

Creating Safe Communities



Local Governments' Legal Duty to Accommodate
People with Disabilities in Emergency Response

BC Coalition of People with Disabilities

2013

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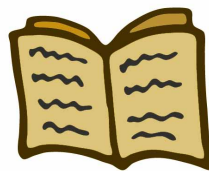


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Disclaimer: The information in this booklet is not intended to be, nor should it be considered, legal advice. It is intended as a general guide to the legal duty to accommodate.

About This Booklet



Following Hurricane Katrina, the BC Coalition of People with Disabilities (BCCPD) began to research how well people with disabilities are included in emergency planning in British Columbia. We found a lack of significant consideration to planning for people with disabilities which put us on the path to becoming a provincial and national leader in helping communities to create more inclusive plans.

Along the way, we have developed positive partnerships with the many stakeholders in emergency preparedness and we are beginning to see concepts of inclusiveness built into planning paradigms.

We have created this booklet to help local governments understand their legal “duty to accommodate” people with disabilities in emergency planning and response.

Though emergency planning and response involves many sectors of our communities, local governments have the core civic and legal responsibility. We have created this booklet to help local governments understand their legal “duty to accommodate” people with disabilities in emergency planning and response. Many of the staff and volunteers involved in emergency preparedness are often not aware of these responsibilities or the resources available to help meet them.

When Emergency Social Services first hear the phrase “duty to accommodate,” they may think of hotel accommodation because of the services they provide. However, duty to accommodate describes the legal responsibility that local governments, and other public entities, have to meet the needs of people with disabilities. We explain the legal context in the section **Understanding the Duty to Accommodate**.

This booklet also provides resources, tools and recommendations to begin implementing more inclusive planning.

The Context for Inclusive Planning

In addition to the legal necessity, here are some reasons to develop inclusive emergency plans:

1. In recent years, there has been an increase in the number of people with disabilities living independently in the community, coupled with an increase in the percentage of Canadians with disabilities.
2. Separate “special needs” planning is not effective. It perpetuates the segregation of people with disabilities and, because it is seen as an “additional service,” it is too often left by the wayside. It is also not effective in meeting the needs of other groups who have similar needs, such as seniors or people with temporary medical conditions.
3. People with disabilities or functional limitations (we explain the importance of this term in the section, **Thinking of Functional Needs**) have a higher level of disaster vulnerability than people without disabilities because they face socioeconomic barriers to accessing resources on a daily basis. Their vulnerability exists before the disaster occurs.
4. During disasters, many people with disabilities lose vital supports and services that are needed on a daily basis that help prevent their health and well-being from deteriorating.
5. People who usually have a caregiver for daily assistance may be separated from the person during an emergency, so alternatives need to be provided.
6. People with equipment and assistive devices are often forced to abandon their equipment in order to use evacuation transportation. They are therefore less independent and more vulnerable. These supports must therefore be provided by response services.

Understanding the Duty to Accommodate



There are two sources of law that prescribe the responsibility that governments and other parties in BC have regarding non-discriminatory practises that may affect people with disabilities, among other protected groups. These are the *BC Human Rights Code (BCHRC)* and the *Canadian Charter of Rights and Freedoms (Charter)*.

The *Charter* applies to governments, while the *BCHRC* applies to both governments as well as non-governmental entities. The *BCHRC* is also subject to the *Charter*, so if there is a discrepancy in the *BCHRC*, that discrepancy may and could be considered by the Courts to be in violation of the *Charter*.

Together, these laws set out the duty to accommodate protected groups in order to prevent discriminatory practises. This duty, for example, can involve eliminating or changing rules, policies, practises, activities or programs that intentionally or unintentionally discriminate against certain groups.

What Does the Law Tell Us?

The section of the *Charter* that outlines the duty to accommodate is as follows:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

These rights are subject only to s. 1 of the *Charter*:

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

The relevant section of the *BCHRC* states that:

8 (1) A person must not, without a bona fide and reasonable justification,

(a) deny to a person or class of persons any accommodation, service or facility customarily available to the public, or

(b) discriminate against a person or class of persons regarding any accommodation, service or facility customarily available to the public.

The Courts and the Duty to Accommodate

In a 1997 case against the province of BC, known as the Eldridge case, a group of Deaf people brought forward a case stating their *Charter* rights had been violated.

They argued that, because BC's Minister of Health had failed to provide them with sign language interpretation services at hospitals, they were unable to access the same quality of medical services as non-Deaf members of the public. The court unanimously agreed and said that the violation occurred, and that it was not justified by section 1 of the Charter.

The court said that, whenever the state provides a benefit to the public, it must do so in a non-discriminatory manner. Going further, the court said that treating the claimants the same as everyone else was unsatisfactory in this case. They recognized that, because of the claimants' hearing impairment, equal treatment led to an unequal and unjust result. The court determined there was a duty to provide accommodations that would help the claimants overcome their barriers to access.

In another case, the Supreme Court of Canada ruled that: The same analysis...applies in the case of physical barriers. A physical barrier denying access to goods, services, facilities or accommodation customarily available to the public can only be justified if it is “impossible to accommodate” the individual “without imposing undue hardship” on the person responsible for the barrier. There is, in other words, a duty to accommodate persons with disabilities unless there is a bona fide justification for not being able to do so. ¹

What Does Undue Hardship Mean?

Judges have said that people with disabilities have the right to be accommodated in the provision of publically-available services and benefits, up to the point of undue hardship.



There is no magic formula to determine precisely what is meant by undue hardship in every situation.

However, we know that the undue hardship standard does permit some hardship on the part of the accommodation provider and that the duty to accommodate is only limited up to the point when hardship becomes “undue.”

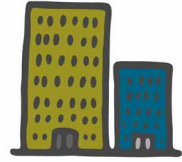
The line between acceptable hardship and undue hardship can sometimes be ambiguous. A number of factors come into play when making the determination, such as:

- Financial cost of an accommodation
- Economic viability
- Prospect of interference with the rights of others
- Safety considerations

In the provision of emergency response, the courts would consider all of these factors as a whole to assess whether an accommodation would be so onerous as to constitute an undue hardship.

In the *Eldridge* case, for example, the court held there was no undue hardship imposed in requiring the provincial government to provide sign language interpretation in hospitals. The cost to do so was estimated at approximately \$150,000 per year. While this amount was not trivial, the court observed that it was a small fraction of the overall provincial health care budget and therefore not an undue hardship.

How Local Governments Accommodate



Canadian law tells us that local governments have the legal duty to accommodate the needs of people with disabilities in the provision of public services, including emergency preparedness and response.

Accommodating people with disabilities can be accomplished through adopting these new perspectives, engaging community capacities and utilizing existing resources in inclusive ways.

Our experience has shown us that inclusive emergency planning is more a matter of changing perspectives than implementing new and expensive programs. Accommodating people with disabilities can be accomplished through adopting these new perspectives, engaging community capacities and utilizing existing resources in inclusive ways.

Who needs to be accommodated?

Individually and collectively, we are gradually expanding our understanding of what disability means. Thankfully, we are moving beyond thinking of only wheelchairs and ramps.

This broader understanding is nowhere more important than in emergency planning. A 2007 Canadian Red Cross report identifies people with disabilities as one of Canada's 10 high-risk populations during emergencies. Not only that, but people with disabilities intersect with all other categories in the report: seniors, Aboriginal people, people who are medically-dependent, people who are low-income, children, people with low-literacy, women, transients, immigrants and cultural minorities.²

The report emphasizes the need for an integrated planning approach, rather than one focussed on “special needs.” The range of disabilities and limitations that citizens have is considerable—more than local government planners can be expected to fully understand.

However, we have found that looking at disability needs from a **functional** perspective—rather than a **disability** perspective—is not only an easier way to understand people’s needs, but also to accommodate those needs.

Here’s a simple example of how this functional perspective tells us much more about a person’s needs.

From a disability perspective

Ellen is a person with Cerebral Palsy.

What do you picture? Perhaps someone who uses a wheelchair? Or, someone who experiences muscle spasms?



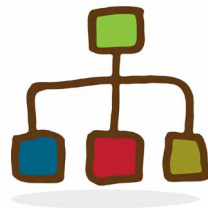
From a functional perspective

Ellen is someone who has mobility needs, communication needs and some need for physical assistance. Her needs are similar to Raj, who is a senior with a hearing impairment. From a functional perspective, you can plan for both people’s needs more readily.

This perspective tells you what a person’s functional needs are, without the need to fully understand the implications of their specific disability.

In the next section, we look deeper into how understanding functional needs can assist with emergency planning.

Thinking of Functional Needs



When we train emergency planners in all sectors of the community, we use the Functional Needs Framework (FNF).

For the purposes of emergency planning and response, the Functional Needs Framework looks at five categories, called C-MIST: Communication, Medical, Functional Independence, Supervision and Transportation.

Communication

People who have a limited ability to speak, see or hear; limited ability to speak, read or understand English; limitations in learning and understanding.

Medical

People who require assistance with bathing, feeding or managing medications; use dialysis or oxygen; use power-dependent equipment to sustain life.

Functional Independence

People who require equipment to maintain functional independence, such as wheelchairs, walkers or scooters.

Supervision

People who require supervision, such as people with dementia, prisoners or unaccompanied children.

Transportation

People who cannot drive or do not have access to a vehicle due to disability, age, addictions, legal restrictions or low-income factors.

Emergency planning that incorporates the five C-MIST areas enables local governments to develop a comprehensive emergency response. The FNF includes a range of vulnerable populations—not only people with disabilities—and reduces the negative impacts of emergencies on people at-risk and the community as a whole.

Examples of FNF Accommodations

What would FNF solutions look like in a real emergency? Here are some examples to illustrate the range of needs and possible responses.

Communication

- A Reception Centre Information Officer ensures that announcements are translated and prepared for special populations, such as non-English speaking people and those who are Deaf and hard of hearing.
- A range of alternative methods are used for emergency notifications, such as text messaging, to reach a broad cross-section of the population, including at-risk populations.
- Planners ensure open captioning of Public Service Announcements during emergencies.
- There is a significant shortage of sign language interpreters in BC. Emergency planners should establish mutual aid agreements with video interpreting services, so emergency communications can be broadcast via interpretive video.



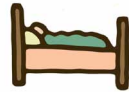
Medical

- A Reception Centre Special Needs Supervisor arranges for medications, medical equipment and health care supplies to be provided to evacuees, e.g., wheelchairs, insulin.
- Back-up generators are available at Group Lodgings for medications and for people who require electricity for oxygen or other life-sustaining equipment.



Functional Independence

- At Group Lodgings, a supervisor ensures that cots are available at transfer height for wheelchair users, with sufficient space to allow wheelchair manoeuvrability.
- Reception Centre and Group Lodging locations are chosen to ensure accessibility of entrances, restrooms, showers, cots and so on.
- Local governments require emergency contractors to provide accessible portable restrooms and showers.
- Manual wheelchairs or other assistive devices are available at Reception Centres and Group Lodgings for people who had to abandon their own devices, and who cannot for example, stand in line-ups at Centres.



Supervision

- Supervision or support staff are available for people with dementia or mental illness who are separated from friends and family.



Transportation

- A Transportation Supervisor at Reception Centres will ensure that evacuees are provided with appropriate accessible transportation from a Reception Centre to Group Lodgings.



Myth Busting



In our training workshops, we have heard some common concerns from virtually all sectors of the community. Here are some of these “myths” about the feasibility of inclusive emergency planning—and the “reality.”

Many disability-specific accommodations can be provided at no or minimal cost.

Myth

We don't have the financial resources to meet the needs of people with the range of disabilities in our community.

Reality

Many disability-specific accommodations can be provided at no or minimal cost; for example, information provided in large print for people with low-vision, instructions provided orally for people who are blind and information by text message for the Deaf. Also, there is no extra planning cost to choose facilities for Reception Centres, Group Lodgings or local hotels that are wheelchair accessible.

Myth

We don't have enough personnel to meet the needs of people with a range of disabilities.

Reality

Emergency Social Services volunteers can be recruited from local disability organizations who will understand the needs of people with disabilities, and be aware of resources and supports in the community. For example, volunteers who have sign language interpretation skills can also be recruited.

Myth

The health authority should provide services for people with disabilities during an emergency response.

Reality

If the person with a disability is not in need of immediate medical care, they should not be referred to the health authority or local hospital. This is an unnecessary burden on health services, as well as being inappropriate to the person's needs. Unless there is a medical reason, people with disabilities should be housed in a Reception Centre or Group Lodging with their family and neighbours.

Myth

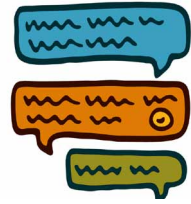
People with disabilities should be prepared to meet their own disability-specific needs in an emergency.



Reality

For a variety of reasons, a person with a disability may not be able to meet their own disability-specific needs during an emergency. For example, their caregiver or attendant may not be present, they may have had to evacuate without their assistive equipment or devices, or they may be living on a low-income and could not afford an emergency kit.

Community and Cooperation



Our communities are a wealth of experience, resources and capacities. One of the key roles local governments fill is as coordinator of these pre-existing capacities.

Communities Are:

Key community partners include local government coordinators and planners, emergency social services and first responders: fire, ambulance and police.

Informal networks include relationships with family, friends, neighbours and work colleagues.

Formal networks include community organizations, social service organizations, faith-based organizations, schools, government programs and health services.

Networks are essential for providing support to people in everyday life and in crisis situations, and most people are part of more than one network. Some people, however, are isolated and excluded from our community networks. This may include people with disabilities, the frail elderly and people living in poverty.

By acting as a connector and coordinator of these community networks, local governments have a central role to play in developing community capacity. These connections strengthen our communities and reduce the vulnerability of at-risk groups during emergencies.

How Local Governments Build Community

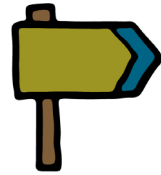
The following recommendations show how local governments can begin to build, as well as utilize, community capacities. Some are within the power of local governments to implement, others are changes that local governments can advocate for with the provincial government.

- Emergency planners move away from “special needs” planning and utilize the Functional Needs Framework to plan for all members of a community.
- We have been working with Emergency Management BC (EMBC) to encourage the incorporation of the Functional Needs Framework into provincial emergency planning, response guidelines and curriculum. Local governments can work in partnership with this agency on FNF planning.
- ESS work with health authorities and non-governmental organizations to create teams trained in functional needs response.
- To build community capacity, EMBC, local governments and regional districts support the involvement of community-based organizations in emergency planning, response and recovery through funding community programs.
- Emergency Managers use multiple methods for public emergency communications, including alternate formats for people with disabilities.



- Government emergency programs plan for digital inclusion when choosing technologies to provide emergency information to the public. They consider the availability, affordability, accessibility and acceptability of those technologies by different at-risk population groups.
- Emergency Social Services (ESS) implement a system of triaging people.
- Reception Centres and Group Lodgings provide universal access shelters for a range of functional limitations.
- Comprehensive planning covers the replacement of medications, and equipment and assistive devices.
- There is coordination of accessible transportation for evacuation purposes.
- People are evacuated with their equipment and assistance animals.

Conclusion



Our intent in preparing this booklet is three-fold:

- to explain local governments' legal duty to accommodate people with disabilities in the context of emergency planning;
- to suggest the Functional Needs Framework as the best paradigm to implement holistic planning that includes not only people with disabilities, but all citizens within our communities; and
- to offer examples, suggestions and resources to assist local governments in creating inclusive emergency plans that will help them meet their legal duty to accommodate.

We have provided a list of resources at the back of this booklet that look further into some of the key concepts we have discussed.

When local governments are providing services in emergencies to the general public, those services need to be accessible to all citizens. The credo "All hazards. All people." will help emergency planners to create the most inclusive plans and responses possible, as well as Creating Safe Communities.

Resources



BC Coalition of People with Disabilities

BCCPD has a library of free print, audio and video resources on emergency preparedness, planning and response. All resources can be found at <http://www.bccpd.bc.ca/ourwork/emergency.htm>, along with our past and current activities in emergency preparedness. Some key resources are listed below.

C-MIST Workshop

To learn more about the C-MIST Functional Needs Framework and how local governments can incorporate it into their emergency planning, we recommend booking a BCCPD **C-MIST and Duty to Accommodate Workshop**. We will provide a full-day on-site workshop on how local governments can be the leader in the three phases of emergency planning, response and recovery. For more information, please visit <http://www.bccpd.bc.ca/epworkshops.htm>.

Key BCCPD Publications

Learning C-MIST: Train-the-Trainer

This handbook is for trainers who wish to help people with disabilities create their own emergency preparedness plans, using the Functional Needs Framework.

Prepare to Survive—Prepare to Help: Community Training in Emergency Planning for People with Disabilities

Created in partnership with Volunteer Canada, **Prepare to Survive** is a training manual for not-for-profit and volunteer organizations.

A Road Map to Emergency Planning for People with Disabilities

A Road Map is a report from workshops attended by community stakeholders in the three areas of emergency planning, response and recovery. The report highlights gaps, solutions and emergency scenarios of people with various disabilities.

The Search for Inclusivity and Accessibility

This report is the culmination of a project to research current practises in BC around inclusive emergency planning. Four areas were examined: stakeholder workshops, a literature review, a curriculum review and a review of current disasters in BC.

Emergency Management BC

EMBC has produced a series of resources on **Preparedness Information for People with Disabilities**. These publications can be used by local governments for public education.

http://embc.gov.bc.ca/em/hazard_preparedness/disabilities_information.html

Footnotes

¹ Council of Canadians with Disabilities v. VIA Rail Canada Inc., 2007 SCC 15 (CanLII), [2007] 1 SCR 650 (Council of Canadians), Abella J. writing for herself and four other judges, at para. 120.

² *Integrating Emergency Management and High-Risk Populations: Survey Report and Action Recommendations*, Canadian Red Cross, 2007.



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