

Employment

Know Your Rights – Legal Information Handbook

November 2021

Disclaimer

This content is provided as general information and is not legal advice. If you need advice about a specific legal problem, contact a lawyer or a community legal service.

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To learn more about the Know Your Rights – Prince Edward Island Project, please visit our [Know Your Rights – Prince Edward Island webpage](#).

Table of Contents

My Legal Rights	4
Q: What legal rights do I have in Prince Edward Island's employment sector?	4
Duty to Accommodate & Undue Hardship	5
Genuine Occupational Qualification	5
Q: Do I have these legal rights even when I'm looking for work or when I'm leaving a job?	6
Q: Where do my legal rights come from?	6
Q: Who must comply with Prince Edward Island's employment laws?	7
Q: I work in a federally regulated industry. Do Prince Edward Island employment laws apply to me?	7
Q: What can I do to enforce my legal rights?	8
Common Scenarios	9
Looking for Work	9
Q: I'm looking for a volunteer position. Am I entitled to receive accommodations as a volunteer?	9
Q: There's a requirement in a job advertisement that I can't meet because of my disability. Should I still consider applying for the job?	9
Q: A job posting is not in an accessible format. What can I do?	11
Q: I got an interview! But I'm not sure when to disclose my sight loss to my prospective employer. What should I do?	11
Q: I had the qualifications and performed well during the interview, but I didn't get the job. I feel that I have been discriminated against because of my sight loss. What can I do?	12
At Work	12
Q: My sight loss is affecting my ability to do my job. What can I do?	12
Q: My employer has provided me with accommodations, but they aren't working. What can I do?	13
Q: Do I have to pay for my employment-related accommodations?	14
Leaving Work	14
Q: I had to leave my job because my sight loss prevented me from performing my duties. What now?	14
Getting Help	14
Legal Resources	14

Essential Non-Legal Resources.....	16
Resources for Employees and Employers.....	18
CNIB Programs.....	19
Vision Loss Rehabilitation Canada.....	21
Wayfinding.....	21

My Legal Rights

Q: What legal rights do I have in Prince Edward Island's employment sector?

A: Under Prince Edward Island laws, people with disabilities have important legal rights when it comes to employment:

- You have the right to be treated equally in the workplace **without discrimination** because of your disability.
- You have the right to receive **accommodations** for your disability from your employer, prospective employer, or employment agency up to the point of **undue hardship**.
 - Your employer must provide you with accommodations in a way that respects your dignity, meets your individual needs and promotes your integration and full participation in the workplace.
 - Examples of accommodations include:
 - flexible work schedules
 - modifying job duties
 - making changes to the building, such as installing automatic door openers
 - providing assistive technology
 - additional training
- You have the right to challenge employment practices that you believe are discriminatory.

- You have the right to work in a healthy and safe work environment.

Duty to Accommodate & Undue Hardship

An employer's **duty to accommodate** means that they are legally required to provide you with the supports you need to succeed in the workplace.

Such accommodations must respect the dignity of the employee, or potential employee, be individualized to the employee's unique needs, and be developed with the view of maximizing the employee's integration and full participation in the job competition process and actual workplace.

The duty to accommodate, however, has a limit. This limit is known as **undue hardship**.

Undue hardship is a legal term. It means that if an employer can show that it would be very difficult to provide a certain accommodation, they are not obligated to provide it.

It's important to note that it is not enough for an employer to **simply claim** undue hardship.

An employer **must show clear evidence** of undue hardship. Such evidence can relate to the following factors:

1. The costs associated with the accommodation are so substantial that they would alter the essential nature of the business or put the business in jeopardy.
2. The accommodation would interfere with the rights of others.
3. The accommodation would cause significant health and safety risks to other employees.

An employer's duty to accommodate goes beyond simply asking an employee if there is another job they can do. Employers are to think creatively and alter their workplace and practices to accommodate an employee's needs.

Even if an employer demonstrates that a certain accommodation will create undue hardship, they may still have a legal duty to provide you with the **next best** type of accommodation.

Genuine Occupational Qualification

There is an important exception to an employer's legal duty to accommodate you. Employers do not have a legal duty to accommodate you if you are unable to meet a genuine occupational

qualification of a job because of your disability. What this means is that if a discriminatory policy, standard or rule is essential to performing the requirements of a job, then it may be permitted.

Here's an example of a genuine occupational qualification:

For the job of an airplane pilot, a certain degree of vision is an essential requirement to perform the work safely. If someone can't meet this requirement because of their disability, an employer does not have a legal duty to accommodate them.

If you are uncertain as to whether a job requirement is a genuine occupational requirement, you should consider consulting with a lawyer who practices human rights or employment law.

Q: Do I have these legal rights even when I'm looking for work or when I'm leaving a job?

A: Yes. You have the legal rights explained above through all stages of employment, whether you are:

- looking for work – for example, responding to job advertisements, attending interviews, or using employment agencies;
- at work – for example, interacting with colleagues, clients or customers; and
- leaving work – for example, changing jobs or being laid off.

Q: Where do my legal rights come from?

A: Your legal rights come from a variety of different laws, including:

- Prince Edward Island's [Human Rights Act](#), which prohibits discrimination based on disability in most areas of public life, including employment.
- Common Law – Laws that are made by the decisions of Courts, Panels and Tribunals.
- Prince Edward Island's [Employment Standards Act](#), which sets out minimum standards that most employers must comply with, such as:
 - Minimum wage;
 - Hours of work, including overtime rules;

- Vacation entitlement;
 - Leaves of absence;
 - Termination notice requirements; and,
 - Public holidays.
- Prince Edward Island's [Youth Employment Act](#), which sets out additional rules that employers are required to follow when employing youth.
 - Prince Edward Island's [Occupational Health and Safety Act](#), which establishes minimum standards for health and safety in Prince Edward Island workplaces.
 - Prince Edward Island's [Labour Act](#), which establishes rules about unions and collective bargaining.

Q: Who must comply with Prince Edward Island's employment laws?

A: Almost all employees, employers, companies and organizations that do business in Prince Edward Island must comply with Prince Edward Island's employment laws. This includes:

- Employees
- Employers, prospective employers, and employment agencies, both for-profit and not-for-profit.
- The Government of Prince Edward Island and its agencies.
- Independent contractors, unions, and trade unions.

Q: I work in a federally regulated industry. Do Prince Edward Island employment laws apply to me?

A: If you work in a federally regulated industry, federal employment laws usually apply instead of provincial employment laws.

To learn more about whether federal laws apply to your employment situation, you can visit the Government of Canada's [List of Federally Regulated Industries and Workplaces](#) webpage.

Q: What can I do to enforce my legal rights?

A: If you have experienced discrimination while looking for work or while working, there are things you can do to challenge the discrimination.

In general, you should first try to resolve your concerns by speaking with the people who are directly involved in an informal and collaborative way.

For more resources on self-advocacy, please visit the Self-Advocacy and Essential Legal Information Handbook on CNIB's [Know Your Rights – Prince Edward Island](#) webpage.

If your concerns can't be addressed through collaborative discussions, you should consider consulting with a lawyer who practices human rights or employment law to see if any of the following options are appropriate:

- A formal complaint to the [Employment Standards Branch](#) for violations of the [Employment Standards Act](#).

Note: Once a formal complaint has been filed with the Employment Standards Branch, the Chief Employment Standards Officer may issue an order in relation to the complaint. These orders can be appealed to the Employment Standards Board.

- A complaint to the [Workers Compensation Board of Prince Edward Island](#) regarding illness or unsafe work conditions.
- A [complaint](#) to the [PEI Human Rights Commission](#)
- A complaint to the [Canadian Human Rights Commission](#) (for federally regulated workplaces)
- A claim before a PEI Court.

You can also contact the [PEI Human Rights Commission](#) by phone at 902-368-4180.

Commission staff cannot offer opinions on the outcome of your complaint, nor can they advise as to whether it will be successful, however, they can provide information as to what the law states and how it may apply to a given situation.

Common Scenarios

Even though there are laws to protect you from discrimination, people with disabilities still face barriers to accessing employment opportunities and fulfilling their potential in the workplace.

This section describes barriers that are commonly experienced and suggests practical next steps. Keep in mind that in most situations, you should first try to resolve your concerns by speaking with the people who are directly involved in an informal and collaborative way.

Looking for Work

Q: I'm looking for a volunteer position. Am I entitled to receive accommodations as a volunteer?

A: In general, yes. Prince Edward Island's [Human Rights Act](#) applies to volunteers. Therefore, most organizations that accept volunteers will have a legal duty to provide you with accommodations for your disability up to the point of undue hardship.

Q: There's a requirement in a job advertisement that I can't meet because of my disability. Should I still consider applying for the job?

A: Sometimes job advertisements include "requirements" that are not [genuine occupational qualifications](#). In other words, they are not essential to doing the job in a safe or effective way. If you can't meet a requirement in a job advertisement because of your disability, and you believe that requirement is not a genuine occupational requirement, then you should still consider applying for the job.

When a job advertisement includes a "requirement" that is not a [genuine occupational qualification](#), the employer is **not allowed to reject** your application on the basis that you could not meet that requirement. The determination of whether or not a job requirement is a genuine occupational qualification is case-specific. Here's an example:

Mary is looking for work. She is trained as an accountant and she has sight loss which prevents her from driving.

Mary sees a job advertisement for an accountant position that is based in one office and does not require travel to other locations. The job advertisement includes a requirement that “all applicants must have a driver’s licence”.

In this example, the requirement that applicants must have a driver’s licence is not a genuine occupational qualification because it does not affect whether someone can do the job in a safe or effective way.

If Mary chooses to apply for this job, the employer is not allowed to reject her application on the basis that she doesn’t have a driver’s licence.

How can you tell which job requirements are genuine occupational qualifications and which are not?

It is not always easy to know because the law on this topic can be complex. Whenever you are in doubt, it’s important to get help from a lawyer who can apply the law to your specific situation.

Here’s an example of when it’s not entirely clear if a job requirement is genuine occupational qualification:

Fara is looking for work. She is an experienced salesperson and she has sight loss which prevents her from driving.

Fara sees a job advertisement for a sales associate position that will require frequent travel to different client locations. The job advertisement includes a requirement that “all applicants must have a driver’s licence”.

If most clients are located nearby, then Fara could take a taxi to meet clients. The cost of a local taxi will probably not cause **undue hardship** to the employer. In this case, the requirement that applicants must have a driver’s licence is **probably not** a genuine occupational qualification.

However, if most clients are located far away, the cost of travelling by taxi to remote locations might create an undue hardship for the employer. In this case, the requirement that applicants must have a driver’s licence **could be** a genuine occupational qualification.

Fara should consider getting help from a lawyer who can apply the law to her specific situation.

Q: A job posting is not in an accessible format. What can I do?

A: If you find a job posting on Prince Edward Island that's not in an accessible format, you have the right to request the job posting in an accessible format from the employer as an accommodation for your disability.

By disclosing your disability and making a request for accommodation, you trigger the employer's legal duty to accommodate you up to the point of undue hardship.

If you don't want to disclose your disability to the employer before you apply for the job, you can ask a friend to make the request for you. You can also get help from a local community organization or CNIB.

Q: I got an interview! But I'm not sure when to disclose my sight loss to my prospective employer. What should I do?

A: While you are not required to disclose your disability to your prospective employer, it may be a good idea to do so, depending on the situation.

There's no single "right answer" about whether you should disclose your disability to a prospective employer and when you should do so.

It's often a good idea to disclose your disability before an interview to make sure that appropriate accommodations will be provided to you during the interview. This is especially important where written tests or other types of evaluation could be part of the interview process.

There are also potential cons to disclosing your disability before an interview. For example, you may be worried that the employer could form misconceptions about you based on false stereotypes before you are able to meet them in-person. Disclosing your disability in advance of the interview will allow you to frame your disability in a positive way and dispel any myths related to your disability.

There are many [resources](#) to help you decide when and how to disclose your disability to an employer. You can also reach out to CNIB for additional support.

Q: I had the qualifications and performed well during the interview, but I didn't get the job. I feel that I have been discriminated against because of my sight loss. What can I do?

A: Sometimes there are clear signs that you have been discriminated against during an interview process. For example:

- When an employer asks intrusive and inappropriate questions
- When an employer makes statements that are offensive or based on false stereotypes
- When an employer says that they cannot hire you because of your sight loss

Before deciding what to do, it's important to understand how the law applies to your specific situation. You should consider consulting with a human rights or employment lawyer about your legal [options](#). You can also contact CNIB, who can provide you with additional support.

When the signs of discrimination are not as clear, it may be harder to prove that you were discriminated against. Even if you think it will be hard to prove discrimination, you may **still** have legal options available. You should consider consulting with a lawyer to understand how the law applies to your specific situation.

At Work

Q: My sight loss is affecting my ability to do my job. What can I do?

A: If you require accommodations at work because of your sight loss, it's important to advise your employer of your disability and how it's affecting your ability to perform job-related tasks.

Disclosure of your disability triggers your employer's legal duty to accommodate you up to the point of undue hardship. It will also allow your employer to work with you around developing and implementing accommodations.

Who should I disclose my disability to in the workplace?

It depends on the size of the employer and on other types of organizations involved (for example, a union or a temporary placement agency). In a large company, you may want to speak with the human resources department or a workplace accessibility advisory committee.

In most situations, you should consider consulting with a [Workplace Accommodation Service](#) who can provide you with more support on how to talk about your disability with your employer.

Before deciding what to do, it's important to understand how the law applies to your specific situation. You should consider consulting with a human rights or employment lawyer to discuss the legal options that may be available to you. You can also contact CNIB's [Career Support and Employment Services](#) who can help connect you with more supports.

Q: My employer has provided me with accommodations, but they aren't working. What can I do?

A: It's important to let your employer know that your current accommodations are not providing you with the support you need to succeed in your job.

Your employer has a legal duty to accommodate you up to the point of undue hardship. It's important to remember that selecting an appropriate accommodation is a **collaborative process**. As an employee requesting an accommodation, you have a legal duty to collaborate with the employer to help them select an appropriate accommodation.

Your employer has the right to get enough information from you about your disability to select an appropriate accommodation. If the employer asks for medical documentation about your disability, you should provide only the information that is necessary to explain your need for accommodations. You are not required to tell your employer your exact diagnosis. You are not required to give your employer information that is not related to your need for accommodations.

You should consider contacting a [Workplace Accommodation Service](#) who can provide you with more support around how to best communicate with your employer.

Before deciding what to do, it's important to understand how the law applies to your specific situation. You should consider consulting with a lawyer who practices human rights or employment law about the options that may be available to you.

You can also contact CNIB's [Career Support and Employment Services](#) who can help connect you with more supports.

Q: Do I have to pay for my employment-related accommodations?

A: Your employer cannot make you pay for your accommodations. It's your employer's duty to accommodate you to the point of undue hardship and your employer is responsible for paying the costs of your accommodations.

Leaving Work

Q: I had to leave my job because my sight loss prevented me from performing my duties. What now?

A: If you lose your job (for example, you resign or you are let go) and you believe you lost your job because of your sight loss, you should get help from a lawyer who practices employment or human rights law to understand what your legal [options](#) are. A lawyer can help you determine whether your employer may have discriminated against you.

Getting Help

Legal Resources

[PEI Human Rights Commission](#)

The **PEI Human Rights Commission** is an independent office of the government of PEI that is responsible for receiving and investigating complaints of discrimination to determine if PEI's [Human Rights Act](#) has been contravened.

For information on [filing a complaint](#) with the Commission, the Commission's website suggests you first read their [guide for making complaints](#)

The Commission also delivers workshops and creates legal [education and resources](#) for among others, [employers and employees](#).

You can contact the PEI Human Rights Commission by phone at 902-368-4180. Commission staff cannot offer opinions on the outcome of your complaint, nor can they advise as to whether it will be

successful, however, they can provide information as to what the law states and how it may apply to a given situation.

The Law Society of PEI

The **Law Society of PEI** oversees the legal profession in PEI. The Law Society is the only body that is authorized to determine who may become a lawyer in the province, and is responsible for [responding to complaints about lawyers](#). The Law Society also has a [find a lawyer tool](#) that enables the public to search for lawyers.

Community Legal Information (CLI)

The **Community Legal Information (CLI)** is a not-for-profit organization that provides legal information and education to residents of PEI. CLI develops programs and resources to help individuals better understand PEI's legal system, and how to resolve their legal issues.

CLI can help members of the public by providing general legal information, suggesting resources, and telling people about different options for obtaining legal advice.

CLI also operates the [Law Inquiry Line](#) in addition to offering [lawyer referrals](#). Individuals who contact CLI can receive:

- legal information,
- referrals to law-related agencies, and
- referrals to lawyers, when appropriate. Individuals who contact the Lawyer Referral Service will receive a referral to a lawyer, who will provide a 45-minute consult at a cost of \$25.00.

CLI can be contacted [through its website](#) or by telephone at 902-892-0853 or 1-800-240-9798.

Legal Aid PEI

Legal Aid PEI provides legal services to low-income PEI residents in the areas of criminal law, family law, and some civil law matters, including child protection law, involuntary hospitalization

under mental health laws, guardianship, and adult protection. Depending on the availability of resources, some assistance may be offered in other civil law areas as well.

When determining whether individuals are eligible for Legal Aid services, Legal Aid PEI considers several factors, including:

- Financial eligibility (which varies, depending on income and family size),
- Urgency and seriousness of the legal needs,
- Coverage and resources of the Legal Aid Program, and
- The individual's ability to obtain legal assistance if Legal Aid is refused.

PEI Supreme Courts

The **PEI Supreme Courts** website provides general information about how Courts in PEI operate, and what to expect if you are attending Court.

It also provides information about the **Pro Bono Legal Advice Clinic (for Self-Represented Litigants) Prince Edward Island**. The Pro Bono Legal Advice Clinic is a free-of-charge legal clinic for self-represented individuals whose family or civil law matter is before the Supreme Court of Prince Edward Island or the Prince Edward Island Court of Appeal. The clinic is held every Wednesday from 9:00AM – 12:00PM at the Sir Louis Henry Davies Law Courts, 42 Water Street, Charlottetown. People who access this service can meet with a lawyer for a 45-minute consultation. Appointments can be scheduled by phone at 902-368-6005, 902-892-0853 or 1-800-240-9798.

Essential Non-Legal Resources

PEI Ombudsperson

The **PEI Ombudsperson** is an independent office of the Legislative Assembly of PEI. The Ombudsperson conducts independent, impartial and non-partisan investigations of **complaints** against:

- Boards, commissions, associations and other bodies,
- Health PEI,
- Municipalities,
- Council members,
- Board members, and
- Officers and employees of the Government

The PEI Ombudsperson aims to promote fairness and transparency in the public sector, find fair resolutions, and make recommendations to improve the practices of public agencies.

PEI 211

PEI 211 is a free, confidential service that operates 24 hours a day, seven days a week. It exists to connect individuals to government, health and social services that are available across PEI. The service helps residents of PEI who are looking to find the right community or social resource, but do not know where to start. Individuals can also contact 2-1-1 to report some by-law infractions.

In addition to searching on the [211 PEI website](#), there are [various ways for people to contact PEI 211](#), including calling 2-1-1 to talk with trained professionals to help identify the services that they need.

Services are grouped together into various categories, including (among others) [legal](#), [education](#) and [disabilities](#).

ResourceAbilities

ResourceAbilities is a non-profit, non-government organization that aims to improve the lives of people with disabilities who live on Prince Edward Island.

ResourceAbilities provides various services to people with disabilities, including assistance with accessing provincial and federal government supports and services. ResourceAbilities also assists people with choosing career paths, applying for relevant education and training, and looking for work.

ResourceAbilities has offices in Summerside, Charlottetown and Montague and can be [contacted](#) by phone or email.

Resources for Employees and Employers

[Hire for Talent](#)

Hire for Talent is a Canada-wide awareness campaign that is designed to educate employers, and support people with disabilities in developing their careers. It covers many employment topics including (among others) accommodations, interviews, recruitment, hiring, and retention.

[NEADS](#)

The **National Educational Association of Disabled Students (“NEADS”)** is a Canadian charitable organization that supports full access to education and employment for students with disabilities. As part of its effort to support full access to education and employment, NEADS has developed resources including:

- A [comprehensive guide to understanding the rights of employees with disabilities](#) and the obligations of employers to accommodate them.
- A web portal for jobs called “Breaking it Down” which includes many resources, links, and articles for job seekers.
- A booklet on the [Duty to Accommodate](#) (Word Doc).

[Government of Alberta Careers Website](#)

The Government of Alberta Careers Website includes many employment-related resources for people who have disabilities. While this website was created in Alberta, it provides a lot of helpful practical advice for people across Canada.

CNIB Foundation

Blindness at Work - with only simple accommodations, many people with sight loss are empowered to work independently. These resources can help employers make the workplace more accessible:

- **Workplace accommodations**: Examples of tools and technologies that can be used to accommodate people with sight loss. This site also includes a link to some quick tips around creating an accessible workplace.
- **Creating an inclusive workplace**: Simple tips about how to be comfortable and supportive of co-workers with sight loss.
- **Hiring someone with sight loss**: Tips for employers around making the recruiting process (e.g. job advertisements, etc.) and interviews accessible to job candidates with sight loss.

March of Dimes Canada

March of Dimes Canada is a national charity that is dedicated to providing support to people with physical and other disabilities. March of Dimes Canada offers clients a wide range of services, including (among others) **employment services** and **Business and Training Services**.

CNIB Programs

We're here to help – contact CNIB for more programs, support, and resources. Some ways we can assist include:

- **CNIB Career Support and Employment**

CNIB's Career Support and Employment Services provides clients with many helpful services, including:

- Assisting with resumé writing, job searches and job retention
- Assisting employees and employers with developing and implementing job accommodation plans

- Providing employers and employment agencies with training and education about how to accommodate people who have sight loss
- **[CNIB Mentoring Program](#)**
 - CNIB's Mentoring Program provides job seekers and employees with skills and strategies to effectively engage employers. Mentors answer your questions and share their firsthand experiences in the workplace.
- **[CNIB Entrepreneurship Program](#)**
 - CNIB's entrepreneur program provides resources and inspiration to help you succeed in your business venture.
- **[CNIB Virtual Programs](#)**
 - CNIB offers a range of free virtual programs for children, youth, adults and families.
 - You can access a list of CNIB's virtual program offerings on **[CNIB's website](#)**. You can also find a list and schedule of PEI's virtual program offerings on **[CNIB's PEI website](#)**.
- **[Technology Training](#)**
 - Join CNIB tech leads from across the country for programming that highlights the suite of programs, apps, products and services that will help empower you to achieve your personal and professional goals.
- **[Virtual Vision Mate](#)**
 - The Virtual Vision Mate program exists to address the feelings of isolation that many people with sight loss experience. Through the Virtual Vision Mate program, people who are blind or partially sighted are connected with sighted volunteers to engage in virtual, weekly conversation.
- **[CNIB SmartLife](#)**
 - CNIB SmartLife is an interactive retail experience that gives people with disabilities hands-on access to the latest breakthroughs in assistive technologies, as well as tried-and-true favourites.

- SmartLife’s goal is not necessarily to sell products but is to give customers the skills and confidence they need to make the most out of assistive tools that can help them lead better lives.
- [CNIB Guide Dogs](#)
 - CNIB Guide Dogs can assist guide dog handlers with advocating for themselves and understanding their rights. This program also provides public education to organizations to provide knowledge about the rights of guide dog users.

[Vision Loss Rehabilitation Canada](#)

Vision Loss Rehabilitation Canada (“VLRC”) is a not-for-profit national healthcare organization and the leading provider of rehabilitation therapy and healthcare services for individuals with vision loss. VLRC’s services are tailored to the unique needs and goals of each person they assist. Specifically, VLRC certified specialists provide a range of services that help individuals with vision loss lead more independent, active lives.

Workplace Accommodation Service

VLRC provides workplace accommodation services, which can assist in many ways, including:

- Providing support and assistance with communicating disabilities to prospective employers/employers and requesting accommodations
- Providing support to employees and employers with developing and implementing accommodation plans

You can contact VLRC’s PEI office by phone at 902-566-2580.

Wayfinding

Wayfinding refers to technological tools that assist people who are blind, partially sighted or Deafblind with navigation and orientation. Such tools include:

- [BlindSquare](#): a GPS-app developed for people with sight loss that describes the environment and announces points of interest and street intersections.
- [Key 2 Access](#): a pedestrian mobility app that allows users to wirelessly request crossing at intersections without having to locate the button on the pole. It also allows users to wirelessly open doors and obtain information about indoor spaces.
- [Access Now](#): a map application that shares accessibility information for locations based on users' feedback.
- [Be My Eyes](#): a volunteer-based app that connects people with sight loss to sighted volunteers, who can assist with tasks such as checking expiry dates, distinguishing colors, reading instructions or navigating new surroundings.
- The [American Foundation for the Blind](#), which provides an overview of some of the apps that are available to assist consumers with reading items such as product labels and menus.

cnib.ca | info@cnib.ca | 1-800-563-2642