and remove barriers rests with the person or organization that is responsible for establishing or perpetuating the barrier.

The AMA also sets 2023 (ten years after the AMA was passed) as the date by which significant progress towards full accessibility must be achieved.

The AMA explicitly states that nothing in the Act or its subsequent regulations diminishes the obligations of persons or organizations with respect to persons with disabilities under any other enactment, including *The Human Rights Code*.

### **Transformative Intent / Broad Non-Partisan Support**

The AMA has been described as ‘game-changing’ legislation in its transformative intent and represents the most significant initiative taken in Manitoba over the past half century to promote and protect the human rights of the almost 200,000 of its citizen with disabilities.

The significance of the AMA for Manitobans with disabilities, their families and for the entire province was captured in comments offered by representatives from each of the three parties during Third Reading.

The Honourable Jennifer Howard, the Minister of the day who sponsored the Act, stated:

When we pass this bill, I will be able to go home and say, without a doubt, that it was important that I was here today, that the change that we're going to make today is not only going to benefit me, is not only going to benefit the people that have come here today to witness this. It is going to benefit generations and generations and generations of Manitobans, and I am so thankful that we will stand united today in this Chamber and give approval to third reading of this bill, because I think today we are changing the world and those opportunities don't come along that often in this line of work.<sup>6</sup>

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<sup>6</sup> Hansard from December 3, 2013

The Honourable Jon Gerrard, the then leader of the Manitoba Liberals said:

I want to say from the start that Manitoba Liberals have been very strong supporters for quite some time for a barrier-free Manitoba, and we've been calling on measures to move forward in this direction for quite a number of years.

There is a lot of good in this legislation, which it's important to recognize. It's well-meaning; it's good to have the overall goal of a fully accessible province; it's good to have set down a process that we will be going through to reach that goal. . .

Now, Mr. Speaker, it will be up to all of us and to those in the disability community in particular to keep a close eye on the government, the present government, and whoever may succeed that government in terms of actually implementing and making sure that those standards are actually set. This is absolutely essential, certainly from a Manitoba Liberal perspective, that this is a vital part of what needs to be done, and we need to be very vigilant as we move forward to make sure that those standards are actually met.

Finally, Leanne Rowat, the then Progressive Conservative Family Services critic, offered:

I believe it's a very important day for many Manitobans, including members that are in the gallery today wanting to make sure that this legislation moves forward.

And, today being International Day of Persons With Disabilities, I would like to indicate that members on this side of the House, the Progressive Conservative caucus, will continue to show their support for individuals with disabilities on this day and every day going forward.

Mr. Speaker, we believe this is a very, very important initiative. We know that this legislation is needed. It could be stronger. . . We feel that there are a number of things that could be done to support or enhance this bill, some accountability to timelines and

ensuring that society does respond to the needs of persons with disabilities. . .

But I do believe that this legislation is going in the right direction, and I want to congratulate the Minister for taking this on and listening to the community.

The broad non-partisan support for, and commitment to, the AMA expressed during the passage of the Act was reinforced during the general provincial election held in April 2016. All major parties recommitted, if elected, to the full and timely implementation of the AMA.

### **The AMA as Follow Up to the AODA**

Another important feature of *The Accessibility for Manitobans Act* is that it is the second, not the first, accessibility-rights act to be passed in Canada. The AMA was developed based on *The Accessibility for Ontarians with Disabilities Act (AODA)* that was passed in Ontario in 2005, more than eight years earlier.

The AODA was truly of national and international significance. Established with the goal of making Ontario fully accessible within 20 years, the AODA established a remarkable and entirely new legislative framework to realize the basic human right to accessibility. We are heavily indebted to the disability communities and activists in Ontario and to that province's government, both for developing the legislative model, and for all the groundbreaking work done as part of implementation since 2005.

The benefit of the AMA being eight years younger than the AODA is that Manitoba can learn from Ontario's experience and create 'made in Manitoba' solutions that customize and improve upon the Ontario model.<sup>7</sup>

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<sup>7</sup> Barrier-Free Manitoba's experience is that the government in Manitoba has, so far, not chosen to take full advantage of these opportunities. For example, two independent and comprehensive reviews of the AODA have now been completed in Ontario. Key findings in both reviews were the need for much stronger provincial government leadership in supporting transformative change through the

In some cases, however, the very limited experience gained during the AODA's eight-year 'head start' means that it will still be too early to draw lessons that can be applied in Manitoba. In short, the AMA is not second generation legislation. It is closer to being a younger sibling legislation. As such, one danger is that Manitoba will place too great an emphasis on precedents established in Ontario, even in the absence of clear evidence of its efficacy.

Being mindful of this danger will be particularly important in the development of Manitoba's accessible employment standard. While Ontario's employment standard<sup>8</sup> came into force in 2011, January 1, 2016 was the first target date for compliance with most of its requirements directed to large private sector firms. The target date for compliance by small and medium sized businesses was January 1, 2017.<sup>9</sup>

That is one of the reasons why the discussion paper's brevity is troubling. The paper does not include any discussion on, nor does it provide any evidence of, how or even if Ontario's employment standard was assessed or what other options were considered.

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implementation of the AODA. These findings do not yet seem to have been considered in developing plans for the implementation of the AMA in Manitoba.

As a second example, the Ontario government recently announced a commitment to develop accessibility standards in the areas of health and education. The discussion of developing standards in these additional areas has yet to begin in Manitoba.

<sup>8</sup> Ontario's accessible employment standard is not stand alone regulations. Rather it is incorporated into a single regulation called the Integrated Accessibility Standards. This regulation also includes standards related to information and communication, transportation and the built environment.

<sup>9</sup> Barrier-Free Manitoba has been advised that the Ontario government will be reviewing its employment standard starting in the fall of 2017. As under the AMA, standards developed under the AODA must be reviewed every five years after they come into force. The purpose of the review is to identify ways that each standard can be strengthened and updated. While the findings from this review of Ontario's employment standard may prove to be of great value, they are not available to inform our review of what is currently being proposed in Manitoba.

## **Accessibility-Rights Legislation in Other Canadian Jurisdictions**

The AMA may not be the first accessibility-rights legislation to be enacted in Canada but neither will it be the last. Indeed, the passage of accessibility-rights legislation in Manitoba appears to have contributed to significant momentum to efforts to enact similar legislation in other Canadian jurisdictions.

### **A National Act**

At the national level, three of the five major federal parties, including the Liberals, included a commitment to introduce a Canadians with Disabilities Act in their electoral platform for the last federal election. Following the election, the Honourable Carla Qualtrough was appointed as Canada's first ever Minister of Sport and Persons with Disabilities. Minister Qualtrough's mandate letter directed her to start a consultation process that will lead to the development and tabling of legislation that will provide for the prevention and removal of barriers in areas of federal jurisdiction.

The consultation process was launched this past summer and has included in-person sessions in 18 different major urban centres across the country. These sessions began on September 22, 2016 and ran through to February 8, 2017.

The consultation session in Winnipeg was held on October 3, 2016. Despite very short notice, an estimated 400 persons attended the session (the largest number to that date). Barrier-Free Manitoba is pleased to have contributed to community dialogue in advance of the session and to have participated at the event.

### **Provincial Initiatives**

The government of Nova Scotia introduced Bill 59: The Accessibility Act, An Act Respecting Accessibility in that province's legislature on November 2, 2016. The Act proceeded to Second Reading on November 3 and to the Law Amendments Committee on November 7, 2016.

Bill 59 is 'framework' legislation that is broadly modeled on the AMA and the AODA. The bill remains with the Law Amendments Committee

which will be holding public consultation sessions throughout the province.

Barrier-Free Manitoba was informally invited to share our experience with key individuals from Nova Scotia's disability communities who are taking lead roles in calling for improved legislation in that province. These communities are calling for significant measures to strengthen Bill 59 and it is expected that the Government of Nova Scotia will be introducing a substantially re-worked version of the bill in the spring of 2017.

Disability community initiatives are also actively working to secure strong and effective accessibility-rights legislation in Newfoundland and Labrador, Saskatchewan and British Columbia.

Consultations among these community-based initiatives are being coordinated through [Barrier-Free Canada](http://barrierfreecanada.org/home/) (<http://barrierfreecanada.org/home/>). Barrier-Free Manitoba is pleased to be part of these consultations.

These developments are testament to how much things have changed since September 2008 when Barrier-Free Manitoba first called for the landmark accessibility-rights legislation in Manitoba. Many thought our call for this legislation was bold, others saw it as idealistic and some viewed it as unrealistic. Even when the AMA passed Third Reading with all-party support in December 2013, the prospects for this type of legislation being introduced elsewhere in Canada were uncertain at best.

But just over three years later, the importance and transformative potential of strong and effective accessibility-rights legislation has become widely recognized across Canada.

The critical questions no longer revolve around whether or not accessibility-rights legislation is needed. The critical questions now relate to how standards can best be designed to achieve full accessibility over the shortest reasonable period of time. Indeed, this is the central challenge before Manitobans in the development of a strong and effective accessible employment standard.

### 3. The Significance of the Challenge

The barriers to labour market success faced by Manitobans with disabilities have been evident for decades. These barriers are pervasive and deeply ingrained in systems, policies and attitudes. Substantial progress in addressing these barriers by 2023, as required under the AMA, will be a huge challenge.

Key to meeting this challenge will be developing a shared sense of basic goals. What are the key outcomes we are looking to achieve?

This section of our report answers this question from three different perspectives:

- An estimate of the levels of employment of Manitobans with disabilities that will provide evidence of success.
- A brief review of major barriers that will need to be addressed by the standard and by complementary government initiatives.
- A review of models used in other jurisdictions to meet this challenge.

#### Employment Levels

The most fundamental indicator that the employment barriers have been addressed will be the achievement of parity or near parity in employment rates<sup>10</sup> between Manitobans with and without disabilities. This benchmark has been selected because it is what the Act intends, it represents a straightforward measure of progress and it also sets an aspirational target that decision-makers and all stakeholders should strive to reach.

How significant a challenge will this be? How many additional Manitobans with disabilities will need to be working to have achieved parity in employment rates?

Figure 1 presents baseline information on the basic labour force status of the 87,100 Manitobans with disabilities who were between the ages of 15 and 64 in 2012. A total of 49,130 of these Manitobans were

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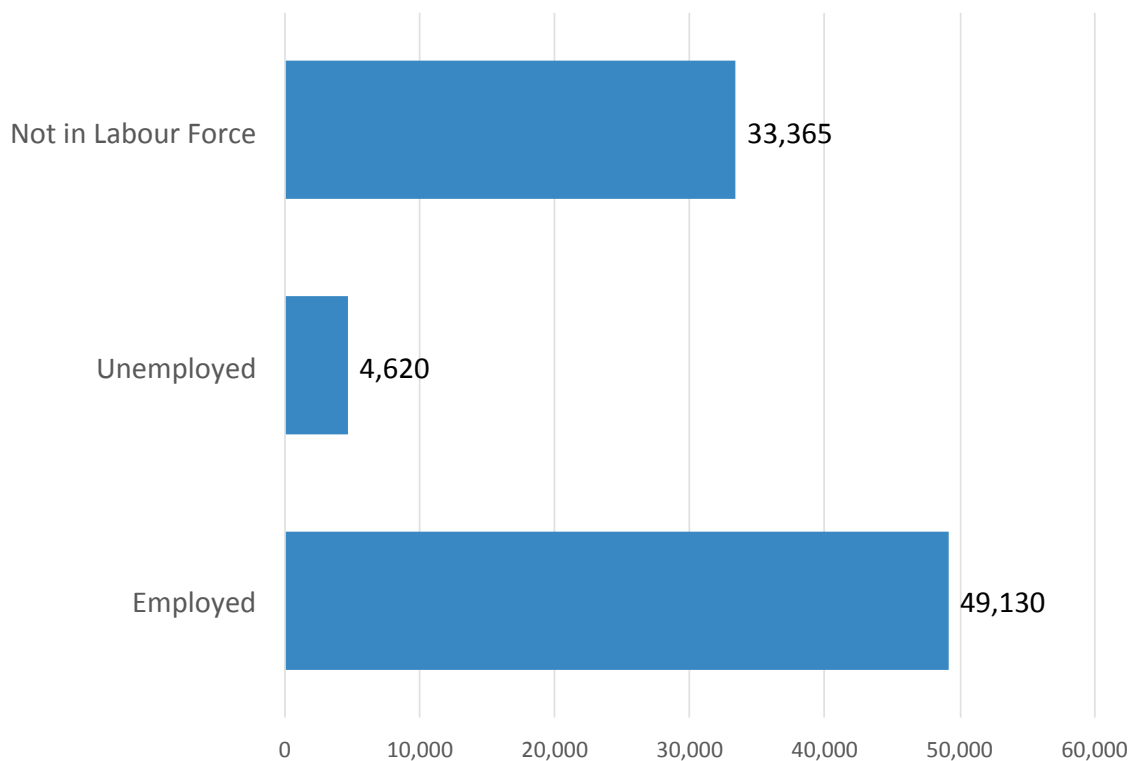
<sup>10</sup> The employment rate is the percentage of persons who are employed.

employed in 2012, 4,620 were unemployed but actively looking for work and another 33,365 were not in the labour force (neither employed nor looking for work).

As shown in Figure 2, the employment rate for Manitobans with disabilities is markedly lower than for Manitobans without disabilities.

**Figure 1**<sup>11</sup>

Labour Force Status of Manitobans with Disabilities Age 15 to 64, 2012



Just over one-half (56.4%) of Manitobans with disabilities were employed in 2012.<sup>12</sup> This compares to an employment rate of 77.3% for

<sup>11</sup> Figure 1 and Figure 2 are based on data from Statistics Canada's 2012 Canadian Survey on Disability. Much of this data was provided by the Manitoba Bureau of Statistics.

<sup>12</sup> It is notable that Statistics Canada reported a 52.9% employment rate for Manitobans with disabilities in 1991. While Statistics Canada data do not provide for reliable comparisons over time, this indicates how little progress has been made over the last 25 years. This 1991 data is cited in Full Citizenship: A Manitoba

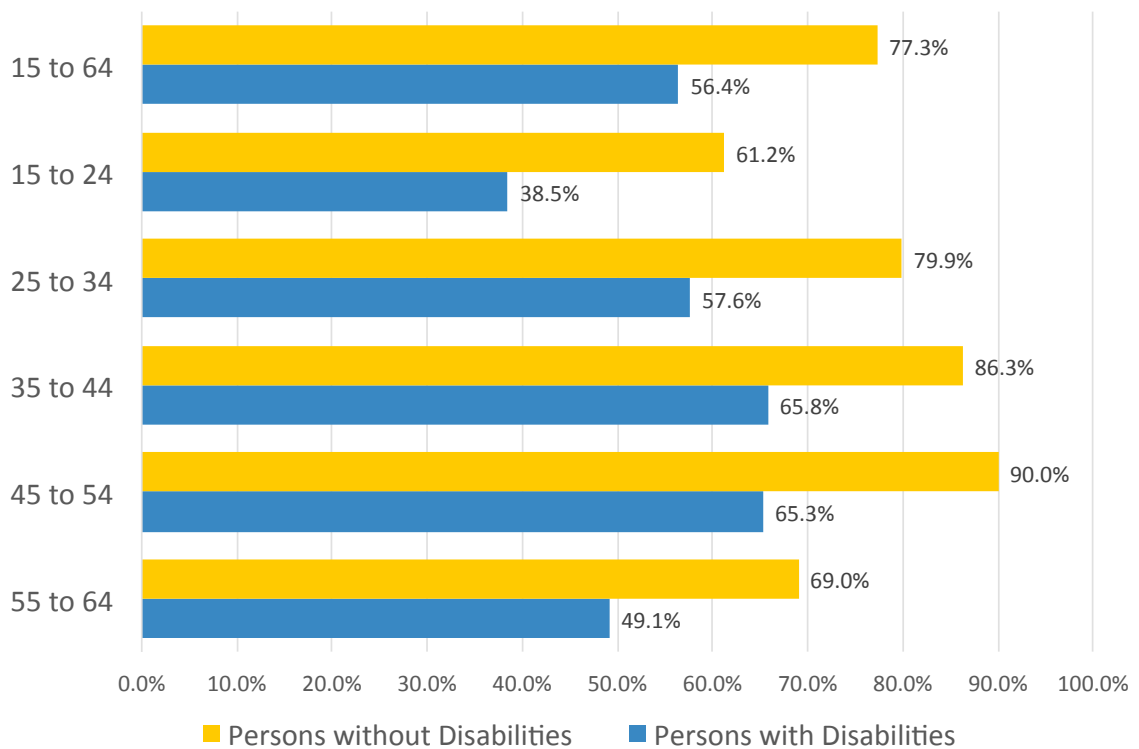


Manitobans without a disability, making for a twenty-percentage point gap in employment rates between those with and without disabilities.

While this twenty-percentage point gap roughly holds for all age groups, the data for young and older Manitobans with disabilities are particularly striking. Less than one-half (49.1%) of Manitobans with disabilities between the ages of 55 and 64 were employed in 2012. The employment rate for Manitobans with disabilities between the ages of 15 and 24 in 2012 was even lower at 38.5%

**Figure 2**

Manitoba Employment Rate by Age Group and Disability Status, 2012



To achieve parity in overall employment rates, we estimate that a total of 67,344 Manitobans with disabilities will need to be employed (see Table 1). This represents an additional 18,214 Manitobans with

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Provincial Strategy on Disability. Posted at:  
[http://www.gov.mb.ca/dio/pdf/full\\_citizenship.pdf](http://www.gov.mb.ca/dio/pdf/full_citizenship.pdf)

disabilities, a 37% percentage increase from the number who were employed in 2012.

**Table 1**

Estimated Number of Employed Manitobans with Disabilities Aged 15 to 64 Who Would Need to be Employed to Achieve Parity in Employment Rates

Gap Reduction	Employment Rate	Number of Manitobans without Disabilities Employed	Additional Persons Employed
0%	56.4%	67,344	0
25%	61.6%	53,688	4,558
50%	66.9%	58,240	9,110
75%	72.1%	62,792	13,662
100%	77.3%	67,344	18,214

While full parity will be the best indicator of long term success, this will likely be very difficult, if not impossible, to achieve by 2023. As such, Table 1 also presents estimates for possible benchmarks of substantial progress.

As the table suggests, reaching anywhere near full parity will mean that a substantial share of the 33,365 Manitobans with disabilities who were not even looking for work in 2012 will need to have entered the labour force. This is not wishful thinking. The vast majority of Manitobans with disabilities both want to and are able to work. Indeed, only 8.8% of Canadians with disabilities between the ages of 15 and 64 in 2012 reported that their disability completely prevented them from working.<sup>13</sup> Moreover, a U.S. study found that 80% of persons with

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<sup>13</sup> As reported in A Profile of the Labour Market Experiences of Adults with Disabilities among Canadians aged 15 years and older, 2012 Catalogue no. 89-654-X. Posted at <http://www.statcan.gc.ca/pub/89-654-x/89-654-x2015005-eng.htm>

disabilities who did not have a job wanted to be employed. This compares to only 77.5% of non-employed adults without disabilities.<sup>14</sup>

It is important to note that this broad goal of achieving parity in employment rates falls well short of achieving actual parity in employment. Considerable differences might continue to exist regarding full time compared to part time work and levels of employment earnings<sup>15</sup> although progress in reducing these disparities will be important as well. But parity in employment rates would mean that persons with and without disabilities are equally represented in Manitoba's labour force.

## **Major Barriers that Need to be Addressed**

The research on the barriers to employment faced by persons with disabilities is extensive and growing. A comprehensive review of this literature is well beyond the scope of this report. The best we can provide given time and resource constraints is a brief overview of the major types of barriers that have been consistently identified.

### **Employer Perspectives**

One of the most insightful studies<sup>16</sup> reviewed for this report was based on a survey of U.S. employers that were known or reputed to be reluctant to comply with American disability non-discrimination laws.

The researchers chose to survey this group because the findings from many previous studies seemed overly optimistic. As the authors note, these findings:

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<sup>14</sup> As reported in the final report from Ontario's Partnership Council on Employment Opportunities for Persons with Disabilities. Posted at: <https://www.ontario.ca/page/partnership-council-employment-opportunities-persons-disabilities-report>

<sup>15</sup> The average reported employment earnings for Manitobans without disabilities was \$39,133. The average reported employment earnings for Manitobans with disabilities was only \$31,578 (almost 20% less).

<sup>16</sup> Why Don't Employers Hire and Retain Workers with Disabilities by H. Stephen Kaye, Lita H. Jans and Erica C. Jones. Journal of Occupational Rehabilitation (2011) 21:526–536. Posted at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3217147/>

. . . paint a picture of successfully accommodated workers in a more or less welcoming environment. If we are to accept such findings at face value, we would be left wondering why the employment situation for working-age adults with disabilities remains dismal a full two decades after the enactment of the ADA [Americans with Disabilities Act].

In an effort to reduce “social desirability bias”<sup>17</sup> they asked human resource professionals and managers working for these reluctant employers why they thought *other* employers might not hire or retain people with disabilities.

The ten reasons most frequently cited by respondents for not hiring persons with disabilities are presented in Table 2.

The top three reasons, each endorsed by more than four-fifths of respondents, refer to:

- The perceived cost of accommodations.
- The lack of awareness as to how to deal with workers with disabilities and their accommodation needs.
- The fear of being stuck with a worker who cannot be disciplined or fired because of the possibility of a lawsuit (a human rights complaint in the Canadian context).<sup>18</sup>

These were also the top three reasons reported for not retaining workers with disabilities. These same reasons are consistently cited in other research conducted in both Canada and the U.S.

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<sup>17</sup> Respondents essentially report what they think the interviewer wants to hear rather than expressing their true attitudes.

<sup>18</sup> The Manitoba Human Rights Code (and similar codes throughout Canada) requires employers to accommodate the needs of workers with disabilities up to the point of undue hardship (these existing legal requirements will be covered in detail in the report’s next section).

**Table 2**

## Reasons for Employers Not Hiring Persons with Disabilities

	Percent of Respondents	
	In agreement	Strongly agree
They are worried about the cost of providing reasonable accommodations so that workers with disabilities can do their jobs	81.4	30.1
They don't know how to handle the needs of a worker with a disability on the job	80.9	25.4
They are afraid they won't be able to discipline or fire a worker with a disability for poor performance because of potential lawsuits	80.2	23.4
They can't ask about a job applicant's disability, making it hard to assess whether the person can do the job	73.3	20.3
They are concerned about the extra time that supervisors or co-workers will need to spend to assist workers with disabilities	70.9	14.8
They are worried about other costs, such as increased health insurance or worker's compensation premiums	69.9	22.8
They are afraid that workers with disabilities won't work up to the same standards as other employees	68.5	12.1
They rarely see people with disabilities applying for jobs	66.3	12.5
They believe that people with disabilities can't do the basic functions of the jobs they apply for	55.8	8.1
They discriminate against job applicants with disabilities	53.3	12.8

These basic findings have also been confirmed through the valuable work done by Ontario's Partnership Council on Employment Opportunities for Persons with Disabilities (Partnership Council). As noted in the Partnership Council's April 2016 final report, the lack of employer knowledge on accommodations and their costs:

. . . discourages employers from hiring their first workers with disabilities, because they don't know what to expect. The evidence, however, is clear: accommodation costs are actually quite minimal.

According to the U.S.-based Job Accommodation Network, the vast majority of people who have a disability do not require special workplace accommodations. For those who do, an estimated two-thirds of all accommodations cost less than US\$500. Examples of such accommodations might include specialized software, telephone amplifiers or headsets, adjustable-height desks, or keyboard armrests and finger guides.<sup>19</sup>

The Partnership Council's final report also notes that the most requested accommodations are flexible scheduling and extra training, both of which involve minimal cost.

Further evidence of the wide gap that exists between employer perceptions and reality is provided in the Partnership Council's initial report<sup>20</sup> from May 2015. Seventy percent of businesses reported having no idea how much workplace accommodations cost. The best guess offered by these businesses was that it costs an average of \$10,000 to accommodate an employee with a disability.

There appear to be at least four factors that contribute to this gap. The first is the lack of employer knowledge of their legal rights and responsibilities regarding accommodation. A second factor is the lack of experience many businesses have in employing persons with disabilities.

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<sup>19</sup> See footnote 14.

<sup>20</sup> Partnership Council on Employment Opportunities for People with Disabilities Initial Report. Posted at: <https://www.ontario.ca/page/partnership-council-employment-opportunities-people-disabilities-initial-report>

A third factor is the lack of expertise and support available to employers on accommodation issues. The Partnership Council, for example, reports that “even employers who are willing to recruit workers who have a disability don’t usually know where to look, or how to start. They need an advisor, a coach or an experienced mentor to help them through the process”.

A fourth major factor is the lack of systems, policies and procedures that employers have in place to address and respond to accommodation needs and issues. Clear evidence of this was provided in a costing study<sup>21</sup> prepared for the Ontario government by Deloitte related to that province’s initial proposed accessible employment standard. Based on its survey of Ontario organizations Deloitte found that:

- Less than 50% had formal policies in place to ensure barrier-free recruitment and hiring.
- Eighty percent rarely or never reached out to prospective job candidates with disabilities.
- Over 80% never included accommodation statements in their job advertisements.
- Less than one-third reported making job advertisements available in accessible formats.
- Seventy-seven percent reported rarely or never asking potential candidates if accommodation was required for interviewing/testing.

As might be expected, small and medium sized businesses were the least likely to have these systems, policies and procedures in place. Research suggests that small to medium sized businesses also face greater challenges in addressing the other three factors.<sup>22</sup>

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<sup>21</sup> Costing Study on the Initial Proposed Employment Accessibility Standard, Deloitte February 2009. Copy of this report was provided to Barrier-Free Manitoba by the Accessibility Directorate of Ontario.

<sup>22</sup> The Partnership Council, for example, reports that 70% of Canadian small business owners say that they have never hired a person with a disability.

The Partnership Council also identified the “No. 1 myth” that its members believe is discouraging employers from hiring persons with a disability.

(T)he unfounded fear that "human rights" laws won't let them fire the employee if he or she fails to perform to an agreed-upon level. The members agree that companies that deal fairly with their employees will rarely have a problem.

The Partnership Council makes two major recommendations in its report for significant and sustained government action seen as essential to complement that province’s accessible employment standard.

**Create strong political leadership:** Policies for people who have a disability span all ministries and require relentless support. We need strong leadership now. For this reason, the Council urges that the Government of Ontario, as soon as possible, assign a Senior Minister with 'People with disabilities' in their title to provide leadership at the political level. Ideally, this individual would be a senior Minister with the experience to bring diverse ministries, programs and people together and create consensus around a process of systemic cultural change.

**Engage employers to effect cultural change:** Despite the clear and oft-cited advantages of employing people with disabilities, many employers have been slow to "get" this message. The Council believes the Ontario Government should plan and launch an ambitious, sustained marketing campaign aimed primarily at small- and medium-sized enterprises to heighten awareness of the value of employing, retaining and promoting persons with disabilities.

The Partnership Council sees these as essential because the accessible employment standard only addresses measures related to accessibility, accommodation, performance management and career development. The standard does little if anything to actually encourage or require employers to hire persons with disabilities.



## 2012 Canadian Survey on Disability Findings

Statistics Canada's 2012 Canadian Survey on Disability included a range of questions about the labour market experience of working-age adults with disabilities. Due to limited available data and issues related to reliability, only the national results from these questions will be reviewed in this report. The results presented refer to "potential workers". This is defined as persons with disabilities who were:

- Not employed
- Not completely prevented from working due to their disability
- Not permanently retired
- Not students
- Did not report that they would not look for work over the next 12 months
- Had previous work experience.

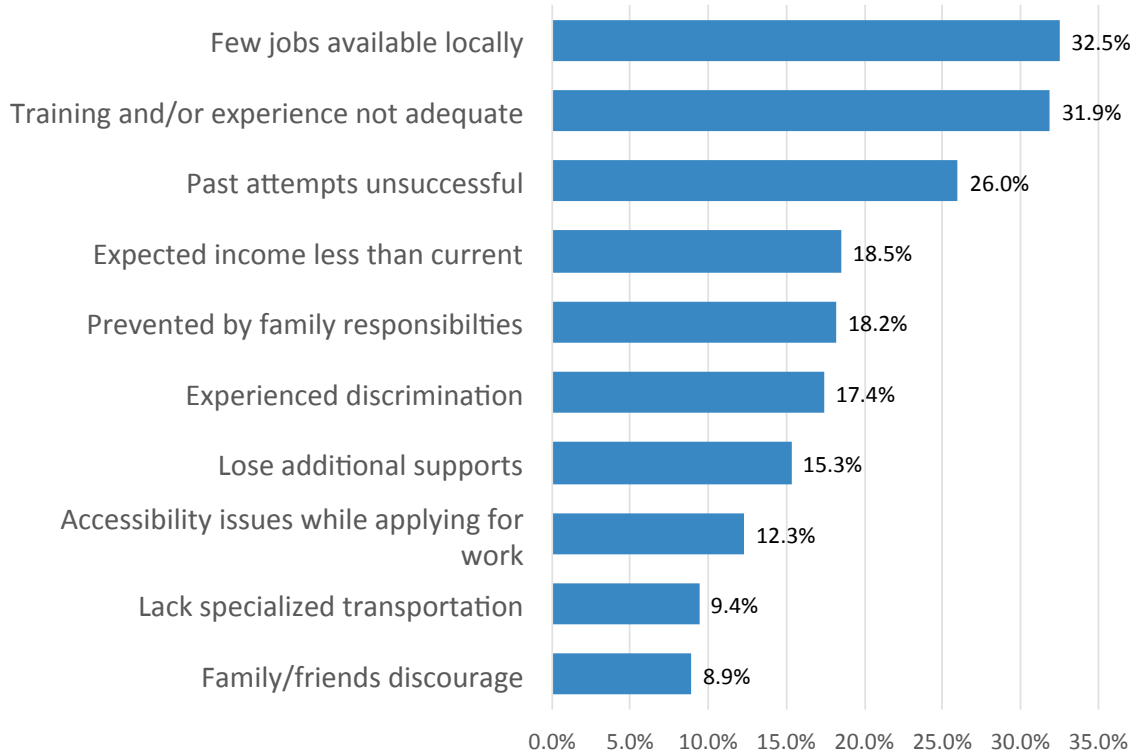
The survey asked potential workers to identify the barriers they faced in finding work. Almost three-quarters (72.6%) of potential workers reported that they experienced at least one of the barriers to employment listed in the survey. Figure 3 presents these results.

The most common barriers experienced were associated with the limited availability of local job opportunities, inadequate training or experience and past lack of success in finding employment.

While these barriers are also frequently cited by potential workers without disabilities, the lack of training and experience is of particular importance of persons with disabilities for two reasons. First, persons with disabilities face clear educational disadvantages. In Manitoba for example, working-age adults with disabilities are much more likely to have less than a high school diploma than those without disabilities (33.3% compared to 22.4%) and much less likely to have a university degree (11.5% compared to 22.5%).

**Figure 3**<sup>23</sup>

**Job Search Barriers for Potential Workers with Disabilities Aged 15 to 64, Canada 2012**



Second, education levels seem to have a much greater impact on labour market success for persons with disabilities than persons without disabilities. The national employment rate for university graduates with moderate disabilities in 2012 were very close to the rate for university graduates without disabilities (77% compared to 83%). The size of the gap in employment rates increase as levels of educational qualifications decrease. The employment rate for persons with less than a high school

<sup>23</sup> Figure 3, Figure 4 and Figure 5 are based on data from Statistics Canada's 2012 Canadian Survey on Disability as reported A Profile of the Labour Market Experiences of Adults with Disabilities among Canadians aged 15 years and older, 2012 by Matthew Till, Tim Leonard, Sebastian Yeung and Gradon Nicholls. Publication 89-654-X. Posted at: <http://www.statcan.gc.ca/pub/89-654-x/89-654-x2015005-eng.htm>

diploma and no disability was 65%. The rate for persons with this same level of education but with moderate disabilities was only 33%.<sup>24</sup>

In short, while higher levels of education appear to be a big equalizer in the labour market success, relatively few Manitobans with disabilities graduate from university.

Financial barriers to employment were also frequently cited by potential workers. In many cases, these relate to respondents' reliance on social assistance programs that offer support such as financial aid for housing, medication, disability supports and local transportation. The availability of some or all of these benefits and supports are withdrawn if an individual earns too much employment income.

Those who have earning potentials less than the basic income benefits because of the need for reduced hours and or access to only low wage job opportunities have limited incentives to seek employment. Similarly, those who might have earning potentials only slightly higher than income benefits also face the disincentive of losing access to other needed supports. These policy barriers are well known and are often referred to as the 'welfare wall'.

Based on recent data, there were 20,575 cases in the Disability Category of the Employment and Income Assistance (EIA) program on March 31, 2016. This represents almost 54% of the total EIA caseload.<sup>25</sup> Based on the conservative assumption that each case in the Disability Category includes only one person, this means that almost one in every four working age Manitobans with a disability relies on EIA to meet all or many of their most basic needs.

Finally, almost one in every five (17.4%) potential workers reported that their experience of past discrimination in the labour market was a barrier to securing employment.

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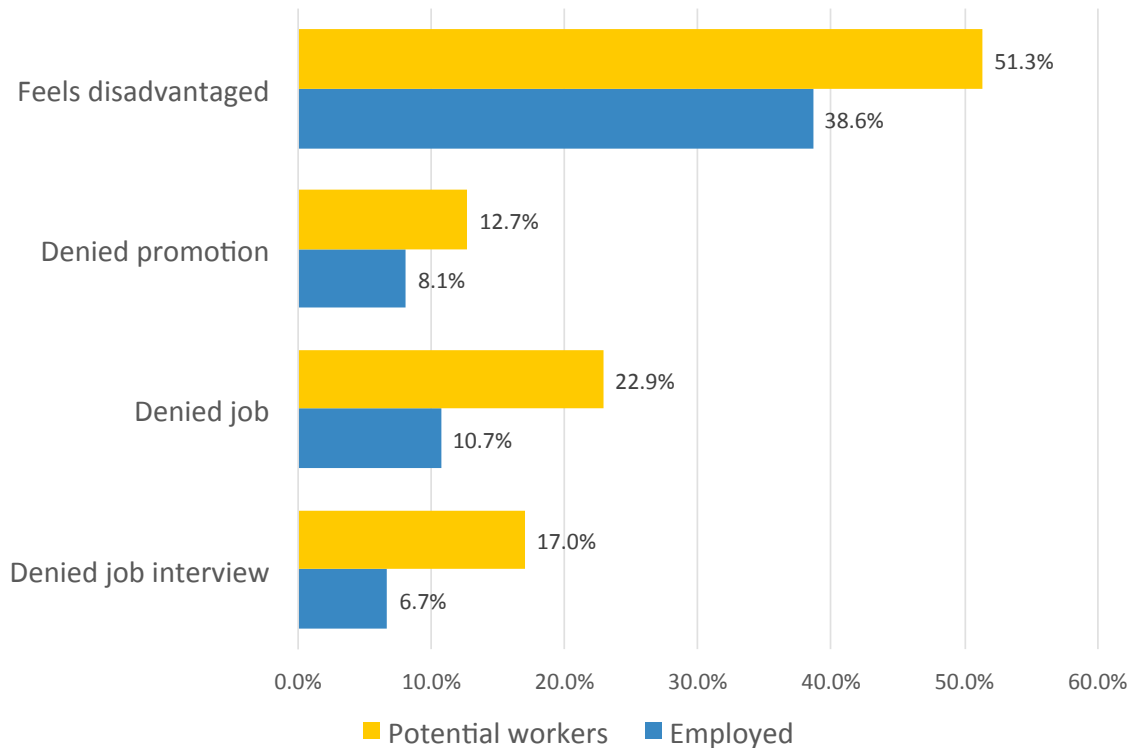
<sup>24</sup> As reported in Insights on Canadian Society – Persons with disabilities and employment, Catalogue no. 75-006-X. Posted at: [http://www5.statcan.gc.ca/olc-olc.action?objId=75-006-X201400114115&objType=47&lang=en&limit=0](http://www5.statcan.gc.ca/olc-olc/action?objId=75-006-X201400114115&objType=47&lang=en&limit=0)

<sup>25</sup> Based on data presented in the Department of Jobs and the Economy's 2015/16 Annual Report

The Canadian Survey on Disability included more detailed questions regarding workplace and labour market discrimination. As shown in Figure 4, potential workers were much more likely to have faced perceived discrimination than those who were employed.

**Figure 4**

Perceived Discrimination of Persons with Disabilities Aged 15 to 64 by Work Potential Status, Canada 2012



More than one-half of potential workers reported feeling disadvantaged because of their disability compared to just over one-third of employed respondents (51.3% versus 38.6%). Almost one-quarter (22.9%) of potential workers reported that they have been denied a job because of their disability and almost one in every five (17%) reported having been denied a job interview. Another 12.7% reported that they had been denied a job promotion in the past due to their disability. Significant but much lower percentages of persons with disabilities who were employed reported these same types of workplace discrimination.

Notably, many employed persons with disabilities do not advise their employers of their disability. In Manitoba, 23% of employed persons with disabilities had not shared information about their disability with their employers. Across Canada, this percentage is even higher (29%).

Respondents were not asked why they chose not to disclose their disability to their employer, but one primary reason was a concern that this information would limit their future employment opportunities. Evidence of this is presented in Ontario's Partnership Council's final report. It reports that 55% of Canadians with disabilities believe that hiding their disability increases their chance of getting hired and promoted.

The Ontario Chamber of Commerce reports that a 2011 survey of employed graduates by the Higher Education Quality Council of Ontario found that 62% reported that they chose to not reveal their disability to their employer. The most frequently cited reason provided was fear that doing so would either preclude them from obtaining employment or negatively impact their career prospects after employment.<sup>26</sup>

Another question in the Canadian Survey on Disability related to the types of workplace accommodations required (see Figure 5).

Potential workers with disabilities were much more likely to report requiring the workplace accommodations listed in the survey than employed persons with disabilities. For both groups, the most frequently needed accommodation was modified or reduced work hours. This was identified by 41.5% of potential workers and 22.6% of employed workers.

Other frequently identified accommodation needs include modified duties, specialized chairs, ergonomic work stations and telework. Potential workers were more likely than employed workers to have identified these accommodations.

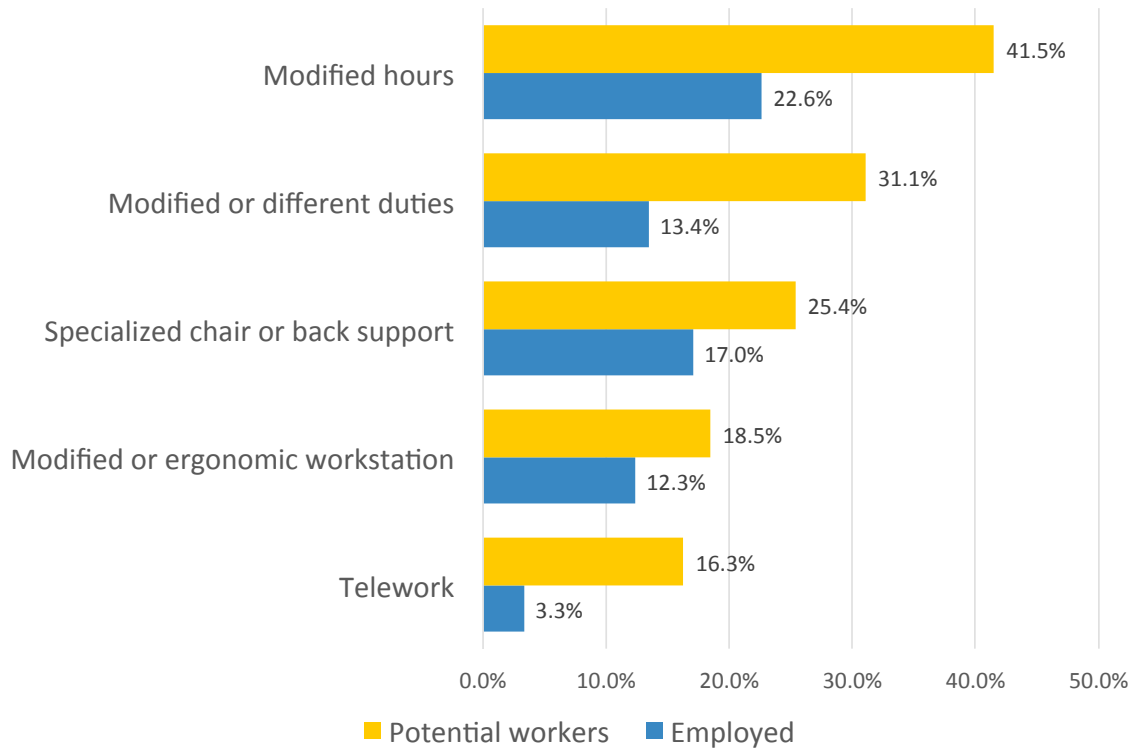
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<sup>26</sup> As reported in Building Bridges: Linking Employers to Postsecondary Graduates with Disabilities. Posted at: <http://www.occ.ca/portfolio/building-bridges/>

These results from the Canadian Survey on Disability confirm that most workplace accommodation requirements reported by persons with disabilities can be provided at no or very limited cost to employers.

**Figure 5**

Workplace Accommodations Required by Persons with Disabilities Aged 15 to 64 by Work Potential Status, Canada 2012



**Diversity of Disabilities**

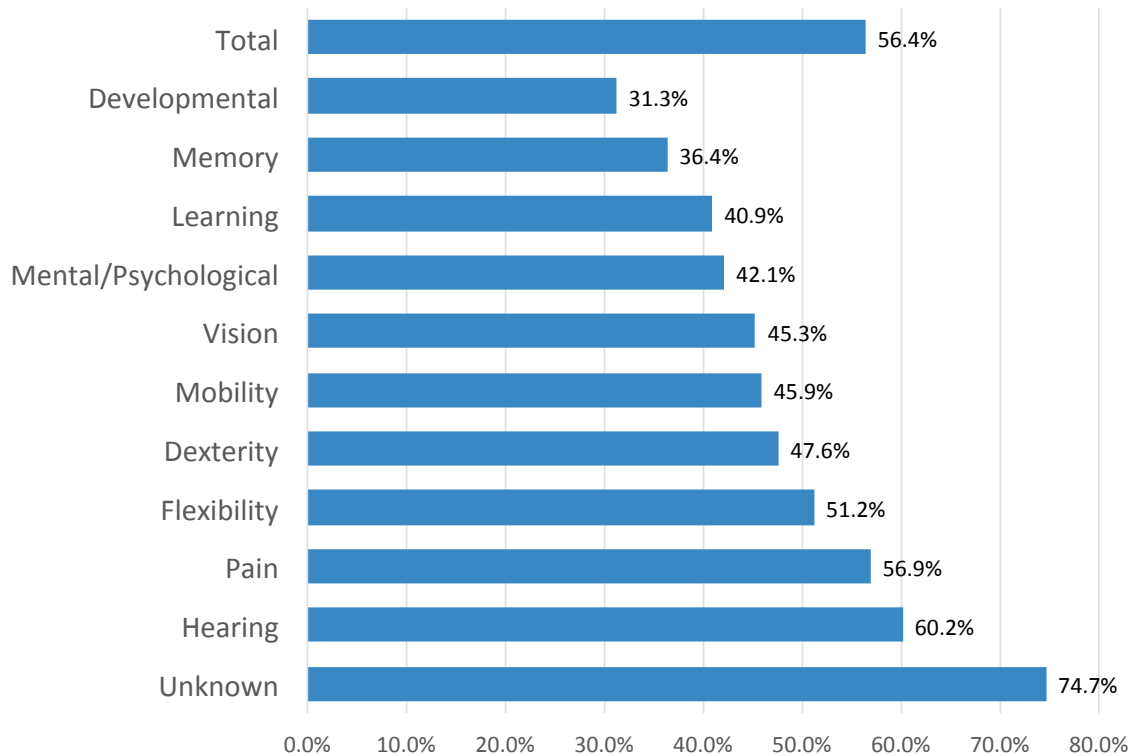
This report consistently refers to Manitoba’s ‘diverse disability communities’. This choice of wording reflects the wide range of disabilities that affect Manitobans. This is important because data clearly demonstrate that persons with different types and severities of disabilities have decidedly different levels of labour market success (see Figure 6).

Just over one-half of Manitobans who had disabilities related to hearing, pain and flexibility were employed in 2012 (60.2%, 56.9% and 51.2% respectively). In comparison, Manitobans with developmental, memory,

learning and mental/psychological disabilities were least likely to be employed (31.3%, 36.4%, 40.9% and 42.1% respectively).

**Figure 6<sup>27</sup>**

Manitoba Employment Rate by Disability Type Aged 15 to 64, 2012



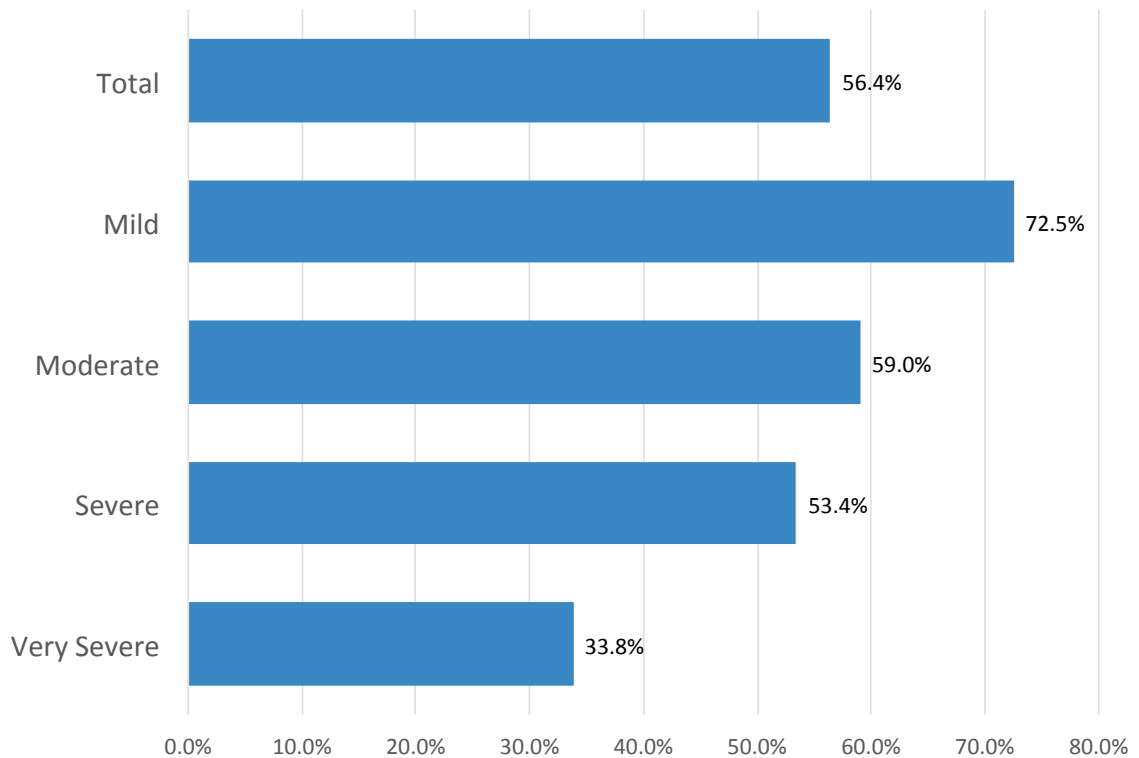
Similarly, employment rates of Manitobans with disabilities in 2012 varied considerably by severity of disability (see Figure 8). The employment rate for Manitobans with mild disabilities was highest at 72.5%, a rate still significantly lower than for Manitobans without disabilities (77.3%). The lowest employment rate was for Manitobans with severe disabilities (33.8%).

To be truly inclusive, Manitoba’s accessible employment standard will need to address the barriers associated with this full range of types and levels of disability.

<sup>27</sup> Figure 6 and Figure 7 are based on data from Statistics Canada’s 2012 Canadian Survey on Disabilities as reported in Disability in Manitoba: Canadian Survey on Disability 2012 released by the Manitoba Bureau of Statistics (December 2015)

**Figure 7**

**Manitoba Employment Rate by Severity Aged 15 to 64, 2012**



## Experience in Other Jurisdictions

This section of the report began with the statement that the barriers to labour market success faced by Manitobans with disabilities have been evident for decades. Moreover, these barriers are pervasive and deeply ingrained in systems, policies and attitudes. It was further noted that making substantial progress in addressing these barriers will be a huge challenge.

The section concludes with a very brief summary of findings from a comparative review of how other jurisdictions around the world have tried to meet this challenge. This comparative review<sup>28</sup> was prepared for

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<sup>28</sup> Links to the review are posted at: <http://www.barrierfreemb.com/bfmbmaterials>. The review was provided to the Disability Issues Office in draft form in the fall of 2015 to support early work on the development of the accessible employment standard.



Barrier-Free Manitoba by the Public Interest Law Centre (PILC). The review was completed in December 2015.

PILC's review compared four models as represented in:

- *The Americans with Disabilities Act* in the United States
- The accessible employment standard under the Ontario's *Accessibility for Ontarians with Disabilities Act (AODA)*
- The quota model that has been used in many western European countries, Japan, South Korea and elsewhere
- The federal *Employment Equity Act*.

All the models have distinctive features, with their own strengths and limitations. Except for Ontario's accessible employment standard which is still in the very early stages of implementation, each of the models share one characteristic – they have all had very mixed results.

They also share one more thing in common. The review found that standards have been most effective when they were complemented by an overall policy and program framework that provides informational resources, incentives and encouragement to employers, as well as meaningful and responsive supports to persons with disabilities. It is notable that Ontario's Partnership Council made similar recommendations for a robust policy and program framework in its final report.

Clearly, Manitoba's success in addressing the pervasive employment barriers faced by persons with disabilities will depend on learning and applying the lessons of experience, based on these models, both in developing our province's accessible employment standard, and in creating the policy and program framework that will be required for the standard to be most effective.

## 4. The Human Right to Accessible Employment

As presented in this report's review of AMA, Barrier-Free Manitoba's 2008 call for accessibility-rights legislation was based on clear evidence that existing legal human rights mechanisms had not provided and could not be expected to provide for the comprehensive prevention or removal of the barriers faced by persons with disabilities.

The limitations of current legal protections are particularly evident for persons with disabilities. As the Canadian Human Rights Commission stated in its 2001 annual report:

For those who are discriminated against because of their disability, the human rights complaints system is not necessarily the answer...Eliminating obstacles one at a time, step by step, or ramp by ramp, so to speak, is not the best way to achieve a barrier-free and inclusive world.

Barrier-Free Manitoba's call for accessibility-rights legislation, and our subsequent work to support the full and timely implementation of the AMA, has never been about creating new rights. Rather, our focus has been on establishing a mechanism to ensure systemic and proactive compliance with the existing rights that are already enshrined in provincial, national and international law.<sup>29</sup>

The case for a strong and effective accessible employment standard under the AMA is no different. For more than 40 years, provincial law has guaranteed Manitobans with disabilities the right to equal treatment in employment without discrimination based on disability. This right was first enshrined in 1974 with *The Human Rights Act*. The right is now enshrined in *The Human Rights Code* that was enacted in 1987 to replace the previous Act.

This section of our report provides an overview of core human rights concepts as related to accessible employment, as well as recent

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<sup>29</sup> In its initial report, Ontario's Partnership Council called the continued underrepresentation of persons with disabilities in labour markets to be "an unacceptable failure of our commitment to human rights".

experience with human rights complaints made in Manitoba based on the ground of disability discrimination.

## **Core Concepts**

*The Human Rights Code* guarantees Manitobans with disabilities the right to equal treatment in employment without discrimination based on disability. That includes the right of employees and job applicants with disabilities to have their employment-related needs reasonably accommodated up to the point of undue hardship by the employer. These human rights also impose the legal obligation on employers to proactively identify and remove existing workplace barriers, and to prevent the creation of new ones. The Supreme Court has held that human rights such as these are to be interpreted broadly. Exceptions to them are to be interpreted narrowly and strictly.

*The Human Rights Code* also provides for affirmative action and other special programs to address serious disadvantages that have been caused by past discrimination.

The following provides brief descriptions of three key concepts that are referred to above.<sup>30</sup>

### **Reasonable Accommodation**

Reasonable accommodation<sup>31</sup> is the only core human rights concept covered in the discussion paper. The paper includes this description:

Achieving the removal of barriers and the fulfillment of equality for persons with disabilities usually requires more than treating everyone the same. In many instances, it requires proactive action which is referred to as reasonable accommodation by human rights law. For example, an employer may have to provide sign language interpreters to enable a Deaf employee to participate effectively in

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<sup>30</sup> While based on existing source materials, these descriptions are not meant to be, nor should they be interpreted, as legal advice.

<sup>31</sup> This concept of reasonable accommodation is referred to more accurately as “duty to accommodate” in the *The Canadian Human Rights Act*.

staff meetings; or an employer may have to provide a blind employee with a computer that can read print information aloud.

Reasonable accommodation means that as much as possible employers must design employment procedures, policies and standards to reflect the needs of all workers. Employers are exempt from this requirement only where they can establish that the accommodation would create an undue hardship in the form of a significant safety risk, a significant disruption to business or a significant expenditure of funds.

An informational resource published by the Manitoba Human Rights Commission describes the concept this way:

Accommodating means allowing for changes to the way things are usually done. The changes might be visible to the public, such as a landlord installing automatic doors to ensure access for a person with a physical disability or installing a ramp or elevator. The changes might also only be apparent to certain people, such as an employer allowing an employee to switch a day off to observe a religious holiday.

Not all requests for accommodation are reasonable even if they are based on a protected characteristic. A company or organization should have a policy that sets out a process for assessing whether or not a request for accommodation is possible. If it is not possible to grant the request in full, or in part, it must be shown that it would cause undue hardship to the company or organization to do so.<sup>32</sup>

The Ontario Human Rights Commission provides examples of common types of workplace accommodations.

Depending on a person's individual needs, accommodation in services may include:

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<sup>32</sup> Excerpted from:  
[http://www.manitobahumanrights.ca/publications/policy/policy\\_reasonable-accomodation-of-religious-belief.html](http://www.manitobahumanrights.ca/publications/policy/policy_reasonable-accomodation-of-religious-belief.html)

- allowing a flexible work schedule
- modifying job duties
- modifying policies
- making changes to the building (for example, installing ramps, hand rails, automatic door openers, wider doorways, etc.)
- modifying workstations (making ergonomic changes, supplying a specialized chair, back support, etc.)
- providing specialized adaptation or assistive devices for computers, accessible technology
- providing alternative ways of communicating with the employee
- additional training
- allowing short-term and long-term disability leave
- job bundling and unbundling
- alternative work (where a person with a disability cannot perform their pre-disability job, even with accommodation).<sup>33</sup>

Employer responsibilities to provide reasonable accommodation in employment extend to employees, independent contractors and volunteers.<sup>34</sup>

Responsibilities also extend to unions and professional associations which are required to:

- take an active role as partners in the accommodation process
- share joint responsibility with the employer to facilitate accommodation
- support accommodation measures irrespective of collective agreements, unless to do so would create undue hardship.<sup>35</sup>

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<sup>33</sup> Excerpted from: <http://www.ohrc.on.ca/en/discrimination-based-disability-and-duty-accommodate-information-employers>

<sup>34</sup> This is set out in clause 14(13) of Manitoba's *Human Rights Code*.

<sup>35</sup> Excerpted from: <http://www.ohrc.on.ca/en/book/export/html/2461>

## Undue Hardship

The Manitoba Human Rights Commission explains that “[t]he duty to reasonably accommodate is often described in human rights law as ‘accommodation short of undue hardship’.” It also notes that:

“Undue hardship” is not defined in *The Code*, however case law has established that it is more than minimal hardship and based on actual evidence and not assumptions.

Inconvenience or some financial cost will not normally qualify as undue hardship. The following factors contribute to undue hardship:

- health and safety risks
- financial costs of accommodation
- legitimate operational requirements
- interchangeability of employees and facilities
- disruption to collective agreements
- impact on employees and service users
- impact on other protected rights

Financial costs of an accommodation will also be considered in the context of the nature, size and scope of a business or organization.

Materials from the Ontario Human Rights Commission note the test of financial cost as an undue hardship is a high one.

The Supreme Court of Canada has said that, “one must be wary of putting too low a value on accommodating the disabled. It is all too easy to cite increased cost as a reason for refusing to accord the disabled equal treatment.” . . .

Costs will amount to undue hardship if they are:

- quantifiable
- shown to be related to the accommodation, and

- so substantial that they would alter the essential nature of the enterprise, or so significant that they would substantially affect its viability.<sup>36</sup>

## Proactive Obligations

The human rights obligations of employers go beyond providing reasonable accommodation in response to requests made by individual employees. Employers are also responsible for proactively identifying and removing workplace barriers. As described in material from the Ontario Human Rights Commission:

People with disabilities face many kinds of barriers every day. These could be attitude, communication, physical and systemic barriers. Employers should identify and remove barriers voluntarily instead of waiting to answer individual accommodation requests or complaints. . .

Effective inclusive design reduces the need for people to ask for individual accommodation. Employers should use the principles of inclusive design when creating policies, programs, procedures, standards, requirements and facilities.<sup>37</sup>

Employers also have the responsibility to to be aware of whether their policies, practices and programs are having an adverse impact or result in systemic discrimination related to disabilities. Whether or not a formal complaint has been made, organizations must acknowledge and address potential human rights issues.

## Recent Experience

Every year for over the last fifteen years (see Figure 7), disability discrimination has been the number 1 reason for the formal complaints made to the Manitoba Human Rights Commission (MHRC). Indeed, disability discrimination has accounted for more complaints than for almost all the other twelve grounds in *The Human Rights Code*

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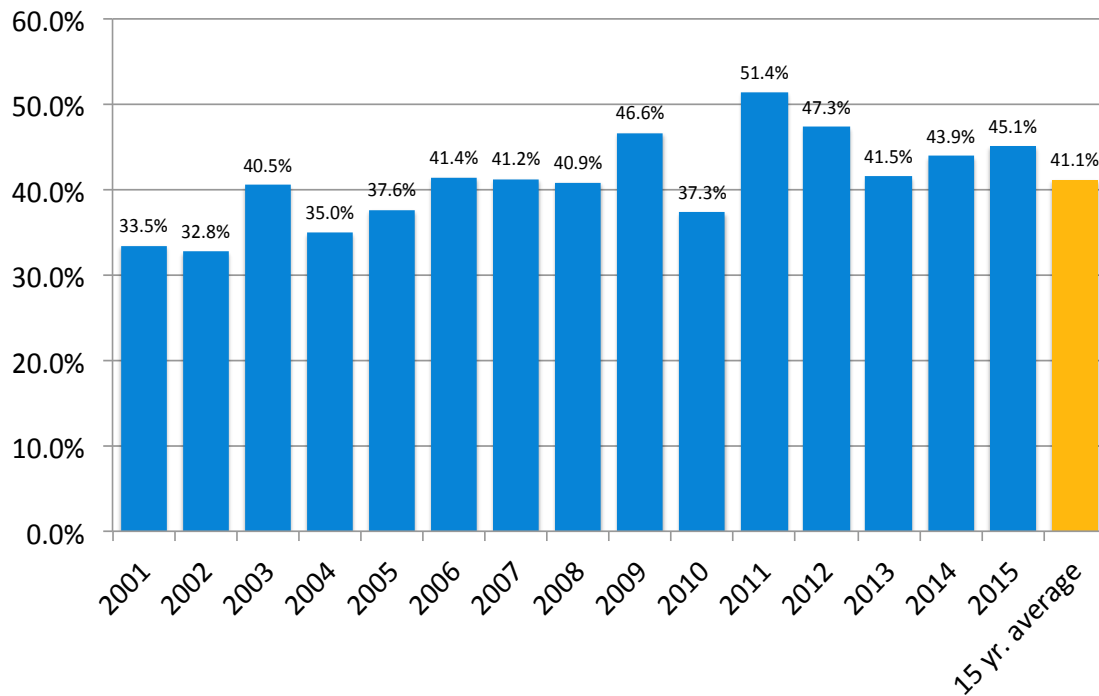
<sup>36</sup> Excerpted from: <http://www.ohrc.on.ca/en/book/export/html/11451>

<sup>37</sup> Excerpted from: <http://www.ohrc.on.ca/en/discrimination-based-disability-andduty-accommodate-information-employers>

combined. Based on discussions with the MHRC, most disability discrimination complaints relate to employment.

**Figure 7**

Complaints Based on Disability Discrimination Filed with the Manitoba Human Rights Commission as a Percent of All Complaints, 2001 to 2015



Complaints to the MHRC provide only a very partial, though important, glimpse into the incidence of discrimination in Manitoba. It is widely understood that very few Manitobans, with and without disabilities, who experience discrimination make human rights complaints. This is due to a wide range of reasons. Many Manitobans are not aware of their human rights or that they can seek redress from the commission. Many Manitobans who face discrimination ‘blame’ themselves for their own perceived limitations. There are other barriers to filing complaints: submitting complaints often involves sharing sensitive and personal information; the complaint process is of an adversarial nature; finally, it sometimes takes an extended period of time to obtain a remedy under *The Human Rights Code*. Clearly, human rights commissions across Canada would be overwhelmed if the one in every five potential workers



who reported having experienced past labour force discrimination in the Canadian Survey on Disability filed formal complaints.

To gain insight into recent experience, Barrier-Free Manitoba asked the MHRC to identify patterns and key issues related to recent disability discrimination complaints made to the commission related to employment.

The commission has advised us that complainants frequently allege that they have been treated differently on the basis of disability often because their employment has been terminated based on absenteeism or time away from work, or similarly, that an employer has not reasonably accommodated an employee's need based on disability to be away from work.

The commission also noted that smaller employers often appear unaware of the obligation to accommodate disability-related needs by providing a modified work schedule or duties. Larger employers, often aware of the obligation, still appear challenged to provide these kinds of modifications.

## 5. The Economic and Business Cases

Addressing the pervasive barriers to equitable employment faced by Manitobans with disabilities is not only the right thing to do; it also makes extraordinary economic and business sense.

Addressing the barriers to equitable employment will eliminate or substantially reduce the enormous costs of excluding tens of thousands of Manitobans from the labour force. Increased employment of persons with disabilities will also contribute to the increased productivity, profitability and competitiveness of Manitoba businesses. As such, the primary issue is not whether Manitoba can afford the cost of measures required to address these pervasive barriers. The real issue is whether Manitoba can afford not to address the barriers.

This section of our report presents the evidence for both the economic and business cases for a strong and effective accessible employment standard.

### The Economic Case

In its November 21, 2016 Speech from the Throne, Manitoba's new government set forth an ambitious agenda for the years ahead. Three of the government's main priorities are to:

- Rebuild our economy
- Put our province back on fiscal track
- Make Manitoba the most improved province in Canada.

Developing and implementing the measures needed to achieve equitable employment may represent the best opportunity to achieve all three of the priorities. As Ontario's Partnership Council concluded,

[T]he elimination of employment barriers today will result in a more prosperous economy tomorrow – as well as a more effective, diverse and innovative workforce, and higher living standards and greater quality of life for persons with disabilities.

In contrast, not taking the measures to eliminate the barriers to employment today will mean having to devote substantial financial

resources well into the future to continue covering the costs associated with the waste of human and economic potential. As stated by the Bank of Montreal's Director of Diversity and Inclusion, the:

[P]ersistent unemployment gap of people with disabilities needs to be addressed. . . It costs government and taxpayers' money unnecessarily, and it robs Canadian businesses and our economy of the vital contribution persons with disabilities are ready and able to make.<sup>38</sup>

The primary benefits that will accrue to Manitoba's economy through the elimination of employment barriers will come in three primary areas.

### **Addressing Labour Force Shortages**

Increased employment by persons with disabilities will be key to addressing the huge labour force shortage that is associated with aging of the baby boomers. Updated research based on the recent data forecasts that the number jobs in Canada will outnumber the workers by more than two million by 2031.<sup>39</sup>

The best domestic option for increasing the size our labour force is to look for employment growth among those who have historically been underrepresented in the work force. While not the only group, persons with disabilities are one of the largest untapped pool of future workers.

The enhanced retention of older and experienced workers is another key measure needed to address the looming labour force shortage. Many of these employees develop disabilities in their 50s and 60s and require reasonable accommodations to extend their careers.

Data suggest that labour shortages are not just a thing of the future. The private sector job vacancy rate in Manitoba stood at 2.2% in the third-

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<sup>38</sup> BMO Study: Canadians Believe People with Disabilities Are Victims of Hiring Bias. Posted at: <https://newsroom.bmo.com/press-releases/bmo-study-canadians-believe-people-with-disabilit-tsx-bmo-201210110825216001>

<sup>39</sup> The Great Canadian Skills Mismatch: People Without Jobs, Jobs Without People and MORE. Rick Miner, March 2014. Posted at: [http://www.minerandminer.ca/data/Miner\\_March\\_2014\\_final\(2\).pdf](http://www.minerandminer.ca/data/Miner_March_2014_final(2).pdf)

quarter of 2016, a figure representing 9,000 unfilled jobs.<sup>40</sup> Ontario has a similar level of job vacancies. The Ontario Chamber of Commerce has referred to this level of unmet need, despite the availability of so many qualified workers with disabilities, as the “labour market paradox”.

This unmet need seems most appreciable among small and medium sized businesses which account for 60% of all jobs in Ontario and represent 75% of recent net employment growth in the province.<sup>41</sup> This view is supported by the finding from a 2014 survey by the Canadian Federation of Independent Business that 60% of independent business owners had difficulty finding qualified employees over the previous year.<sup>42</sup>

### **Increasing Employment Income**

One major economic benefit from addressing the employment barrier faced by Manitobans with disabilities is increased employment earnings and the contributions that this will make to the provincial economy. The most comprehensive research on the economic benefits of accessible employment has been done by the Martin Prosperity Institute housed at the University of Toronto’s Rotman School of Management. Their report, released in 2010, examined the potential economic impacts of

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<sup>40</sup> Job Vacancy Rate Up In Manitoba. December 17, 2016. Posted at: <http://mytoba.ca/featured/job-vacancy-rate-manitoba/>

<sup>41</sup> Building Bridges: Linking Employers to Postsecondary Graduates with Disabilities, Ontario Chamber of Commerce (no date). Posted at: <http://www.occ.ca/portfolio/building-bridges/>. As will be recalled from earlier in our report, small and medium sized businesses were also found to be most likely to lack recruitment, outreach and other employment policies and procedures that represent best practice in hiring and retaining persons with disabilities.

<sup>42</sup> As reported in the Final Report of Ontario’s Partnership Council on Employment Opportunities for Persons with Disabilities. Posted at: <https://www.ontario.ca/page/partnership-council-employment-opportunities-persons-disabilities-report>

increased accessibility at three scales: individuals, markets, and society.<sup>43</sup>

The institute modeled four different scenarios related to employment, each with different sets of assumptions. The scenario with the most conservative assumptions resulted in a forecasted \$359 million increase in employment income. The scenario with the least conservative assumptions resulted in a forecasted increase in employment income of \$4.8 billion.

While the development and assessment of such detailed scenarios are well beyond the scope of this report, Barrier-Free Manitoba can provide some very rough estimates based on data from the 2012 Canadian Survey on Disability.

Our estimates are based on the same benchmarks of progress in achieving parity in employment rates that were presented earlier in this report (see page 15). The one difference in this case is that our assumptions relate to the percentage of working age adults with and without disabilities who reported employment income. In 2012, 83.3% of persons without disabilities reported having received employment income. The figure for Manitobans with disabilities was sharply lower at 64.3%.<sup>44</sup> This represents a percentage-point gap of 18.9%.

Table 3 shows the impact of 25%, 50%, 75% and 100% reductions in the percentage gap between Manitobans with and without disabilities who receive employment income. Total employment earnings are calculated based the average level of employment income (\$31,578) reported by working aged Manitobans with disabilities in 2012.<sup>45</sup>

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<sup>43</sup> Releasing Constraints: Projecting the Economic Impacts of Increased Accessibility in Ontario. Posted at:  
[http://martinprosperity.org/media/ReleasingConstraints\\_June22.pdf](http://martinprosperity.org/media/ReleasingConstraints_June22.pdf)

<sup>44</sup> This 18.9% gap approximates the 20.9% gap in employment rates.

<sup>45</sup> These estimates do not assume any reduction in the \$7,500 gap in average reported earnings among Manitobans with and without disabilities.

**Table 3**

Assumptions and Impact of Levels of Progress in Achieving Parity in Rates of Persons with Disabilities Reporting Employment Earnings

Gap Reduction	Number Reporting Employment Income		Estimated Total Earnings
	Additional	Total	
0%	0	56,050	1,769,946,900
25%	4,118	60,168	1,899,983,048
50%	8,236	64,286	2,030,019,196
75%	12,354	68,404	2,160,055,343
100%	16,472	72,522	2,290,091,491

The net increases in total employment income that would be earned by working age Manitobans with disabilities is presented in Figure 8. It is estimated that a 25% reduction in the gap would result in an increase of \$130 million in total employment income earned by Manitobans with disabilities. The complete elimination of the gap would result in an estimated total increase in employment earnings of over \$520 million.

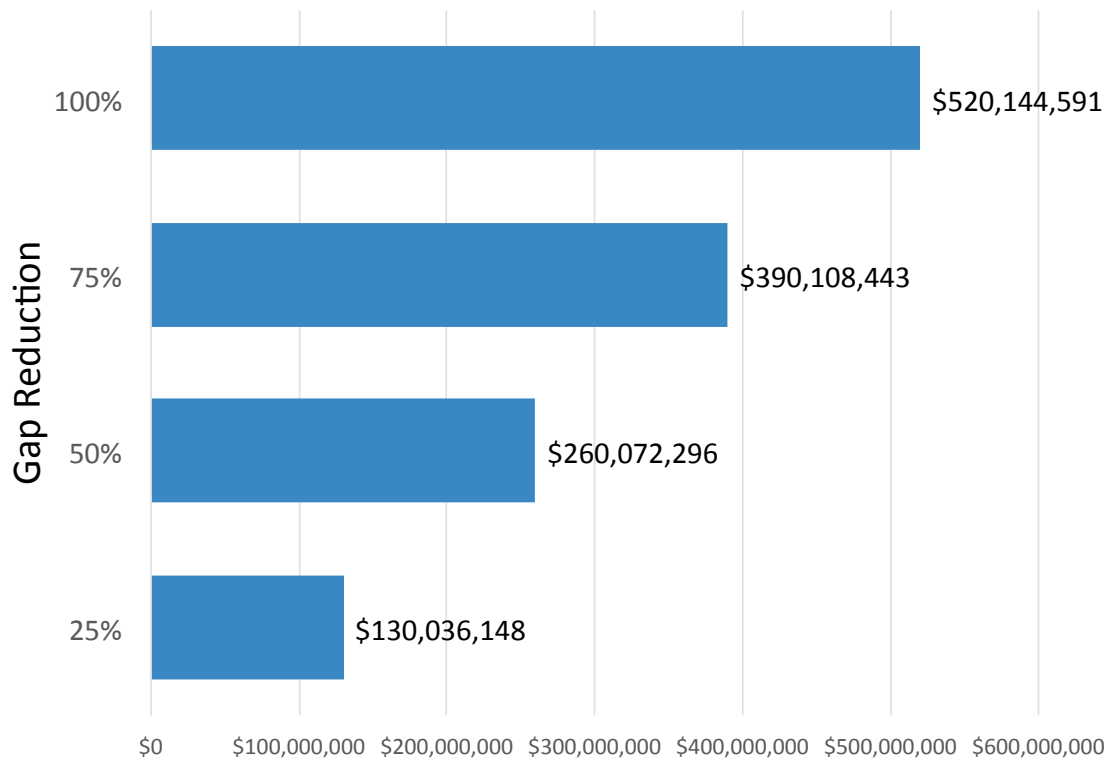
### **Reducing Costs of Exclusion**

Addressing employment barriers will also substantially reduce other costs associated with the economic exclusion and marginalization of Manitobans with disabilities.

Some of these, like alternative income and related supports, are direct costs borne by government and taxpayers. As has been reported, persons in the Disability Category account for an estimated 55% of Manitobans currently reliant in the province's Income and Employment Assistance EIA program. The cost of delivering this program and the benefits it provides totals \$557.7 million. Total expenditures for income benefits alone in 2016/17 are projected to exceed \$461 million. A conservative estimate of cost of income benefits provided to Manitobans with disabilities is more than \$265 million.

**Figure 8**

Estimated Net Increase in Employment Income Based on Levels of Progress in Achieving Parity in Rates of Persons with Disabilities Reporting Employment Earnings



As has been repeatedly been stated in this report, the vast majority of Manitobans with disabilities want to and are able to work. That so many are reliant on EIA because they are unable to earn employment incomes at levels adequate to provide for economic self-sufficiency is simply unacceptable.

In its final report, Ontario's Partnership Council provides an estimate of the savings and benefits that would accrue through a modest reduction in the number of persons with disabilities who rely on that province's social assistance program. Were only 5,000 persons with disabilities (1.5% of Ontario's case load) to become employed full-time at a moderate wage of \$17 per hour, Ontario would save \$69.5 million in

benefit payments and bring in an additional \$5.3 million in taxes for an annual return of \$74.8 million. As the council concludes:

The economic benefits of engaging more people with disabilities in the workforce produces a win-win-win scenario which cannot be contested. Individuals with disabilities win through gaining disposable income and improving their quality of life when they engage in the workforce and regain independence and dignity. Employers gain by filling vacant jobs with qualified, conscientious and loyal new employees. And governments gain on all sides of the transaction, by reducing social-benefit outflows, generating tax revenue and stimulating the economy.<sup>46</sup>

The Council's estimate only deals with direct costs and benefits. There are also many indirect costs associated with economic exclusion and marginalization. As summarized by the Martin Prosperity Institute, the exclusion of persons with disabilities and others from opportunities, freedoms, networks, events and resources of the society in which they live has a negative impact on that society and its economic prosperity.<sup>47</sup>

Exclusion erodes the well-being of one of the smallest societal units: the family. This erosion in turn produces costs to the

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<sup>46</sup> Partnership Council on Employment Opportunities for Persons with Disabilities Final Report. Posted at: <https://www.ontario.ca/page/partnership-council-employment-opportunities-persons-disabilities-report>

<sup>47</sup> Measures to address the cost of inclusion must also include ensuring adequate incomes for Manitobans who are unable to rely on employment to provide for economic self-sufficiency. The level of basic needs benefits provided by the EIA program to Manitobans with severe and prolonged disabilities means that many live in deep poverty for much of or most of their adult lives. A dignified income for these Manitobans was one of five priority issues raised in the Disability Matters: Vote 2016 campaign (see <http://www.disabilitymatters2016.ca/priority-issues/dignified-income>). The current Manitoba Make Poverty History campaign has called for increases to EIA benefit to ensure that all recipients receive incomes that are equal to at least 75% of the poverty line (see <https://makepovertyhistorymb.files.wordpress.com/2016/11/final-backgrounder-mphm-eia-campaign-2016-oct-173.pdf>)



community through unemployment, illiteracy and reliance on social support programs while, at the same time, preventing the community from benefitting from contributions from the excluded individuals. The negative effects of exclusion reverberate throughout an individual's personal network, particularly caregivers, spouses and children but also the social systems that rely on these connected individuals. Exclusion also holds the price tag of unrealized innovation and social capital for groups and communities.

While over regulation and unnecessary red tape can surely slow the economy, under regulation and lack of government leadership can also serve as a brake to economic growth. The lack of strong measures taken by government to address labour market inefficiencies and inequities related to the employment of Manitobans with disabilities is surely a prime example of the latter.

## **The Business Case**

The business case for employing persons with disabilities is every bit as compelling as the economic case for strong government action to address the employment barriers faced by persons with disabilities.

The following is just a brief overview of a representative sample of evidence that has emerged from recent research.

### **Lower Employee Turnover and Absenteeism**

- A Tim Horton's franchisee that operates six stores in Toronto and includes persons with disabilities in all aspects of operations experiences employee turnover of 35% compared to an industry average of 75%. In 2011, absenteeism of the franchisee's 35 employees with disabilities (17% of the workforce) was zero.
- A three-year study at Washington Mutual found a turnover rate of 8 percent among people with developmental disabilities, compared to an overall rate of 45 percent in the general population.
- Marriot reported a 6 percent turnover rate among persons with disabilities versus 52 percent overall.

- A DuPont Corporation study found that 85% of its employees with disabilities rated average or above on attendance.
- Job turnover among people who have a disability is estimated to be 20% of the rate of other employees. Statistics Canada research indicates that, in organizations with accessible employment practices, employee retention was 72% higher among people with disabilities.
- The benefit of reduced turnover is brought into focus by the cost of hiring and training new employees—or even making an internal transfer. A formula provided by the Corporate Leadership Council places the cost-per-hire associated with five categories of employees as follows:
  - Executive: \$21,686
  - Mid-level: \$8,291
  - Entry level college: \$9,798
  - Entry level non-college: \$5,436
  - Internal: \$3,168

### **Excellent Job Performance and Productivity**

- Ninety percent of persons with disabilities rate average or better on job performance compared with their colleagues without disabilities. In fact, 75% of Ontario’s small and medium sized enterprises who have employees with disabilities report that those employees meet or exceed their expectations.
- Walgreens’ management analyzed a total of 31 distinct locations in three distribution centers, including the one in Anderson, South Carolina, where 40 percent of employees have disabilities. In 18 locations, the difference in productivity rates was statistically insignificant; in three locations, employees without a disability were more productive; and in 10 locations, employees with a disability were more productive.
- According to a WCG International Consultants’ survey for the Government of British Columbia, 90% of employees with

disabilities rated average or better on job performance than their non-disabled colleagues.

## **Enhanced Innovation and Team Dynamics**

- An inclusive workforce has an innovation advantage. Because people with disabilities must often develop alternative paths to accomplish common tasks, they are forced to innovate constantly—a skill that can translate to the creation of new processes, products and services. As a CEO of a large accounting firm stated, “There is a war for talent and anyone who intends to win it better realize two things: First, that it is a global war and, second, that if you restrict your search for talent in any way...you will be giving your competitors the edge they need to put you out of business”.
- A Harvard study from the 1990s demonstrated that organizations leveraging diversity are better able to adapt to changes in the external environment, and are more innovative in anticipating and responding to these changes. Adaptive cultures dramatically outperformed non-adaptive ones across many indicators, with 90 percent posting increased market valuation compared to 74 percent.

## **Expanded Customer Base**

- In a 2006 national survey of U.S. consumer attitudes toward companies that hire people with disabilities, 87% of respondents said they agreed or strongly agreed that they would prefer to give their business to companies that employ people with disabilities. Eighty-three per cent agreed or strongly agreed that employing people with disabilities showed customers that businesses care about all workers. Furthermore, 92 percent of respondents were more favourable or much more favourable toward companies that hire people with disabilities.
- A 2008 COMPAS Research poll found that 78% of Canadians say that they are more likely to buy a product or service from a

business that has a policy of hiring people with disabilities than a company that doesn't.

- People with disabilities represent a major consumer market in Canada that has not been fully capitalized on by business. Royal Bank research estimates that people with disabilities spend about \$25 billion annually on goods and services.
- It is estimated that the income controlled by people with disabilities and those at risk of disability (those aged 55 and above) in Canada will be \$536 billion by 2031. Their impact on the Canadian economy increases significantly when taking into consideration their friends and families, who are also more likely to go to businesses that are inclusive of customers with disabilities.
- The Conference Board of Canada reports that businesses cannot market effectively to consumers with disabilities if they do not recognize and understand those consumers' needs. By creating inclusive workplaces, which include hiring employees with disabilities, businesses are able to better gain knowledge and understanding.

### **Strengthened Business Performance**

- Findings from The Return on Disability Group (RoDG), a research and advisory company based in Toronto and New York, suggest that companies that perform well across disability business factors outperform their industry peers in revenue growth and shareholder value. Since their index went live on September 9, 2014, through March 30, 2015, the U.S. Index has returned 9.73% — an outperformance of 4.14 % versus the S&P 500 total return. On a retrospective basis, since January 3, 2012, the index has returned 96.48% — 21.39% more than the S&P 500 total return over the same period. The retrospective results for Canadian companies were similar.
- Ongoing survey research conducted since 2004 by the U.S.-based Job Accommodation Network (JAN) has found that American employers that provide accommodations for employees with

disabilities frequently report multiple direct and indirect benefits. Here are the results updated to January 2016.

	% of Employers
<b>Direct Benefits</b>	
• Retained a valued employee	90.0%
• Increased the employee's productivity	73.0%
• Eliminated costs associated with training a new employee	61.0%
• Increased the employee's attendance	56.0%
• Increased diversity of the company	40.0%
• Saved workers' compensation or other insurance costs	38.0%
<b>Indirect Benefits</b>	
• Improved interactions with co-workers	64.0%
• Increased overall company morale	63.0%
• Increased overall company productivity	56.0%
• Improved interactions with customers	45.0%
• Increased overall company attendance	40.0%
• Increased profitability	27.0%

## 6. The Proposed Standard

Barrier-Free Manitoba's review of the proposed standard has been based on our best efforts to answer one essential question:

- If implemented as described, will the proposed employment standard ensure that substantial progress toward a fully accessible labour market is achieved by 2023?

While the emphasis on concise and plain language makes the paper very accessible and easy to read, the paper's lack of both detail and explanation make answering this question very difficult. For example, no information is presented on why certain elements were included in the proposed standard, nor why other elements were excluded. Moreover, no evidence is presented that would demonstrate the expected efficacy of the proposed standard.

Based on the information we have gathered, and the discussion we have had with selected stakeholder groups from Manitoba's diverse disability communities, our short answer to this essential question is 'No'.<sup>48</sup> We do not believe that the standard as proposed will make the substantial difference that is required under the *Accessibility for Manitobans Act*.

What is proposed in the discussion paper may 'inch' us forward but it does not adequately respond to the significance of the challenge ahead. We believe that much stronger and considerably expanded measures will be needed to achieve the level of progress envisioned in this landmark legislation

Our findings are presented in detail below. This includes 16 recommendations to build on key strengths, to address significant limitations and to complete further work that will be needed to establish and implement a strong and effective accessible employment standard.

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<sup>48</sup> See Appendix 2 for a list of the stakeholder groups that had a representative who participated in Barrier-Free Manitoba's Experts' Table Consultation held on December 7, 2016.

## Heavy and Uneven Reliance on Ontario’s Standard

The terms of reference established for the committee responsible for developing the initial recommendations for Manitoba’s accessible employment standard directed the committee to be innovative, to review best practices in employment and, where appropriate to “consider existing international standards, legislation, regulation codes, and best practices in Manitoba, other Canadian provinces, and internationally, in the area of employment accessibility”.

Despite the wide scope given to the committee, the accessible employment standard that has been proposed looks a lot like the standard that came into force in Ontario in 2011.<sup>49</sup> This is a major concern for Barrier-Free Manitoba for two reasons. First, as mentioned earlier in this report, the very limited experience to date with the implementation of Ontario’s standard does not provide an adequate base for adopting it as the best model for Manitoba.

Second, while what is being proposed in Manitoba includes two measures that provide for limited improvements, it also seemingly overlooks two of the Ontario standard’s primary strengths.

These strengths and serious oversights are described below.

### Improvements

#### Shorter Time Lines

Ontario’s standard provided employers, depending on their size and sector, with as much as five years to comply with most of its requirements. The proposed standard in Manitoba would require compliance with most of its requirements within three years:

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<sup>49</sup> Part of the reason for this may be that the terms of reference also directed the committee to focus on paid employment practice related to employee-employer relationships, including recruitment, hiring, and retention policies and practices. Another reason may be that the wide scope given to the committee was not matched by the level of resources that were made available to complete its work. This issue of inadequate resources will be discussed later in our report.

- The Government of Manitoba one year after the standard becomes a regulation;
- Every government agency, as described in The Financial Administration Act, two years after the standard becomes a regulation; and,
- All private and non-profit organizations three years after the standard becomes a regulation.<sup>50</sup>

These timelines proposed for Manitoba’s accessible employment are both fair and reasonable. They provide all employers with an extended period to meet, if they have not already done so, requirements that essentially represent 42 year-old human rights obligations. The timelines, as they should, require that government and public sector organizations take and demonstrate leadership in first complying with the standard. Further, they are also consistent with the model of the timelines used in Manitoba’s Accessible Customer Service Standard that came into force on November 1, 2015.

Our support for the proposed compliance timeline is contingent, however, on the accessible employment standard being completed and coming into force by no later than January 1, 2018. Any date beyond this will represent unacceptable delays by employers in complying with their basic human rights obligations.

***BFM Recommendation 1: That, contingent on the accessible employment standard coming into force by January 1, 2018, dates for compliance be set at:***

- ***One year for the Government of Manitoba***
- ***Two years for designated public sector organizations***
- ***Three years for all other obligated organizations.***

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<sup>50</sup> The one requirement with a shorter timeline relates to workplace emergency response information. All employers are “asked” to establish a plan and to have supports in place for employees with a disability “without delay”.



## **Coverage of Smaller Employers**

Like Ontario's standard, the standard being proposed in Manitoba places lesser obligations on smaller employers. Both use the number of employees to establish the 'dividing line'. In Ontario, a small employer is one with less than 50 employees. As proposed in Manitoba, a small employer is defined as having less than 20 employees. At this point, the only proposed differential obligations in Manitoba's standard relate to requirements for documented individual accommodations plans and return to work processes.

Barrier-Free Manitoba strongly supports both the practice of having differential requirements based on an employer size and the benchmark that has been proposed in Manitoba. The metric selected to divide smaller organizations from larger ones needs to be relatively straightforward and simple to understand. The measure of the number of employees meets these criteria.

Our strong support for the 20+ employee benchmark is based on four factors. First is scale. Clearly, organizations with 20+ employees are more complex and require more formalized management infrastructures than smaller ones. The greater scale of these employers will mean that they are much more likely to rely on human resource policies, practices and procedures.

Second, our strong support is based on optimizing coverage of Manitoba's employers and employees. As shown in Table 4, Manitoba had an estimated total of 40,699 employers in June 2016. Adopting the proposed 20+ benchmark would mean the documentary requirements proposed on Manitoba's standard would only apply to 6,105 or 14.8% of these employers. Ontario's 50+ employee benchmark would mean coverage of only 2,188 or 5.2% of Manitoba employers.

Third, our strong support for the employee benchmark that has been proposed in Manitoba is based on the vital roles played by small businesses as engines of job growth. According to Innovation, Science and Economic Development Canada, small businesses accounted for 87.7% of the net increase in jobs in the private sector

in Canada during the period 2002 to 2015.<sup>51</sup> While this figure includes firms with up to 99 employees, it demonstrates how important the overall small business sector will be to achieving parity or near parity in employment for Manitobans with and without disabilities.

**Table 4**

Employers by Number of Employees in Manitoba, June 2016<sup>52</sup>

Number of Employees	Count	Percent
1 to 4 Employees	20,920	51.4%
5 to 9 Employees	8,137	20.0%
10 to 19 Employees	5,627	13.8%
20 to 49 Employees	3,897	9.6%
50 to 100 Employees	1,165	2.9%
100 to 200 Employees	565	1.4%
200+ Employees	388	1.0%
Total	40,699	100.0%

Finally, our strong support is based on having a benchmark that is consistent with the one in Manitoba's Customer Service Standard. Expecting organizations with 20+ employees to meet documentary requirements for accessible customer service but not for accessible employment simply does not make sense.

There is one important caveat. Current Manitoba Workers Compensation policies related to return to work requirements only apply to employers with 25 or more full-time or regular part-time workers.<sup>53</sup> While the human rights obligation to provide reasonable accommodation and return to work processes applies to all employers, regardless of size, consideration should be given to harmonizing Workers Compensation's return to work requirements

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<sup>51</sup> As cited at: <https://www.ic.gc.ca/eic/site/061.nsf/eng/03022.html>

<sup>52</sup> Based on data reported in Statistics Canada's CANSIM Table 552-004

<sup>53</sup> These policies also only cover persons who have limitations due to workplace injury and/or sickness and to employees who have been employed for at least 12 consecutive months.

and those that will be established under Manitoba's accessible employment standard.

***BFM Recommendation 2: That the standard adopt the 20 or more employees as the benchmark for requiring that employers prepare written documentation of policies, practices and procedures related to accessible employment.***

***BFM Recommendation 3: That consideration be given to harmonizing Workers Compensation's return to work requirements and those that will be established under Manitoba's accessible employment standard.***

## **Essential Features Overlooked**

Barrier-Free Manitoba is deeply concerned that essential features included in Ontario's standard seem to have been overlooked in the development of Manitoba's accessible employment standard.

### **Accessible Employment Policies**

Part I of Ontario's standard, the general section, sets out two additional policy-related requirements that were not included in Manitoba's proposed standard:

- Every employer is required to develop, implement and maintain policies governing how the organization achieves or will achieve employment accessibility through meeting its requirements under the standard.
- All employers, other than small ones, must include a statement of organizational commitment to meet accessibility needs of persons with disabilities related to employment in a timely manner in its policies.<sup>54</sup>

In effect, the standard being proposed in Manitoba requires that employers develop and implement accessible human resource practices and procedures without requiring that they have any overarching accessible employment policy. This is a serious oversight.

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<sup>54</sup> These are adapted, not direct excerpts, from Ontario's Integrated Accessibility Standards.

At the same time, one shortfall in Ontario's standard is that it does not include any reference to an employer's obligations under human rights law to proactively prevent and remove barriers to accessible employment.

This can be improved upon in the Manitoba standard which should include a requirement for a commitment to the principle of universal design in the future development of business practices and infrastructure. Universal design is one of the four basic principles set out in the Act. It refers to designing products, processes and the built environment to be usable to the greatest extent possible by everyone, regardless of their age and ability.

***BFM Recommendation 4: That the standard require that all employers develop, implement and maintain policies that:***

- ***Include a statement of the employer's commitment to meet accessibility needs of persons with disabilities related to employment in a timely manner.***
- ***Include a statement of the employer's commitment to the principle of universal design and to the proactive identification and removal of barriers to accessible employment as a basic part of its planning processes.***

***Govern how the employer achieves or will achieve employment accessibility through meeting its requirements under the standard.***

### **Training**

Part I of Ontario's standard also requires that every employer ensure that training is provided on the accessible employment standard to all employees, volunteers, and persons involved in policy development to whom the standard is relevant to the performance of their duties.

The absence of any training requirement in the standard proposed in Manitoba is another clear oversight. At the most limited level, personnel responsible for implementing accessible human resource policies and practices need to understand what these are and what is required of them. At a broader level, education represents one of the

most powerful tools to promote understanding and change attitudes. Manitoba's standard must take full advantage of this and include robust training requirements. The importance of such training cannot be overstated given the limited understanding that many employers, particularly smaller organizations, seem to have of their existing human rights obligations.

Manitoba's Customer Service Standard, in contrast, includes clear training requirements. Understandably, training is only required by persons who have duties and responsibilities related to the delivery of goods and services. Where possible and applicable, the training requirements in the accessible employment standard should reflect the types of requirements included in the Customer Service Standard.

***BFM Recommendation 5: That the standard require that all employers ensure that training about accessible employment is provided to all employees, volunteers, and persons involved in policy development to whom the standard is relevant to the performance of their duties. The training must include:***

- ***A review of The Human Rights Code, the Accessibility for Manitobans Act and the standard.***
- ***A review of the employer's accessible employment policies and procedures and how these apply to the performance of their duties.***

***BFM Recommendation 6: That, consistent with the Customer Service Standard, the standard require that all employers ensure that:***

- ***Training is provided to a person as soon as reasonably practicable after the person is assigned the applicable duties.***
- ***On-going training is provided in connection with changes to the employer's policies and practices respecting accessible employment.***

***BFM Recommendation 7: That, consistent with the Customer Service Standard, all employers with 20 or more employees be required to***

***document their training policy, including a summary of the content of the training and when training is to be provided.***

### **Workplace Culture**

Employer policies and practices related to the standard will be most successful in workplace cultures that are positive and supportive and free from discrimination and harassment. Establishing and maintaining such workplaces are basic responsibilities of employers under human right law. An essential part of this regarding the standard will be promoting a basic understanding and appreciation of the human right to accessible employment and employer obligations among all employees, including those without any direct human resource duties.

For new employees, measures to promote this understanding can and should be incorporated into basic orientation and on-boarding processes. This same understanding can be promoted among existing employees through information sessions and ongoing communications.

***BFM Recommendation 8: That the standard require that employers provide a basic orientation to the human right to accessible employment and to their accessible employment policies and practices to all existing staff and to all new personnel.***

### **Other Measures Required to Strengthen the Standard**

There are several additional consequential issues that emerged from Barrier-Free Manitoba's review of the proposed accessible employment standard. These issues and associated recommendations are outlined below.

#### **Strengthened Language**

Barrier-Free Manitoba appreciates that the wording used in the discussion paper does not represent the final wording that would appear in the actual standard. The wording used was meant to be descriptive rather than technical. Notwithstanding this, words, even in a discussion paper like this, have clear meanings and they must be carefully chosen.

There are two instances in the discussion paper where restrained wording was used when stronger proscriptive wording was more

appropriate. The first instance occurs in the discussion of the individual accommodation plans. The paper states that the employer must “[a]llow an employee to request the participation of a representative from their bargaining agent or other representative in the development of the accommodation plan”. We believe that this should have stated that the employer must “ensure that the employee’s requested representative from their bargaining agent or other representative have the opportunity to participate in the development of the accommodation plan”.

The second instance is in the discussion paper’s section on workplace emergency response information. In this case, the paper states that “[b]ecause lives may be affected, all employers are asked to fulfill this requirement without delay”. Barrier-Free Manitoba believes that the standard should require, not ask, this of employers.

While these are isolated examples, every effort needs to be made to ensure the clarity of requirements in the next version of the proposed standard to be developed by the Minister, as well as in subsequent discussion papers that will be developed for other accessibility standards.

***BFM Recommendation 9: That clear and proscriptive language is used in the next version of this standard to be developed by the Minister to describe the standard’s requirements.***

## **Ensuring Requirements are Based on Best Practices and Stakeholder Consultations**

The proposed standard outlines the types of specific requirements that employers would need to meet related to both individual accommodation plans and return to work processes. Due to the discussion paper’s emphasis on brevity, these requirements are not described in detail.

The subsequent proposal for the standard that will be developed by the Minister, as well as the standard that becomes the formal regulation, will need to describe these specific requirements clearly and explicitly. This will be essential to ensure that employers know precisely what is

required of them in order to comply with the standard. This will also go a long way toward ensuring the effectiveness of the standard.

Clearly, the specific requirements that will be included in the standard will need to balance employer flexibility in developing and implementing the practices and processes that are most appropriate for their workplaces with the evidence of best practices. More employer flexibility will be called for in cases where best practices are diverse or not well established. More specified requirements will be called in cases where clear best practices are evident.

Considerable research and stakeholder consultations will be needed to determine when detailed requirements are called for, as well as the specific requirements that will need to be set out.

***BFM Recommendation 10: That focused research and stakeholder consultations on best practices related to accessible employment policies and practices be conducted and reported on to provide the basis for establishing specific requirements as part of the standard.***

### **Promoting Inclusive Recruitment**

The proposed standard includes several reasonable requirements related to employer recruitment practices. One serious shortfall, however, is that there is no requirement for employers to take any measures to help ensure that Manitobans with disabilities are made aware of employment opportunities.

While active outreach may not be required in the longer term, the current lack of awareness of employment opportunities by Manitobans with disabilities goes some way to explaining why many employers report that few if any persons with disabilities apply for jobs with their organizations. Reasonable outreach requirements to address this barrier need to be included in the standard.

***BFM Recommendation 11: That the standard be expanded to include requirements that employers provide information about employment opportunities to agencies and organizations that provide employment services to Manitobans with disabilities.***



## **Building Requirements into Collective Bargaining Processes**

Human rights cases make it clear that there are circumstances where a collective agreement between a union and employer can impede the effective accommodation of an employee in the workplace. This can result in a duty on the part of the union, and not just the employer, to help make sure that the employee is reasonably accommodated.

The proposed accessible employment standard does not specifically address this situation but it should. It is not necessary or desirable for the standard to set out in detail the duties of trade unions and employers when these situations arise. However, it would be helpful to expand the standard to require that a process, consistent with the traditional collective bargaining relationship of employers and unions, is in place so that when collective agreements are bargained in the future, they do not impede the achievement of accessible workplaces.

It would be helpful if during that collective bargaining process, the employer and union were to review any existing collective agreement, to identify if any barriers exist that would impede effective accommodation of employees or job applicants with disabilities, and if found, to negotiate provisions that address these barriers. It would also be helpful if during the collective bargaining process, the employer and union directed their attention to ensuring that no new barriers are created in the collective agreement that they eventually negotiate.

Similarly, in those very limited situations where a collective bargaining agreement is imposed through an arbitration process rather than through negotiations, the arbitrator should be under a duty, in devising the collective agreement, to ensure that the contract doesn't perpetuate any old barriers, or create any new barriers. As part of that process, the arbitrator could invite the union and employer to make submissions that identify: existing barriers in the expired collective agreement and possible new barriers contained in proposed terms put on the table by either party, as well as strategies for removing and preventing such barriers.

***BFM Recommendation 12: That consideration be given to expanding the standard to address the process of removing and preventing***

***barriers to effective workplace accommodation and accessibility in the collective bargaining process and in collective agreements. This process could:***

- ***Focus the attention of an employer and union involved in the process of bargaining a collective agreement towards identifying and removing existing barriers in the collective agreement, and preventing the creation of new barriers.***
- ***Require an arbitrator, undertaking binding arbitration of the collective agreement, to address identification and removal of existing barriers, and prevention of new barriers in the collective agreement, including inviting submissions from the union and employer on this topic during the arbitration process.***

### **Expanding Coverage to Unpaid Positions**

The committee that was responsible for recommending the initial proposed accessible employment standard was directed to focus on “paid employment practices, and related to employee-employer relationships, including recruitment, hiring and retention policies and practices”. This is what they did.

However, the journey toward paid employment for many persons with disabilities, particularly those with intellectual disabilities, often starts with volunteer, internship positions and student placements. Additionally, many educational and training programs include mandatory cooperative placements and volunteer requirements.

The standard, as proposed, will have a limited impact on these types of opportunities, even though employer obligations extend to both paid and unpaid work under human rights law. It will be important for consideration to be given to if and how the standards could be adjusted or expanded to address these situations.

***BFM Recommendation 13: That consideration be given to adjusting or expanding the standard to address the accessibility of volunteer and internship positions.***

## Measuring Impact

One of the primary limitations of Ontario's accessible employment standard is that there are no mechanisms built in to measure impact. The expectation, perhaps more the hope, is that the development and implementation of accessible employment policies and practices by employers will result in increased employment opportunities for persons with disabilities in individual organizations and across the province.

There is no way to test this assumption or to assess the overall impact of that province's accessible employment standard except for reliance on Statistics Canada data. This is very problematic as Statistics Canada has a long record of revising its definition of disability and how this is operationalized in its surveys. As a result, data from Statistics Canada only provides one-time snapshots of disability-related labour force conditions. The data does not provide for reliable or valid comparisons over time.

In contrast, the capacity to measure impact or lack thereof is one of the primary strengths of Canada's *Employment Equity Act*. This Act requires that all obligated employers establish numeric goals for the representation of members of designated groups<sup>55</sup> in its workforce. The Act also requires that these organizations establish and maintain employment equity records in respect to the employer's workforce. Finally, the Act requires that every public and private sector employer provide an annual report related to the employer's workforce, including but not limited to "the number of its employees hired, promoted and terminated and the degree or representation of persons who are members of designated groups."<sup>56</sup> Every year, progress in reaching equitable representation by public and private sector is reported in aggregated form.

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<sup>55</sup> The designated groups are women, Aboriginal peoples, persons with disabilities and members of visible minorities.

<sup>56</sup> As excerpted from the Act which is posted at: <http://laws.justice.gc.ca/eng/acts/e-5.401/>. The designated groups are women, Aboriginal peoples, persons with disabilities and members of visible minorities.

This process of setting and reporting on the achievement of goals is replicated by the Manitoba Civil Service Commission. In March 2015, persons with disabilities represented 5% of total provincial government workforce. This an increase from the 3.3% reported in March 2010. Based on this success, the Civil Service Commission recently increased its representational benchmark (basically its target) from 7% to 9%.

The goal setting and monitoring mechanisms that are part of The Employment Equity Act and used by the Civil Service Commission serve two broad and important purposes. First, they provide for a basis to measure impact and progress and support for improved evidence-based decisions when the standard comes up for review five years after it goes into effect.

Second, they provide a basis for holding managers and human resource officials accountable. This second purpose is critical. While having the basis to measure progress does not guarantee results, it does provide tremendous encouragement. One of the key findings from research conducted by the U.S. Equal Employment Opportunity Commission was that “[t]he success or failure of most disability programs is directly related to the degree of accountability placed on agency officials and managers”.<sup>57</sup> This reflects the adage offered by management guru Peter Drucker, “if you can’t measure it, you can’t manage it”.

Placing similar requirements for participation in an overarching measurement and monitoring system in Manitoba’s accessible employment standard is the only way to ensure that we have the means to assess the standard’s impact and the extent of the province’s progress toward achieving a fully accessible labour market.

***BFM Recommendation 14: That the standard be expanded to require employer participation in a measurement and monitoring system that provides the basis for assessing the standard’s impact and the province’s progress toward achieving substantial progress toward achieving a fully accessible labour market.***

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<sup>57</sup> Reported in Improving the Participation Rate of People with Targeted Disabilities in the Federal Work Force (January 2008). Posted at: <https://www.eeoc.gov/federal/reports/pwtd.pdf>

## Other Issues

Barrier-Free Manitoba has identified two additional issues of great importance that will need to be addressed to ensure the effectiveness of Manitoba's accessible employment standard. One relates to measures required to address the educational disadvantages faced by Manitobans with disabilities. The other relates to the need for the development of a robust implementation plan to support the launch of the standard.

### Addressing Current Educational Disadvantages

As discussed earlier in this report, Manitobans with disabilities face major educational disadvantages that have a serious and negative impact on their prospects in the competitive labour market. As reported, working age Manitobans with disabilities are less likely to complete high school and less likely to have a university degree.

Further, as reported earlier, these lower levels of educational standing have a disproportionate impact on labour market success for persons with disabilities. The national employment rate for university graduates with moderate disabilities in 2012 was very close to the rate for university graduates without disabilities (77% compared to 83%). The size of the gap in employment rates increase as levels of educational qualifications decrease. The employment rate for persons with less than a high school diploma and no disability was 65%. The rate for persons with this same level of education but with moderate disabilities was only 33%.

These findings provide compelling evidence that the measures to address the educational disadvantages faced by Manitobans with disabilities will be fundamental to achieving a fully accessible labour market.

This same evidence prompted the Government of Ontario to retain KPMG to conduct a comparative review of the accessibility of its educational systems. While KPMG's report<sup>58</sup> found that the accessibility of Ontario's system was comparable or better than systems in other

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<sup>58</sup> Research Services – Accessibility in Education. Final Report KPMG (August 12, 2015)

jurisdictions, the report identified a wide range of barriers to accessible education in Ontario. Examples of some of the barriers identified include:

- Long delays in getting needed individual accommodations and needed professional assessments.
- Bureaucratic barriers that impede access to needed educational supports and accommodations.
- Recurring poor transition planning for students with disabilities.
- Insufficiently including students with disabilities and their families in educational planning to meet the student's accommodation needs.
- The lack of a formal appeal process for students with disabilities or their families to question the educational organization's plans and actions to meet the accommodation needs of the student.
- Specific barriers to STEM (science, technology, engineering and mathematics) curriculum, e.g. for students with vision loss.
- Barriers to the accessibility of online learning resources such as those on the internet.
- Insufficient government monitoring of the implementation of Individual Education Plans (IEPs) for students with disabilities in school, college or university.<sup>59</sup>

Based on these findings and considerable pressure from and beyond its disability communities, the Government of Ontario recently announced its decision to develop an accessibility educational standard under *The Accessibility for Ontarians with Disabilities Act*.

The Manitoba government decided to develop the accessibility standards in the same areas that had originally been identified in Ontario. Barrier-Free Manitoba believes that Manitoba should continue

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<sup>59</sup> This list of examples is based on the AODA Alliance's review of the KPMG report.

following Ontario's lead in this regard and commit to establishing an accessible education standard in this province.<sup>60</sup>

We understand that there is a distinctive legislative and regulatory environment in Manitoba related to education, including but not limited to the Child Care Inclusion Support Program that is part of the Early Learning and Child Care Program, and the Amendment to the Public Schools Act: Appropriate Educational Programming. But we also understand that many of the same barriers that result in inequitable educational opportunities and outcomes for students with disabilities in Ontario continue to exist in Manitoba. Moreover, we understand that current barriers to educational equity continue to contribute to lower levels of labour market success for Manitobans with disabilities.

The starting point in the development of an accessible standard, as with all the standards under the Act, is to identify current barriers and to propose a standard to address them that will ensure that substantial progress toward full educational accessibility is achieved by 2023. The standard will need to complement what is in place already and to build on progress to date. Extensive consultations with the many stakeholder groups, from line staff to senior administrators, will also be essential to the development of a strong and effective educational standard.

Finally, we believe that the accessible educational standard will need to identify and address barriers throughout the continuum of education settings, from child care through to post-secondary and adult education, rather than dealing with the components of the system as separate and distinct silos.

***BFM Recommendation 15: That, following Ontario's recent decision, the Government of Manitoba commit to the development of an accessible education standard under The Accessibility for Manitobans Act that covers settings from child care to post-secondary and adult education and that this standard be developed and implemented within the government's current term in office.***

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<sup>60</sup> Notably, Ontario has also recently committed to the development of a separate accessible health standard. We encourage Manitoba to do likewise.

## **Planning a Robust Implementation Strategy**

The final issue that emerged from Barrier-Free Manitoba's review of the proposed standard relates to its almost complete reliance on requiring that employers develop and implement accessible human resource policies and practices. Our report has presented substantial background information on the myriad of employment barriers faced by Manitobans with disabilities. Employers' lack of accessible human resource policies and practices is but one. Other barriers include but are not limited to:

- Deeply ingrained employer attitudes based on myths related to Manitobans with disabilities.
- The lack of employer knowledge about their human rights responsibilities related to prospective and current employees with disabilities.
- The lack of employer knowledge of accommodation options and experience with employees with disabilities.
- The lack of available expertise and support for employers in making reasonable accommodation.
- The real and perceived concerns of prospective and current employees with disabilities related to discrimination and to sharing information about their disabilities as part of the hiring process or once on the job.
- Government policies that create disincentives for Manitobans with disabilities in seeking employment.
- The lack of a robust government policy and program framework required to support a major increase in employment among Manitobans with disabilities.

The proposed standard's requirement for employers to establish and implement accessible human resource policies and practices, while an important step forward, particularly if the recommendations we have made are followed, will not address these other important barriers.

As such, Barrier-Free Manitoba believes that the strength and effectiveness of Manitoba's accessible employment standard will



depend on government developing a robust implementation strategy that complements and supports the standard. This strategy must include extensive supports to both employers, particularly small and medium sized employers, and Manitobans with disabilities. The strategy should also include the type of sustained marketing campaign called for by the Partnership Council on Employment Opportunities in Ontario to heighten awareness of the value of employing, retaining and promoting persons with disabilities.

Finally, the strategy must include measures to address the many other barriers to employment that cannot and will not be adequately addressed through accessible human resource policies and practices. Many of these barriers were created by and are now sustained through the government's own policies and limitations in its current programs. It is incumbent on government to take a strong leadership role in ensuring that meaningful progress toward a fully accessible labour market is achieved by 2023. This leadership requires that government take full responsibility for removing the barriers that it itself has created and now perpetuates.

***BFM Recommendation 16: That the Government of Manitoba develop and adequately resource a robust implementation strategy that will provide increased support to employers and Manitobans with disabilities, facilitate greater awareness of the value of employing, retaining and promoting persons with disabilities and address other barriers to employment that will not be adequately addressed through employers' development and implementation of accessible human resource policies and practices.***

## 7. Related Matters of Concern

Barrier-Free Manitoba's report would be incomplete if we did not raise three additional matters of serious concern. Each of these has been raised in previous briefs we have submitted to government and in meetings we have had with Ministers responsible for *The Accessibility for Manitobans Act (AMA)* and their senior department officials. Despite having been repeatedly advised of these concerns, the government has made little progress in addressing them to date.

### Inadequacy of Government Resources

Barrier-Free Manitoba is deeply concerned with the apparent lack of a commitment by government to adequately resource the Disability Issues Office (DOI) and the Accessibility Advisory Council (the Council). These two bodies have critical roles to play in the implementation of the landmark AMA. Barrier-Free Manitoba does not believe that the two bodies have had the resources required to effectively meet their responsibilities to date. Based on Barrier-Free Manitoba's observations, available resources have already been stretched thin in efforts to implement the Customer Service Standard.

Clearly, these bodies do not have the resources required to lead in the implementation of the accessible employment standard and they have nowhere near the level of resources required to play strong leadership roles in developing the three outstanding standards in the areas of transportation, information and communication and the built environment that the government has committed to establishing before the next election. This does not include taking on responsibility for the development of an accessible education standard.

In an even broader sense, government does not yet seem to have dedicated the resources required to comply with its own obligations under the Act in a timely and robust fashion. Minister Scott Fielding, the Minister responsible for the Act, recently announced that the government's Customer Service Policy would be completed by mid-February, 2017. This is an important and welcomed step forward but the deadline set out in this standard for government to have developed the policy was November 1, 2016. This was the first opportunity for the

government to demonstrate real leadership in meeting requirements that organizations in other sectors will need to comply with over the next two years. That government has now committed to meet this first requirement a full two and one-half months late is not the type of leadership we had expected.

Moreover, the government has only very minimally met the second requirement, the development of multi-year accessibility plans which were due by December 31, 2016. The only plan that has been made public to date is the overall government plan.<sup>61</sup> Expectations, supported by previous government documents, had been that each department would be developing their own individual plans. So far no such plans are evident.<sup>62</sup>

The lack of the government's timely and robust compliance with its own Act and standards continues to be a grave concern. We are hopeful that recent developments point to increased government resolve and commitment.

***BFM Recommendation 17: That the Government of Manitoba review and commit to providing the level of resources needed to ensure the full and timely implementation of The Accessibility for Manitobans Act.***

## **Lack of Resources Available to Manitoba's Disability Communities**

The Council was initially established under *The Accessibility Advisory Council Act* with the responsibility of providing the Minister of the day with recommendations for scope and content of the yet to be developed AMA. One of the recommendations made to the Minister

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<sup>61</sup> The government recently posted its plan at:  
[http://www.manitoba.ca/csc/publications/accessgovsvc/pdf/mgap-pub\\_doc\\_en.pdf](http://www.manitoba.ca/csc/publications/accessgovsvc/pdf/mgap-pub_doc_en.pdf)

<sup>62</sup> Barrier-Free Manitoba sent an email message to all departments on February 1, 2017 to formally request copies of their plans, Departments were asked to send us the plans by February 28. We have not received any responses or messages of acknowledgement to date. We will be posting the plans we receive, along with the plans from other obligated organizations on our website at:  
<http://www.barrierfreemb.com/accessibilityplans>

was that government provide financial and other resources to Manitoba's diverse disability communities "to enable their fair and equal participation in the development of accessibility standards." The council noted that these resources would be needed to "fund research activity so that participants are informed on the key issues under discussion" and to "fund community consultations undertaken by organizations of persons with disabilities during the process of standard development".

With the appreciated but limited exception of funding from the DIO to cover the cost of accommodation, we are not aware of government providing any funding or other resources to the disability communities to support their "fair and equal participation".

Meanwhile, many other stakeholder groups have relatively greater access to technical and policy-related expertise important to developing responses to proposed standards and have significant lobbying capacities to ensure that their views are heard and given due consideration by government.

That our disability communities can scrape together the resources required to prepare a comprehensive report like this one demonstrates their resolve in promoting and protecting the human rights of persons with disabilities. That The Winnipeg Foundation (Barrier-Free Manitoba's largest recent funder) has provided two grants to date to fund community-engagement related to the implementation of the AMA demonstrates that we are not alone in understanding the need for additional resources.

The process that will lead to the accessible employment standard is only a beginning. Similar processes are expected to begin shortly that will lead to the development of three or four additional sets of standards. Given both the complexity and volume of the work ahead, our disability communities do not have the resources required to sustain the extent and high quality of our participation to date.

The AMA and the Accessible Customer Service Standard will both be more effective because of meaningful and thoughtful contributions from Manitoba's disability communities. Achieving a fully accessible Manitoba

is in everybody's interest. So too is government support to ensure the communities' fair and equal participation in all major AMA implementation activities.

***BFM Recommendation 18: That the Government of Manitoba provide financial and other resources to Manitoba's disability communities to ensure their capacity to conduct independent research and to support their fair and equal participation in the implementation of The Accessibility for Manitobans Act.***

## **Limited Progress on Development of a Compliance Regime**

Barrier-Free Manitoba has raised the lack of a compliance regime to enforce the standards as a serious concern on several occasions. The lack of a compliance regime means that standards will set out requirements for what obligated organizations must do but there will be nothing in place to assess and enforce compliance. Essentially, compliance with mandatory standards will be voluntary.

As Barrier-Free Manitoba's detailed response to a previous Council discussion paper noted, having a strong compliance regime will be critical to the overall effectiveness of the landmark AMA. The concluding paragraph of our response read:

We dearly hope that the Minister and the Accessibility Advisory Council have already started to identify pragmatic and progressive options for the compliance regime in Manitoba. We also hope that the Minister and the Accessibility Advisory Council will provide meaningful opportunity for Manitoba's disability communities to participate in early discussions to assess and refine these compliance options.<sup>63</sup>

There is little evidence that our earlier comments or the need for timely progress in developing a compliance regime have been heard.

Ontario struggled to develop and implement a provincial compliance regime. Like the AMA, the AODA sets out general powers and duties of a

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<sup>63</sup> Equality of Service: Preliminary Comments on the Proposed Customer Service Standard. Barrier-Free Manitoba (May 30, 2014). Posted at: <http://www.barrierfreemb.com/bfmbmaterials>

government representative responsible for enforcement. Unlike the AMA, the AODA also includes a clause [14(1)] that requires that organizations to which regulations apply file accessibility reports with the Director. The proactive submission of these reports by organizations forms one of the basic elements of that province's compliance regime. Details on the types and frequency of reporting requirements are then set out in accessibility regulations or standards.

Disability advocates have been critical of both the design and implementation of Ontario's compliance regime, but the fact of the matter is that Ontario actually has one, is working to improve it, and has recently added a toll-free telephone number that citizens can call to report on non-compliance.

While we were delighted that government announced last month that the Deputy Minister of Families had been appointed to serve as the Director of Compliance and Enforcement under the Act, Manitoba does not seem to have, or at least has not shared or involved disability communities in developing, any clear plan for the development of a compliance regime.

There is no reference to a compliance regime in the proposed accessible employment standard. The only reference to compliance in Manitoba's Accessible Customer Service Standard is that organizations will be expected to implement the accessible customer policies that they are required to develop.

We again urgently call on the provincial government to take immediate and dedicated action to develop clear plans for a strong and effective compliance regime.

***BFM Recommendation 19: That the Government of Manitoba take immediate and dedicated action to develop clear plans for a strong and effective compliance regime under The Accessibility for Manitobans Act.***

# Appendix 1

## List of Recommendations

***BFM Recommendation 1:*** *That, contingent on the accessible employment standard coming into force by January 1, 2018, dates for compliance be set at:*

- *One year for the Government of Manitoba*
- *Two years for designated public sector organizations*
- *Three years for all other obligated organizations*

***BFM Recommendation 2:*** *That the standard adopt the 20 or more employees as the benchmark for requiring that employers prepare written documentation of policies, practices and procedures related to accessible employment.*

***BFM Recommendation 3:*** *That consideration be given to harmonizing Workers Compensation's return to work requirements and those that will be established under Manitoba's accessible employment standard.*

***BFM Recommendation 4:*** *That the standard require that all employers develop, implement and maintain policies that:*

- *Include a statement of the employer's commitment to meet accessibility needs of persons with disabilities related to employment in a timely manner.*
- *Include a statement of the employer's commitment to the principle of universal design and to the proactive identification and removal of barriers to accessible employment as a basic part of its planning processes.*
- *Govern how the employer achieves or will achieve employment accessibility through meeting its requirements under the standard.*

***BFM Recommendation 5:*** *That the standard require that all employers ensure that training about accessible employment is provided to all employees, volunteers, and persons involved in policy development to*

*whom the standard is relevant to the performance of their duties. The training must include:*

- *A review of The Human Rights Code, the Accessibility for Manitobans Act and the standard.*
- *A review of the employer's accessible employment policies and procedures and how these apply to the performance of their duties.*

***BFM Recommendation 6:*** *That, consistent with the Customer Service Standard, the standard require that all employers ensure that:*

- *Training is provided to a person as soon as reasonably practicable after the person is assigned the applicable duties.*
- *On-going training is provided in connection with changes to the employer's policies and practices respecting accessible employment.*

***BFM Recommendation 7:*** *That, consistent with the Customer Service Standard, all employers with 20 or more employees be required to document their training policy, including a summary of the content of the training and when training is to be provided.*

***BFM Recommendation 8:*** *That the standard require that employers provide a basic orientation to the human right to accessible employment and to their accessible employment policies and practices to all existing staff and to all new personnel.*

***BFM Recommendation 9:*** *That clear and proscriptive language is used in the next version of this standard to be developed by the Minister to describe the standard's requirements.*

***BFM Recommendation 10:*** *That focused research and stakeholder consultations on best practices related to accessible employment policies and practices be conducted and reported on to provide the basis for establishing specific requirements as part of the standard.*

***BFM Recommendation 11:*** *That the standard be expanded to include requirements that employers provide information about employment*



*opportunities to agencies and organizations that provide employment services to Manitobans with disabilities.*

***BFM Recommendation 12:*** *That consideration be given to expanding the standard to address the process of removing and preventing barriers to effective workplace accommodation and accessibility in the collective bargaining process and in collective agreements. This process could:*

- *Focus the attention of an employer and union involved in the process of bargaining a collective agreement towards identifying and removing existing barriers in the collective agreement, and preventing the creation of new barriers.*
- *Require an arbitrator, undertaking binding arbitration of the collective agreement, to address identification and removal of existing barriers, and prevention of new barriers in the collective agreement, including inviting submissions from the union and employer on this topic during the arbitration process.*

***BFM Recommendation 13:*** *That consideration be given to adjusting or expanding the standard to address the accessibility of volunteer and internship positions.*

***BFM Recommendation 14:*** *That the standard be expanded to require employer participation in a measurement and monitoring system that provides the basis for assessing the standard's impact and the province's progress toward achieving a fully accessible labour market.*

***BFM Recommendation 15:*** *That, following Ontario's recent decision, the Government of Manitoba commit to the development of an accessible education standard under The Accessibility for Manitobans Act that covers settings from child care to post-secondary and adult education and that this standard be developed and implemented within the government's current term in office.*

***BFM Recommendation 16:*** *That the Government of Manitoba develop and adequately resource a robust implementation strategy that will provide increased support to employers and Manitobans with disabilities, facilitate greater awareness of the value of employing, retaining and promoting*

*persons with disabilities and address other barriers to employment that will not be adequately addressed through employers' development and implementation of accessible human resource policies and practices.*

***BFM Recommendation 17:*** *That the Government of Manitoba review and commit to providing the level of resources needed to ensure the full and timely implementation of The Accessibility for Manitobans Act.*

***BFM Recommendation 18:*** *That the Government of Manitoba provide financial and other resources to Manitoba's disability communities to ensure their capacity to conduct independent research and to support their fair and equal participation in the implementation of The Accessibility for Manitobans Act.*

***BFM Recommendation 19:*** *That the Government of Manitoba take immediate and dedicated action to develop clear plans for a strong and effective compliance regime under The Accessibility for Manitobans Act.*

## Appendix 2

### Disability Community Groups that Participated in Barrier-Free Manitoba-Led Consultations

Working within the restricted timeline that was available, Barrier-Free Manitoba organized and hosted an Expert's Table Consultation on December 7, 2016 with selected stakeholders from Manitoba's diverse disability communities. The purpose of the consultation was to gain insight into stakeholder views on the strengths and limitations of the proposed accessible employment standard.

While not responsible for Barrier-Free Manitoba's findings, or other content presented in this report, organizations with representatives who participated in the consultation included:

- Canadian Mental Health Association, Manitoba and Winnipeg Branch
- Canadian National Institute for the Blind Manitoba and Saskatchewan
- The Children's Coalition
- Community Living Manitoba
- Connect Employment Services
- Independent Living Resource Centre
- Manitoba League of Persons with Disabilities
- Manitoba Supported Employment Network
- New Directions for Children, Youth, Adults and Families
- Public Interest Law Centre
- Reaching E-Quality Employment Services
- SCE LifeWorks
- Society for Manitobans with Disabilities

## Appendix 3

### Barrier-Free Manitoba

Barrier-Free Manitoba is a non-partisan, non-profit, cross-disability initiative that was formed in 2008. We believed that the time had come for the Province of Manitoba to enact strong and effective legislation that required the removal of existing barriers to equitable access faced by Manitobans with disabilities, as well that prevented the creation of new ones.

- We believed and continue to believe that enacting such legislation is a basic matter of human rights.
- We believed and continue to believe that the removal of barriers is an entirely realistic and attainable duty.
- We believed and continue to believe that the removal of barriers is good basic public policy that will benefit everyone.
- We believed and continue to believe that enacting such legislation is about doing what is right and doing what is reasonable.

Driven by these beliefs, Barrier-Free Manitoba launched and sustained a determined 5+ year campaign to secure this legislation based on the following principles:

1. Cover all disabilities.
2. Reflect a principled approach to equality.
3. Move beyond the complaints-driven system to comprehensively address discrimination and barriers.
4. Establish a definite target date to achieve a barrier-free Manitoba.
5. Require the development of clear, progressive, mandatory and date-specific standards in all major areas related to accessibility that will apply to public and private sectors.
6. Establish a timely and effective process for monitoring and enforcement of the standards.
7. Incorporate ongoing leadership roles for the disability community.
8. Supersede all other provincial legislation, regulations or policies which provide lesser protections.
9. Not diminish other legal and human rights protections.

During the campaign, Barrier-Free Manitoba publicly released a total of thirteen substantive papers and/or reports related to provincial accessibility-rights legislation. These include:

1. A Barrier-Free Manitoba (September 2008)
2. Analysis of Accessibility Legislation Models – Public Interest Law Centre (April 2009)
3. Fair Access for All! Initial Response to Opening Doors (September 2009)
4. Accessibility Standards Legislation: A Strategic Options Paper – Bakerlaw (May 2010)
5. Accessibility Standards Legislation: Centralized or Dispersed Approaches – Bakerlaw (June 2010)
6. Response to Discussion Paper for Made in Manitoba Accessibility Legislation (December 2010)
7. Bill 47: An important Step Toward the Effective Promotion and Protection of the Human Rights of Manitobans with Disabilities (June 2011)
8. A Solid Foundation for Strong and Effective Legislation: Our Response to the Accessibility Advisory Council Discussion Paper on Accessibility Legislation (May 24, 2012)
9. Global Messages of Encouragement (June 5, 2012)
10. Overview of Manitoba Accessibility Advisory Council's Recommendations and Comments: Barrier-Free Manitoba's Position Paper (October 1, 2012)
11. Stronger Measures Essential for Effective Legislation: Comments on the Manitoba Accessibility Advisory Council's Recommendations (October 1, 2012)
12. Progress on Track: Comments on the Government 'White Paper' Response to Recommendations for a Made-in-Manitoba Act (January 31, 2013)
13. Brief to the Social and Economic Development Standing Committee (October 28, 2013)

This legislation was passed and proclaimed in December 2013 in the form of the landmark *Accessibility for Manitobans Act* (AMA).

The lengthy campaign represented a major investment of time, commitment and creativity and was only successful because of the widespread support provided by organizations and individuals from and beyond Manitoba's disability communities.

In May of 2014, Barrier-Free Manitoba began the next stage of our initiative – working to ensure the timely and effective implementation of the AMA. As part of the transition to this next stage, Barrier-Free Manitoba consulted with our communities and developed nine principles to guide the implementation of the Act.

To be effective, the implementation of *The Accessibility for Manitobans Act* must:

1. Cover all disabilities.
2. Reflect a principled approach to accessibility that respects human rights enshrined in provincial, national and international law.
3. Provide for the development and enactment of mandatory and date-specific standards in all major areas related to accessibility that:
  - Apply to the governmental, private and not-for-profit sectors.
  - Provide for the prevention and systemic removal of barriers at the earliest possible date.
4. Establish, operate and report on proactive and comprehensive monitoring and enforcement of these standards.
5. Incorporate and sustain ongoing leadership roles for the disability community, as well as meaningful and timely opportunities for consultations with all persons affected by disabilities.
6. Be transparent and open as the law allows, including the public availability of clear, accurate, complete, relevant and timely information on both process and outcomes.
7. Provide for public accountability of progress and results.
8. Provide for the completion and publication of an inclusive and independent review of the legislation and its implementation within four years of the passage of the legislation and then every five years thereafter.
9. Not diminish other legal and human rights protections.

Initial work during this stage has focused on active participation in the development of the first standard proposed under this legislation, the customer

service standard. The major documents prepared and released by Barrier-Free Manitoba related to this standard include:

1. Equality of Service: Preliminary Comments on the Proposed Customer Service Standard (May 2014)
2. Equality of Service: Final Brief on the Proposed Customer Service Standard (July 2014)
3. Making Accessible Customer Service the New Minimum Standard: Preliminary Comments on the Consultation Draft (April 2015)
4. Making Accessible Customer Service the New Minimum Standard: Final Comments on the Consultation Draft (May 2015)

Barrier-Free Manitoba has also actively participated in the public consultation sessions held in June 2014 to seek feedback and comment on the initial proposal for this standard.

As part of our feedback, Barrier-Free Manitoba has repeatedly highlighted the need for the provincial government to develop and implement a robust compliance and enforcement regime, to provide adequate resources to its own operations to support the effective implementation of the AMA, and to ensure that that representatives and members of the disability community have access to the independent technical resources and expertise required to be full and equal participants in implementation activities.

Barrier-Free Manitoba continues to be led by a Steering Committee with members spanning Manitoba's disability communities. The current members of the Steering Committee and, where applicable, their organizational affiliations are:

- Dale Kendel
- David Steen
- Jeannette DeLong (Abilities Manitoba)
- Janet Forbes (Children's Coalition)
- Jennifer Frain (New Directions for Children, Youth, Adults and Families)
- Marion Cooper (Canadian Mental Health Association, Manitoba and Winnipeg Branch)
- Oly Backstrom (Manitoba Supported Employment Network)