

Unnecessary Delay? Bill 47, *The Accessibility Advisory Council Act and Amendments to The Government Purchases Act*

K A R I N E L E V A S S E U R *

I. INTRODUCTION

Manitobans with disabilities face significant barriers. These include institutional, physical, attitudinal and other barriers when these citizens try to access employment, education, housing, transportation and social or recreational programs. With a disability rate appreciably higher than the national average (15.7% compared to 14.3%)¹ coupled with an aging population, Manitoba is set to experience even higher rates of disability. Accessibility is an important policy issue in general and even more important in Manitoba.

Defined as the prevention and removal of barriers,² accessibility in Canada is primarily promoted through a complaint driven process. This approach relies on the individual to file a complaint with the appropriate body such as the federal or provincial human rights commissions, depending on the constitutional jurisdictional sphere at play.³ Once a complaint is filed,

* Assistant Professor, Department of Political Studies, University of Manitoba. The author would like to thank Donna Miller and Darcy MacPherson for their thoughtful comments on an earlier version of this paper. She also wishes to thank the Journal's reviewers and editor for their helpful comments.

¹ Statistics Canada, *Participation and Activity Limitation Survey 2006: Tables (Part VI)* (Ottawa: StatCan, 2010) at 8.

² Katrina Kovacs Burns and Gary Gordon, "Analyzing the Impact of Disability Legislation in Canada and the United States" (2010) 20 *Journal of Disability Policy Studies* 4 at 206.

³ *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, ss 91 and 92, reprinted in RSC 1985, App II, No 5.

the appropriate body may mediate the complaint or proceed with an investigation and adjudication. This approach places the onus on the person with the disability to defend his or her rights. Self-determination is often important to the ongoing protection of human rights for persons with disabilities. Indeed, the expression “Nothing about us without us” is a critical aspect of disability-rights discourse.⁴ However, the complaint driven approach can have certain drawbacks, in that it can result in a piece-meal and potentially incoherent approach to the promotion of accessibility. This leaves persons with disabilities vulnerable to an array of barriers, which is antithetical to the accessibility being sought.⁵

Another approach, which has been adopted by several jurisdictions including Ontario, Australia, the United Kingdom and the United States, is designed to complement the complaint-driven approach. Accessibility legislation is thought to be a more proactive approach to prevent new barriers and remove existing barriers through the development and enforcement of accessibility standards applicable to private, non-profit and public-sector organizations. Accessibility legislation constitutes systemic change. Entirely prescriptive, these standards outline the minimum level of acceptable accessibility (for example, use of slip-resistant flooring on buses) in a more systematic and timely manner than the complaint driven approach.⁶

While jurisdictions like Manitoba are looking to develop accessibility legislation, comparative research begun by Michael Prince reveals there is a lack of consensus within the disability community on the benefits of this approach.⁷ Prince delineates three positions held by disability advocates. The first position holds there is no need for accessibility legislation because the

⁴ As an example, see the work of James Charlton, *Nothing About Us Without Us: Disability Oppression and Empowerment* (Berkeley, CA: University of California Press, 2000).

⁵ Ontario, Ministry of Community and Social Services, *Charting a Path Forward: Report of the Independent Review of the Accessibility for Ontarians with Disabilities Act, 2005* by Charles Beer (Ottawa: Queen’s Printer for Ontario, 2010) at 7.

⁶ Cara Wilkie and David Baker, *Baker Law Paper on Legislative Options* (2010) at 34, online: Barrier-Free Manitoba <<http://www.barrierfreemb.com/bfmbmaterials>>. See also Burns and Gordon at 207 for their review of the Canadian disability literature which concludes that accessibility legislation is needed at the federal level to compliment the *Canadian Human Rights Act*.

⁷ Michael Prince, “What about a Disability Rights Act for Canada? Practices and Lessons from America, Australia, and the United Kingdom” (2010) 36:2 *Canadian Public Policy* 199.

complaint driven approach, with some improvements, can respond to long term issues. Within this position is the concern that accessibility legislation may be accompanied by certain political risks notably that such legislation may “ghettoize disability as a social policy area” and undermine other disability-related policy advancements.⁸ The second position holds an ambivalent view on accessibility legislation while the third position is unequivocal in its support for this type of legislation and holds firm to the idea that accessibility legislation can be used to achieve other goals such as greater public awareness of disability issues.

Although we can never expect one community to hold similar views on public policy matters, Manitoba’s recent experience with accessibility legislation suggests there is more support for the third position on the part of the disability community.⁹ Given a formidable advocacy effort by the disability community, the Province of Manitoba recently passed Bill 47, *The Accessibility Advisory Council Act and Amendments to The Government Purchases Act*.¹⁰ This Bill does not establish accessibility standards however. Rather, it provides a process for recommending accessibility standards to the Minister with the goal of entrenching the accepted standards in legislation and regulation at a later date.

This paper provides an assessment of Bill 47 and begins with a summary of the Bill and an outline of its legislative development. This paper is not intended to provide analysis of the merits of accessibility standards *per se*, because Manitoba does not yet have such standards. Rather, this paper anchors its analysis in the policy and legislative process used to develop accessibility standards. It argues that this Bill, which proved relatively easy to pass, unnecessarily delays the development of accessibility standards in Manitoba. The analysis reveals there were previous attempts to consult and develop accessibility standards and concludes the pursuit of accessibility legislation has been over-processed. The paper also provides some thoughts as to the key challenges the government and disability community will face moving forward.

⁸ *Ibid* at 210.

⁹ Interview of disability advocates (12 December 2011).

¹⁰ 5th Sess, 39th Leg, Manitoba, 2011 (assented to 16 June 2011), SM 2011, c 37.

II. SUMMARY OF THE ACT

The Bill proposes two areas for reform. First, it amends *The Government Purchases Act* and how purchases are to be made. This amendment enables the development of “barrier-free purchasing guidelines” through regulations that, in turn, commit the Province of Manitoba to purchase goods in accordance with these guidelines “whenever possible.” Second, it establishes an Accessibility Advisory Council of 6-12 members appointed by the Lieutenant Governor in Council for a three-year term of office. These members are appointed from two target groups: individuals who have a disability or act as representatives from disability organizations; and, representatives of individuals or organizations that promote a barrier-free society. Meeting a minimum of six times per year and flanked by sub-committees, the Council is mandated to provide advice and recommendations to the Minister on the development of accessibility standards that work to prevent and remove barriers. Prior to making recommendations to the Minister, the Council must consult with the disability community and consider the technical and economic implications of preventing or removing a barrier. Once the Council submits its initial recommendations, the public is provided an opportunity to make comments and the Minister is required to provide a written response to the Council on its recommendations and any public comments received about said recommendations.

III. PASSAGE OF BILL 47

A. First and Second Readings

In early summer 2011, Bill 47 *The Accessibility Advisory Council Act and Amendments to The Government Purchases Act* was introduced into the Legislature of Manitoba. The first reading was moved by the Honourable Jennifer Howard, Minister Responsible for Persons with Disabilities and seconded by the Honourable Theresa Oswald, Minister of Health on 1 June 2011.

The second reading was initiated on 6 June 2011 and so moved by the Honourable Jennifer Howard, and seconded by the Honourable Gord Mackintosh, Minister of Family Services and Consumer Affairs. This motion was later adopted by the House on 8 June 2011. In speaking to the Bill, the Honourable Jennifer Howard pre-empted the central criticism associated with

the proposed legislation by acknowledging that it was “by no means the final destination or the silver bullet that is going to make Manitoba a fully accessible province, but it is another step in that journey.”¹¹

What is perhaps most striking about this legislation was the absence of conflict and the support it received from all three political parties in the legislature. Perhaps, however, this should not be a surprise because disability is an issue that cuts across partisan lines.¹² Mr. Kelvin Goertzen, PC MLA for Steinbach stated that “the intention of the bill... is important”¹³ while Leader of the Liberal Party, the Honourable Jon Gerrard, expressed support for an accessible province.¹⁴ While supportive of the legislation in principle and supportive of it proceeding to the committee stage, Mr. Goertzen and the Honourable Jon Gerrard also expressed disappointment that the proposed legislation did not go further in developing a more comprehensive plan to make Manitoba barrier free. The comments made by the Honourable Jon Gerrard, however, were more stinging reminding the government that it had “a decade of discussion of this area with very little action, and what we need is a decade of action rather than more discussion.”¹⁵

B. Standing Committee on Human Resources

The Standing Committee on Human Resources held public hearings on 16 June 2011. A total of 24 presentations—22 oral and 2 written—were made. Given this large number, this paper will report these presentations thematically.

A common theme running through the vast majority of the presentations related to the support for Bill 47, but this support was tempered by a significant degree of disappointment and frustration for two reasons: the

¹¹ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, vol LXIII, No 57 (6 June 2011) at 2591 [*Debates* (6 June 2011)].

¹² In the Standing Committee hearings, Bonnie Mitchelson, PC MLA for River East affirms, “I think, as many have indicated, that this is a non-partisan issue. I believe that we all need to work together towards the end goal of having good legislation here in Manitoba.” See Manitoba, Legislative Assembly, *Standing Committee on Human Resources*, 39th Leg, 5th Sess, vol LXIII, No 2 (13 June 2011) at 38 [*Committee* (13 June 2011)].

¹³ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, vol LXIII, No 59 (8 June 2011) at 2698.

¹⁴ *Debates* (6 June 2011), *supra* note 11 at 2592-2593.

¹⁵ *Ibid* at 2592.

legislation was long overdue and it did not go further in providing full accessibility rights. The former point was perhaps best evidenced by the comments made during one of the oral presentations:

I have seen reports before, and have participated in discussions on this matter for a long time. I was around for the [Full Citizenship White Paper] in 2001...and I was here for the Opening Doors paper in 2009. To be frank, and I say this with the most respect, I have heard enough talk; enough of the white paper, yellow paper, red paper, on the positive impacts of accessible legislation and practice in Manitoba. The time for community and government to act is now. No one in this room wants to see another report put on the shelf. We are at the bridge; let's cross over and get this thing done.¹⁶

On the latter point, a submission to the Standing Committee by Barrier-Free Manitoba summarized the lack of substance in the proposed Bill:

Our main criticism of the Bill is that it is transitional rather than substantive in nature. Barrier-Free Manitoba, along with many others, had hoped that legislation passed in the 39th session of the Legislature would have instituted historic reforms. Instead, this Bill sets out and legislates the process that is subsequently expected to lead to these reforms.¹⁷

Somewhat related to this point was the concern that this Bill, which was entirely procedural, may not yield accessibility standards in a timely manner. Several presenters commented on the need to add a specific target date in the legislation for Manitoba to become barrier free and prevent further delays or even inaction as evidenced by one presenter:

Timelines create a sense of urgency and importance to meet the goals. A timeline is an empowering tool for a leader, in this case, the Province, for keeping the feet to the fire, keeping the dream alive, giving permission to check in, creating accountability and providing an opportunity for correction, communication and encouragement. Without that timeline, the legislation will be more susceptible for delay, disregard and eventual disappearance.¹⁸

Despite these concerns, the majority of presenters conceded that this Bill was a small, but important step towards the long term goal of legislating accessibility rights in Manitoba.

¹⁶ Committee (13 June 2011), *supra* note 12 at 31 (Terry McIntosh).

¹⁷ Barrier-Free Manitoba, Submission to the Human Resources Standing Committee (13 June 2011) at 1, online: Barrier-Free Manitoba <<http://www.barrierfreemb.com/bfmbmaterials>>.

¹⁸ Committee (13 June 2011), *supra* note 12 at 39 (Jeannette Delong).

Two amendments, both moved by the Honourable Jennifer Howard were adopted at the Committee Stage based on the recommendations of presenters. The first amendment augmented the Preamble to emphasize that future legislation must complement the provincial *Human Rights Code*. Presenters noted that the draft bill referenced the *United Nations Convention on the Rights of Persons with Disabilities* and the *Canadian Human Rights Code*, but that there was no reference to the provincial *Human Rights Code*. Given that this Code is the defining source for human rights protection in provincial areas, the House agreed to add the following clause to the Preamble:

AND WHEREAS legislation is needed to establish a systemic and proactive approach for identifying, preventing and removing barriers that will complement *The Human Rights Code* in ensuring accessibility for Manitobans.¹⁹

The second amendment related to the timeliness of the Accessibility Advisory Council's mandate. The Bill referenced that the Council will advise and make recommendations to the Minister on legislative and regulatory provisions to systematically identify, prevent and remove barriers for persons with disabilities. Presenters noted that this does not speak to the issue of making timely recommendations. By agreement, an amendment was made to Bill 47 to reflect that the Accessibility Advisory Council will make recommendations in a timely manner. However, this amendment did not provide a specified timeline for the province to be barrier-free as requested by several presenters.

C. Third Reading, Royal Assent, and Coming Into Force

On June 16, 2011, the Honourable Jennifer Howard moved the amended Bill 47 to third reading. This motion was seconded by the Honourable Kerri Irvin-Ross, Minister of Housing and Community Development. Before voting on the motion, the Honourable Jon Gerrard reiterated his support for the concept of a barrier-free society and acknowledged that this proposed legislation was “one step in that direction and that much, much more needs to be done.”²⁰ The motion for concurrence

¹⁹ *Supra* note 10.

²⁰ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Legislature, 5th Session, vol LXIII, No 64B (16 June 2011) at 2985.

and third reading passed and Royal Assent was received the same day. The Act came into force upon receiving Royal Assent.

IV. ANALYSIS

The disappointment expressed by disability advocates over Bill 47 stems from two key issues. The first is that it took too long to develop Bill 47 and the second is that it does not provide accessibility rights, but only offers a process for potential reform in this area.

In relation to the first concern, did it take too long for the Province of Manitoba to move towards accessibility legislation? To answer this question, we must turn to the release of a White Paper titled “Full Citizenship: A Manitoba Provincial Strategy on Disability” in 2001.²¹ While it is not the intention of this paper to review the entire disability policy framework over the last ten years, let alone analyze it, the discussion contained in the White Paper is important because it employed a lens for full inclusion, including accessibility, of persons with disabilities. This goal of full inclusion was built on four key areas—income support, disability support, employment and access to government—with proposed measures for each area. In addition, the discussion paper discusses a pro-active accessibility model through such mechanisms as regulation, guidelines and enforcement to accompany the existing complaint-based approach to human rights legislation.²² However, it would take another 10 years before the first step to achieving this proposal was initiated in the form of Bill 47. At the same time, another Canadian jurisdiction—Ontario—moved farther and faster on the development of accessibility legislation.

One can only speculate why it took ten years to initiate the first step towards building such a model. Perhaps it is partly due to the fact that in the last ten years, five different cabinet ministers have been given this responsibility, meaning there may not be consistent attention to the issues that confront persons with disabilities. This is not due to either malice, a lack of talent or care amongst those responsible for this portfolio. Rather, short

²¹ Manitoba, *Full Citizenship: A Manitoba Provincial Strategy on Disability* (Winnipeg: Disability Issues Office, 2001). online: Government of Manitoba Disabilities Issues Office <<http://www.gov.mb.ca/dio/citizenship/index.html>>.

²² *Ibid* at 37.

tenures tend to inhibit systemic change.²³ The more likely reason, I suggest, rests with a general lack of political will on the part of government, but even within the disability community there appears to have been no sustained groundswell of support to move accessibility standards forward in the early days, perhaps because accessibility legislation is not as tangible as other policy fields such as income security and housing.²⁴ It may have been difficult for the disability community to conceptualize what a standard looks like (for example, a customer service standard) and how it could affect them.

It would not be until late 2008 that this issue would garner the attention of the Province of Manitoba as a result of a particularly strong and effective advocacy campaign by a large coalition of coalitions known as Barrier Free Manitoba.²⁵ Perhaps the most interesting aspect of this study is how Barrier Free Manitoba identified an opening in the public policy process that allowed for mobilization around systemic change in the form of accessibility legislation to occur. This opening emerged from a series of events. The first event included the *United Nations Convention on the Rights of Persons with Disabilities*. Canada signed this Convention on March 3, 2007 and later ratified it in 2010 which requires a commitment to the Convention in building a more accessible society. The second event occurred in August 2008 with amendments made by Parliament to the *Museum Act*. These amendments allowed for the establishment of the Canadian Museum for Human Rights. With the Museum to be located in Manitoba's capital city, it brought national and international attention to the fact that, for many people, disability is a pressing human rights issue.

The third event relates to the number of human rights complaints based on disability under provincial jurisdiction. Over time, the number of complaints has been steadily increasing. In 1998, the Manitoba Human Rights Commission indicates that 25% of complaints were disability-related²⁶

²³ The five cabinet ministers responsible for Persons with Disabilities include Tim Sale (January 2011–September 2002), Drew Caldwell (September 2002–November 2003), Christine Melnick (November 2003–September 2006), Gord Mackintosh (September 2006–November 2009), and Jennifer Howard (November 2009–present).

²⁴ Interview of disability advocates, *supra* note 9.

²⁵ Barrier Free Manitoba is a non-partisan coalition of coalitions consisting of 99 disability-related organizations and seven alliances/coalitions/federations as of 5 July 2011.

²⁶ Manitoba Human Rights Commission, *Annual Report* (Winnipeg: MHRC, 2001) at 7.

while in 2010, this share has increased to 37.3%.²⁷ So while it took ten years for this type of systemic change to emerge as a viable policy option, the timing of Barrier Free Manitoba to emerge as an advocacy coalition was at the convergence of a number of factors that made its message more easily heard. The lesson learned here for advocates and lawyers concerns the ability to recognize when a policy window is opening. A policy window, as Dr. Les Pal describes the term, is a regular or unpredictable event or series of events that provide an opportunity to influence the agenda of a government.²⁸

The fourth event unfolded in June 2009. At that time, a discussion paper titled *Opening Doors: Manitoba's Commitment to Persons with Disabilities* was released. This document committed the Province to consult on a variety of issues including how to advance accessibility-rights for persons with disabilities and this goal was later reiterated in the 2009 Throne Speech. The last event occurred with the resignation of former Premier Gary Doer in August 2009. With his resignation, a fortuitous opportunity to promote the need for accessibility legislation arose during the campaign to replace him. Both candidates—Greg Selinger and Steve Ashton — agreed that if elected they would enact accessibility legislation.²⁹ With Selinger's victory, his government proceeded to put forward Bill 47.

With this consultation process, the Province was clearly committed to move towards developing accessibility legislation. The logical question to ask is why it proceeded with procedural-based legislation rather than producing substantive accessibility legislation. In the view of the government, establishing a legislative process by which future legislation could be developed was seen as the responsible option. Many disagreed. The Honourable Jennifer Howard noted:

[T]here will continue to be those, particularly those people representing people with disabilities and seniors and all people who benefit from a more accessible province, who push us to go farther and faster, and we respect those voices. We also know it's responsible to move forward in this, which is a new realm of government regulation.

²⁷ Manitoba Human Rights Commission, *Annual Report* (Winnipeg: MHRC, 2010) at 12.

²⁸ Les Pal, *Beyond Policy Analysis: Public Issue Management in Turbulent Times*, 4th ed (Toronto: Nelson, 2010) at 127.

²⁹ Barrier Free Manitoba, Media Release, "Leadership Candidates Agree on Need for Accessibility Legislation" (29 September 2009), online: Barrier-Free Manitoba <<http://www.smd.mb.ca/uploads/BFM%20Momentum%20Media%20Release%20Draft.pdf>>.

We have to move forward responsibly and in doing that, we have to make sure that we're talking to other levels of government, that we're talking to the private sector and the public sector, but that we're also taking into account all of those with disabilities.³⁰

This need to move cautiously was echoed by Ms. Sharon Blady, NDP MLA for Kirkfield Park, who opined that:

[T]here's no sense running forward too fast and tripping over your own feet, as opposed to moving at a more prudent pace that allows you to do things the right way. Do it once and do it right and then tweak as you go along as needed as technology and situations evolve.³¹

While many presenters lamented that Bill 47 lacked substance to advance accessibility rights as noted earlier, at least one presenter expressed an understanding for the government's approach:

I understand the path that the government has taken on this issue, and that is to, as much as possible, build broad-based community support for the remedies before taking more definitive action. This is a good public policy measure to take but, having said that, there's no doubt that the need for action is apparent.³²

Given the support of every political party and the importance of promoting accessibility in a timely manner, one would think that the option of proceeding directly with accessibility legislation was viable. However, as with most public policy, disagreement is generally found in the details. Accessibility legislation, particularly the regulations which will outline the specific standards to be enforced, is likely to be no different.

What is perhaps most striking about this policy issue is that, in addition to the 2009 consultation process, there existed another mechanism to provide advice to the Minister on accessibility legislation. This was in existence prior to Bill 47. A "Ministers' Advisory Committee on Accessibility Legislation" was established in December 2010 and met to advise on the development of accessibility legislation.³³ In March 2011, this Committee provided its report to the Minister. There was a belief within the disability

³⁰ *Debates* (6 June 2011), *supra* note 11 at 2592.

³¹ Manitoba, Legislative Assembly, *Debates and Proceedings (Hansard)*, 39th Leg, 5th Sess, vol LXIII, No 58B (7 June 2011) at 2662.

³² *Committee* (13 June 2011), *supra* note 12 at 39 (Kevin Rebeck).

³³ Manitoba, Disability Issues Office, "Accessibility Advisory Committee Terms of Reference", online: Government of Manitoba Disability Issues Office <http://www.gov.mb.ca/dio/aac/aac_terms_reference.html>.

community that this report would form the basis of substantive accessibility standards legislation.³⁴ However, broad consensus on substantive change was not achieved so the government opted not to proceed with introducing legislation, but instead established another Advisory Council under Bill 47.

Beyond the political desire for consensus, one of the primary challenges associated with developing accessibility standards is that they are not limited to one sector, and one size rarely fits all. Accessible hotel rooms are a good example of this complexity. An individual who uses a wheelchair, but is generally self-sufficient may require a larger hotel room with a single bed for greater maneuverability. Comparatively, another individual may require two beds in a smaller hotel room if s/he requires an attendant with shorter distances from the bed to the bathroom. These differentiated needs can be accommodated but require considerable planning and could account for the long delays in pursuing accessibility standards.³⁵ Accessibility standards are contested because of their reach across the provincial government, municipalities, non-profit organizations and private enterprises. As a result, developing accessibility standards, which would be prescribed and enforced in regulations, requires negotiation because not all obligated sectors may agree on the definition of accessibility or how a standard should apply to individual environments. Another area that will require attention is the affordability of such standards on businesses, non-profits and public sector organizations that will be obligated to meet the new accessibility standards. One only needs to look to the written submission prepared by the Association of Manitoba Municipalities (AMM) to the Standing Committee on Human Resources to understand why the government felt it necessary to proceed cautiously. In its submission, the AMM emphasizes its support for accessibility legislation, but stresses the need for new resources to accompany the implementation of accessibility standards:

...any new standards imposed on municipalities must also include provisions for the extra resources municipalities will require. Without new resources to accompany new standards, municipalities will bear the costs of implementation. This will be a

³⁴ Interview of disability advocates, *supra* note 9. The remaining points in this paragraph stem from these interviews.

³⁵ I would like to thank Professor Darcy MacPherson, Faculty of Law for providing this helpful example.

very difficult challenge for municipalities who are constantly dealing with new downloaded responsibilities and unfunded mandates.³⁶

Concerns related to the affordability of accessibility standards may help explain the long delays. Indeed, one only needs to examine Ontario's experience to see that the affordability factor could be an issue in Manitoba. In 2005, *The Accessibility for Ontarians With Disabilities Act* came into effect and prescribed accessibility standards to remove barriers in the public and private sectors by 2025. According to an independent review conducted in 2010, there are challenges to the implementation of the legislation. Chief among these is that every "obligated sector expressed significant concerns about affordability including business, not-for-profit sector and government departments."³⁷ Nonetheless, it will be important for the Province of Manitoba not to allow affordability concerns to dominate the development of accessibility standards.

The question to ask here is whether developing a process vis-à-vis Bill 47 was appropriate. On the one hand, providing a process for the development of future legislation and regulations may promote greater buy-in and potentially mitigate conflict at the front end. This ability to mitigate conflict and could go a long way to smoother implementation later on. On the other hand, the path to developing accessibility legislation has been characterized by a significant degree of bureaucratization. If we recall the 2009 consultation process and the Ministers' Advisory Committee on Accessibility Legislation, these were mechanisms for the Minister to solicit advice prior to Bill 47. The final report prepared by this Advisory Committee, which is not a public document,³⁸ will serve as the new Advisory Council's "starting point for discussions on the development of accessibility legislation."³⁹ In effect, this means that the work of the previous Advisory Committee will serve to guide the work of the new Advisory Council. Given that half the members of the

³⁶ Association of Manitoba Municipalities, "Letter to the Standing Committee on Human Resources Regarding Bill 47" (8 June 2011), online: AMM <<http://www.amm.mb.ca/documents/Bill47.pdf>>.

³⁷ Beer, *supra* note 5 at 23.

³⁸ The author made a request to the Government of Manitoba Disabilities Issues Office on 13 December 2011 for a copy of this report, but was informed that it was for the Minister's eyes only.

³⁹ Accessibility Advisory Committee Terms of Reference, *supra* note 33.

former Advisory Committee now sit on the new Advisory Council,⁴⁰ it is not clear why duplication in process was needed. Given the membership overlap in the two committees, it is legitimate to ask whether significant changes in the recommendations could reasonably be expected. This duplication in process is somewhat perplexing, because accessibility standards already exist in Ontario so Manitoba could consult, borrow and modify where needed without having to reinvent the proverbial wheel. In some part, this may be reflective of the long standing practice of the NDP to govern based on consensus as Dr. Paul Thomas and Curtis Brown comment:

As premier after 1999, Doer's leadership philosophy and style was more pragmatic and transactional than visionary and transformational. His approach to policy making emphasized the importance of context, the feasibility of the actions being contemplated, and the necessity to mobilize support from the relevant stakeholders...Never too far ahead of public opinion, Doer created the appearance of governing on a consensus basis that left few openings for his political opponents to attack government actions.⁴¹

While policy based on consensus can make for good politics, it can also delay the development of policy. Expressed another way, consensus may ruffle the fewest feathers for the government in power so consensus may be politically desirable, but it can come at the expense of making policy in a timely and responsive manner because of the effort needed to negotiate and work towards consensus.

What is equally problematic, I suggest, is the potential impact this duplication may have on the capacity of the disability community, which is comprised partly of registered charities and non-profit organizations, to continue its engagement in the process. Dr. Sid Frankel's examination of the voluntary sector in the prairies and territories concludes that while financial and human resources have not declined for many charities and non-profit organizations, overall capacity remains a concern.⁴² There is an increased

⁴⁰ The membership overlap between the Advisory Committee and Advisory Council, consists of two organizations that were represented, but by different individuals and four organizations that were represented by the same individuals.

⁴¹ Paul G Thomas with Curtis Brown, "The Past, Present and Future of the Manitoba Civil Service" in Paul G Thomas and Curtis Brown, eds, *Manitoba Politics and Government: Issues, Institutions and Traditions* (Winnipeg: University of Manitoba Press, 2010) at 243-244.

⁴² Sid Frankel, *The Nonprofit and Voluntary Sector in Manitoba, Saskatchewan and the Territories: Regional Highlights from the National Survey of Nonprofit and Voluntary Organizations* (2006),

emphasis placed on project funding, which would include government contracts that outline specific deliverables, rather than through grants that generally provide more flexibility for the organization. As a result, there are well-documented concerns about the ability of charities and non-profits to support the overall infrastructure and non-project related programs and activities, such as participating in an advisory or consulting role to government.⁴³ In essence, the funding regime is sometimes such that charities and non-profit organizations work on these types of projects off the side of their desk when limited time and resources permit. Duplication in process further stretches the limited capacity of these organizations.

V. CONCLUDING THOUGHTS

As noted at the outset of this paper, accessibility legislation is believed to complement the existing complaints driven approach in order to prevent the creation of new barriers and eliminate existing barriers. While other jurisdictions, notably Ontario, have actively pursued accessibility legislation, Manitoba's journey towards establishing a barrier free province through the development of accessibility standards has been over-processed. Bill 47 proved to be easy to pass and because it is entirely procedural as opposed to substantive, there is no real opposition.

By prescribing yet another consultative process, Bill 47 unnecessarily delays the development of accessibility standards so it is perhaps no surprise that there was such tepid support by disability advocates for Bill 47 before the Standing Committee on Human Resources.

Despite this delay, Manitoba will be one of a small handful of jurisdictions with accessibility standards. To its credit, the Province of

online: Imagine Canada <http://www.imaginecanada.ca/files/www/en/nsnvo/e_man_sask_territories_sector_report.pdf>.

On a national scale, these trends appear to play out as well. See Michael Hall et al, *The Capacity to Serve: A Qualitative Study of the Challenges Facing Canada's Nonprofit and Voluntary Organizations* (2003), online: Voluntary Sector Initiative <http://www.vsi-isbc.org/eng/knowledge/pdf/capacity_to_serve.pdf>.

⁴³ See Katherine Scott, *Funding Matters: The Impact of Canada's New Funding Regime on Nonprofit and Voluntary Sector Organizations*. (Ottawa: Canadian Council on Social Development, 2003). See also Susan Phillips and Karine Levasseur, "The Snakes and Ladders of Accountability: Contradictions between Contracting and Collaboration for Canada's Voluntary Sector" (2004) 47 *Canadian Public Administration* 4.

Manitoba has shown leadership in this area because systemic change is not often facilitated and adding a new instrument to the policy toolbox could go a long way to making Manitoba barrier free for persons with disabilities.