



July 13, 2017

Jennifer Jimenez
Canadian General Standards Board
Gatineau, Canada K1A 1G6

Via email

Dear Ms Jimenez:

Re: Submission on the Draft Canadian National Service Dog Standard

Please be advised that the Manitoba Human Rights Commission (“MHRC”) has reviewed the draft Standard from the perspective of a statutory human rights agency that has within its enabling legislation specific protection for persons with disabilities who use a service animal. We understand that the Standard may be used to inform further legislative and regulatory reform, including the development of a certification/identification scheme across Canada. As human rights legislation in Canada takes precedence over all government activity, such as standard setting, we request that the CGSB Service Dog Committee take seriously the impact the Standard may have on the human rights of service animal users. We trust that the following comments will assist the Committee with this process.

1. Service Animal Users Have a Presumed Right of Access

Over the past couple of years, the Commission has paid particular attention to the growing use of service animals. In 2015 we hosted several consultations which included service dog users and service providers such as hotels, housing and property management, restaurants, stores and education institutions. We learned that persons with disabilities who use service animals continue to experience discrimination and barriers to their full participation in society. Service providers on the other hand advised that they lacked information about when they were required to provide access and what information they can request of a person who uses a service animal.

The Commission responded by developing resources which affirm that a person who uses a service animal is presumed to have a right of access to public services and facilities. However, if service providers have concerns, they may inquire about the tasks performed by the service animal in relation to the person’s disability, and further, if they feel the animal is behaving inappropriately or disrupting business, they can request that the person remove the service animal.

We understand that the draft Standard is primarily aimed at identifying training requirements for service dogs and their handlers. However, the Commission is

concerned that the Standard places most of the burden for establishing legitimacy on a person with a disability or service animal handler/user without acknowledging that service providers have a legal duty to accommodate persons with disabilities and their service animals, unless they can establish an undue hardship.

2. Definition of Disability

The Human Rights Code (Manitoba) was amended in 2012 to provide further specificity with regard to the definition of a service animal, at which time the following definition of service animal was added to our legislation:

An animal trained to provide assistance to a person with a disability that relates to that person's disability.

This definition specifically focuses on the assistance the service animal provides to enable a person to manage their disability. The assistance provided by a service animal is no different than the assistance provided by a wheelchair or other remedial device. In our view, this definition focuses on assisting with functional restrictions or limitations and not on "mitigating symptoms". Relying on definitions of disability used by programs such as disability support programs, the Canada Pension Plan and Revenue Canada agency (see 5.1.1.1 of the draft Standard) appears to be more restrictive than the approach adopted by the MHRC.

3. The proposed Standard has the potential to create additional barriers for persons with disabilities.

The draft Standard sets out detailed and often onerous requirements that a person with a disability must meet as a "handler". The Commission questions the need for requirements such as comprehensive knowledge of canine first aid/ emergency response training and detailed record keeping which may be subject to third party inspection. The Commission urges the Committee to reconsider the relevance of such detailed requirements, particularly if they are used to inform a certification scheme. It is conceivable that for some persons with disabilities, meeting these requirements may be difficult and perhaps impossible, thus limiting their opportunities and subjecting them to further barriers.

The Commission would like to remind the Committee that persons with disabilities are not a homogenous group. There are a wide range of disabilities and a wide array of disability-related needs that can be addressed by service animals. In certain circumstances, blanket policies and "one-size-fits-all" standards have been found to be in violation of human rights law.

A key principle of human rights law is the duty to accommodate. In many cases, particularly where disability rights are concerned, the law requires that an individualized assessment of a person's disability-related needs be undertaken with the objective of designing an effective solution for overcoming barriers. While it would appear that some

of the requirements are founded on an interest in ensuring healthy working relationships and ensuring the health and safety of the service animal, we caution the Committee that forcing all handlers and users to meet the same standards may be subjected to a human rights complaint, particularly where the standards in question are proven to be irrelevant and unnecessary to the safe and effective handling of a service animal.

4. Human rights law and the development of a certification/ identification scheme

Although not clearly specified by the draft Standard, we assume from the reading of Sections 7 “Marking”, 8 “Inspection” and 9 “Testing” that the next step may include the development of a certification/identification scheme. We assume that the objective of such a scheme would be to insure the legitimacy of a service animal team and dissuade persons wishing to pass their untrained pets off as service animals. Without the dissemination of public information regarding the work and use of a service animal, and without the imposition of significant penalties, the Commission questions the ability of a certification/identification process to eliminate so-called “fake” service animals. The requirement to produce identification to exercise access rights is a sensitive issue and one that has considered a violation of human rights in other circumstances. Moreover, once again the standards place the burden of establishing legitimacy on the handler/user and not on the business or service-provider to take an informed and rights approach when dealing with members of the public who rely on service animals. The Commission cautions that such schemes may have a negative impact on the rights of persons with disabilities who use service animals in Canada which may run contrary to the spirit and intent of the *United Nations Convention on the Rights of Persons with Disabilities*.

It should also be noted that persons who refuse to carry or produce identification will likely still be able to file a human rights complaint if refused access. This means that service providers will not be able to rely solely on identification to determine its responsibilities to persons with disabilities who use service animals.

5. Canada is not currently equipped to meet training needs required by the draft Standard.

The Commission has been advised that certain groups of persons with disabilities, such as guide dog users, who currently use service animals and who have obtained those animals through internationally accredited training programs, may not have the training to meet all of the draft Standard. This is because they have obtained service animals that are trained to meet the unique needs of their disability and not the requirements of a broad one-size-fits-all comprehensive Standard. The Commission has also been advised that some internationally accredited training facilities have expressed concerns about providing service to Canadians should the requirements of the standards become policy or legislation. The withdrawal of such training services to Canadians will leave many without the supports they may need to continue working with their service animal and may also result in reduced training opportunities and choices for those persons

wishing to obtain a service animal. Given that many persons with disabilities already wait for extended periods of time to find an animal that will meet their needs, this has the potential to create yet more barriers. The Commission encourages the Committee to develop standards that are broadly inclusive and respectful of individual choices and the effectiveness of existing training programs with a proven track record of excellence in service animal training.

6. Conclusion

The Commission acknowledges and appreciates the Committee's efforts to ensure high quality and effective service animal teams. Moreover, we appreciate that members of the public need more information and assurances that service animal teams will not interfere or jeopardize their services or businesses. However, we wish to emphasize that insisting on sameness may inadvertently end up creating greater inequality. The recognition of human rights is a fundamental value of Canadian society.

We therefore request that the Committee take a rights-based approach to standard development and refrain from imposing further barriers on an already historically disadvantaged group in society.

Sincerely,

Board of Commissioners