

October 2, 2015

Bill Matthews  
Comptroller General of Canada  
Office of the Comptroller General  
Treasury Board of Canada Secretariat  
90 Elgin St  
Ottawa, Ontario K1A 0R5  
VIA EMAIL: publicenquiries-demandesderenseignement@tbs-sct.gc.ca

Dear Sir:

**Re: Accessibility Procurement Practices**

I am a lawyer specializing in disability and human rights law. It has come to my attention that the Federal Government has been acquiring systems and programs for public service employee use, that are not accessible. I am writing this letter on behalf of my individual and organization clients who shall remain anonymous for now.

In 2012, the Federal Court of Appeal in *Jodhan v Canada (Attorney General)*, 2012 FCA 161, upheld a decision requiring the Canadian Government to ensure all websites were accessible to those who are blind or visually impaired. Rather than serving as an impetus to complete accessibility within the Canadian Government, the Government has taken a divided approach. Its public sites are becoming increasingly accessible, but the internal sites and programs used by Federal employees remain inaccessible.

These internal sites are often incompatible with assistive devices such as screen readers, voice recognition keyboards, screen magnifiers etc. This means that basic systems such as secure logins and communication systems and more advanced programs such as those that host collaborative tools such as shared document-editing programs, are inaccessible to any employee who requires the use of an assistive device.

Without full and independent access to these systems and programs, many employees are unable to do the jobs they were hired for, and are unable to advance, owing to the inability to perform to their potential. This also limits the ability of Federal employees to independently participate in collaborative environments that are essential to a productive and effective employment atmosphere.

Experts in the field of inclusive technology design have confirmed that alternative, fully accessible systems and programs exist. These systems are used throughout the United States of America, Europe, Australia and many other jurisdictions. While the Federal Government procures these systems for its public sites, it has not made accessibility a requirement for its internal systems. The Canadian Government is lagging behind both in its policy regarding accessible procurement of these systems, and in its actual procurement.

The attached Invitation to Qualify is an example of the Government's inaccessible procurement practices. The Invitation to Qualify is for an Internal Centralized Authentication Service. The

deadline to respond is today. While only the first step in the procurement process, there is no mention of accessibility requirements. The Federal Government's Web Accessibility Guidelines and Standards are not referenced at all.

Section 15 of the *Charter* provides that everyone has the right to not be discriminated against. The continued procurement of inaccessible systems and programs has resulted in a distinction and differential treatment of groups of Federal employees on the basis of disability. This failure to procure accessible systems has a profound and negative impact on disabled Federal employees. These employees are unable to do their jobs effectively, collaborate meaningfully online, and face greater barriers in the workplace. This amounts to discrimination.

The *Financial Administration Act* provides authority for the Treasury Board to set conditions and restrictions during the procurement of services and products for the Government (s. 7(1)). Currently, the procurement process for internal Federal employee systems does not impose conditions or restrictions that products purchased will be accessible. This failure results in visually impaired public service employees being denied access to these systems. The same consequences do not result for those employees who are not visually impaired. As such, the application of this section is resulting in differential treatment between visually and non-visually impaired public service employees.

The Policy on the Duty to Accommodate Persons with Disabilities in the Federal Public Service requires that the Government provide accommodation to its disabled employees to the point of undue hardship. Staff from the Canadian Human Rights Commission have been delivering speeches on accessible procurement to your employees.

As you are also aware there are now an immeasurable number of internal reports recommending adherence to the principle of accessible procurement. By failing to procure systems that are compatible with assistive devices such as screen readers and voice recognition software, the Federal Government cannot provide meaningful accommodations to visually impaired employees. While readers can provide minimal access for visually impaired employees, having to rely on a person to read a computer screen is not an adequate accommodation. Further, our clients have indicated that these readers are rarely available or provided.

In *Jodhan v Canada (Attorney General)*, 2010 FC 1197, in holding that the inaccessibility of public Government websites was discrimination, the Court stated that:

[This] failure perpetuates a disadvantage which undermines the dignity of the visually impaired. This differentiation perpetuates the stereotyping and prejudice that blind persons cannot access and benefit from online government information and services which sighted persons can (at para 158).

The failure to procure accessible internal systems and programs likewise endangers the dignity of disabled public service employees and it is likely to perpetuate stereotypes and prejudicial treatment that these employees are somehow less qualified or competent than their non-disabled peers. Further, it increases the chances that disabled employees will receive poor performance reviews and lose advancement opportunities because of a perceived inability to do their jobs.

The Supreme Court of Canada has held that "the point of undue hardship is reached when reasonable means of accommodation are exhausted and only unreasonable or impractical options remain" (*Council of Canadians with Disabilities v Via Rail Canada Inc.* 2007 SCC 15 at para 130). Clearly the government is capable of procuring accessible systems for websites. It has done this for its external sites since *Jodhan*. The failure of the Government to procure similarly accessible systems and programs for its internal sites is as inexplicable as it is unjustifiable.

As the largest employer in Canada, if the Government were to follow accessible procurement practices, this would spark a cultural shift in Canada. In order to obtain Government contracts, vendors would have to adapt their products to be fully accessible. This would facilitate a shift in the types of products available and would encourage vendors to offer these products to other Canadian employers. Rather than sparking this shift and following the examples set in other jurisdictions, the Canadian Government is lagging behind in providing accessible systems to its own employees. This failure is discriminating against employees and needs to be rectified immediately.

We request that the Government apply the same accessibility guidelines and standards used for external sites, to its procurement procedures for services and products for internal Federal Government sites.

We further request that the attached Invitation to Qualify be retracted and replaced with an Invitation to Qualify that contains requirements for accessibility. Any other Invitations to Qualify, or tenders at any stage, for internal Federal Government systems or programs, with similar shortcomings regarding accessibility, should also be retracted and reissued with the appropriate accessibility requirements.

The courtesy of a response within three weeks is respectfully requested.

Yours truly,



David Baker

**Encl.**

Invitation to Qualify No. 10046765  
Canadian Human Rights Commission Accessible Procurement Powerpoint Presentation

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