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Dear BTLR Review Panel:

Deafness Advocacy Association Nova Scotia (**DAANS**) is honored and indeed privileged to provide the Broadcasting TLR Panel with some feedback on how current federal legislation must change to accommodate the needs of Deaf, Deaf-Blind, hard of hearing and late deafened (**DDBHH**) Canadians including an estimated 58,000 DDBHH Nova Scotians.

INTRODUCTION

DAANS was founded in 1976 and incorporated in 1978 as a nonpartisan organization. DAANS works with the public, private and non-profit sectors to remove old barriers and prevent new barriers faced by an estimated 58,000 Deaf, hard of hearing, late deafened and Deafblind Nova Scotians in a variety of areas including communication access, education, employment, health, legal services and recreation.

Elliott Richman retired from the Nova Scotian provincial civil service in February 2017 after 28 years specializing in ADABAS database analysis before switching over to Oracle database analysis. During that time, he volunteered with DAANS from 1992 to 2017 – twenty one of those as its President. He also:

- provided advice and feedback on government or private sector policies and procedures and legislation and regulations that have a direct or indirect effect or impact on the Deaf, Deaf-Blind, hard of hearing and late deafened (**DDBHH**).
- assisted individuals and self-advocates in promoting the rights and needs of DDBHH Nova Scotians.

Based on more than twenty five years of experience working with Deaf and interpreter communities across Canada, Elliott raised awareness of issues facing the DDBHH by publishing numerous articles in Abilities Network, Canadian Association of the Deaf (**CAD**) Chat and most recently in H3 World TV.

DAANS works with the public, private and non-profit sectors to remove old barriers and prevent new barriers faced by an estimated 58,000 Deaf, hard of hearing, late deafened and Deaf-blind Nova Scotians in a variety of areas including communication access, education, employment, health, legal services and recreation.

Elliott Richman:

- joined DAANS in February 2017 as its Assistant Director of Deaf Outreach
- represented DAANS to CWTA Wireless Accessibility Committee Sept 20, 2017
- Joined Deaf Wireless Canada Consultative Committee - Comité pour les Services Sans fil des Sourds du Canada, (**DWCC**) on September 29, 2017.
- was appointed as DWCC's Vice Chair on November 14, 2017.
- represented DWCC at CCTS' Accessibility Consultation with Accessibility Group on July 17 2018.
- became DAANS' Executive Director on September 05, 2018.

Elliott Richman's past and current CRTC related work include:

- CRTC TNC 2018-098 Lower-cost data-only plans for mobile wireless services
- CRTC TNC 2018-246 Report regarding the retail sales practices of Canada's large telecommunications carriers
 - Elliott appeared at its public hearing on October 22, 2018.
- CRTC TNC 2018-422 Proceeding to establish a mandatory code for Internet services.

DISCLAIMER

Neither DAANS nor Elliott Richman has a legal background and therefore both are not in a position to suggest how specific clauses should be worded, phrased, amended, deleted, altered, ordered or otherwise restructured. They will respectfully leave that particular (and most enjoyable) job to the appropriate federal departments / lawyers and politicians.

DAANS will instead strongly suggest **what** (not how) the "new and improved" legislation must do (or not do) to improve the lives of DDBHH Canadians as they buy, change or cancel services in the broadcasting, telecommunication, radio-communications and internet (**BTRI**) industries. DAANS will also strongly suggest that specific words / phrasing to be included or in the new BTRI legislation.

BACKGROUND – HUMAN RIGHTS

1. Under the heading of "Equality Rights" Section 15(1) of the Canadian Charter of Rights and Freedoms reads as:

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.

2. Section 2 of the Canadian Human Rights Act reads as:

Proscribed Discrimination

2 The purpose of this Act is to extend the laws in Canada to give effect, within the purview of matters coming within the legislative authority of Parliament, to the principle that all individuals should have an opportunity equal with other individuals to make for themselves the lives that they are able and wish to have and to have their needs accommodated, consistent with their duties and obligations as members of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability or conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered

Discriminatory Practices

Denial of good, service, facility or accommodation

5 It is a discriminatory practice in the provision of goods, services, facilities or accommodation customarily available to the general public

(a) to deny, or to deny access to, any such good, service, facility or accommodation to any individual, o

(b) to differentiate adversely in relation to any individual, on a prohibited ground of discrimination.

3. Canada ratified the Convention on the Rights of Persons with Disabilities (CRPD) on March 11, 2010

Article 2 “Definitions” includes the following wording:

For the purposes of the present Convention:

- *"Language" includes spoken and signed languages and other forms of non spoken languages;*

Article 9 “Accessibility” reads in part as:

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

b. Information, communications and other services, including electronic services and emergency services.

All these laws and convention either individually or collectively clearly state(s) that DDBHH Canadians have the same rights to buy, change and terminate their communication services (be they BTRI) at par with their counterparts.

Implications of these rights

Of course, DDBHH Canadians perceive their worlds differently from their hearing counterparts. The former mostly depend on their visual senses to make sense and interact with society at large whereas the latter depend on their aural senses. As a consequence, the former rely heavily on videoconferencing (visual) while the latter rely heavily on telecommunications (aural).

BACKGROUND – DDBHH COMMUNITY

Reliable statistics on Deaf Canadians are hard to collect, and no two organizations seem to agree on the numbers involved. The standard practice used by Canadian Association of the Deaf - Association des Sourds du Canada (**CAD-ASC**) uses the traditional ‘one in ten’ formula for estimating statistics, with strong disclaimers. This formula estimates that there are 357,000 culturally Deaf Canadians and 3.21 million hard of hearing Canadians. It is CAD-ASC’s opinion that no fully credible census of Deaf, deafened, and hard of hearing people has ever been conducted in Canada.” ([CAD-ASC website](#)).

The Canadian National Society of the Deaf Blind (**CNSDB**) estimates there are 69,700 Deaf-Blind Canadians over the age of 12 living with the dual disability of deafness and blindness or a combination of both vision and hearing losses that limit their everyday activities. The [Canadian Helen Keller Centre](#) provided an estimate of the Deaf-Blind population in an earlier version of its website which is now available on [Senator Yonah Martin’s website](#).

One important concept is some DDBHH individuals through no fault of theirs go through life language deprived (explained more in depth in DWCC's brief) and communicate in either American Sign Language (ASL) or langue des signes Québécoise (LSQ) – both of which are distinct from English / French. Standard practice would be to provide these individuals with “plain language” text – something that is written at a tenth grade level and not appropriate for these DDBHH individuals. Jim Roots, CAD-ASC's Executive Director, strongly recommends the use of “simple language” written closer to third grade reading level.

Jim Roots best explains this concept by using UN CRPD's Article 24 as an example as follows.

Article 24 – Education

1. States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:
 - a. The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;
 - b. The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;
 - c. Enabling persons with disabilities to participate effectively in a free society.
2. In realizing this right, States Parties shall ensure that:
 - a. Persons with disabilities are not excluded from the general education system on the basis of disability, and that children with disabilities are not excluded from free and compulsory primary education, or from secondary education, on the basis of disability;
 - b. Persons with disabilities can access an inclusive, quality and free primary education and secondary education on an equal basis with others in the communities in which they live;
 - c. Reasonable accommodation of the individual's requirements is provided;
 - d. Persons with disabilities receive the support required, within the general education system, to facilitate their effective education;
 - e. Effective individualized support measures are provided in environments that maximize academic and social development, consistent with the goal of full inclusion.
3. States Parties shall enable persons with disabilities to learn life and social development skills to facilitate their full and equal participation in education and as members of the community. To this end, States Parties shall take appropriate measures, including:
 - a. Facilitating the learning of Braille, alternative script, augmentative and alternative modes, means and formats of communication and orientation and mobility skills, and facilitating peer support and mentoring;
 - b. Facilitating the learning of sign language and the promotion of the linguistic identity of the deaf community;
 - c. Ensuring that the education of persons, and in particular children, who are blind, deaf or deafblind, is delivered in the most appropriate languages and modes and means of communication for the individual, and in environments which maximize academic and social development.
4. In order to help ensure the realization of this right, States Parties shall take appropriate measures to employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille, and to train professionals and staff who work at all levels of education. Such training shall incorporate disability awareness and the use of appropriate augmentative and alternative modes, means and formats of communication, educational techniques and materials to support persons with disabilities.

5. States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.

And the following is how Jim Roots would transform the above into simple language:

Article 24 – Education

- Persons with disabilities have the right to inclusive, quality, and free education in the communities where they live. They also have the right to the support services they need to succeed in school.
- Deaf, deafblind, and blind people have the right to receive education in the language and communication method that is most appropriate for them.
- Governments must help the learning of Sign language, and must promote the linguistic and cultural identity of the Deaf community.
- Deaf people and people with disabilities must be provided with equal opportunity to learn life skills and social skills, so they can all participate fully and equally in the community.
- Also, governments must employ teachers, including teachers with disabilities, who are qualified in sign language and/or Braille.
- Professionals and staff who work at any level of education must be provided with training in the rights of people with disabilities.

DAANS acknowledges and appreciates that DWCC is preparing a brief to the BTLR Panel that details the trials, tribulations and problems (along with some useful recommended solutions) DDBHH face on a daily basis when buying, changing or cancelling their communication services (be they BTRI).

RECOMMENDATION: CONSOLIDATE FEDERAL ACTS

Canada currently has three federal acts as follows:

1. The **Broadcasting Act** was created in 1932, revised in 1958, 1968 and again in 1991. The Minister of Canadian Heritage is responsible for this Act.
2. The **Railway Act** (enacted in 1903) originally regulated telecommunications before 1993. The **Telecommunications Act** enacted in 1993 was amended once in November 2005 to create a national “Do Not Call” list in Section 41. The Minister of Innovation, Science and Economic Development is responsible for this Act.
3. The **Radiocommunications Act** was enacted in 1985 and last amended in September 2017. The Minister of Industry is responsible for this Act.

There is no Act specifically dealing with the internet. Consumers now can buy internet services, landline phone services, cable and mobile phone services all from the one and same service provider – something that wasn’t possible at the time these three Acts were last enacted / amended.

Former CRTC Chair Konrad von Finckenstein made two very good points in his Modernizing Communications Legislation presentation as follows:

1. Any review of communications has to include the Radiocommunications Act which presently governs spectrum management and wireless communications. All communications, regardless of mode, should be covered by one communications act. The present division between wireline, wireless and cable communications predates the digital revolution and makes no sense in the age of the internet.
2. It is essential that any new communication legislation be based on the centrality of the Internet. It is key to our modern digital economy and any legislation should be based on the concepts of net neutrality, seamless interconnection, fair competition, prevention of abuse and protection of privacy. It should be crafted independent of any thought about Canadian content.

DAANS wholeheartedly agrees with both points von Finckenstein made. In fact DAANS proposes that there be one act – to be called “**Communications Act**” which will consolidate all three Acts listed earlier and deal with the following (but not limited to):

- radio, television, pay television, specialty services and broadcasting distribution undertakings, such as cable television (whether distributed using analogue or digital technology), direct-to-home (DTH) satellite and wireless distributors
- “new media broadcasting services” such as digital media broadcasting undertakings, which provide broadcasting services that are delivered and accessed over the internet or delivered using point-to-point technology received by way of mobile devices.
- IP-based distribution undertakings using proprietary networks or leased local facilities
- ‘over-the-top’ (OTT) internet-based programming and distribution undertakings
- telecommunications both landline and mobile
- managing and allocating radio frequencies used in broadcasting and telecommunications as well as licensing and regulating radio apparatus
- and last but not least “as otherwise prescribed by the Minister responsible for the Communications Act.”

This last item would allow the aforementioned Minister to add areas of responsibilities to be administered by this Act – perhaps as a result of frequent CRTC proceedings – especially when new technologies and changing markets constantly and frequently disrupt the communications industry as a whole. For example – artificial intelligence and virtual reality may play a role in the future communications industry.

In other words, the new Communications Act must have exclusive and complete control over **ALL** broadcasting (radio, television and their distribution, including **ALL** Internet activity) and **ALL** telecommunications and **ALL** radiocommunications both current and emerging.

One advantage of this approach would avoid CRTC’s current approach of creating separate codes for separate industries. For example, we have a Wireless Code (first and second versions) and CRTC just issued a proceeding to explore the necessity / desire for an Internet Code.

There will be only one Minister responsible for the “new and improved” consolidated

The Act will clearly and explicitly preserve net neutrality. DDBHH Canadians totally depend on

RECOMMENDATION: ACT SHALL REGULATE BTRI INDUSTRIES TO MAKE THEM ACCESSIBLE TO DDBHH

As mentioned earlier, DAANS acknowledges and appreciates that DWCC is preparing a brief to the BTLR Panel that details the trials, tribulations and problems DDBHH face on a daily basis when buying, changing or cancelling their communication services (be they BTRI). Along with using simple language as Jim Roots demonstrated earlier, DWCC’s brief contains useful recommended accessibility solutions. The Act must enact the establishment of a mechanism, a process and procedures to have such accessibility requirements made mandatory for all BTRI players.

The Act must establish a Disability Rights Office within CRTC itself to be staffed by professional and qualified DDBHH individuals who will use their “Deaf lens” to ensure CRTC activities and decisions actually remove barriers faced by DDBHH individuals and do not create new ones.

RECOMMENDATION: ACT SHALL PROSCRIBE FORBEARANCE ON ACCESSIBILITY REQUIREMENTS

Stikeman Elliott's 2013 analysis "[Canada: Broadcasting and Telecommunications Law Overview](#)" states in part as:

The Telecommunications Act allows the CRTC to refrain from exercising its normal regulatory powers (forbearance) where it is of the view that the forces of competition will suffice to ensure reasonable rates and prevent discriminatory practices with respect to a class of telecommunications services. Traditionally, forbearance was treated as only one policy option of many available to the CRTC, though in recent years, the CRTC has forbore substantially from the regulation of wireless, long distance, satellite, international and retail Internet services, as well as many local telephone services in larger markets.

In December 2006, forbearance became the CRTC's default option, when the Government of Canada issued a policy directive stating that the CRTC should use market forces instead of regulation whenever possible. In April 2007, an Order-in-Council was passed establishing a presence-based test to be used by the CRTC to determine whether certain markets should be deregulated.... The CRTC preference has been to issue conditional forbearance orders rather than exemption orders and to maintain a power to review alleged discriminatory practices.

DAANS strongly recommends that the Communications Act's provisions and obligations to make all aspects of the communications accessible for all DDBHH Canadians never be foreborn. In other words, CRTC must always enact and enforce accessibility related regulations that all service providers must follow.

For example, two wireless service providers (**WSP**) zero rated SRV CAV VRS (a videoconferencing application allowing DDBHH Canadians to call hearing counterparts with the assistance of sign language interpreters). This means DDBHH consumers do not use up their data plans when using this application. Other WSPs did not follow this practice.

Had CRTC not forbore this essential service then all WSPs would have provided all DDBHH consumers with the same and no one would have to determine which WSPs are accessible and which are not.

RECOMMENDATION: COMMUNICATIONS ACT PHRASING

As Ms Lisa Anderson-Kellett and Jeffrey Beatty, both from DWCC, mentioned in their November 16, 2018 presentation to the BTLTR Panel, the proposed Communications Act shall contain the following wording or concepts:

- Regulating without forbearance the BTRI industry so DDBHH individuals may buy, change and cancel BTRI services at par with their hearing counterparts while simultaneously taking into consideration DDBHH rely on **BOTH** video communications and telecommunications. Such regulations will give DDBHH "functional BTRI equivalency."
- Change "persons with disabilities" to "Deaf people and persons with disabilities"
- Change "facilitating access to telecommunications by persons with disabilities" to "facilitating access to video and telecommunications by Deaf persons and people with disabilities"
- Change "interactive two-way voice communications between individuals" to interactive two-way voice and/or video communications between individuals;
- Functional equivalent or functional equivalency
- Equal Access
- Accessible Emergency Broadcasts
- Video Online captioning equivalency
- Relay Services
- Accessibility
- Mobile Options

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Please do not hesitate to contact me should you have any questions.

Sincerely yours,

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