

FEDERAL COURT

BETWEEN:

Donna Jodhan

Applicant

- and -

Attorney General of Canada

Respondent

FACTUM OF THE APPLICANT

Date: January 15, 2010

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PART I: STATEMENT OF FACT

1. This is an application under section 18.1 of the *Federal Courts Act*. The Applicant, Ms. Donna Jodhan, is a Canadian citizen who is legally blind. She seeks a declaration that Government of Canada (“GC” or “government”) web sites and online services are inaccessible to her as a vision impaired Canadian, and that as such, her rights under section 15(1) of the *Canadian Charter of Rights and Freedoms* (“*Charter*”) have been breached. She maintains that there are systemic problems with GC web sites and online services which prevent her, as a vision impaired Canadian, from having equal access to government services and information. She seeks a systemic remedy.

Overview

2. For persons who are blind, access to information is a matter of overriding concern. Vast amounts of information upon which all citizens depend is communicated visually.
3. When accommodated, persons with vision disabilities can live, learn, work and participate in society on an equal basis with their sighted peers. If persons with vision disabilities are denied access to information they are rendered functionally illiterate. They are deprived of their ability to acquire and apply the knowledge that would enable them to function effectively and independently and to realize their potential.
4. The Government of Canada is the single most important source of information, rights and entitlements for its citizens. To be denied access to fundamental information and the ability to communicate directly with government represents a denial of one of the most basic rights of citizenship which Canadians have come to regard as fundamental.
5. Technology in general, and the web in particular, has the potential to enable persons with disabilities to be more independent. Print has historically been the dominant means by which government communicates with its citizens. Alternate means of making print accessible to persons with vision disabilities, such as Braille, reading

onto tape and providing readers are slow and expensive and fraught with innumerable problems. Separate is inevitably unequal.

6. The Internet presents a mechanism for enabling persons with vision disabilities to simultaneously access the same information as sighted people and to interact independently and directly with those who control their rights and entitlements, such as governments, banks and employers. The technical means exist and have existed for a long time for achieving this.
7. The United States government has not only imposed an obligation on itself to use these means since 2001 but has imposed the same obligations on the private sector. The U.S. market is the world's largest, and sets the standard for the development of software, including authoring and monitoring software, designed to address the accessibility of web sites.
8. In the very early years of the web, the Canadian government was a world leader in the accessibility of its web sites and pioneered the introduction of accessibility standards.
9. Unfortunately, the Canadian government's leadership was quickly lost. Others, such as the United States, Europe and Australia, ensured web site accessibility kept up with new and important developments, particularly in how the Internet can be used to conduct basic business with the government, such as applying for employment, passports and government benefits. These online services which allow citizens the ability to interact with the government are largely made possible through the use of interactive web sites, also called rich internet applications, discussed more fully below. Canadian web accessibility standards fail to ensure that rich internet applications are accessible, which has effectively made the Canadian standards obsolete.
10. Obsolete standards mean many aspects of the Canadian government's web sites are completely inaccessible. They also mean that certain online government services operate in breach of Canada's web accessibility standards.

11. Of necessity, software and tools developed for the American market could be and have been adopted by the Canadian private sector, such as banks, but cannot be used without modification to fit the obsolete standards of the Canadian government.
12. The Canadian government clings to outmoded standards and rejects the use of simple and widely available methods of ensuring compliance with existing standards, such as automatic authoring and monitoring tools. Of great concern, the government decided against a centralized approach to web accessibility that should have included authoring and monitoring tools. The government's decentralized approach left individual departments and agencies to ensure compliance with its web accessibility standards. Not surprisingly, compliance with the obsolete standards has become a major issue. A recent audit of 47 government departments and agencies disclosed what the public servant responsible for the GC office charged with monitoring compliance described as "serious" concerns about the inaccessibility of the web sites. These findings have been confirmed by arm's length audits conducted by reputable Canadian and international auditory bodies.
13. As the web became the dominant method by which the government communicates with Canadian citizens and tax payers ("e-government"), confidentiality inevitably became a concern. The government purchased confidentiality software ("ePass") which is not compatible with its web site accessibility standards, even though accessible confidentiality software is available and in use across the United States and in the Canadian private sector. Fully aware that by doing so it was likely violating the *Charter* and human rights of blind Canadians, the government renewed the ePass contract in 2006 and recently renewed it for an additional two years. The private sector supplier indicated that it could modify the ePass software to enhance accessibility, but there is no evidence that any action has been taken by the government to make ePass accessible.
14. At the very time e-government has become the dominant way the Canadian government is communicating and transacting business with its citizens, blind Canadians are finding that government web sites are becoming less accessible. For

blind Canadians, this inequality is aggravated by the fact that blind Americans and customers of private Canadian companies such as banks are using the web on an equal basis with their sighted peers.

15. Further, it is entirely unclear *why* the government is excluding blind persons from accessing its services and information online. Updating its web accessibility standards and ensuring its web sites are accessible would not impede access for people with other types of disabilities, or for those with outdated assistive technology. Moreover, the government does not justify the inaccessibility of its web sites on a cost basis. Indeed, it would be much more cost effective for the government to update its web standards and to make its web sites accessible. This would give the government a broader choice of software providers and decrease the number of employees performing time-consuming and ineffective manual checks of its web sites. It would also give blind Canadians equal access to government services and information.
16. The Canadian government has violated the rights of blind Canadians by denying them access to its web sites. The result is that huge parts of its web sites are functionally inaccessible. The failure is systematic.

E-Government and the Government On-Line Initiative

17. In the 1999 Speech from the Throne, the GC made a commitment to making itself the government most connected to its citizens by making government information and services available online by 2004.

Government On-Line Chronicle, Joint Application Record [“JAR”] Volume 1, Tab 1D, pp. 71, 79

Speech by the Honourable Lucienne Robillard, JAR Volume 1, Tab 1B, p. 61
Auditor General’s Report, JAR Volume 26, Tab 4A, pp. 7666, 7670

18. The GC’s commitment to providing information and services online stemmed from its recognition of the Internet as an increasingly essential communication tool. The GC understood the importance of the Internet for interacting and communicating with Canadians about public programs, services and information twenty-four hours a day, seven days a week.

Communications Policy, JAR Volume 7, Tab 3G, p. 1914
Common Look and Feel for the Internet 2.0, JAR Volume 3, Tab N, p. 620
Steve Buell, Transcript of Cross-examination, p. 13, lines 8-14, p. 14 lines 3-11, p. 15,
line 23, p. 16, lines 1-7, JAR Volume 21, Tab 5, pp. 5930-5933

19. In light of the GC's recognition of the critical importance to Canadians of providing access to government services through the Internet, it established the Government On-Line Initiative ("GOL"). The GOL is a government-wide initiative that "is meant to stimulate the provision of better, faster, trusted and more convenient and accessible government services over the Internet" to all Canadian citizens.

Government On-Line Chronicle, JAR Volume 1, Tab 1D, pp. 71, 79
Government On-Line 2006, JAR Volume 1, Tab 1E, pp. 89-92
Auditor General's Report, JAR Volume 26, Tab 4A, pp. 7666-7671

20. In establishing the GOL, the GC's intention was "to fundamentally change the way the government operates and to deliver better service to Canadians." The GC has described the goals of its active online presence as "... expanding the reach and quality of internal and external communications, improving service delivery, connecting and interacting with citizens, enhancing public access and fostering public dialogue."

Auditor General's Report, JAR Volume 26, Tab 4A, p. 7670
Communications Policy, JAR Volume 7, Tab 3G, p. 1914
Speaking Notes for the Honourable Lucienne Robillard, JAR Volume 1, Tab 1C, p. 66

21. The GC recognizes that its online presence is vital in ensuring that citizens have access to timely and trusted information. It further recognizes that "in times of crisis or when a special event dominates the news, [such as SARS, mad cow disease or the West Nile Virus,] the need for timely and trusted information is greater." For this reason, the GC has committed to making such vital information readily accessible to citizens online.

Government On-Line 2006, JAR Volume 1, Tab 1E, p. 104

22. In carrying out the GOL initiative and delivering GC services online, web developers within the GC have implemented dynamic, interactive web sites, which are also referred to as rich internet applications. In the web in general, the use of rich internet applications has become common because they afford users the ability to manage information on a page similar to desktop applications, thereby allowing a much

higher degree of communication through the Internet and a much richer experience. Examples include bank web sites through which customers can open a bank account or pay a bill. Examples in the GC context include web sites through which citizens can apply online for government jobs, passports and social benefits.

Affidavit of Jutta Treviranus, Volume 1, paras. 26-27, JAR Volume 2, Tab 2, pp. 334-35
Affidavit of Jutta Treviranus, Volume 2, paras. 15, 16, 25, 32, JAR Volume 12, Tab 2, pp. 3255-57, 3259
W3C Roadmap for Accessible Rich Internet Applications (WAI-ARIA Roadmap), JAR Volume 4, Tab P, p. 781

23. For citizens in general, Canada's willingness to make government services available online has been a major convenience and cost saver. It has allowed Canadians the ability to access government information and services instantaneously, at the time and place of their choosing.

Affidavit of Jutta Treviranus, Volume 2, para. 32, JAR Volume 12, Tab 2, p. 3259
Auditor General's Report, JAR Volume 26, Tab 4A, p. 7670

24. For persons with disabilities, being able to deal directly with government over the Internet is more than just a matter of efficiency and reliability; it represents independence and privacy. For many Canadians with vision impairments, functioning independently in the world of printed media is impossible, so electronic forms of communications, such as are available over the Internet, are nothing short of a lifeline.

Affidavit of Jutta Treviranus, Volume 2, para. 32, JAR Volume 12, Tab 2, p. 3259
Affidavit of John Rae, para. 18, JAR Volume 4, Tab 3, p. 902
Steve Buell, Transcript of Cross-examination, p. 10, lines 20-23, p. 150, lines 3-10, JAR Volume 21, Tab 5, pp. 5927, 6067

25. For Ms. Jodhan and other vision impaired Canadians, the preferred means of accessing government services is online, because it permits interaction and information in the most independent, efficient, and dignified manner. If a website is accessible, a person need not request a Braille copy of a document, call a government employee for assistance, or go to the significant expense and inconvenience of obtaining information in person. Further, studies have shown that vision impaired Canadians have less than a 50 percent chance of obtaining a desired GC publication

in a timely manner, and that the quality of these alternative publications is often unsatisfactory.

Affidavit of Donna Jodhan, Volume 1, paras. 4, 35-36, 45, JAR Volume 1, Tab C1, pp. 43, 50-52, 55

Cynthia Waddell, Transcript of Cross-examination, p. 77, lines 24-25, p. 78, lines 1-25, p. 79, line 1, JAR Volume 18, Tab 3, pp. 5031-5033

Steve Buell, Transcript of Cross-examination, p. 11, lines 1-6, JAR Volume 21, Tab 5, p. 5928

Canadian Human Rights Commission, "No Alternative: A review of the Government of Canada's Provision of Alternative Text Formats", JAR Volume 2, Tab P, p. 215

Introduction to Web Accessibility, JAR Volume 3, Tab G, p. 451

How blind persons use the web and common accessibility barriers

26. A person who is blind operates a computer using assistive technology, such as a screen reader and/or self voicing browser software, and a keyboard. A screen reader is a software application that identifies and interprets electronic text that is displayed on a computer screen, and then presents that information to the user with text-to-speech and, when available, a Braille output device. Self-voicing browser software is essentially a web browser with a screen reader built in. In either case, a blind person uses keystrokes entered on a standard keyboard instead of mouse clicking to operate both the screen reader and other software, such as a web browser displaying a web page. A web site can be accessible if designed so that assistive technology can navigate and interpret the information encoded in the site.

Affidavit of Donna Jodhan, Volume 1, paras. 4-6, JAR Volume 1, Tab C1, p. 43

How People with Disabilities Use the Web, JAR Volume 2, Tab 2B, pp. 353, 359-361

27. Proper web design is critical for a web site to be accessible to a blind person. A web site that is difficult to navigate for a sighted person may be completely inaccessible to a blind person. In some cases, accessibility barriers mean that it takes a vision impaired person a significantly longer amount of time than a person without vision impairments to access the information. However in many other cases, accessibility barriers mean that a vision impaired person is entirely prevented from accessing the service in question or the information being conveyed. This may occur because the screen reader cannot read or decipher the information, or because when it is read the content is meaningless and does not reflect the actual content on the screen. It may

also occur where keyboard navigation is blocked because a web site was not designed to be accessible. However, the techniques and methodologies for creating accessible web content have existed for many years.

Affidavit of Donna Jodhan, Volume 1, para. 8, JAR Volume 1, Tab C1, pp. 43-44
Affidavit of Jutta Treviranus, Volume 1, paras. 6, 14-15, 18, 28-30, JAR Volume 2, Tab 2, pp. 330, 331-333, 335
Affidavit of Jutta Treviranus, Volume 2, paras. 14, 16, 17, 24-25, 28-30, 32-34, JAR Volume 12, Tab 2, pp. 3255-3259
Steve Buell, Transcript of Cross-examination, p. 11, lines 18-23, JAR Volume 21, Tab 5, p. 5928

28. A common accessibility barrier for blind web users is the failure to properly associate labels with form fields. This often occurs when a web designer places text close to a form field, so that it visually appears to be a label, without programmatically associating the text with the form control. Because screen readers are software, they interpret the programmatic code, rather than looking at the visual screen as a person does, so they are unable to identify the label relationship. A blind user relies on a screen reader to read a label identifying what information is to be entered into a particular form field. If the label is not properly associated with the form field, the screen reader will not tell a user what to put in the field. It will identify that a checkbox is not checked, but it will not tell the user what the option might be. This type of barrier is similar to a ramp with a step in the middle. While a wheelchair user may be able to get closer to the building entrance, the step is a complete barrier to entering the building. Similarly, while a web user may be able to get partway through the form, failure to properly associate a label with a form field will stop a web user from being able to complete the entire form, thus blocking the user from accessing the information or services in question. As discussed below, this accessibility barrier is being routinely encountered by Ms. Jodhan and other vision impaired Canadians on GC web sites.

Affidavit of Donna Jodhan, Volume 1, para. 12, JAR Volume 1, Tab C1, p. 44
Steve Buell, Transcript of Cross-examination, p. 21, lines 9-16, JAR Volume 21, Tab 5, p. 5938

29. Another common accessibility barrier is a web site that does not use structural elements properly, for example where headings and subheadings are created in graphics rather than appropriate heading text. Screen readers are capable of helping

blind users navigate between headings, but if a site lacks heading markup, that screen reader feature is useless and the user must read through the entire content of a web page to reach the relevant link or information. This barrier is analogous to a sighted person attempting to read a newspaper that contained no headlines or other formatting. In both cases, an individual would have great difficulty understanding and navigating the page. The frustrating loss of time created by such a barrier eventually leads a blind user to conclude that he or she cannot rely upon direct access to the web site in a manner comparable to non-disabled persons. Then they give up.

Affidavit of Jutta Treviranus, Volume 1, para. 6, JAR Volume 2, Tab 2, p. 330

Affidavit of Jutta Treviranus, Volume 2, para. 15, JAR Volume 12, Tab 2, p. 3255

Technology that ensures web accessibility exists

30. The techniques, methodologies and tools for creating accessible web sites and for ensuring that web sites are accessible, including authoring tools and automatic monitoring tools, have existed for a long time.

Affidavit of Jutta Treviranus, Volume 1, paras. 6, 14-15, 18, 28-30, JAR Volume 2, Tab 2, pp. 330, 331-333, 335

Affidavit of Jutta Treviranus, Volume 2, paras. 14, 16, 17, 24-25, 28-30, 32-34, JAR Volume 12, Tab 2, pp. 3255-3259

Steve Buell, Transcript of Cross-examination, p. 11, lines 18-23, JAR Volume 21, Tab 5, p. 5928

31. Authoring tools simplify the task of developing web pages and web sites by hiding complex program code details, much the same way as Microsoft Word hides codes so that a document appears typewritten without any formatting notations. Some authoring tools help improve the accessibility of web content regardless of the experience or expertise of the web designer by generating valid markup automatically; by checking the accessibility of content created; by prompting the author for necessary changes; and by informing the author how to create accessible content.

Affidavit of Jutta Treviranus, Volume 1, paras. 7, 15, JAR Volume 2, Tab 2, pp. 331-333

32. Authoring tools that support accessibility are vital because it is much more efficient in terms of time and resources to build accessibility in at the early stage of web site development, rather than attempting to make an inaccessible web site accessible.

Affidavit of Jutta Treviranus, Volume 1, paras. 15, 20, 33, JAR Volume 2, Tab 2, pp. 332-334, 336

Affidavit of Jutta Treviranus, Volume 2, paras. 14, 28-30, JAR Volume 12, Tab 2, pp. 3255, 3258

Cynthia Waddell, Transcript of Cross-examination, p. 81, lines 21-25, p. 82, lines 1-25, JAR Volume 18, Tab 3, pp. 5035-5036

Panel II: The Principle of Non-Discrimination and Equality From A Disability Perspective, JAR Volume 19, Tab 3B, p. 5347

33. Internationally recognized Authoring Tool Accessibility Guidelines (“ATAG”) have also been developed to assist web developers in designing authoring tools that produce accessible web content and to assist developers in creating an accessible authoring interface. The development of ATAG is an ongoing project of the World Wide Web Consortium (“W3C”), an international consortium of web accessibility experts, organizations, and members of the public who work together to ensure no country or type of disability is left behind.

Authoring Tool Accessibility Guidelines 1.0, JAR Volume 4, Tab I, p. 484-503

Affidavit of Jutta Treviranus, Volume 1, para. 15, JAR Volume 2, Tab 2, pp. 332-333

About the World Wide Web Consortium (W3C), JAR Volume 2, Tab 2C, pp. 369-370

34. The first version of ATAG, known as ATAG 1.0, became a W3C final recommendation in February 2000. Even if an authoring tool does not conform entirely to ATAG 1.0, following even some of the provisions will improve the accessibility of the web pages and web sites that the authoring tool creates.

Affidavit of Jutta Treviranus, Volume 1, para. 15, JAR Volume 2, Tab 2, pp. 332-333

Affidavit of Jutta Treviranus, Volume 2, paras. 28-30, JAR Volume 12, Tab 2, p. 3258

Authoring Tool Accessibility Guidelines 1.0, JAR Volume 4, Tab I, p. 484-503

Cynthia Waddell, Transcript of Cross-examination, p. 108, lines 1-16, p. 111, lines 6-13, p. 116, lines 23-25, p. 117, lines 1-9, JAR Volume 18, Tab 3, p. 5062, 5065, 5070-5071

35. Additionally, automatic monitoring tools have been developed to assist in ensuring effective monitoring of web sites because of the difficulty of manually checking web sites to ensure they are accessible. According to the GC, a typical manual evaluation of a 30 page web site would involve five days of testing for each of the English and French versions of the web site. An automatic evaluation can be performed in a matter of seconds.

Affidavit of Jutta Treviranus, Volume 2, para. 30, JAR Volume 12, Tab 2, p. 3258

Steve Buell, Transcript of Cross-examination, p. 55, lines 16-23, p. 56, lines 1-8, p. 155, lines 18-23, p. 156, lines 1-3, JAR Volume 21, Tab 5, pp. 5972-5973, 6072-6073

Cynthia Waddell, Transcript of Cross-examination, p. 138, lines 6-20, JAR Volume 18, Tab 3, p. 5099

36. While automatic monitoring tools are able to check the accessibility of web sites in a rapid and convenient manner, this does not entirely obviate the need for manual checks. For example, an automatic tool would be able to determine if there is alternative text in place of an image or other non-text element, but manual checking would be required to determine the accuracy of the alternative text. Nevertheless, automatic tools are essential for ensuring web accessibility, as approximately 80% of accessibility issues can be addressed using automatic monitoring tools.

Affidavit of Jutta Treviranus, Volume 1, para. 7, JAR Volume 2, Tab 2, p. 331
Cynthia Waddell, Transcript of Cross-examination, p. 124, lines 19-25, p. 125, lines 9-25, p. 126, lines 1-17, JAR Volume 18, Tab 3, pp. 5077-5080
Steve Buell, Transcript of Cross-examination, p. 18, lines 19-23, JAR Volume 21, Tab 5, p. 5935

The Common Look and Feel Standards

37. The GC has committed to making government information broadly accessible throughout society, including to Canadians with physical disabilities. The GC has also recognized that Canadians have the right to obtain information and services from GC web sites regardless of the technologies they use. It has cautioned GC departments not to design or test web site accessibility only for those with the newest technology, as low income Canadians including those with disabilities will be unable to access the services or information unless they can afford to buy the latest technology.

Communications Policy, JAR Volume 7, Tab 3G, pp. 1905, 1914-1915
CLF 2.0, JAR Volume 7, Tab 3H, p. 1936
Defining the JavaScript issue for accessibility, JAR Volume 21, Tab 4B, pp. 5798-99

38. In 2000, the GC adopted web accessibility standards to ensure “equitable access to all content on [GC] websites.” The GC’s web accessibility standards form part of the GC’s “Common Look and Feel” or “CLF” standards.

CLF 1.0, JAR Volume 3, Tab K, p. 553

39. The accessibility provisions of CLF 1.0, the first version of the CLF standards, adopted parts of the international standards known as the Web Content Accessibility

Guidelines 1.0 (“WCAG 1.0”). The development of WCAG is an ongoing project of the W3C.

CLF 1.0, JAR Volume 3, Tab K, pp. 553-575
Fact Sheet for WCAG 1.0, JAR Volume 2, Tab 2D, pp. 373-410
WCAG 1.0, JAR Volume 2, Tab 2F, pp. 416-448

40. Although WCAG 1.0 became a final recommendation of the W3C in 1999, the CLF Standards did not fully implement WCAG 1.0 in its entirety. Since CLF 1.0 was adopted by the GC, it has undergone two revisions. CLF 1.1 was implemented in September 2005, and CLF 2.0, the standard currently in effect, was approved in December 2006. In other words, it has taken the GC over six years to adopt WCAG 1.0, even though WCAG 1.0 was in its final form in 1999.

WCAG 1.0, JAR Volume 2, Tab 2F, pp. 416-448
CLF 1.0, JAR Volume 3, Tab K, pp. 553-575
CLF 1.1, JAR Volume 24, Tab K, pp. 6899-6909
CLF 2.0, JAR Volume 7, Tab 3H, pp. 1933-1955
CLF Crosswalk Table: Police Requirements, JAR Volume 4, Tab O, pp. 726-778

41. All GC departments governed by the *Financial Administration Act* are required to be compliant with the CLF standards. All newly launched web sites must be fully compliant with CLF 2.0; older web sites were expected to be compliant by December 31, 2008.

CLF 2.0, JAR Volume 7, Tab 3H, p. 1933
Financial Administration Act, R.S.C., 1985, c. F-11, Schedules I, II, and III, JAR Volume 17, Tab N, pp. 4942-4954

42. The Treasury Board is a Cabinet committee that has the overriding responsibility for ensuring the GC’s online material is accessible and compliant with the CLF standards. However, implementation of the standards and monitoring of GC web sites is decentralized. GC departments and agencies are each responsible for implementing the CLF standards and for monitoring their own implementation of the standards to ensure compliance.

CLF 2.0, JAR Volume 7, Tab 3H, pp. 1937-1938
Treasury Board of Canada Secretariat – About Us, JAR Volume 2, Tab Q, pp. 244-246
TBS Organization, Chief Information Officer Branch, JAR Volume 2, Tab R, pp. 248-49
TBS, Policy on Active Monitoring, JAR Volume 2, Tab S, pp. 251-257
Wendy Birkinshaw Malo, Transcript of Cross-Examination, p. 89, lines 23-27, p. 90 lines 1-4, JAR Volume 20, Tab 4, pp. 5619-5620

Accessibility barriers encountered by Ms. Jodhan

43. Despite the GC's commitment to and responsibility for ensuring that Canadians with disabilities have equitable access to all content on GC web sites, there are a number of basic accessibility problems with its online material that make them unusable by individuals with disabilities. In order to exemplify the systemic web site accessibility issues, Ms. Jodhan has detailed the many problems she has had in accessing GC web sites. It is worth noting that Ms. Jodhan encountered these problems despite the fact that she is an accessibility consultant who possesses above average computer skills and uses capable technology. Indeed, Ms. Jodhan has won four awards from IBM for various technical initiatives.

Affidavit of Donna Jodhan, Volume 1, paras. 1-2, 8-19, 23-31, 33-34, 37-39, 42-45, JAR Volume 1, Tab C1, pp. 41-55
Affidavit of Donna Jodhan, Volume 2 at paras. 6-13, 20, 22, 24-29, JAR Volume 12, Tab 1, pp. 3142-3144, 3146-3149
Curriculum vitae of Donna Jodhan, JAR Volume 1, Tab 1A, pp. 57-59
Affidavit of Jutta Treviranus, Volume 1, para. 6, JAR Volume 2, Tab 2, p. 330
Affidavit of Jutta Treviranus, Volume 2, para. 10, JAR Volume 12, Tab 2, p. 3254
Affidavit of John Rae, paras. 1-15, JAR Volume 4, Tab 3, pp. 900-901
Alliance for Equality of Blind Canadians, Common Look and Feel Report, Site Evaluation, JAR Volume 5, Tab N, pp. 1069-1081

44. One accessibility barrier Ms. Jodhan encountered was that she was unable to create a job profile on the GC's employment web site, www.jobs.gc.ca, which is the gateway for all federal government job opportunities. Despite trying several times, Ms. Jodhan was unable to create a job profile due to an error message that appeared each time she tried to enter the "date available" field. The problem with the "date available" field was also observed and discussed by accessible web site expert Alan Cantor in his review of the web site one month *after* Ms. Jodhan filed the within application. Ms. Jodhan attempted to get technical assistance from the GC, but was provided with a phone number that was out of service.

Affidavit of Donna Jodhan, Volume 1, paras. 10-18, JAR Volume 1, Tab C1, pp. 44-46
Affidavit of Donna Jodhan, Volume 2, paras. 24-27, JAR Volume 12, Tab 1, pp. 3148-49
Alan Cantor's report "Review of jobs.gc.ca", dated July 31, 2007, JAR Volume 12, Tab 1D, p. 3243

45. With no technical help from any GC agent, Ms. Jodhan was forced to depend on sighted assistance to continue. Ms. Jodhan's profile had to be created and accessed

by a government employee, Mr. Clifford Scott, because of the accessibility barriers on the web site www.jobs.gc.ca. Ms. Jodhan was unable to review any of the information entered on her profile, and was unable to access her own profile because she was never provided with her own user identification or password. In fact, Ms. Jodhan was first made aware of her user identification when she reviewed one of the Respondent's affidavits. Ms. Jodhan commends the efforts by GC counsel to make the materials in this case accessible to her. For all other purposes Ms. Jodhan must attempt to access sighted assistance, as there is no sighted GC personnel readily available to her. Further, it is extraordinarily demeaning for her to be forced to rely on others to access government information.

Affidavit of Donna Jodhan, Volume 1, paras. 17, 21, JAR Volume 1, Tab C1, pp. 46-47
Affidavit of Donna Jodhan, Volume 2, paras. 10-12, JAR Volume 12, Tab 1, pp. 3143-44
Affidavit of Diane Beauchamp, para. 49, JAR Volume 10, Tab 6, p. 2571

46. In addition to being forced to depend on sighted assistance to complete her profile, Ms. Jodhan's application for a position with Statistics Canada was subjected to a different process than other applications that are submitted by sighted persons within Canada. Statistic Canada's standard practice is to administer a written test to all applicants who apply for positions from within Canada. If an applicant is successful on the written test, his or her application may then be screened out if the applicant does not meet the educational requirements of the position. In contrast, Ms. Jodhan's application for a position with Statistics Canada was screened out by the department before she even had the opportunity to write the written test.

Affidavit of Donna Jodhan, Volume 2, para. 13, JAR Volume 12, Tab 1, p. 3144
Affidavit of Clifford Scott, paras. 20-27, JAR Volume 9, Tab 5, pp. 2471-2473

47. Ms. Jodhan also encountered accessibility barriers when she tried to complete Statistic Canada's 2006 online Census form. By law, the government imposes an obligation on every household to fill in a Census form. Despite Statistics Canada's assertions, the online form was not generally accessible to most Canadians with vision disabilities. The Census was only accessible online to blind or severely vision impaired persons if they had the most recent version of technology, such as the Freedom Scientifics' JAWS Screen Reader Technology ("JAWS"). As the GC has recognized, this is unacceptable because the JAWS program is very costly (about

\$1000 U.S.), beyond the financial reach of most vision impaired Canadians, an overwhelming number of whom live in poverty.

Affidavit of Donna Jodhan, Volume 1, paras. 23-27, JAR Volume 1, Tab C1, pp. 47-48

Affidavit of Donna Jodhan, Volume 2, paras. 15-16, 20-23, JAR Volume 12, Tab 1, pp. 3145-3148

Affidavit of John Rae, paras. 3, 7, JAR Volume 4, Tab 3, pp. 899-900

Statistics Act, R.S.C. 1985, c. S-19, section 19

Statistics Canada, 2006 Census 2A (Short Form) Paper Questionnaire, JAR Volume 11, Tab 8A, p. 2925

Statistics Canada, The 2006 Census questionnaire in alternative formats, JAR Volume 1, Tab J, p.177

New Devices can Let the Blind Use Computers, But Cost Denies Access for Many, JAR Volume 1, Tab 1F, p. 167

An Unequal Playing Field: Report on the Needs of People Who Are Blind or Visually Impaired Living in Canada, JAR Volume 5, Tab E, pp. 1021-1041

Defining the JavaScript issue for accessibility, JAR Volume 21, Tab 4B, pp. 5798-5799

48. Ultimately, Ms. Jodhan was forced to rely on sighted assistance from a government employee to complete the Census. This was an invasion of Ms. Jodhan's privacy. It required her to go to time and trouble not required of sighted Canadians, and it caused Ms. Jodhan considerable stress that she would not have experienced if she was sighted, or if the forms had been accessible to her on the Statistics Canada web site.

Affidavit of Donna Jodhan, Volume 2, paras. 18-20, JAR Volume 12, Tab 1, p. 3146-47

49. In addition to the accessibility barriers to the 2006 online Census form, Ms. Jodhan was also unable to obtain information on the consumer price index and the unemployment rate on the Statistics Canada web site. She could not access this information because the statistics were only available in portable document format ("PDF"), with no HTML (or text) equivalent. Unless PDF files are created to be accessible, which these were not, screen readers are not able to read them. When Ms. Jodhan called the information number provided, she was told no alternative formats were available for these statistics or others.

Affidavit of Donna Jodhan, Volume 1, paras. 28-30, JAR Volume 1, Tab C1, p. 49

Affidavit of Donna Jodhan, Volume 2, paras. 28-29, JAR Volume 12, Tab 1, p. 3149

50. The inaccessibility of GC web sites has been the subject of complaint by many members of the Alliance for Equality of Blind Canadians ("AEBC"). This has led the AEBC to adopt a number of resolutions aimed at targeting inaccessible web material, including one which notes the GC's continued breach of its own CLF standards. The

AEBC's reviews of GC web sites indicates the significant accessibility issues which consistently arise on those sites, including many of the barriers detailed by Ms.

Jodhan.

Affidavit of John Rae, paras. 7-18, JAR Volume 4, Tab 3, pp. 900-902

AEBC – Resolutions 2003-12 – Government of Canada Access to Information, JAR Volume 5, Tab I, pp. 1060-61

AEBC – Resolutions 2005-15 – Access to Electronic Text, JAR Volume 5, Tab J, p. 1064

AEBC – Resolutions 2005-20 – Internet Content Access, JAR Volume 5, Tab K, p. 1066

AEBC – Resolutions 2005-21 – Internet Meta Tags, JAR Volume 5, Tab L, p. 1067

AEBC – Resolutions 2006-08 – Charity vs. Rights, JAR Volume 5, Tab M, p. 1068

AEBC – Common Look and Feel Report, JAR Volume 5, Tab N, pp. 1069-1081

The CLF standards are obsolete

The web has changed drastically in the past decade

51. When WCAG 1.0 became a final recommendation of the W3C in 1999, the web consisted primarily of relatively static HTML-based web sites. More interactive web sites, called rich internet applications, were emerging, such as bank web sites through which customers can open a bank account or pay a bill. As noted above, examples in the GC context include web sites through which citizens can apply online for government jobs, passports and social security benefits. These web sites are called rich internet applications because they use scripting language such as Javascript to create user experiences that are similar to desktop applications. Since WCAG 1.0 was published, the W3C has continued its work to provide the best possible guidance on how to make the web accessible, including rich internet applications.

W3C Roadmap for Accessible Rich Internet Applications (WAI-ARIA Roadmap), JAR Volume 4, Tab P, pp. 780-843

W3C Web Accessibility Initiative, JAR Volume 2, Tab 2E, pp. 412-413

Accessible Rich Internet Applications (WAI-ARIA) 1.0, W3C Working Draft, JAR Volume 17, Tab H, pp. 4764-4915

Affidavit of Jutta Treviranus, Volume 1, paras. 26-27, JAR Volume 2, Tab 2, pp. 334-35

Affidavit of Jutta Treviranus, Volume 2, paras. 15, 16, 25, 32, JAR Volume 12, Tab 2, pp. 3255-57, 3259

52. In 1999, screen readers were still having difficulty accessing this dynamic information. For this reason, WCAG 1.0 (and by implication CLF 1.0 and 2.0) included a provision that web sites should be operable with the processing of scripts and other programmatic technologies turned off by the user. Soon afterwards, however, screen reader technology adapted to the emergence of these rich internet

applications. This is why the United States' web accessibility standards and WCAG 2.0 (discussed below) no longer include such a provision. Rich internet applications simply cannot function when scripts are turned off. Essentially, this means that the CLF standards cannot be complied with for any rich internet applications. The failure to ensure the accessibility of rich internet applications has rendered the CLF standards obsolete.

W3C Roadmap for Accessible Rich Internet Applications (WAI-ARIA Roadmap), JAR Volume 4, Tab P, pp. 780-843
Affidavit of Jutta Treviranus, Volume 2, paras. 15-16, 32, JAR Volume 12, Tab 2, pp. 3255-3256, 3259
WCAG 1.0, JAR Volume 2, Tab 2F, pp. 416-448
CLF 1.0, JAR Volume 3, Tab K, pp. 553-575
CLF 2.0, JAR Volume 7, Tab 3H, pp. 1933-1955
Rehabilitation Act of 1973, Section 508 Standards, JAR Volume 12, Tab 2E, pp. 3283-95

United States Web Accessibility Standards – Section 508 and Section 508 Refresh

53. As early as 2001, the United States recognized that web authors would be compelled to use rich internet applications and that a more flexible strategy than that of WCAG 1.0 would be required to address accessibility issues with respect to these functions.

Affidavit of Jutta Treviranus, Volume 2, para. 33, JAR Volume 12, Tab 2, p. 3259

54. In 2001, the United States' web accessibility standards, commonly referred to as "Section 508", took effect. Section 508 mirrored WCAG 1.0 in most requirements but the guidelines referring to interactive elements including scripts and applets, because of the rapid adoption and widespread use of Javascript and rich internet applications. Section 508 includes five modified rules that do not form part of WCAG 1.0. In this respect, Section 508 is superior to WCAG 1.0, as these provisions recognize the need for a standard that requires rich internet applications to be accessible, rather than prohibiting their use entirely, as is the case with the CLF standards.

Affidavit of Jutta Treviranus, Volume 2, para. 33, JAR Volume 12, Tab 2, p. 3259
Rehabilitation Act of 1973, Section 508 Standards, JAR Volume 12, Tab 2E, pp. 3283-95
Cynthia Waddell, Transcript of Cross-examination, p. 53, lines 9-25, p. 54, lines 1-12, pp. 254-257, JAR Volume 18, Tab 3, pp. 5007-5008, 5215-5218
Analysis prepared by Jim Thatcher, "Side by Side WCAG vs. 508", JAR Volume 7, Tab O, pp. 1847-1864

55. Since 2004, the United States has been working actively on revised web accessibility standards, referred to as “Section 508 refresh,” which are based upon the WCAG 2.0 standards not already included in Section 508. The US has adapted its standards to reflect the needs of its citizens on an ongoing basis. As a result of Section 508 and Section 508 refresh, the private sector has developed programs that address the accessibility of rich internet applications. In fact, the GC’s expert in this litigation has elsewhere applauded U.S. efforts in web accessibility:

As the world’s largest consumer of electronic and information technology, our federal government is required to use the power of the purse to push the electronic and information technology industries to design accessible products. All vendors, whether they be U.S. or foreign, must design for all if they seek to participate in the federal government market.

As a result, a marketplace incentive has now been created to design for accessibility since 1) the federal government must procure products meeting the Electronic and Information Technology Accessibility Standards [Section 508] and 2) a vendor can challenge and ultimately void a government contract award to another vendor if they prove that their product is more accessible. These factors provide an economic benefit for devoting research and development to design for all.

Affidavit of Jutta Treviranus, Volume 2, para. 33, JAR Volume 12, Tab 2, p. 3259
Report to the Access Board: Refreshed Accessibility Standards and Guidelines in
Telecommunications and Electronic and Information Technology, JAR Volume 12,
Tab 2F, pp. 3297-3395

Panel II: The Principle of Non-Discrimination and Equality From A Disability
Perspective, “Critical issues from a disability perspective: Accessibility” by Cynthia D.
Waddell, JAR Volume 19, Tab 3B, pp. 5343-5344

WCAG 2.0 and WAI-ARIA

56. Early rich internet applications used scripting in a fairly limited way to enhance HTML-based pages with richer error-validation and other useful effects. However, many contemporary rich internet applications make much more extensive use of scripting and de-emphasize HTML to produce even richer and more compelling interactive web sites. With this shift away from HTML, screen readers need additional information in order to communicate the state of the applications to their users. This information can be provided by WAI-ARIA, a technology developed by the W3C Web Accessibility Initiative to make these kinds of rich internet applications accessible.

W3C Roadmap for Accessible Rich Internet Applications (WAI-ARIA Roadmap), JAR Volume 4, Tab P, pp. 780-843
Accessible Rich Internet Applications (WAI-ARIA) 1.0, W3C Working Draft, JAR Volume 17, Tab H, pp. 4764-4915
WCAG 2.0, W3C Recommendation, JAR Volume 16, Tab 16, pp. 4683-4723
Jutta Treviranus, Transcript of Cross-Examination, p. 119, lines 18-24, p. 120, lines 1-6, JAR Volume 14, Tab 2, pp. 3959-3960
Affidavit of Jutta Treviranus, Volume 2, paras. 15, 16, 32, 34, 35, JAR Volume 12, Tab 2, pp. 3255-3256, 3259-3260

57. While WCAG 2.0 did not become a W3C final recommendation until December 2008, the W3C's position with respect to scripts, applets and programmatic objects has remained unchanged since the August 2001 draft of WCAG 2.0. WCAG 2.0 and WAI-ARIA could have provided helpful advice to GC web developers in making GC rich internet applications accessible, just as Section 508 did since 2001.

WCAG 2.0, W3C Working Draft, 24 August 2001, JAR Volume 14, Tab C2, pp. 3994-4025
W3C Roadmap for Accessible Rich Internet Applications (WAI-ARIA Roadmap), JAR Volume 4, Tab P, pp. 780-843
Accessible Rich Internet Applications (WAI-ARIA) 1.0, W3C Working Draft, JAR Volume 17, Tab H, pp. 4764-4915
Affidavit of Jutta Treviranus, Volume 1, paras. 26-31, JAR Volume 2, Tab 2, pp. 334-35
Affidavit of Jutta Treviranus, Volume 2, paras. 15-17, 32, 34-35, JAR Volume 12, Tab 2, pp. 3255-3256, 3259-3260

58. As evidenced by their participation in the candidate recommendation phase of WCAG 2.0, jurisdictions such as Australia and New Zealand implemented the standard before it became a W3C final recommendation.

Affidavit of Jutta Treviranus, Volume 2, para. 34, JAR Volume 12, Tab 2, p. 3260
WCAG 2.0 Implementation Report, JAR Volume 12, Tab 2G, p. 3403

CLF standards do not address current technology

59. CLF 2.0 was purportedly “developed to reflect modern practices on the Web, changes in technology and issues raised by the Web community over the past six years ...” Unfortunately, the CLF standards have remained virtually unchanged since they were originally adopted in 2000 despite the drastic changes in the way the web functions.

Common Look and Feel for the Internet 2.0, JAR Volume 3, Tab N, p. 620
Affidavit of Jutta Treviranus, Volume 1, paras. 23-25, JAR Volume 2, Tab 2, p. 334

60. The fundamental problem with CLF 2.0, in terms of web accessibility, is that it continues to reference WCAG 1.0, despite the fact that WCAG 1.0 is an outdated

standard. CLF 2.0 does not take into account any developments in web practices and technology following WCAG 1.0 (i.e. since 1999). As discussed above, the way people use the web has changed dramatically over the intervening years leaving the GC's standards far behind.

Affidavit of Jutta Treviranus, Volume 1, paras. 23-25, JAR Volume 2, Tab 2, pp. 334

61. While the GC in effect prohibited the use of rich internet applications through CLF 1.0 and 2.0, the services that the GC wanted to put online dictated the need to use rich internet applications. Thus, the GC's web masters and web developers face an impossible choice. They are told to comply with the CLF standards, which instruct web masters not to create rich internet applications, and to put services online that require the use of rich internet applications. This dilemma is evident in ePass, discussed below at paragraphs 67-82. Unquestionably the GC's web masters and developers are opting to utilize rich internet applications and disregard the CLF standards. Blind Canadians are left in the dark as a consequence.

Affidavit of Jutta Treviranus, Volume 1, paras. 26-31, JAR Volume 2, Tab 2, pp. 334-35

Affidavit of Jutta Treviranus, Volume 2, paras. 32-35, JAR Volume 12, Tab 2, pp. 3259-3260

62. After CLF 2.0 came into effect, the focus of the GC was on ensuring compliance with the already out-of-date WCAG 1.0 standard, rather than tracking evolving technology to address the needs of persons with disabilities through changes in standards. The GC could have adopted the methodology and tools that are available for making rich internet applications accessible, including WCAG 2.0 and WAI-ARIA, into the CLF standards and provided its web developers with training on how to support accessibility in rich internet applications.

Affidavit of Jutta Treviranus, Volume 1, paras. 25-31, JAR Volume 2, Tab 2, p. 334-335

Affidavit of Jutta Treviranus, Volume 2, paras. 32-35, JAR Volume 12, Tab 2, pp. 3259-3260

CLF 2.0, JAR Volume 7, Tab 3H, pp. 1933-1955

63. The very existence of the U.S. Section 508 standards which address rich internet applications, as well as the stance of jurisdictions such as Australia and New Zealand, makes it clear that the Canadian government's web accessibility standards could have and should have addressed rich internet applications since 2001. Indeed, the witness

for whom the GC claims expertise has acknowledged that Section 508 is “superior to WCAG [1.0]” (and by implication CLF 1.0 and 2.0) in terms of its treatment of scripts, which is the accessibility stumbling block in rich internet applications. The Applicant’s expert in web accessibility, Ms. Jutta Treviranus, has given uncontradicted evidence that WCAG 2.0 could have been implemented by the GC before it became a W3C final recommendation, without any risk of wasting money or of having to reverse changes made according to the evolving versions of WCAG 2.0.

Jutta Treviranus, Transcript of Cross-examination, p. 25, lines 10-25, p. 26, lines 1-13, JAR Volume 14, Tab 2, pp. 3865-66

Cynthia Waddell, Transcript of Cross-examination, p. 53, lines 9-25, p. 54, lines 1-12, p. 222, lines pp. 254-257, JAR Volume 18, Tab 3, pp. 5007-5008, 5215-5218

64. While the GC claims to have been waiting for WCAG 2.0 to become a W3C final recommendation before implementing it, WCAG 2.0 has been a final recommendation since December 2008. Unlike the United States which started its Section 508 refresh process in 2004, the GC has done nothing. CLF 2.0 has not been modified or revised to reflect the key areas addressed in WCAG 2.0, nor is there any process underway designed to achieve this.

WCAG 2.0, W3C Recommendation, JAR Volume 16, Tab 16, pp. 4683-4723

Failure to enforce Compliance with the CLF standards

65. The CLF standards are obsolete because they fail to address rich internet applications. Worse still, the GC has failed to ensure that GC departments and agencies are complying with its CLF standards, as outdated as they may be. The specific examples of barriers faced by Ms. Jodhan in her efforts to access government information and services online reflect the accessibility gaps across GC web sites, and the GC’s systematic failure to comply with its own CLF standards. The GC is aware of the government-wide failure to comply with the CLF standards, as these failure have been well-documented both through internal audits conducted by the GC and by external studies conducted by independent parties.

66. The internal audits and external studies show that GC departments and agencies are failing to comply with WCAG 1.0 Priority 1 and 2 checkpoints. According to the W3C, Priority 1 checkpoints are those that *must* be developed or one or more groups

will find it impossible to access information. Priority 2 checkpoints are those that *should* be satisfied or one or more groups will find it difficult to access the information within (there will otherwise be significant barriers in the Web document).

WCAG 1.0 Priority 1 and 2 checkpoints are all mandatory under CLF 1.0 and 2.0.

WCAG 1.0, JAR Volume 2, Tab 2F, p. 422

CLF 1.0, JAR Volume 3, Tab K, pp. 553-575

CLF 2.0, JAR Volume 7, Tab 3H, pp. 1933-1955

ePass

67. In June 2001, the GC contracted with a private sector consortium, Team Bell Canada Enterprises (“Bell Canada”), to provide the GC with a number of confidentiality-related services, known as Secure Channel services. This secure infrastructure is the foundation for government electronic service delivery and is considered a key component of the GOL by the GC. As of 2003, the GC had invested \$880 million on GOL expenditures, of which \$475 million was allocated to Secure Channel.

Communique setting out plan for replacement of epass, JAR Volume 24, Tab I, pp. 6860-6861

Auditor General’s Report, JAR Volume 26, Tab 4A, pp. 7677, 7689-7690

68. ePass is the Secure Channel service that allows for the confidential exchange of information. Twenty-three GC departments, with a total of eighty-three programs, use ePass. For example, “My Service Canada”, the online system that allows a user to access and update information on Employment Insurance and Old Age Security and to apply for passports requires the use of ePass.

Auditor General’s Report, JAR Volume 26, Tab 4A, pp. 7689-7691

Affidavit of Steve Buell, para. 37, JAR Volume 11, Tab 11, p. 3035

Steve Buell, Transcript of Cross-examination, p. 98, lines 17-23, p. 99, lines 1-2, JAR Volume 21, Tab 5, pp. 6015-6016

Answers to Undertakings given at the cross-examination of Steve Buell, JAR Volume 26, Tab 4, p. 7657

Answers to Undertakings given at the cross-examination of Wendy Birkinshaw Malo, JAR Volume 22, Tab 3, p. 6166

69. A draft version of the Request for Proposals for Secure Channel was released in August 2000, which post-dates WCAG 1.0 but predates CLF 1.0. Committees within the GC recognized the need for an accessibility requirement in the Request for Proposals in September 2000. The CLF office (the Treasury Board office responsible

for supporting GC departments in implementing the CLF standards) was aware of the accessibility barriers with regard to ePass. In November 2005, as the GC considered renewing the ePass contract, the CLF Technical Working Group recommended “an independent formal review of ePass and the included applications since accessibility issues are apparent.” The Internet Advisory Committee, an inter-departmental group chaired by the CLF office, noted in April 2006 that the “[Treasury Board Secretariat] approved the ePass project and knew of the accessibility issues, which could not be fixed without compromising the system’s security.”

Treasury Board Secretariat, Access Working Group Minutes, September 7, 2000, JAR Volume 24, Tab M, p. 6915

Treasury Board Secretariat, Technical Working Group Minutes, November 22, 2005, JAR Volume 24, Tab N, p. 6935

Answers to undertakings given at the cross-examination of Wendy Birkinshaw Malo, JAR Volume 22, Tab 3, p. 6167

Internet Advisory Committee Minutes, September 1, 2005, JAR Volume 24, Tab H1, p. 6826

Internet Advisory Committee Minutes, April 6, 2006, JAR Volume 24, Tab H3, p. 6835

Draft version of the RFP for Secure Channel, JAR Volume 22, Tab 3C, pp. 6176-6441

70. Despite the GC’s awareness of the accessibility barriers in ePass, the contract it entered into in December 2006 with Bell Canada in respect of goods and services relating to Secure Channel does not mention any accessibility requirements. While the contract incorporates by reference standard clauses, the GC’s standard clauses did not include a CLF compliance requirement until 2008. The requirement is not enforced.

Contract governing the provision of goods and services relating to Secure Channel, JAR Volume 23, Tab E, pp. 6588-6684

Wendy Birkinshaw Malo, Transcript of Cross-Examination, p. 189, lines 22-27, p. 190, lines 1-16, JAR Volume 20, Tab 4, pp. 5719-5720

71. Both internal and external audits confirm the inaccessibility of ePass by vision impaired Canadians. One internal audit jointly conducted by Environment Canada and Service Canada in April 2008 found that ePass failed six of the WCAG 1.0 Priority 1 checkpoints and twenty-three of the WCAG 1.0 Priority 2 checkpoints. As discussed above, WCAG 1.0 Priority 1 and 2 checkpoints are all mandatory under CLF 1.0 and 2.0.

Comprehensive Accessibility Evaluation of ePass R7.8, JAR Volume 21, Tab 5E, pp. 6103-6114

72. The audit indicated that ePass failed to comply with the CLF requirement to provide a text equivalent for every non-text element, a WCAG 1.0 Priority 1 checkpoint.

Where an image does not have an alternative text description, an individual with a vision disability will not know what information is conveyed through the image or what image is being presented.

Comprehensive Accessibility Evaluation of ePass R7.8, JAR Volume 21, Tab 5E, pp. 6107-6108

Steve Buell, Transcript of Cross-examination, p. 105, lines 20-23, p. 106, lines 1-13, JAR Volume 21, Tab 5, pp. 6022-6023

Affidavit of Jutta Treviranus, Volume 1, para. 6, JAR Volume 2, Tab 2, p. 330

73. The Environment Canada/Service Canada audit provided examples of the “known impacts” related to the failures noted in the audit, including the fact that “citizens with vision related disabilities WILL require assistance during initial sign up.” The audit concluded that “inevitable outcomes” of the failures identified included:

Continued negative press and scrutinizing media attention [;] Human Rights complaints [;] ... Policy Breaches (negative impact on GC accountability towards Canadian citizens), legislative violations (i.e. CHRC, Duty to Accommodate) [and] Misalignment with the GC’s Agenda/vision of being an inclusive employer of choice ...

Comprehensive Accessibility Evaluation of ePass R7.8, JAR Volume 21, Tab 5E, pp. 6113-6114

74. Another internal audit by the GC identified a total of 254 failures of ePass with respect to the CLF accessibility provisions. According to the audit, the failures revealed that ePass was not sufficiently tested with adaptive technologies. This audit confirmed that ePass failed to provide text equivalents for non-text elements.

CLF 2.0 Assessment of epass R7.8, JAR Volume 21, Tab 4G, pp. 5872-5916 (Summary of Failures, p. 5883)

75. In 2008, Bell Canada conducted an audit of ePass which again confirmed that it did not comply with the CLF accessibility provisions. The audit found that ePass violated seventeen WCAG 1.0 Priority 1 and 2 checkpoints and that ten of these failures were “severe.” For example, the audit revealed that ePass failed to programmatically associate form fields. As discussed above at paragraph 28, Bell

Canada noted that this failure means users are not given reliable information about what to enter in a given field, and may therefore be unable to complete the form.

Common Look and Feel 2.0 Audit and Gap Analysis, JAR Volume 23, Tab F, pp. 6685-6812 (Analysis of CLF web accessibility compliance, pp. 6704-6734, 6794-6796)

76. While Bell Canada’s audit concluded that “...in general, [ePass] remains somewhat accessible,” the response of the CLF office to the Bell Canada audit makes it clear that the failures identified by Bell Canada were very serious indeed.

Common Look and Feel 2.0 Audit and Gap Analysis, JAR Volume 23, Tab F, p. 6794

77. The CLF office queried why Bell Canada identified one WCAG failure as “minor,” “when [the audit] stated that non-compliance can ‘sometimes cause insurmountable problems for some users using certain software applications’.” As the CLF office noted, “[e]ven one insurmountable problem that prevents a Canadian from accessing epass is a serious issue.” The CLF office also questioned the accuracy of Bell Canada’s audit, noting that some pages were found to be compliant with WCAG checkpoints when they were not in fact compliant. According to the CLF office, Bell Canada’s conclusions that some failures had no impact on end-users was incorrect as the failures in question “can cause problems with most new-generation, more-accessible browsers, screen readers, Braille keyboards and speech synthesis software ...”

CLF Office – Response to the Common Look and Feel 2.0 Audit and Gap Analysis, JAR Volume 24, Tab G, pp. 6814-15, 6817, 6823

78. The CLF office also noted that ePass could not be said to be usable by people with disabilities, as no usability tests were performed. The CLF office concluded as follows:

Finding that “there were no significant barriers found” and “Problems that were found can be bypassed by end-users” seems to be inconsistent with there being at least 2 “Severe” Priority 1 checkpoint failures, 8 “Severe” Priority 2 Checkpoint failures, and 5 “Moderate” Priority 2 Checkpoint failures ... If failures that were identified as “Severe” are not a cause for concern, then what is the meaning of the rating system of “Severe”, “Moderate”, and “Minor”? ...

The comment “there were no significant barriers found” is misleading, considering the applet dialog that is provided on the first visit is

completely inaccessible to screen readers and will likely prevent screen reader users from entering the application.

CLF office – Response to the Common Look and Feel 2.0 Audit and Gap Analysis, JAR Volume 24, Tab G, pp. 6821-6822

79. The ePass failures against the CLF standards can be divided into two categories. In the first category are failures that result directly from the fact that the CLF standards are obsolete. For example, a major failure identified in the GC and Bell Canada audits is that ePass requires a user to have scripting turned on in order to function. In so doing, ePass violates the CLF standards, but it must necessarily violate them in order to operate. This violation of the CLF standards reflects the impossible choice given to web developers when they are told to put certain services online and, at the same time, to comply with the outdated CLF standards. In the second category are failures that violate the CLF standards for no reason whatsoever. Failures such as the failure to provide alternative text equivalents for non-text elements cannot be justified on any basis. The latter category of failures may be a sign of a slippery slope; once web developers can disregard the CLF standards with respect to scripting, it sends a message that other standards may be broken with equal impunity.

Comprehensive Accessibility Evaluation of ePass R7.8, JAR Volume 21, Tab 5E, pp. 6107-6109, 6113-6114

Common Look and Feel 2.0 Audit and Gap Analysis, JAR Volume 23, Tab F, pp. 6704-6705, 6708-6709

80. The GC has implied that ePass is necessarily inaccessible, because it would not be possible to ensure the confidentiality of GC web sites without compromising their accessibility for persons with disabilities. However, the need to maintain the confidentiality of GC web sites does not preclude the accessibility of those sites. The technology to make web sites with confidential information accessible exists, and is widely used. The GC is not unique in its need to address confidentiality issues in a manner that is compatible with its obligation to ensure its web sites are accessible. Web sites such as those operated by the major Canadian banks safeguard the confidentiality of personal information disclosed online. They maintain accessibility for comparably large numbers of applicants for employment and other services. This is not an issue and never has been in the United States.

Affidavit of Jutta Treviranus, Volume 2, paras. 22-25, JAR Volume 12, Tab 2, p. 3257
Affidavit of Ken Cochrane, paras. 33-36, JAR Volume 8, Tab 4, pp. 1982-1983

81. The GC should have ensured that ePass was accessible from the outset, as prevention is always more cost effective and comprehensive than correction on an *ad hoc* basis. While Bell Canada offered to have a team of web developers work through the corrective action required to make ePass more accessible in early 2008, to date there is no evidence that the GC has followed this recommendation or has taken any other concrete action to make ePass accessible.

Affidavit of Jutta Treviranus, Volume 2, paras. 23-25, JAR Volume 12, Tab 2, p. 3257
Common Look and Feel 2.0 Audit and Gap Analysis, JAR Volume 23, Tab F, p. 6793

82. Despite the clear accessibility barriers created by ePass, in April 2009 the GC announced its intention to extend the service for at least an additional two-year period to December 31, 2011.

Communique setting out current plan for the replacement of epass, JAR Volume 24, Tab I, pp. 6860-6861

IBM Audit

83. Other aspects of GC web sites have also been shown to be inaccessible. For example, IBM conducted an audit of the accessibility of the 2006 online Census form, which was submitted to Statistics Canada. A review of the report makes it clear that the 2006 Census was not accessible using Home Page Reader, despite IBM's reference to the fact that Home Page Reader is a "popular screen reader." This is confirmed on the Census 2006 web site, which indicates only that the online form could be completed using JAWS 5.1.

Statistics Canada, Census Internet Access for Visually Impaired Respondents, Report prepared by IBM, JAR Volume 11, Tab 8D, pp. 2960-2980
Statistics Canada, The 2006 Census questionnaire in alternative formats, JAR Volume 1, Tab J, p. 177
Affidavit of Donna Jodhan, Volume 2, paras. 15- 16, JAR Volume 12, Tab 1, p. 3145

84. Further, the IBM report makes it clear that IBM was directed to focus its accessibility efforts solely on Form 2A, the "short form" of the 2006 Census. However, only Form 2B, the "long form" of the Census collects information related to disability, which is geared to determine what barriers people face in their everyday lives.

Statistics Canada, Census Internet Access for Visually Impaired Respondents, Report prepared by IBM, JAR Volume 11, Tab 8D, p. 2962
Statistics Canada – 2006 Census – Form 2B, the “long form”, JAR Volume 12, Tab 1B, pp. 3159-3198
Statistics Canada – Census Guide 2B, JAR Volume 12, Tab 1C, pp. 3200-3238
Affidavit of Donna Jodhan, Volume 2, para. 17, JAR Volume 12, Tab 1, p. 3145

CLF Audit of GC Departments

85. Broader audits of GC web sites have confirmed that the GC’s failure to make its web sites accessible to persons with severe vision impairments spans across GC departments.

86. In 2007 and 2008, the Treasury Board’s CLF office performed an internal audit on the web sites of 47 GC departments subject to the CLF standards. Despite the fact that this review took place over six years after the GC adopted the CLF 1.0 web accessibility standards, all 47 departments demonstrated a significant number of violations of these provisions.

47 Spot checks conducted by the Common Look and Feel Office, JAR Volume 25, Tabs 1-25, pp. 7117-7412, JAR Volume 26, Tab 26-47, pp. 7413-7642

87. For example, the internal audit identified 131 failures on 14 Web pages of Human Resources and Social Development Canada, 93 failures on 14 Web pages of the Public Service Commission, and 212 failures on 14 Web pages of Statistics Canada.

Spot checks conducted by the Common Look and Feel Office on 14 pages of three institutions, JAR Volume 24, Tabs R1-3, pp. 7084-7113

88. If a GC department is failing to meet its obligations to comply with the CLF standards, the Treasury Board Secretariat has the mandate to perform informal follow-ups, make formal requests, mandate external audits and give formal direction on corrective measures.

Common Look and Feel for the Internet 2.0, JAR Volume 3, Tab N, p. 630

89. In the view of the CLF office, 22 of the departments evaluated demonstrated “serious” violations of the CLF’s web accessibility provisions. While some efforts were made to address the multitude of errors, no follow-up evaluation was conducted to ensure that the sites audited were corrected, despite the CLF office’s authority to do so. In discussing these accessibility problems with GC departments, the CLF

office found that many departments did not understand the results and were under the impression that their web sites were CLF compliant.

Follow up letter to Deputy Minister of Human Resources and Social Development
Canada, JAR Volume 26, Tab T, pp. 7643-7648

Index of all 22 follow up letters, JAR Volume 26, Tab U, pp. 7649-7650

Two sample follow up letters, JAR Volume 26, Tab V, pp. 7651-7654

Wendy Birkinshaw Malo, Transcript of Cross-Examination, p. 149, lines 8-25, p. 150,
lines 1-26, p. 152, lines 1-22, p. 155, lines 21-27, p. 156, line 1, JAR Volume 20, Tab
4, pp. 5679-5680, 5682, 5685-5686

90. A telling example of this government wide failure to understand or ensure CLF compliance occurred in the proceedings in the within application. Mr. Steve Buell, a public servant employed as Project Lead, Accessibility Integration for the Accessibility Centre of Excellence within Service Canada, deposed that in May and June 2007 the main Service Canada site was fully compliant with CLF 1.0. However, the audit conducted by the CLF office in December 2007 showed that the main Service Canada website was not compliant with CLF 1.0. For example, the audit found that the feedback page of the main Service Canada site, which allows users to report technical problems with the site, failed three WCAG 1.0 Priority 2 checkpoints, each of which is mandatory pursuant CLF 1.0. The public servant responsible for the CLF office confirmed that these problems were of a “serious nature.”

Affidavit of Steve Buell, para. 33, JAR Volume 11, Tab 11, p. 3034

Steve Buell, Transcript of cross-examination, p. 55, lines 11-23, JAR Volume 21, Tab 5,
p. 5972

Spot check conducted by the Common Look and Feel Office on Human Resources and
Social Development Canada, JAR Volume 24, Tab R1, p. 7088

Wendy Birkinshaw Malo, Transcript of Cross-Examination, p. 152, lines 1-10, p. 156,
lines 2-22, p. 207, lines 16-27, p. 208, line 1, p. 212, lines 11-22, JAR Volume 20, Tab
4, pp. 5682, 5686, 5737-5738, 5742

Other reviews of GC web sites

91. The dismal results of the internal and external audits of the accessibility of GC web sites are reflected in independent studies.
92. The July 2007 Accessibilité Web evaluation of the Service Canada web site demonstrated a number of serious accessibility problems. The evaluation found that 85% of the web sites audited “offered a very low performance with regards to

accessibility.” One accessibility barrier identified by the study was that the vast majority of sites failed to properly associate labels with form fields. As discussed above, if a label is not properly associated with the form field, a blind person cannot accurately complete the form.

2007 Accessibilité Web evaluation of Service Canada (English), JAR Volume 21, Tab 4E, pp. 5813, 5832

93. Another independent study that examined the accessibility of GC web sites in 2007 found that none of the five web sites passed the automatic and manual evaluations against WCAG 1.0 Priority 1 checkpoints.

MeAC – Measuring Progress of e-Accessibility in Europe, JAR Volume 19, Tab F, pp. 5441-5522 (Report regarding Canada, pp. 5516-5518)

Cynthia Waddell, Transcript of Cross-examination, p. 199, lines 15-25, p. 200, lines 1-25, p. 201, line 1, JAR Volume 18, Tab 3, pp. 5160-5162

94. Studies conducted by the United Nations have also highlighted Canada’s declining performance in terms of web accessibility. In the *United Nations E-Government Survey 2008*, a methodology based on actual consumer experience with web accessibility was surveyed. The U.N. survey bases its conclusions in part on a 2007 Accenture Survey research methodology where Accenture concluded that “a gap between the government’s promise and its practice” exists in Canada. It further noted that “less than half the [Canadian] respondents believe the service has improved compared to three years ago.” The authors of the U.N. survey reached the following conclusion about Canada’s poor and declining performance:

A particular concern pertaining to ongoing political ambivalence about the mission, mandate and formal governance structures of the lead service entity (Service Canada) reinforces a point made earlier on [*sic*] this report – namely the importance of political leadership (a key driver of Canada’s early success and emergence as an e-government leader).

United Nations E-Government Survey 2008, JAR Volume 13, Tab H, pp. 3522-3523

95. The U.N. Survey goes on to note that Accenture’s findings are also echoed by Canada’s “slipping performance in The Economist Intelligence Unit’s e-readiness rankings where Canada dropped from 9th to 13th place in 2007.”

United Nations E-Government Survey 2008, JAR Volume 13, Tab H, pp. 3522-3523

96. Similarly, the 2006 *United Nations Global Audit of Web Accessibility* found that the Prime Minister's Office web site did not achieve Single-A accessibility, unlike the central government web sites of Germany, Spain and the United Kingdom. The report specific to Canada indicates that the Prime Minister's web site falls below the accessibility of many Canadian private sector web sites and does not compare favourably to central government web sites in many of the other countries surveyed.

2006 United Nations Global Audit of Web Accessibility, JAR Volume 13, Tab I, pp. 3650-3733 (Report regarding Canada, pp. 3678-3680)

Decentralized monitoring and failure to use available technology

97. The results of the internal audits and external studies clearly demonstrate the systematic failure of the government to monitor or enforce compliance with its own web accessibility standards. As noted above, monitoring and enforcement of the CLF standards is decentralized, which has allowed the inaccessibility of GC web sites to become a systemic problem. Further, for reasons that are entirely unclear, the government has refused to use available technology, including authoring and monitoring tools, which would greatly reduce the inaccessibility of its web sites.

Decentralized monitoring

98. The internal audit of GC web sites conducted by the CLF office in 2007-2008 (i.e. after this application was commenced) represents one centralized monitoring effort over the course of the past seven years. The CLF standards themselves include only minimal provisions for monitoring and enforcement. Monitoring of GC web sites is decentralized, with each department having responsibility to ensure its own web sites are accessible. Where a user encounters an accessibility issue on a GC web site, he or she must contact the department responsible for the web site; there is no single GC office that addresses disability-related access problems.

Common Look and Feel Standards for the Internet 2.0, JAR Volume 7, Tab 3H, pp. 1937-1938

Wendy Birkinshaw Malo, Transcript of Cross-examination, p. 82, lines 7-19, JAR Volume 20, Tab 4, p. 5612

99. The GC's Accessibility Centre of Excellence ("ACE") provides information, education and consultation to GC departments on accessibility issues. However,

ACE is only able to provide accessibility services and consultation when requested to do so by GC departments. Not surprisingly, departments using rich internet applications that are known to violate the CLF standards have no incentive to invite ACE's "assistance" when compliance is impossible. Further, ACE has no enforcement powers and cannot halt a site or an application from entering a production environment.

Affidavit of Steve Buell, paras. 7-9, 12, JAR Volume 11, Tab 11, pp. 3028-3030
Steve Buell, Transcript of Cross-examination, p. 81, lines 16-22, JAR Volume 21, Tab 5, p. 5998

100. Many of the problems and deficiencies with the CLF standards (1.0 and 2.0) could have been addressed through the Federated Architecture Program. In 2000, the Treasury Board Secretariat created the Program to achieve a common government-wide approach to planning, designing and implementing the GC's strategic IM/IT infrastructure. It was intended to be a "flexible approach" to allowing groups or departments "to interconnect with the common infrastructure as appropriate." Rather than allowing departments to operate in isolation from each other, it "ensure[d] the alignment of IM/IT architecture with Government of Canada goals and objectives," including ensuring the accessibility of the GC's web sites in compliance with the CLF standards.

Affidavit of Jutta Treviranus, Volume 1, paras. 31-32, JAR Volume 2, Tab 2, p. 336
Affidavit of Jutta Treviranus, Volume 2, para. 18, JAR Volume 12, Tab 2, p. 3256
Federated Architecture Program, JAR Volume 4, Tab Q, pp. 845, 848

101. Unfortunately, the GC has drastically reduced the budget of the accessibility group within the Federated Architecture Program initiative, which had embedded accessibility at a foundational level into the underlying architecture of the enterprise systems applied in the GC. Between 2007-2008 and 2009-2010, the GC has cut the budget of the accessibility group by more than fifty percent.

Affidavit of Jutta Treviranus, Volume 2, para. 19, JAR Volume 12, Tab 2, p. 3256
Summary of expenditures and estimated salary expenditures for the accessibility group within the federated architecture program, JAR Volume 22, Tab 3B, p. 6174

102. The GC's haphazard approach to web accessibility and the lack of enforcement power of ACE means that GC departments can remain "blissfully ignorant" of accessibility problems.

Steve Buell, Transcript of Cross-examination, p. 81, lines 1-22, JAR Volume 21, Tab 5, p. 5998

Failure to use available technology

103. Because the government's approach is decentralized, proactive measures to embed accessibility into web sites is critical. As discussed above, authoring tools are vital for ensuring that web sites are created to be accessible. Automatic monitoring tools are equally important for ensuring the accessibility of web sites on an ongoing basis.

Affidavit of Jutta Treviranus, Volume 1, paras. 7, 15, 20, 30, JAR Volume 2, Tab 2, pp. 331-335

Affidavit of Jutta Treviranus, Volume 2, paras. 14, 17, 28-30, JAR Volume 12, Tab 2, pp. 3255-3256, 3258

(i) Authoring tools

104. Despite the widely recognized importance of authoring tools for improving web accessibility, no version of the CLF standards has required or even recommended the use of authoring tools that are designed to support the creation of accessible web sites.

CLF 1.0, JAR Volume 3, Tab K, pp. 553-575

CLF 2.0, JAR Volume 7, Tab 3H, pp. 1933-1955

Affidavit of Jutta Treviranus, Volume 1, paras. 15, 20, 30, JAR Volume 2, Tab 2, pp. 332-335

Affidavit of Jutta Treviranus, Volume 2, paras. 14, 17, 28-30, JAR Volume 12, Tab 2, pp. 3255-3256, 3258

105. The failure to require the use of accessibility-aware authoring tools is aggravated by the fact that the GC had at its disposal the internationally recognized W3C Authoring Tool Accessibility Guidelines when it elected to exclude from CLF 2.0 any requirement that authoring tools that support accessibility be used. CLF 2.0 was not introduced until December 2006, almost seven years after the first version of the Authoring Tools Accessibility Guidelines (ATAG 1.0) had become a W3C final recommendation, at a time when the W3C's work on the second version of the Guidelines, ATAG 2.0, was well underway.

CLF 2.0, JAR Volume 7, Tab 3H, pp. 1933-1955

Authoring Tool Accessibility Guidelines 1.0, W3C Recommendation, 3 February 2000, JAR Volume 3, Tab I, pp. 484-503

Authoring Tool Accessibility Guidelines 2.0, W3C Working Draft, 7 December 2006, JAR Volume 3, Tab J, pp. 505-551

Affidavit of Jutta Treviranus, Volume 1, paras. 15, 20, 30, JAR Volume 2, Tab 2, pp. 332-335

Affidavit of Jutta Treviranus, Volume 2, paras. 28-30, JAR Volume 12, Tab 2, p. 3258

Steve Buell, Transcript of Cross-examination, p. 50, lines 10-20, JAR Volume 21, Tab 5, p. 5967

106. The failure to require that accessibility-aware authoring tools be used is also exacerbated by the GC's acknowledgment that "[t]he knowledge of [web developers] ... lags far, far behind the capacity of the tools," and that web developers are not, in general, educated with respect to accessibility or accessible design.

Steve Buell, Transcript of Cross-examination, p. 97 lines 14-19, p. 137, lines 1-14, JAR Volume 21, Tab 5, pp. 6014, 6054

107. Further, the GC has acknowledged that it has had to correct accessibility problems on GC web sites that could have been avoided entirely, had authoring tools that support accessibility been used at the outset.

Steve Buell, Transcript of cross-examination, p. 8, lines 9-25, p. 9, lines 1-2, JAR Volume 21, Tab 5, pp. 5925-5926

(ii) Monitoring tools

108. As discussed above, automatic monitoring tools are vital in ensuring that web sites are accessible. Indeed, the CLF office recognized the value of automated tools (again, after this application was commenced) and expressed a desire to create or acquire an automatic checking tool.

Wendy Birkinshaw Malo, Transcript of Cross-Examination, p.160, lines 4-27, p. 161, lines 1-7, p. 165, lines 1-27, p. 166, lines 1-13, JAR Volume 20, Tab 4, pp. 5690-5691, 5695-5696

109. Despite the importance of automatic monitoring tools for ensuring web accessibility, the GC does not provide automated monitoring tools to individual departments. As of 2007, GC departments such as Service Canada and the CLF office relied exclusively on manual evaluations of web sites. This is so despite the availability of automatic tools, and the negligible portion of GC web sites that can be monitored manually. The GC estimates that a manual evaluation of just thirty pages of a web site takes approximately five days and that the total number of GC web pages exceeds twenty million. Thus, while manual evaluations may be important in

detecting certain accessibility barriers, they simply cannot ensure the overall accessibility of GC web sites because of the breadth of the GC's online presence.

CLF Crosswalk Table: Policy Requirements – Accessibility, JAR Volume 4, Tab O, p. 764

Steve Buell, Transcript of Cross-examination, p. 17, lines 19-23, p. 18, lines 1-5, JAR Volume 21, Tab 5, pp. 5934-5935

Wendy Birkinshaw Malo, Transcript of Cross-Examination, p. 160, lines 4-11, p. 164, lines 20-27, p. 165, lines 1-17, JAR Volume 20, Tab 4, pp. 5690, 5694-5695

Affidavit of Ken Cochrane, paras. 57-59, JAR Volume 8, pp. 1988-89

110. The GC's own "expert" in this litigation has suggested that the GC should have an enterprise-wide tool, which is more sophisticated than an automatic checker tool, as it is able to monitor web sites on an ongoing basis.

Cynthia Waddell, Transcript of Cross-examination, p. 138, lines 6-25, p. 139, lines 1-20, JAR Volume 18, Tab 3, pp. 5099-5100

(iii) Failure to test with wide range of technology

111. The GC has recognized that "[a]ll sites must be tested with a variety of browser software, platforms and technologies to ensure that Web pages remain accessible and interoperable." Nevertheless, GC accessibility advisors do not test web sites and services with a broad range of adaptive technologies.

CLF 2.0, JAR Volume 7, Tab 3H, p. 1937

Affidavit of Steve Buell, para. 12, JAR Volume 11, Tab 11, pp. 3029-3030

Steve Buell, Transcript of Cross-examination, p. 7, lines 13-16, JAR Volume 21, Tab 5, p. 5924

There is no justification for the GC's failure to ensure its web sites are accessible

112. The GC's failure to ensure its web sites are accessible is perplexing to Canadians who are severely vision impaired and to experts in the field of web accessibility. The government is not claiming that its failure to ensure accessibility can be justified on a cost basis. Indeed, the government could not sustain any such claim because ensuring its web sites are accessible, through standards that respond to current technology and through appropriate monitoring and enforcement, including the use of authoring tools and automatic monitoring tools, would be much more cost effective than its current stance.

Affidavit of Jutta Treviranus, Volume 1, para. 33, JAR Volume 2, Tab 2, p. 336

Affidavit of Jutta Treviranus, Volume 2, paras. 19, 28-30, JAR Volume 12, Tab 2, pp. 3256, 3258

113. Using accessibility-aware authoring tools and automatic monitoring tools would certainly decrease costs to the government, by reducing the number of employees who must perform time-consuming and ineffective manual web sites checks. Further, if government information and services are set out according to proper web accessibility standards, the government could reduce reliance on case-by-case accommodation such as alternate formats, readers and scribes for its blind employees as well as for blind citizens in general. Most importantly, if the government ensured its web sites were accessible, blind Canadians would have equal access to government services and information as their sighted peers, in a dignified and independent manner.

Affidavit of Jutta Treviranus, Volume 1, para. 33, JAR Volume 2, Tab 2, p. 336
Affidavit of Jutta Treviranus, Volume 2, paras. 19, 28-30, JAR Volume 12, Tab 2, pp. 3256, 3258

Conclusion

114. The CLF standards have become meaningless because they are not monitored or enforced. As a consequence, GC web sites by and large violate the CLF standards. The failure to monitor or enforce compliance with the CLF standards is exacerbated by the fact that the standards themselves have been outdated since their inception. Ms. Jodhan's experiences with GC web sites reflect both the failure to monitor compliance with the CLF standards, and the problems with the standards themselves. Blind Canadians do not have equal access to GC web sites.

PART II: POINTS IN ISSUE

115. The issues to be determined are as follows:
- a. Whether the Government of Canada has discriminated against individuals with vision impairments by denying them equitable access to government web sites and online services, contrary to section 15(1) of the *Charter*?
 - b. If so, is this breach justified under section 1 of the *Charter*?
 - c. What remedies are appropriate in the circumstances?

PART III: STATEMENT OF SUBMISSIONS

(a) The Government of Canada has discriminated against individuals with vision impairments, contrary to section 15(1)

116. Section 15(1) of the *Charter* provides as follows:

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.

117. It is well established that a claimant must meet the test set out by the Supreme Court in *Law v. Canada* in order to show a breach of s. 15(1). The *Law* test provides as follows:

First, does the impugned law (a) draw a formal distinction between the claimant and others on the basis of one or more personal characteristics, or (b) fail to take into account the claimant's already disadvantaged position within Canadian society resulting in substantively differential treatment between the claimant and others on the basis of one or more personal characteristics? If so, there is differential treatment for the purpose of s. 15(1). *Second*, was the claimant subject to differential treatment on the basis of one or more of the enumerated and analogous grounds? And *third*, does the differential treatment discriminate in a substantive sense, bringing into play the purpose of s. 15(1) of the *Charter* in remedying such ills as prejudice, stereotyping, and historical disadvantage? The second and third inquiries are concerned with whether the differential treatment constitutes discrimination in the substantive sense intended by s. 15(1).

Law v. Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497, [1999] S.C.J. No. 12 at para. 39 [*"Law"*]

118. Each branch of the *Law* test proceeds on the basis of a comparison with another relevant group. The appropriate comparator group is one that possesses all of the relevant characteristics of the claimant group apart from the characteristics that are the claimed grounds of discrimination.

Hodge v. Canada (Minister of Human Resources Development), [2004] 3 S.C.R. 357, 2004 SCC 65 at paras. 17, 23

119. The Applicant submits that she and other vision impaired Canadians have been discriminated against on the enumerated ground of disability by the GC's failure to

ensure that its web sites and online services are accessible to persons with vision disabilities.

120. In this case, the appropriate comparator group is sighted individuals. Sighted individuals are able to access GC web sites and online services, a benefit that is denied to persons with vision disabilities because of the discrimination complained of – the GC’s obsolete web standards and its failure to ensure compliance with those standards.

Vision impaired persons are subject to differential treatment on the enumerated ground of disability

121. The Supreme Court has repeatedly held that once the government provides a benefit, it is obliged to do so in a non-discriminatory manner. A claim of discrimination may be established based on the adverse effects of a facially neutral benefit scheme.

Native Women’s Assn. of Canada v. Canada, [1994] 3 S.C.R. 627, [1994] S.C.J. No. 93 at paras. 51-52
Eldridge v. British Columbia (Attorney General), [1997] 3 S.C.R. 624, [1997] S.C.J. No. 86 at paras. 60-66, 73, 74, 77, 78 [“Eldridge”]

122. Access to government information and services online is a benefit the GC has purportedly extended to all Canadians. While the GC’s web standards are neutral on their face, the effect on blind people of inadequate standards and the failure to ensure compliance with those standards is disproportionate, as they are systematically denied access to the benefit of GC web sites and online services.

123. In *Eldridge*, the Supreme Court recognized that where sign language interpretation is necessary for deaf patients to effectively communicate with their doctors, sign language interpretation is an integral part of the medical services provided. It is “the means by which deaf persons may receive the same quality of medical care as the hearing population.”

Eldridge, supra at para. 71

124. In this case, vision impaired persons are subject to adverse effect discrimination because of the GC's failure to ensure that they have equal access to GC web sites and online services. Web accessibility standards that ensure vision impaired persons can access GC information and services online are not merely ancillary; they are the means by which vision impaired persons may receive the same quality of access to GC information and services as the sighted population. As in *Eldridge*, once it is accepted that web accessibility standards are an indispensable component of the delivery of GC information and services online, it becomes clear that obsolete web accessibility standards and the failure to ensure compliance with those standards constitutes discrimination against persons with vision impairments.

Eldridge, supra at para. 72

125. In *Canadian Assn. of the Deaf v. Canada (F.C.)*, the Court found that the federal government's guidelines for the administration of its Sign Language Interpretation Policy denied deaf and hard-of-hearing Canadians the opportunity to fully participate in government programs. Similarly to the decentralized monitoring and enforcement of the CLF standards, the Sign Language Interpretation Policy provided that the needs of the hearing-impaired public in their dealings with the government were left to each department or agency to address. The Court found that the effect of the guidelines was to deny interpretation services to members of the public where required to allow them to participate meaningfully in government programs:

Substantive equality means that all Canadians must be able to interact with government institutions when approached by them to participate in surveys and programs. Given the special situation of deaf persons, this requires accommodation through vision interpretation services.

This decision was not appealed.

Canadian Assn. of the Deaf v. Canada (F.C.), [2006] F.C.J. No. 1228, 2006 FC 971 at paras. 12-15, 96 [*"Canadian Assn. of the Deaf"*]

126. Similarly in this case, given the special needs of severely vision impaired persons, the government must establish, monitor and enforce web standards that ensure accessibility so that vision impaired persons are able to interact and communicate with government on an equal basis as their sighted peers.

International Law

127. Courts and tribunals in other jurisdictions have recognized that the failure to provide disabled persons with meaningful access to information and services because of their disability constitutes discrimination.

128. The Australian Human Rights and Equal Opportunity Commission (“Commission”) found that the Sydney Organising Committee for the Olympic Games (“SOCOG”) discriminated against blind persons by providing for the use of a web site which was inaccessible. The Commission found that the SOCOG’s actions were discriminatory on their face because the SOCOG used computer technology to service the needs of the public to have access to information, but made that information unavailable or only partly available to blind people. The Commission further found that the SOCOG indirectly discriminated against blind persons by effectively imposing on them a requirement that they be able to read print.

Bruce Lindsay MacGuire v. Sydney Organising Committee for the Olympic Games (24 August 2000), No. H99/115 (Australian Human Rights Commission), online: AHRC <http://www.hreoc.gov.au/disability_rights/decisions/comdec/2000/DD000120.htm>.

129. Similarly, a U.S. Court found that the United States Social Security Administration discriminated against blind and vision impaired individuals by communicating its notices and other correspondence in only standard print and supplemental telephone calls. The Court found that having to rely on sighted assistance does not provide blind and vision impaired persons with meaningful access to information or effective communication.

American Council of the Blind v. Michael Astrue, Commissioner of the Social Security Administration, et al. (20 October 2009), No. C 05-04696-WHA (N.D. Cal.) at 9-11, 27-28

130. It is also worth noting that several significant settlements have been reached in the United States with respect to web accessibility, including agreements with Staples, Inc. and with Target Corporation in which the companies agreed to make their web sites fully accessible to blind individuals by a specified date.

Class Settlement Agreement and Release between Target Corporation and the National Federation of the Blind, et al.
Settlement Agreement between Staples, Inc. and American Council of the Blind, et al.

131. The GC recently tabled the United Nations *Convention on the Rights of Persons with Disabilities*, which is the final step in the process of ratification. The Convention affirms the right of disabled persons to receive and impart information on an equal basis with others and through all forms of communication of their choice.
- Convention on the Rights of Persons with Disabilities*, 30 March 2007, 189 U.N.T.S. 137 (entered into force 03 May 2008), ss. 1, 5, 9, 21

Violation of human dignity

132. To establish an infringement of s. 15(1), it must be shown that the government's failures, in purpose or effect, perpetuate the view that people with vision impairments are "less capable, or less worthy of recognition or value as human beings or as members of Canadian society, equally deserving of concern, respect, and consideration."

Egan v. Canada, [1995] 2 S.C.R. 513, [1995] S.C.J. No. 43 at para. 39 ["Egan"]

133. The barriers faced by Ms. Jodhan in attempting to interact with the GC are demonstrative of the GC's failure to ensure that vision impaired persons have equal access to its web sites and online services. These barriers clearly impacted her dignity. The inaccessibility of the government's job sites led to Ms. Jodhan to be denied full and equal participation in a competition for a government job. The inaccessibility of other GC web sites, such as Statistics Canada, denied Ms. Jodhan access to important information that is readily available to sighted Canadians. Further, the inaccessibility of the government's online services, including the online Census form and the job site, forced Ms. Jodhan to rely on sighted assistance in order to access those services. Being forced to rely on sighted assistance is demeaning and promotes the view that vision impaired persons are less capable and less worthy than sighted persons. It is not only an invasion of privacy, but requires blind persons to go to time and trouble not required of sighted persons.
134. The alternative formats offered by the Respondent are inadequate to ensure equal participation of disabled persons. Alternative formats often require significantly more time and sighted assistance to access. This approach promotes the view that people with vision impairments are less capable.

135. In *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, the Supreme Court recognized that the use of a narrow wheelchair on-board a train, which requires that rail passengers be assisted into it, is not an acceptable substitute for a person's own wheelchair. The Court acknowledged the humiliation that can accompany transfers from a personal wheelchair into alternative seating accommodations or the receipt of assistance in washroom use. Justice Abella, writing for the majority, explained that,

Independent access to the same comfort, dignity, safety and security as those without physical limitations, is a fundamental human right for persons who use wheelchairs. This is the goal of the duty to accommodate: to render those services and facilities to which the public has access equally accessible to people with and without physical limitations.

Council of Canadians with Disabilities v. VIA Rail Canada Inc., [2007] 1 S.C.R. 650, 2007 SCC 15 at paras. 151-163

136. The idea that vision impaired persons should be forced to rely on sighted assistance, either to access online services and information or to access alternative formats, is an affront to their dignity. Section 15 requires that the online information and services to which the public has access are equally accessible to persons with vision impairments.

137. In the *Canadian Assn. of the Deaf* case, the Court held that the government's failure to provide sign interpretation services for deaf persons when they come into contact with the government in the administration of its programs was central to the dignity of deaf persons. The Court stated that:

As Canadians, deaf persons are entitled to be full participants in the democratic process and functioning of government. The role of government is to serve and represent all Canadians. It is fundamental to an inclusive society that those with disabilities be accommodated when interacting with the institutions of government. The nature of the interests affected is central to the dignity of deaf persons. If they cannot participate in government surveys or interact with government officials they are not able to fully participate in Canadian life.

Canadian Assn. of the Deaf v. Canada, *supra* at para. 114

138. The Court's statement is equally applicable in this case. The dignity of blind Canadians is undoubtedly violated when they are denied the ability to interact with the institutions of government on an equal basis as their sighted peers, because of the government's failure to ensure equitable access to its web sites and online services.

Contextual factors

139. The Supreme Court has noted several contextual factors that are relevant to a determination of whether a claimant's dignity has been demeaned, each of which is present in this case. Vision impaired persons have been historically subject to disadvantage and stereotypes that they are not as capable as sighted persons. Even today, a disproportionate number of vision impaired Canadians live in poverty because of stereotypical views about their abilities. Obsolete web accessibility standards and the failure to ensure compliance with those standards means that vision impaired Canadians are denied equitable access to GC web sites and online services. This denial reflects and reinforces existing inaccurate understandings of the merit, capabilities and worth of vision impaired persons. It results in their further stigmatization.

Law, supra at paras. 63-68

140. The GC's failure to ensure web accessibility for persons with vision impairments does not correspond to the needs, capacities or circumstances of vision impaired persons. Indeed, the GC's web accessibility standards ignore the needs and circumstances of vision impaired persons by failing to ensure that they have equitable access to GC information and services. While the web accessibility standards were presumably intended to ameliorate the already disadvantaged position of vision impaired persons, the failure to develop, maintain or enforce standards that actually ensure accessibility puts vision impaired persons at a further disadvantage. Finally, the impact of the government's failure to ensure equitable access to its web sites and online services has a severe impact on vision impaired persons. They are systematically denied access to the information and services available to the sighted population.

Law, supra at paras. 69-75

Scope of section 15(1) rights

141. It is recognized that human rights law does not require perfection on the part of the Respondent. Thus in *Eldridge*, deaf persons were said to have a right to “effective means of communication” rather than an absolute right to sign interpretation.

Eldridge, supra at paras. 80-82

142. Likewise in *Saskatchewan (Human Rights Commission) v. Canadian Odeon Theatres Ltd.*, it was held that a disabled person has a *prima facie* right to comparable rather than identical treatment. In this case, a person with a disability complained that a movie theatre discriminated when it only provided him with one seating option, ahead of the front row. The Saskatchewan Court of Appeal held that the failure to provide a person in a wheelchair “with a choice of a place from which to view the movie comparable to that offered to other members of the public” amounted to *prima facie* discrimination.

Saskatchewan (Human Rights Commission) v. Canadian Odeon Theatres Ltd., [1985] S.J. No. 268, 18 D.L.R. (4th) 93 (Sask. C.A.) at paras. 73-74, leave to appeal to S.C.C. refused, [1985] S.C.C.A. No. 129

143. The Supreme Court has noted that a cornerstone of human rights jurisprudence is that the government’s duty to take positive action to ensure that members of a disadvantaged group benefit equally from services offered to the general public is subject to the principle of reasonable accommodation. In the Court’s view, in s. 15(1) cases, that principle is best addressed as a component of the s. 1 analysis and should not be employed to restrict the ambit of s. 15(1).

Eldridge, supra at para. 79

144. In the present case, the GC’s failure to ensure that vision impaired persons have equitable access to GC web sites and services constitutes a violation of their rights under s. 15(1). This failure denies them the equal benefit of the law and discriminates against them in comparison with sighted persons.

145. The Applicant submits that she has established that the GC’s failure to ensure equal access to its web sites and online services has violated her rights, as a blind person, under s. 15(1). However, the Applicant notes that it is sufficient for her to

establish that the equality rights of vision impaired persons have generally been infringed, and she need not establish a violation of her own particular rights.

Egan, supra at paras. 12 and 153
Eldridge, supra at para. 83

(b) The Government's breach of section 15(1) is not justified under section 1

146. The GC's failure to ensure equitable access to GC web sites and online services is not justified by s. 1 of the *Charter*.

(c) Appropriate remedy is declaratory relief

147. The Applicant submits that the appropriate remedy in this case is declaratory relief.

PART IV: ORDER SOUGHT

148. The Applicant seeks the following declaratory relief:

- a. A declaration that the GC has breached section 15(1) of the *Charter* by denying vision impaired persons equal access to government information and services online, and that such breach is not justified under section 1 of the *Charter*;
- b. An Order that the GC bring itself into compliance with the *Charter* within 12 months and that, if the GC fails to do so, the matter return to Court for review and further orders detailing mandatory steps to be taken by the GC in order to bring itself into compliance with the *Charter*; and
- c. A costs order reflecting the public interest serviced by Ms. Jodhan having litigated this issue.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Date: January 15, 2010

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PART V: LIST OF AUTHORITIES

Jurisprudence

1. *American Council of the Blind v. Michael Astrue, Commissioner of the Social Security Administration, et al.* (20 October 2009), No. C 05-04696-WHA (N.D. Cal.)
2. *Bruce Lindsay MacGuire v. Sydney Organising Committee for the Olympic Games* (24 August 2000), No. H99/115 (Australian Human Rights Commission), online: AHRC
<http://www.hreoc.gov.au/disability_rights/decisions/comdec/2000/DD000120.htm>.
3. *Canadian Assn. of the Deaf v. Canada (F.C.)*, [2006] F.C.J. No. 1228, 2006 FC 971
4. *Council of Canadians with Disabilities v. VIA Rail Canada Inc.*, [2007] 1 S.C.R. 650, 2007 SCC 15
5. *Egan v. Canada*, [1995] 2 S.C.R. 513, [1995] S.C.J. No. 43
6. *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, [1997] S.C.J. No. 86
7. *Hodge v. Canada (Minister of Human Resources Development)*, [2004] 3 S.C.R. 357, 2004 SCC 65
8. *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497, [1999] S.C.J. No. 12
9. *Native Women's Assn. of Canada v. Canada*, [1994] 3 S.C.R. 627, [1994] S.C.J. No. 93
10. *Saskatchewan (Human Rights Commission) v. Canadian Odeon Theatres Ltd.*, [1985] S.J. No. 268, 18 D.L.R. (4th) 93 (Sask. C.A.), leave to appeal to S.C.C. refused, [1985] S.C.C.A. No. 129

Secondary Material

11. Class Settlement Agreement and Release between Target Corporation and the National Federation of the Blind, the National Federation of the Blind of California, named Plaintiffs and a class of persons similarly situated
12. Settlement Agreement between Staples, Inc. and American Council of the Blind, American Foundation for the Blind, Bay State Council of the Blind and California Council of the Blind

APPENDIX A

STATUTES AND REGULATIONS

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11

Guarantee of Rights and Freedoms: Rights and Freedoms in Canada

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.

Equality Rights: Equality before and under law and equal protection and benefit of law

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.

Charte canadienne des droits et libertés, partie I de la Loi constitutionnelle de 1982, constituant l'annexe B de la Loi de 1982 sur le Canada (R.-U.), 1982, c. 11

Garantie des droits et libertés: Droits et libertés au Canada

1. La Charte canadienne des droits et libertés garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

Droits à l'égalité: Égalité devant la loi, égalité de bénéfice et protection égale de la loi

15. (1) La loi ne fait acception de personne et s'applique également à tous, et tous ont droit à la même protection et au même bénéfice de la loi, indépendamment de toute discrimination, notamment des discriminations fondées sur la race, l'origine nationale ou ethnique, la couleur, la religion, le sexe, l'âge ou les déficiences mentales ou physiques.

Federal Courts Act, R.S., 1985, c. F-7

Application for judicial review

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

Time limitation

(2) An application for judicial review in respect of a decision or an order of a federal board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

Powers of Federal Court

(3) On an application for judicial review, the Federal Court may

- (a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or
- (b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

Grounds of review

(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

- (a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;
- (b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;
- (c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;
- (d) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;
- (e) acted, or failed to act, by reason of fraud or perjured evidence; or
- (f) acted in any other way that was contrary to law.

Defect in form or technical irregularity

(5) If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may

- (a) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and
- (b) in the case of a defect in form or a technical irregularity in a decision or an order, make an order validating the decision or order, to have effect from any time and on any terms that it considers appropriate.

Loi sur les Cours fédérales (L.R., 1985, ch. F-7)

Demande de contrôle judiciaire

18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

Délai de présentation

(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.

Pouvoirs de la Cour fédérale

(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :

- a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;
- b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

Motifs

(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

- a) a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;
- b) n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter;
- c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;
- d) a rendu une décision ou une ordonnance fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;
- e) a agi ou omis d'agir en raison d'une fraude ou de faux témoignages;
- f) a agi de toute autre façon contraire à la loi.

Vice de forme

(5) La Cour fédérale peut rejeter toute demande de contrôle judiciaire fondée uniquement sur un vice de forme si elle estime qu'en l'occurrence le vice n'entraîne aucun dommage important ni déni de justice et, le cas échéant, valider la décision ou l'ordonnance entachée du vice et donner effet à celle-ci selon les modalités de temps et autres qu'elle estime indiquées.

Financial Administration Act, R.S., 1985, c. F-11

Loi sur la gestion des finances publiques, L.R., 1985, ch. F-11

SCHEDULE I

(Sections 2 and 11)

Department of Agriculture and Agri-Food

Ministère de l'Agriculture et de l'Agroalimentaire

Department of Canadian Heritage

Ministère du Patrimoine canadien

Department of Citizenship and Immigration

Ministère de la Citoyenneté et de l'Immigration

Department of the Environment

Ministère de l'Environnement

Department of Finance

Ministère des Finances

Department of Fisheries and Oceans

Ministère des Pêches et des Océans

Department of Foreign Affairs and International Trade

Ministère des Affaires étrangères et du Commerce international

Department of Health

Ministère de la Santé

Department of Human Resources and Skills Development

Ministère des Ressources humaines et du Développement des compétences

Department of Indian Affairs and Northern Development

Ministère des Affaires indiennes et du Nord canadien

Department of Industry

Ministère de l'Industrie

Department of Justice

Ministère de la Justice

Department of National Defence

Ministère de la Défense nationale

Department of Natural Resources

Ministère des Ressources naturelles

Department of Public Safety and Emergency Preparedness
Ministère de la Sécurité publique et de la Protection civile

Department of Public Works and Government Services
Ministère des Travaux publics et des Services gouvernementaux

Department of Social Development
Ministère du Développement social

Department of Transport
Ministère des Transports

Treasury Board
Conseil du Trésor

Department of Veterans Affairs
Ministère des Anciens Combattants

Department of Western Economic Diversification
Ministère de la Diversification de l'économie de l'Ouest canadien

SCHEDULE I.1
 (Sections 2 and 3)

Column I	Column II
Division or Branch of the Federal Public Administration	Appropriate Minister
Atlantic Canada Opportunities Agency <i>Agence de promotion économique du Canada atlantique</i>	Member of the Queen's Privy Council for Canada appointed by Commission under the Great Seal to be the Minister for the purposes of the <i>Atlantic Canada Opportunities Agency Act</i>
Canada Industrial Relations Board <i>Conseil canadien des relations industrielles</i>	Minister of Labour
Canadian Artists and Producers Professional Relations Tribunal <i>Tribunal canadien des relations professionnelles artistes-producteurs</i>	Minister of Labour
Canadian Environmental Assessment Agency <i>Agence canadienne d'évaluation environnementale</i>	Minister of the Environment
Canadian Forces Grievance Board <i>Comité des griefs des Forces canadiennes</i>	Minister of National Defence
Canadian Grain Commission <i>Commission canadienne des grains</i>	Minister of Agriculture and Agri-Food

Column I	Column II
Division or Branch of the Federal Public Administration	Appropriate Minister
Canadian Human Rights Commission <i>Commission canadienne des droits de la personne</i>	Minister of Justice
Canadian Human Rights Tribunal <i>Tribunal canadien des droits de la personne</i>	Minister of Justice
Canadian Intergovernmental Conference Secretariat <i>Secrétariat des conférences intergouvernementales canadiennes</i>	President of the Queen's Privy Council for Canada
Canadian International Development Agency <i>Agence canadienne de développement international</i>	Minister of Foreign Affairs
Canadian International Trade Tribunal <i>Tribunal canadien du commerce extérieur</i>	Minister of Finance
Canadian Northern Economic Development Agency <i>Agence canadienne de développement économique du Nord</i>	Minister of Indian Affairs and Northern Development
Canadian Radio-television and Telecommunications Commission <i>Conseil de la radiodiffusion et des télécommunications canadiennes</i>	Minister of Canadian Heritage
Canadian Security Intelligence Service <i>Service canadien du renseignement de sécurité</i>	Minister of Public Safety and Emergency Preparedness
Canadian Space Agency <i>Agence spatiale canadienne</i>	Minister of Industry
Canadian Transportation Agency <i>Office des transports du Canada</i>	Minister of Transport
Copyright Board <i>Commission du droit d'auteur</i>	Minister of Industry
Correctional Service of Canada <i>Service correctionnel du Canada</i>	Minister of Public Safety and Emergency Preparedness
Courts Administration Service <i>Service administratif des tribunaux judiciaires</i>	Minister of Justice

Column I	Column II
Division or Branch of the Federal Public Administration	Appropriate Minister
Economic Development Agency of Canada for the Regions of Quebec <i>Agence de développement économique du Canada pour les régions du Québec</i>	Minister of the Economic Development Agency of Canada for the Regions of Quebec
Federal Economic Development Agency for Southern Ontario <i>Agence fédérale de développement économique pour le Sud de l'Ontario</i>	Minister of Industry
Financial Consumer Agency of Canada <i>Agence de la consommation en matière financière du Canada</i>	Minister of Finance
Financial Transactions and Reports Analysis Centre of Canada <i>Centre d'analyse des opérations et déclarations financières du Canada</i>	Minister of Finance
Hazardous Materials Information Review Commission <i>Conseil de contrôle des renseignements relatifs aux matières dangereuses</i>	Minister of Health
Immigration and Refugee Board <i>Commission de l'immigration et du statut de réfugié</i>	Minister of Citizenship and Immigration
Indian Residential Schools Truth and Reconciliation Commission <i>Commission de vérité et de réconciliation relative aux pensionnats indiens</i>	Minister of Indian Affairs and Northern Development
Library and Archives of Canada <i>Bibliothèque et Archives du Canada</i>	Minister of Canadian Heritage
Military Police Complaints Commission <i>Commission d'examen des plaintes concernant la police militaire</i>	Minister of National Defence
NAFTA Secretariat — Canadian Section <i>Secrétariat de l'ALÉNA — Section canadienne</i>	Minister for International Trade
National Energy Board <i>Office national de l'énergie</i>	Minister of Natural Resources

Column I	Column II
Division or Branch of the Federal Public Administration	Appropriate Minister
National Farm Products Council <i>Conseil national des produits agricoles</i>	Minister of Agriculture and Agri-Food
National Film Board <i>Office national du film</i>	Minister of Canadian Heritage
National Parole Board <i>Commission nationale des libérations conditionnelles</i>	Minister of Public Safety and Emergency Preparedness
Northern Pipeline Agency <i>Administration du pipe-line du Nord</i>	Minister of Natural Resources
Office of Infrastructure of Canada <i>Bureau de l'infrastructure du Canada</i>	Minister of Transport
Office of the Auditor General <i>Bureau du vérificateur général</i>	Minister of Finance
Office of the Chief Electoral Officer <i>Bureau du directeur général des élections</i>	Leader of the Government in the House of Commons
Office of the Commissioner for Federal Judicial Affairs <i>Bureau du commissaire à la magistrature fédérale</i>	Minister of Justice
Office of the Commissioner of Lobbying <i>Commissariat au lobbying</i>	President of the Treasury Board
Office of the Commissioner of Official Languages <i>Commissariat aux langues officielles</i>	President of the Queen's Privy Council for Canada
Office of the Communications Security Establishment Commissioner <i>Bureau du commissaire du Centre de la sécurité des télécommunications</i>	Minister of National Defence
Office of the Co-ordinator, Status of Women <i>Bureau de la coordonnatrice de la situation de la femme</i>	Minister of Canadian Heritage
Office of the Correctional Investigator of Canada <i>Bureau de l'enquêteur correctionnel du Canada</i>	Minister of Public Safety and Emergency Preparedness
Office of the Director of Public Prosecutions	Minister of Justice

Column I	Column II
Division or Branch of the Federal Public Administration	Appropriate Minister
<i>Bureau du directeur des poursuites pénales</i>	
Office of the Governor General's Secretary <i>Bureau du secrétaire du gouverneur général</i>	Prime Minister
Office of the Public Sector Integrity Commissioner <i>Commissariat à l'intégrité du secteur public</i>	President of the Treasury Board
Office of the Superintendent of Financial Institutions <i>Bureau du surintendant des institutions financières</i>	Minister of Finance
Offices of the Information and Privacy Commissioners of Canada <i>Commissariats à l'information et à la protection de la vie privée au Canada</i>	Minister of Justice
Patented Medicine Prices Review Board <i>Conseil d'examen du prix des médicaments brevetés</i>	Minister of Health
Privy Council Office <i>Bureau du Conseil privé</i>	Prime Minister
Public Appointments Commission Secretariat <i>Secrétariat de la Commission des nominations publiques</i>	Prime Minister
Public Health Agency of Canada <i>Agence de la santé publique du Canada</i>	Minister of Health
Public Service Commission <i>Commission de la fonction publique</i>	Minister of Canadian Heritage
Public Service Staffing Tribunal <i>Tribunal de la dotation de la fonction publique</i>	Minister of Canadian Heritage
Public Service Labour Relations Board <i>Commission des relations de travail dans la fonction publique</i>	Minister of Canadian Heritage
Registrar of the Supreme Court of Canada and that portion of the federal public administration appointed under subsection 12(2) of the Supreme Court Act	Minister of Justice

Column I	Column II
Division or Branch of the Federal Public Administration	Appropriate Minister
<i>Registraire de la Cour suprême du Canada et le secteur de l'administration publique fédérale nommé en vertu du paragraphe 12(2) de la Loi sur la Cour suprême</i>	
Registry of the Competition Tribunal <i>Greffe du Tribunal de la concurrence</i>	Minister of Industry
Registry of the Public Servants Disclosure Protection Tribunal <i>Greffe du Tribunal de la protection des fonctionnaires divulgateurs d'actes répréhensibles</i>	Minister of Canadian Heritage
Registry of the Specific Claims Tribunal <i>Greffe du Tribunal des revendications particulières</i>	Minister of Indian Affairs and Northern Development
Royal Canadian Mounted Police <i>Gendarmerie royale du Canada</i>	Minister of Public Safety and Emergency Preparedness
Royal Canadian Mounted Police External Review Committee <i>Comité externe d'examen de la Gendarmerie royale du Canada</i>	Minister of Public Safety and Emergency Preparedness
Royal Canadian Mounted Police Public Complaints Commission <i>Commission des plaintes du public contre la Gendarmerie royale du Canada</i>	Minister of Public Safety and Emergency Preparedness
Security Intelligence Review Committee <i>Comité de surveillance des activités de renseignement de sécurité</i>	Prime Minister
Statistics Canada <i>Statistique Canada</i>	Minister of Industry
Transportation Appeal Tribunal of Canada <i>Tribunal d'appel des transports du Canada</i>	Minister of Transport
Veterans Review and Appeal Board <i>Tribunal des anciens combattants (révision et appel)</i>	Minister of Veterans Affairs

SCHEDULE II

(Section 2)

Assisted Human Reproduction Agency of Canada

Agence canadienne de contrôle de la procréation assistée

Canada Border Services Agency

Agence des services frontaliers du Canada

Canada Emission Reduction Incentives Agency

Agence canadienne pour l'incitation à la réduction des émissions

Canada Employment Insurance Commission

Commission de l'assurance-emploi du Canada

Canada Revenue Agency

Agence du revenu du Canada

Canada School of Public Service

École de la fonction publique du Canada

Canadian Centre for Occupational Health and Safety

Centre canadien d'hygiène et de sécurité au travail

Canadian Food Inspection Agency

Agence canadienne d'inspection des aliments

Canadian Institutes of Health Research

Instituts de recherche en santé du Canada

Canadian Nuclear Safety Commission

Commission canadienne de sûreté nucléaire

Canadian Polar Commission

Commission canadienne des affaires polaires

Canadian Transportation Accident Investigation and Safety Board

Bureau canadien d'enquête sur les accidents de transport et de la sécurité des transports

Law Commission of Canada

Commission du droit du Canada

The National Battlefields Commission

Commission des champs de bataille nationaux

National Research Council of Canada

Conseil national de recherches du Canada

National Round Table on the Environment and the Economy

Table ronde nationale sur l'environnement et l'économie

Natural Sciences and Engineering Research Council

Conseil de recherches en sciences naturelles et en génie

Parks Canada Agency

Agence Parcs Canada

Social Sciences and Humanities Research Council

Conseil de recherches en sciences humaines

SCHEDULE III
(Section 3)

PART I

Atlantic Pilotage Authority

Administration de pilotage de l'Atlantique

Atomic Energy of Canada Limited

Énergie atomique du Canada, Limitée

Blue Water Bridge Authority

Administration du pont Blue Water

Business Development Bank of Canada

Banque de développement du Canada

Canada Deposit Insurance Corporation

Société d'assurance-dépôts du Canada

Canada Employment Insurance Financing Board

Office de financement de l'assurance-emploi du Canada

Canada Lands Company Limited

Société immobilière du Canada Limitée

Canada Mortgage and Housing Corporation

Société canadienne d'hypothèques et de logement

Canadian Air Transport Security Authority

Administration canadienne de la sûreté du transport aérien

Canadian Commercial Corporation

Corporation commerciale canadienne

Canadian Dairy Commission

Commission canadienne du lait

Canadian Museum for Human Rights

Musée canadien des droits de la personne

Canadian Museum of Civilization

Musée canadien des civilisations

Canadian Museum of Nature

Musée canadien de la nature

Canadian Tourism Commission

Commission canadienne du tourisme

Cape Breton Development Corporation

Société de développement du Cap-Breton

Corporation for the Mitigation of Mackenzie Gas Project Impacts

Société d'atténuation des répercussions du projet gazier Mackenzie

Defence Construction (1951) Limited

Construction de défense (1951) Limitée

Enterprise Cape Breton Corporation

Société d'expansion du Cap-Breton
Export Development Canada
Exportation et développement Canada
Farm Credit Canada
Financement agricole Canada
The Federal Bridge Corporation Limited
La Société des ponts fédéraux Limitée
First Nations Statistical Institute
Institut de la statistique des premières nations
Freshwater Fish Marketing Corporation
Office de commercialisation du poisson d'eau douce
Great Lakes Pilotage Authority
Administration de pilotage des Grands Lacs
Laurentian Pilotage Authority
Administration de pilotage des Laurentides
Marine Atlantic Inc.
Marine Atlantique S.C.C.
National Capital Commission
Commission de la capitale nationale
National Gallery of Canada
Musée des beaux-arts du Canada
National Museum of Science and Technology
Musée national des sciences et de la technologie
Pacific Pilotage Authority
Administration de pilotage du Pacifique
Ridley Terminals Inc.
Ridley Terminals Inc.
Standards Council of Canada
Conseil canadien des normes
VIA Rail Canada Inc.
VIA Rail Canada Inc.

PART II

Canada Development Investment Corporation
Corporation d'investissements au développement du Canada
Canada Post Corporation
Société canadienne des postes
Royal Canadian Mint
Monnaie royale canadienne

Statistics Act, R.S., 1985, c. S-19

Population Census and Agriculture Census: Population Census

19. (1) A census of population of Canada shall be taken by Statistics Canada in the month of June in the year 1971, and every fifth year thereafter in a month to be fixed by the Governor in Council.

Loi sur la statistique, L.R., 1985, ch. S-19

Recensement de la Population et Recensement Agricole: Recensement de la population

19. (1) Le recensement de la population du Canada est fait par Statistique Canada à tous les cinq ans, à compter de juin 1971, dans le mois qui est fixé par le gouverneur en conseil.