

Towards an Ontario Accessible for All:

Spinal Cord Injury Ontario's Submission to the *Accessibility for Ontarians with Disabilities Act* Legislative Review

MARCH 2014



The Public Policy Program of Spinal Cord Injury Ontario is made possible by the generous support of the Personal Injury Alliance

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Letter to the Reviewer

To: Dean Mayo Moran
University of Toronto Faculty of Law

Date: 8 April 2014

Re: Spinal Cord Injury Ontario Submission to AODA Legislative Review

Dear Dean Moran –

On behalf of Spinal Cord Injury Ontario, I am pleased to present our submission, *Towards an Ontario Accessible for All*, to the *Accessibility for Ontarians with Disabilities Act* Legislative Review.

With its passage of the *Act*, the Province of Ontario has indicated its commitment to a barrier free province.

However, there are four barriers that remain if the Province is to meet its stated goal of becoming barrier-free by 2025 under the *Act*:

Limited compliance of existing standards

As has been reported recently in the media, the majority of businesses have failed to comply with reporting requirements outlined in the *Act* by January 31st 2014. Limited compliance, coupled with few – or no – sanctions, gives the impression that failure to remove barriers to access does not have substantial consequences. As a result, the status quo often prevails.

Limited resources to meet existing standards

While the *Act* clearly outlines that services people with disabilities receive must be on par with those of people without disabilities, it often contains the caveat, “resources permitting”. This is problematic insofar as many services – such as non-conventional transit – do not receive the resources required to provide equitable *access* to these services. Unless stakeholders are mandated to provide not only an equitable standard of service – but also, access to those services – substantive change is not likely to occur in the near future.

Limited scope of the Act

We are pleased that the *Act* addresses areas under the *Integrated Standard* and the *Customer Service Standard*. While not perfect, these do provide a framework for removing barriers. A lack of standards in other areas – health care and education in particular – is troubling, given the impending 2025 deadline.

Limited policy analysis from a disability lens

We note that enforcement of the *Act* is now housed under the Ministry of Economic Development, Trade and Employment. While this has certain policy implications given its transfer from the Ministry of Community and Social Services, we nonetheless hold that all forthcoming legislation and policy – across ministries – must undergo policy analysis from a disability lens. This will better assist Members of Provincial Parliament and ministry staff in ensuring that access barriers are not inadvertently created and/or enforced.

In our submission, you will find recommendations for addressing these barriers. We believe that they are both reasonable and essential. We also understand that the *Review* is but one part of crafting stronger legislation. To this end, we are pleased to continue to work with you and other partners to arrive at this goal.

Sincerely,



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Introduction

Spinal Cord Injury Ontario works with people with spinal cord injuries and other physical disabilities to increase their self-reliance and enhance community participation. With seventeen regional offices across the province, we have a strong awareness of the issues facing our members.

As the Purpose (Section 1) of the *Accessibility for Ontarians with Disabilities Act* reads:

Recognizing the history of discrimination against persons with disabilities in Ontario, the purpose of this Act is to benefit all Ontarians by,

- (a) developing, implementing and enforcing accessibility standards in order to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises on or before January 1, 2025; and*
- (b) providing for the involvement of persons with disabilities, of the Government of Ontario and of representatives of industries and of various sectors of the economy in the development of the accessibility standards.*

As such, the Government of Ontario is committed to clearly outlining standards to remove barriers to persons with disabilities. To date, these standards are:

- Customer Service;
- Employment;
- Transportation;
- Information and Communications Standard; and
- Built Environment.

With respect to the Built Environment, we made separate submissions to the *Ontario Building Code* consultation in March 2013.¹

We believe that strong standards are essential to fostering norms for barrier-free access in our society. Nonetheless, we hold that these standards must be met with strong enforcement; otherwise, the required change will likely not take place. We address this issue here, along with issues pertaining to limited resources to meet the deadline of a barrier-free Ontario by 2025.

¹ This submission may be viewed at the following link:
<http://alliance.sciontario.org/sites/alliance.sciontario.org/files/attachments/SCIO%20Building%20Code%20Consultation%20-%20March%202013.pdf>

We analyze gaps within the existing standards, and make recommendations for improvements. We also briefly address the need for new standards, particularly as they pertain to healthcare and education.

We make the case for broader policy analysis from a disability perspective across all levels of government, based on a framework developed by the Canadian Disability Policy Alliance. Such analysis, conducted in an open and transparent manner will, we believe, engender meaningful change for the better – today, and in the years to come.

Finally, we wish to emphasize that any changes that result from this *Legislative Review* should strengthen existing legislation and regulations – not weaken them.

RECOMMENDATION

That any changes stemming from the *Legislative Review* strengthen – not weaken – obligations and protections as they exist under the *Act* and corresponding regulations.

Overview of Recommendations

Below are recommendations provided in this submission:

No Reduction of Existing Standards

- 1) That any changes stemming from the *Legislative Review* strengthen – not weaken – obligations and protections as they exist under the *Act* and corresponding regulations.

Compliance and Resources to Ensure Greater Accessibility

- 2) Provide non-compliant entities with a hard deadline of six months to file appropriate reports under the *Customer Service Accessibility Standard* and other provisions of the *Act*. Failure to do so will result in automatic financial penalty, with entities reserving the right of appeal.
- 3) Ensure that access to services and operations for people with disabilities is the same or better than those provided to the general population in a specific jurisdiction under the *Act*.

Municipal Accessibility Advisory Committees

- 4) Establish that municipal advisory committees must meet at least six (6) times in a calendar year to ensure that motions before municipal bodies are given due consideration by advisory committees.
- 5) Mandate municipalities to provide policy analysis on proposed motions and how they may impact persons with disabilities.
- 6) Mandate that municipalities smaller than 10,000 must establish a consultation mechanism such as through consultations with resident advisors via email.

Customer Service

- 7) Expand the Standard to include facilities, not only goods and services.
- 8) Remove provisions permitting support persons to be charged fees for goods and services.

- 9) Ensure that organizations and businesses are obligated to ensure barrier-free access to premises including:
 - Installation of ramps and door openers where there is no undue hardship; and
 - Regular snow removal at pathways and doorways.
- 10) Under Regulation 430/07, lower the threshold for filing reports from 20 employees to 5.

Employment

- 11) Should employers require written confirmation of accommodation needs from a medical professional, have associated costs (such as physician fees for letters) covered by the employer.
- 12) Have accommodation plans extended for all organizations, including "small organizations" under the *Act*.

Transportation

- 13) Mandate municipalities to ensure barrier-free access at pick-up and drop-off points.
- 14) Ensure that "alternate accessible arrangements" under Section 50 are not at additional cost to the traveller requiring these arrangements.
- 15) Change Section 62 to include "at least two rail cars per train".
- 16) Mandate municipalities to provide resources to meet increased accessibility targets for taxicabs over time.
- 17) Mandate all licensed taxicab drivers of accessible and non-accessible vehicles to have accessibility awareness training.

Information and Communications

- 18) Mandate all organizations under the *Act* to have accessible formats of emergency preparedness on hand.

Potential New Standards

- 19) That the Government immediately begin the process for developing new standards for education, healthcare and residential housing as established under the Standards Development Process under the *Act*.

Policy Analysis from a Disability Lens Perspective

- 20) Defer any proposed changes from the Standards Development Committee until the *Legislative Review* of the *Act* is complete.
- 21) Ensure that policies, procedures and regulations undergo a policy analysis from a disability perspective across all ministries, and that Orders-in-Council also undergo such analysis.

Limited Compliance = Limited Results

On February 20th of this year, the *Toronto Star* reported that, as of November 2013, approximately 36,000 companies had not filed compliance reports regarding the Customer Service Accessibility Standard.² At over 70 percent non-compliance – and seemingly little consequence for the majority of these businesses – it gives the message that compliance is not mandatory, much less a firm legal requirement.

We note that the Province plans to conduct 1,700 compliance audits; however, this may not be ambitious enough. Rather, it may be helpful to notify non-compliant of a “hard deadline” of 6 months to file, or automatic penalties will be put in place.

We also note that existing timelines are extensive; given the necessity of timely compliance to engender a cultural shift of accessibility by the 2025 deadline, we are in favour of shorter timelines for existing obligations under the *Act* to facilitate the development and integration of new standards, as outlined later in this document.

The *Act* outlines administrative penalties under Section 5. While we do not object to the right of appeal within the *Act*, we nonetheless believe that non-compliant entities must be given financial penalties if they do not comply with the *Act* in a timely manner.

While some non-compliant entities may choose to appeal, and therefore result in government staff resources to oversee them, we anticipate that the majority of these entities will react to this incentive by filing appropriate reports.

RECOMMENDATION:

Provide non-compliant entities with a hard deadline of six months to file appropriate reports under the *Customer Service Accessibility Standard* and other provisions of the *Act*. Failure to do so will result in automatic financial penalty, with entities reserving the right of appeal.

² Laurie Monsebraaten. “Ontario vows to enforce accessibility law”. *Toronto Star*. 20 February 2014, n. pag.

URL:

http://www.thestar.com/news/gta/2014/02/20/ontario_vows_to_enforce_accessibility_law.html

Limited Resources = Limited Access

In broad terms, the *Act* rightly mandates plans to remove barriers over time – such as requirements that new vehicles for conventional public transit be accessible – and requires the employees of some organizations to undertake training to provide barrier-free service.

While this is a positive stipulation, the *Act* does not mandate that resources be provided to provide equal access to operations. For example, with regards to specialized transit, the *Act* mandates equal access to the “extent resources” are available (Section 71).

This is problematic: unless clear standards are in place for access to services, there is no incentive to allocate resources to provide this access. In a number of municipalities for example, Ontarians who use para transit are unable to book rides in a timely manner, or may have to wait long periods between pick-up and drop-off times as there are not enough vehicles and drivers to meet existing need. Rather than aggressively provide these resources, some municipalities opt for a more incremental approach to providing these resources, while ensuring that those who receive rides do so in a manner in accordance with the *Act*.

RECOMMENDATION:

Ensure that access to services and operations for people with disabilities is the same or better than those provided to the general population in a specific jurisdiction under the *Act*.

For example, one possibility would be to measure access by the general population to standard transit and have this be the standard.

Municipal Accessibility Advisory Committees

Part VII of the *Act* establishes municipal accessibility advisory committees. These bodies are essential to ensure that municipal laws have been drafted in consultation with advisors with disabilities.

However, we note that the *Act* is silent on how often such a Committee should meet. This results in some motions being put to municipal bodies not being given due consideration with regards to accessibility.

RECOMMENDATION

Establish that municipal advisory committees must meet at least six (6) times in a calendar year to ensure that motions before municipal bodies are given due consideration by advisory committees.

We have also heard from stakeholders that policies are created in municipalities that may contravene the spirit – if not the letter – of the *Act*. To this end, we believe that section 29(4) of the *Act* should be broadened.

RECOMMENDATION

Mandate municipalities to provide policy analysis on proposed motions and how they may impact persons with disabilities.

Finally, while it may not be feasible for municipalities of all sizes to have advisory meetings in person on a regular basis, we nonetheless hold that a lack of consultation mechanism is detrimental to persons with disabilities in municipalities with residents less than 10,000 persons.

RECOMMENDATION

Mandate that municipalities smaller than 10,000 must establish a consultation mechanism such as through consultations with resident advisors via email.

Gaps in the Act – Existing Standards and Potential Solutions

Customer Service

We note that the Customer Service Standard applies to goods and services, but not to facilities. While the *Ontario Building Code* has been recently changed, it leaves much to be desired in terms of ensuring greater physical access on the part of compliant organizations. Thus, specific standards need to be developed to ensure the physical accessibility of facilities.

RECOMMENDATION

Expand the Standard to include facilities, not only goods and services.

Under Section 4(6), businesses are allowed to charge support persons. This is wrong: support persons are required to ensure the community integration and participation of those persons with disabilities who make use of the supports the person provides.

RECOMMENDATION

Remove provisions permitting support persons to be charged fees for goods and services.

We believe that organizations and businesses should be compelled to ensure barrier-free access to buildings wherever possible. It makes little sense to have staff trained in providing accessible services if people with disabilities are not able to access the venues themselves. We recognize that a phased approach is necessary for more costly changes; however, with regards to snow removal and the like, such obligations can be fulfilled at minimal cost.

RECOMMENDATION

Ensure that organizations and businesses are obligated to ensure barrier-free access to premises including:

- Installation of ramps and door openers where there is no undue hardship; and
- Regular snow removal at pathways and doorways.

With regards to *Regulation 430/07*, we believe it should be revised, and the threshold for filing reports regarding the *Accessibility Standards for Customer Service* be lowered.

Under (2) 1, the regulation's rationale is that it is "consistent with the phased approach of implementing the *Act*." As the 2010 Legislative Review has passed and with the 2025 deadline approaching, we hold that more businesses in Ontario should be compliant.

We note that reporting requirements are far from onerous, and we disagree that "exempted providers [are able to better] focus their efforts on complying with those accessibility standards". Compliance, it must be emphasized, helps change expectations and behaviour, and increases accessibility as a result.

RECOMMENDATION:

Under Regulation 430/07, lower the threshold for filing reports from 20 employees to 5.

Furthermore, the Government must take pro-active steps to educate exempted businesses on the value of complying with the spirit of the *Act* – including that it expands an untapped market of persons with disabilities.

Employment – Regulation 191/11

We support the mandatory requirement that eligible businesses must provide written accommodation plans for employees under Section 28. Nonetheless, we note that while employers may request medical confirmation of accommodations from employees, there is no mechanism to ensure that this is provided without cost to the employee.

RECOMMENDATION

Should employers require written confirmation of accommodation needs from a medical professional, have associated costs (such as physician fees for letters) covered by the employer.

Under Section 28, "*employers other than employers that are small organizations*" [emphasis added] must provide a process for written accommodation plans. We believe that accommodation plans are not onerous, and should be extended to all businesses.

RECOMMENDATION

Have accommodation plans extended for organizations of all sizes, including “small organizations” under the *Act*.

*Transportation – Regulation 191/11**Conventional Transit*

A major gap within the guidelines as they pertain to Conventional Transit is the need to ensure barrier-free access at pick-up and drop-off points. For example, municipalities should be obligated to provide snow removal at bus stops and pathways, with particular consideration to removal of temporary barriers (snowbanks and the like).

RECOMMENDATION

Mandate municipalities to ensure barrier-free access at pick-up and drop-off points.

Under Section 50 of the *Act*, where there is a service disruption, the transit service operator must “make available alternate accessible arrangements to transfer persons with disabilities to their route destination where alternate arrangements for persons without disabilities are inaccessible”. However, the *Act* is silent on payment of such alternate transportation.

RECOMMENDATION

Ensure that “alternate accessible arrangements” under Section 50 are not at additional cost to the traveller requiring these arrangements.

Under Section 62 of the *Act*, every conventional transportation provider “whose service includes light rail, commuter rail or inter-city rail shall ensure that at least one rail car per train is accessible to persons with disabilities who use mobility aids”. This number is insufficient, as often, more than one passenger with a disability may require access to a train at a specific time. We often hear of wheelchair users who have been forced to delay travel plans until an accessible car is available.

RECOMMENDATION

Change Section 62 to include “at least two rail cars per train”.

Specialized Transit

It is our position that, in general, specialized transit has become substantially more accessible across a number of municipalities for persons with physical disabilities.

Nonetheless, with regards to fare parity (Section 66), we have become aware of some jurisdictions – such as the City of Ottawa – that do not permit rural-to-rural rides within its boundaries. While not a fare parity issue with respect to the City's Para Transpo service, it does result in riders having no option but to pay for private services.

With respect to Visitors, Section 67 obligates specialized transit service providers to offer their services; however, due to limited resources, like non-Visitors, many are unable to actually obtain requested rides.

See **Limited Resources = Limited Access** for a recommendation to address this challenge.

With regards to accessible taxicabs under Section 79 of the *Act*, municipalities must be compelled to provide more than plans for increased accessibility.

RECOMMENDATION

Mandate municipalities to provide resources to meet increased accessibility targets for taxicabs over time.

The *Act* is also silent on the need for awareness training by owners of all cabs, accessible other otherwise.

RECOMMENDATION

Mandate all licensed taxicab drivers of accessible and non-accessible vehicles to have accessibility awareness training.

Information and Communications

In principle, we support the Information and Communications Standard. Many of our clients have multiple disabilities, including visual impairments. As such, we believe that it is essential to provide accessibility with a cross-disability approach.

Nonetheless, we are particularly concerned that organizations are not required to have accessible formats of emergency preparedness plans on hand under Section 13, given the essential nature of this information, and the delays that result by not having this information.

RECOMMENDATION

Mandate all organizations under the *Act* to have accessible formats of emergency preparedness on hand.

We also note that while the *Act* compels organizations to let the public know of their accessible formats and communication supports, the *Act* is silent as to how it is presented: for example, some organizations may post policies and procedures to show compliance, but may not do so in plain language the broader population can easily comprehend.

We defer to the expertise of organizations that work with populations that require alternate information and communications supports such as those with audio-visual disabilities as to other required changes within the Standard.

Expanding the Act – New Standards in Education, Healthcare and Residential Housing

We agree with the AODA Alliance's call for new standards in education, healthcare and residential housing. In its public communication dated March 3rd 2014, David Lepofsky wrote the following to the three parties (edited for length and clarity):

The Ontario Government has not designated any new accessibility standards to be developed since well before the 2011 Ontario general election. For over two and a half years, we have advocated for the next three accessibility standards to address disability barriers in health care, education (including schools, universities, colleges and other educational institutions), and residential housing.

It can take years to develop a new accessibility standard. With only eleven years left to reach 2025, it is necessary for the Ontario Government in the next term to ensure that all accessibility standards are developed and enacted that will ensure that that goal is reached.

We therefore ask your Party to commit to:

- Develop accessibility standards under the AODA in the areas of education, of health care, and of residential housing, with work on these to begin immediately.
- Over the three months immediately following a spring 2014 election (or between May and July 2014, if there is no spring 2014 election), consult with the public, including the disability community, on all the other accessibility standards that need to be developed to ensure that Ontario becomes fully accessible by 2025, with a decision to be announced on those standards within three months after that consultation.

We concur with these recommendations. It is our view that persons with disabilities face disproportionate barriers in accessing accessible education, healthcare and residential housing.

RECOMMENDATION:

That the Government immediately begin the process for developing new standards for education, healthcare and residential housing as established under the Standards Development Process under the Act.

We note that the 2010 legislative review asked the Province **not** to develop additional standards. The rationale given by the Reviewer was that the government "should focus its energies on completing the development and

harmonization of the first five standards”.³ We disagree with this direction, as there is nothing that precludes the government from developing existing standards while developing standards in education, healthcare and residential housing.

3

http://www.mcass.gov.on.ca/en/mcass/publications/accessibility/charles_beer/findings_more_standards.aspx

Aligning Government Policies, Procedures, and Regulations with the Act – Policy Analysis from a Disability Perspective

We agree with the role of a Standards Development Committee. However, we believe that the Committee's recommendations on standards should not proceed until the *Review* is complete, as there is some confusion in the disability community about the consultative process for both the Committee's mandate and that of the *Review*.

RECOMMENDATION:

Defer any proposed changes from the Standards Development Committee until the *Legislative Review* of the *Act* is complete.

As we have outlined in our letter to the Committee on April 4th and CC'd to the Reviewer, we do not support the principle of harmonization which results in diminished standards.

We also submit that all government policies, procedures and regulations undergo a policy analysis from a disability perspective across all ministries. This is not to suggest that various policymakers are acting to directly limit access, but that without this analysis, important considerations may not be taken into account in the drafting of such policies, procedures, and regulations.

RECOMMENDATION:

Ensure that policies, procedures and regulations undergo a policy analysis from a disability perspective across all ministries, and that Orders-in-Council also undergo such analysis.

The Canadian Disability Policy Alliance provides a comprehensive "disability lens" below:

<http://www.disabilitypolicyalliance.ca/wp-content/uploads/2013/10/disability-lens-300913.pdf>

Mandating such a cross-ministry approach to policy analysis and development will help ensure greater accessibility at all levels.

Conclusion

The *Accessibility for Ontarians with Disabilities Act* is testament to the value of mandating and regulating requirements to build a stronger, more barrier-free province for all. Legislation does not only establish legal norms, it also helps to foster cultural norms, including that of greater inclusion of persons with disabilities in our broader society.

In closing, we view this submission as part of a broader discussion with the *Review* and governmental partners. We look forward to engaging these key stakeholders in the coming months.

Appendix: Letter Regarding Customer Service Standard Review



To: Customer Service Standard Review
Accessibility Directorate of Ontario

Re: Exemptions under the proposed Customer Service Standard

Date: 4 April 2014

To Whom It May Concern:

I am writing on behalf of Spinal Cord Injury Ontario to express our opposition to the proposed Customer Service Standard's exemption, which holds that "[requirements] under the Customer Service Standard that applied to organizations with 20 or more employees would now apply to organizations with 50 or more employees".

The rationale for the proposed change is as follows: "This proposed change would match the class structure of the Customer Service Standard with the class structure of the other four accessibility standards (employment; information and communications; transportation; and the design of public spaces). The proposed change will result in a consistent definition of private and not-for-profit organizations, simplify requirements, and reduce inconsistencies across all accessibility standards".



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While we appreciate that there can be some confusion amongst organizations as to the standards, it is far better to educate stakeholders of the requirements under legislation, not to effectively dilute them.

In giving the rationale for the existing exemption, under Ontario Regulation 430/07, the rationale is:

- 1. It is consistent with a phased approach to implementing the Act.*
- 2. It allows the exempted providers of goods or services to focus their efforts and resources on complying with those accessibility standards. O. Reg. 430/07, s. 1 (2).*

We believe that in order for Ontario to meet its goal of becoming barrier-free by 2025, we need to be more aggressive in its phased approach – and ensure that even more organizations must meet the obligations set out in the Customer Service Standard.

Experience teaches us that we cannot simply rely on the education and goodwill of organizations. While many can and do show leadership and demonstrate initiative, others need to be compelled to do so by regulation. The Customer Service Standard is crucial towards enhancing inclusion in all walks of life. The existing changes will, in effect, be a step backwards – and will not bring us closer to our collective goal of a barrier-free Ontario in the near future.

Sincerely,



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CC: David Lepofsky
Chair, AODA Alliance

Dean Mayo Moran
AODA Legislative Review