

What We Heard:

Consultations on the **Buildings Accessibility Act**

Digital Government and Service NL

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Introduction

The **Buildings Accessibility Act** came into effect in 1981. The purpose of reviewing the Act is to propose changes designed to ensure everyone has access to public spaces, respecting safety, accessibility and convenience for all Newfoundlanders and Labradorians. The Act covers public buildings, apartment-type buildings, hotels and building links and helps maintain compliance with buildings accessibility standards.

In 2018, the Act and Regulations were amended to strengthen alignment with the National Building Code of Canada. This allowed improvements to accessibility and safety, such as reduced gradients for access ramps, additional power door operators, and improved accessible parking.

At that time, it was recognized that a more comprehensive review was required to assess lessons learned and to address:

- advances in technology and health care
- changes in demographics
- changes in philosophies and attitudes of and about people with disabilities or mobility issues
- whether the current regulatory model of minimum standards sufficiently progresses equity for people with disabilities.

A two-phased approach was deployed whereby the proposed recommendations made in 2018 were accepted and a more comprehensive review, including stakeholder consultations, was to be completed within the next 24 months.

In 2018, the Buildings Accessibility Advisory Board (BAAB), established under the Act, was tasked to review the Act and present recommendations for change so that people with disabilities have full and effective access on an equal basis with others. The Board's recommendations were received by government in July 2021.

Digital Government and Service NL sought feedback on the BAAB recommendations as part of a comprehensive review aimed at strengthening and modernizing the legislation. This feedback was sought through an online questionnaire and three virtual public consultations. The information received through this engagement will be reviewed, and all feedback will be considered as government explores potential amendments.

Online Questionnaire

Methodology

Input on the recommendations of the BAAB was gathered via an online questionnaire posted to the engageNL web portal. An email address was also provided for written submissions to be sent directly to the department (none were received).

The questionnaire was posted to engageNL on December 16, 2021, and was open to the public until February 11, 2022. In total, 151 submissions were received through engageNL.

The Northeast Avalon Peninsula had the highest concentration of declared respondents to the questionnaire, with 66 submissions coming from that area, followed by the Eastern (27), Central (24), and Western (16) regions. Respondents in the rural Avalon and in Labrador sent six and five responses respectively, while no responses identified as being from the Northern Peninsula. It is noted that not all respondents chose to identify their region.

33.5 per cent of respondents who answered the question identified as a person with a disability, while 60.3 per cent did not, and 6.2 per cent preferred not to say.

Respondents were also asked to identify stakeholder groups with which they identified. The breakdown of results can be found in the table below. The total number is greater than the number of submissions because respondents could identify with multiple options.

Are you.....? (Select all that apply)	Number of Responses	Percentage
A disability advocate	57	26.15%
A building owner	11	5.05%
A home business operator	5	2.29%
A construction industry professional	6	2.75%
A professional designer	1	0.46%
A building tenant	16	7.34%
A(n) (interested) member of the general public	92	42.20%
Prefer not to say	10	4.59%
Other - please specify	20	9.17%
Total	218	100%

Questionnaire Results

Section A – 1981 Exemption Clause

Subsection 5(1) of the **Buildings Accessibility Act** exempts buildings existing before December 24, 1981 from accessibility requirements. One of the key questions in revising the Act is whether buildings constructed before 1981 should have to comply with the Act.

BAAB Recommendations	Number of Responses	Percent Completely Agree
Buildings constructed before 1981 that are open to the public be required to be made accessible for persons with disabilities.	Agree: 126 Disagree: 25	83.44%

Only respondents who agreed were asked further questions regarding the timeline for implementation of this change, which was outlined in the BAAB recommendations. Respondents who did not agree, were not asked about the following four recommendations and skipped to the next section. As a result, the percentages in the below table indicate how many agreed out of the subset of respondents who supported the above recommendation.

BAAB Recommendations	Number of Responses	Percent Completely Agree
Buildings that are currently exempt from the Act be required to have accessible parking, walkways, entrances and washrooms as well as ensure access to main common areas within five years of a revised Act coming into effect.	Agree: 118 Disagree: 7	94.40%

Buildings that are currently exempt from the Act be required to have an additional 30 per cent of the building's square footage in compliance with the Act within 10 years of a revised Act coming into effect.	Agree: 103 Disagree: 22	82.40%
Buildings that are currently exempt from the Act be required to be 100 per cent in compliance with the Act within 20 years of a revised Act coming into effect.	Agree: 90 Disagree: 34	72.58%
A tax incentive be established to help with the cost of making accessibility renovations to buildings that are currently exempt from the Act (The incentive would line up with the timelines referenced above).	Agree: 114 Disagree: 10	91.94%

The results of the remaining questions from Section A are summarized in the table below. All respondents were asked about these recommendations.

BAAB Recommendations	Number of Responses	Percent Completely Agree
The cost of renovating exempt buildings be thoroughly scrutinized and the building's replacement cost be determined by a commercial building appraiser to ensure property owners do not unnecessarily extend the exemption period.	Agree: 129 Disagree: 19	87.16%
There be enhanced oversight to ensure property owners do not change building occupancy, use, classification or ownership details, for the sole purpose of obtaining an exemption from the Act.	Agree: 133 Disagree: 16	89.26%

Exemption requests be assessed through a tribunal process where specialist individuals convened by government make the decision, as opposed to the current process where exemptions are determined as part of the building plan review process.	Agree: 128 Disagree: 20	86.49%
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Among those who did not fully agree with the recommendation to remove the pre-1981 exemption, concerns centered on costs and heritage. The cost of doing accessibility renovations was said to be unreasonable and prohibitive for some businesses and in some cases even may exceed the value of the building. Concerns were expressed that accessibility requirements may cause a loss of heritage and cultural value to buildings, and for registered historic structures, they may contradict the terms of the owners' agreements with entities like Heritage NL. A significant issue raised is that some older buildings, such as in downtown St. John's and in rural areas, have design features such as narrow hallways and stairs that make it not only expensive but physically impossible to fully comply with the Act and Regulations with the existing floor plan.

Among the 83.4 per cent of respondents who fully agreed with removing the pre-1981 exemption, there was disagreement about the proposed timelines for compliance; many found them too long and believed the timeline for full accessibility should be shorter. Most agreed with the idea of a tax incentive, while a small number of respondents said owners should be fully responsible for their buildings, and receive no financial assistance for accessibility from government.

Concerns were expressed with the requirement to make exempt buildings undergoing renovations costing more than 50 per cent become fully compliant with the Act. Cost was again frequently cited as a major issue. Some suggested that the 50 per cent cutoff seemed arbitrary and would result in necessary renovations not being done as owners tried to keep costs under the limit, while others believed the threshold should be lower. Cost concerns were also raised about requiring commercial building appraisers to be hired.

With regard to the proposed exemption review tribunal, concerns were expressed about the cost, complexity, time delays, and additional red tape potentially created by such a process. Some suggested that this could be made part of the existing building plan review process, while a few respondents believed that no exceptions to accessibility should be made.

While a variety of substantive concerns with removing the exemption were raised, a majority of respondents supported removing the exemption, and many participants further indicated their belief that doing so is important for human rights, dignity and equality.

Section B – Residential Development

Section B of the questionnaire concerned the Board’s proposal to expand the scope of the Act to include private homes. This question saw less consensus, with 53.4 per cent of respondents agreeing and 46.6 per cent disagreeing.

BAAB Recommendations	Number of Responses	Percent Completely Agree
The scope of the Act be expanded to include private homes.	Agree: 79 Disagree: 69	53.38%
Owners of home-based businesses providing in-person services be required to make their business accessible to persons with disabilities.	Agree: 118 Disagree: 30	79.73%
All new home construction be required to meet a minimum level of accessibility (for example, wider hallways and doorways, constructing the walls to allow for the installation of grabs bars or ceiling lifts, etc.).	Agree: 107 Disagree: 38	73.79%
Developers constructing multiple homes in a residential area be required to build a percentage of homes that are fully accessible.	Agree: 128 Disagree: 19	87.07%

A minority of respondents disagreed with expanding the Act to include private homes, with many citing the high cost burden and saying that homeowners should have discretion over the accessibility of their own property. Similar

comments were made about the idea of all new home builds having to meet minimum accessibility standards. Concern was expressed about the feasibility and cost of making home-based businesses accessible, especially for sole proprietors of small businesses. Some suggested that business owners should be instead required to accommodate persons with disabilities in one way or another, i.e. by making outcalls.

The idea of requiring a certain percentage of new homes in a development to be build as fully accessible saw a higher level of support. Some respondents questioned whether this is necessary and thought this may reduce the number of housing starts and/or increase housing costs. Conversely, others questioned why all new home construction cannot be required to comply with principles of universal design.

Section C – Additional Building Accessibility Related Topics

Respondents were asked for their opinions on whether the current fines for individuals and corporations under the Act should be increased, decreased or remain the same. Respondents were also asked if they agreed with the Board's recommendations on changing the definition of persons with disabilities and on requiring full-service family washrooms. The results of these questions are summarized in the tables below.

Question	Breakdown of responses
Currently, the fines for individuals who are found guilty of violating the Act range from \$500 to \$5,000. Which of the following best describes your opinion on fines for individuals?	<p>Fines should:</p> <ul style="list-style-type: none"> ○ Be increased: 53 (36.3%) ○ Be decreased: 7 (4.79%) ○ Remain the same: 86 (58.9%)
Currently, the fines for corporations who are found guilty of violating the Act range from \$1,000 to \$25,000. Which of the following best describes your opinion on fines for corporations?	<p>Fines should:</p> <ul style="list-style-type: none"> ○ Be increased: 96 (65.31%) ○ Be decreased: 4 (2.72%) ○ Remain the same: 47 (31.97%)

BAAB Recommendations	Number of Responses	Percent Completely Agree
The definition of persons with disabilities be expanded to include mental, intellectual, visual, hearing and other identifiable accessibility disabilities.	Agree: 130 Disagree: 16	89.04%
Buildings with an occupant load of 300 persons or more should be equipped with a full-service family washroom with an adult change table.	Agree: 126 Disagree: 21	85.71%

Virtual Consultation Sessions

In addition to the online questionnaire, three virtual sessions were held via Webex, with the Minister of Digital Government and Service NL on January 27, January 31 and February 7, 2022. Many who participated in the sessions would also have filled out the questionnaire.

A total of 86 individuals participated in the sessions. Participants were given an overview presentation on the BAAB recommendations and then all participants were divided into breakout rooms in the virtual sessions to discuss the following three questions:

- What obstacles must be overcome/addressed to bring about improvements in buildings accessibility?
- Considering the recommendations of the Buildings Accessibility Advisory Board, is there anything you would change? If yes, why?
- Do you have any additional recommendations that would improve accessibility to the built environment? If yes, please explain?

Common themes that arose in discussion of these questions are summarized below.

Obstacles

- Older buildings have limitations and structural challenges which can make it physically impossible to fully comply with the Act and Regulations.
- Most have a desire to make buildings more accessible, but cost is a big challenge. Incentives and funding are needed. Costs may be passed on to tenants and customers.
- Enforcement is key to success; a comprehensive plan and more staff to inspect and educate building owners are needed.
- Heritage advocates want to keep properties intact. Accessibility requirements can sometimes be detrimental to built heritage.
- The built environment is not just private buildings but also outside features like sidewalks, stairs, and streets. A building owner cannot make their entrance accessible if the public infrastructure is inaccessible.
- Responsibilities lie with municipalities and the Province but the general public doesn't always recognize which responsibilities lie where. There is also confusion between the National Building Code and Province's Act.
- Broader education and awareness of what “disability” means (sensory/vision/etc.) is needed – accessibility is not just about mobility.
- We need to acknowledge our aging population, which will result in accessibility needs increasing over time.
- Minimum requirements are not adequate to meet the needs of persons with disabilities.

Recommendations to Change

- The 5-10-20 year timeline is too long to address accessibility needs and should be shorter.
- The proposed timeline will be especially hard for smaller businesses and should be longer.
- Government should be required to have their buildings accessible within 12 years, 20 years for the private sector.
- Too many buildings are excluded under the 300-person threshold for a full service family washroom – this should be lowered.

- Consideration should be given to providing grants rather than tax credits for accessibility upgrades.
- There is too much focus on mobility/physical disabilities.
- There should be a universal definition of persons with disabilities.
- Businesses that currently meet minimum requirements still are not always accessible.
- There should be a built-in statutory review process in the Act.
- All home-based businesses shouldn't be required to have an accessible washroom under the proposed definition changes.
- No buildings should be offered exemptions until the independent advisory board is established.
- The language in the codes should be clearer.

Additional Recommendations

- Business owners, inclusion community and builders should get together to discuss accessibility – need to better understand each other's needs.
- Education is important – get people from different sectors together to work through difficulties.
- Consideration should be given to the challenge of finding contractors to do upgrades for residential properties.
- Consideration should be given to timelines for tribunal review of exemptions to ensure a backlog does not develop.
- The Act should be renamed “An Act to Respect Universal Design Principles” and the recommendations should adhere to Universal Design principles.
- The focus seems to be on getting people into a building – we also need to focus on getting people out in an emergency situation.
- For the tribunal process, consideration should be given to membership (i.e. landscape architect) and timelines.
- A body should be put in place to provide free advisory services to help buildings meet requirements in the most cost effective way, and to connect them with funding. This might help building owners make changes sooner rather than later.

Conclusion

Digital Government and Service NL would like to extend a sincere thanks to everyone who participated in the questionnaire and engagement sessions. Persons with disabilities, stakeholders and other interested persons offered important insights that will be of invaluable help to government in considering new legislation. The information gathered through this process will be carefully considered, as the department moves forward with developing a modern regime for improved and strengthened accessibility requirements for the benefit of all residents of Newfoundland and Labrador.