

**ACCESSIBILITY STANDARDS LEGISLATION:
A STRATEGIC OPTIONS PAPER PREPARED
FOR BARRIER-FREE MANITOBA**

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ACCESSIBILITY STANDARDS LEGISLATION: A STRATEGIC OPTIONS PAPER PREPARED FOR BARRIER-FREE MANITOBA

Executive Summary

The *Human Rights Code* is the main Manitoba law targeted at removing barriers experienced by people with disabilities, but it mainly responds to individual experiences of barriers, rather than proactively removing those barriers. The *Code's* approach can be supplemented by a broader, intentional, and faster-paced approach to barrier-removal, such as the *Accessibility for Ontarians with Disabilities Act (AODA)* which aims to make Ontario fully accessible by 2025 through the development of accessibility standards requiring the removal of barriers. These standards provide specific direction on how to remove barriers rather than simply requiring organizations to refrain from discriminating against people with disabilities.

Barrier-Free Manitoba is a non-profit, non-partisan, cross-disability initiative that is working toward the enactment of accessibility-standards legislation. As a result of its advocacy efforts, Manitoba's premier, the Honourable Greg Selinger, committed to enact accessibility-standards legislation. With this promise, Barrier-Free Manitoba is now considering what the legislation must contain to ensure its effectiveness for Manitobans with disabilities.

This paper is intended to guide informed discussion within the disability community on the content of the proposed legislation on key aspects of accessibility-standards legislation that should be considered in the design and development of legislation in Manitoba. In this paper the available options are measured against the nine principles that Barrier-Free Manitoba developed for the legislation; it must:

- Cover all disabilities;
- Reflect a principled approach to equality;
- Move beyond the complaints-driven system to comprehensively address discrimination and barriers;
- Establish a definite target date to achieve a barrier-free Manitoba;
- Require the development of clear, progressive, mandatory and date-specific standards in all major areas related to accessibility that will apply to public and private sectors;
- Establish a timely and effective process for monitoring and enforcing the standards;
- Incorporate ongoing leadership roles for the disability community;
- Supersede all other provincial legislation, regulations or policies which provide lesser protections; and
- Not diminish other legal and human rights protections.

Definition of Disability: The Canadian model of disability defines the term in a broad manner such that conditions of all kinds qualify as a disability, whether they result in functional limitations or only the perception of limitations, including past and future disabilities. The *Americans with Disabilities Act (ADA)* defines disability in a narrower manner and requires an individual to demonstrate that they currently have, previously had or are perceived to have a physical or mental impairment that substantially limits one or more major life activities. The Canadian

model of defining disability best ensures that all disabilities will be covered and reflects a principled approach to equality. While the definition may exclude particular conditions that are perceived as blame-worthy, like the *ADA*'s exclusion of addictions, the desire to cover all disabilities, by necessity, requires that no conditions are specifically-excluded from the definition.

Development of Accessibility Standards: Standards can be developed by industry, though we assume such standards are more likely to represent the interests of industry rather than the disability community. Standards can also be developed by government, as in the United States, or through committees of stakeholders, as in Ontario. Any of these models can incorporate a leadership role for the disability community; the key is not the mechanism through which the community is consulted, but how meaningful the consultation is and whether the comments are incorporated in further revisions of the standards. The Ontario experience with standard development committees demonstrates that their proper functioning depends, in large part, on the exact details of how they function, which the disability community must be cognizant of.

Monitoring Compliance with the Standards: Once developed, government needs to monitor their implementation by organizations. Annual reporting can be used, but is unlikely to be useful for any organization that is intentionally or negligently contravening the standards, though the reporting could provide useful information for other monitoring mechanisms. Either individuals or government investigators could also identify organizations not complying with the standards, the main difference being who bears the burden of monitoring implementation. In Ontario, both annual reporting and investigations are envisioned, though their implementation is still in its early stages. The legislation ought to primarily adopt a monitoring system using investigations by an independent agency. When deciding which organizations to investigate, the body ought to consider complaints of non-compliance received by people with disabilities.

Ensuring Compliance with the Standards: Monitoring implementation is one mechanism through which compliance can be promoted, particularly if there is broad knowledge of a rigorous monitoring mechanism. In addition, the government can develop incentive or penalty-based programs. All of these mechanisms and the incentive created by the purchasing power of people with disabilities form part of the Accessibility Directorate of Ontario's compliance planning. For any of these mechanisms to be an adequate motivator for an organization to consider expending resources on compliance, it must be significant. The legislation or regulations ought to provide direction as to the calculation of fines or damages to ensure that they are sufficiently large to discourage non-compliance.

Public Accountability: An important aspect of the legislation is providing a means by which the government can be held accountable for implementing the legislation in a way that advances its objective. There are many non-exclusive options, including annual reporting by the government, legislative provisions that mandate rather than permit government action, public consultation throughout the legislation's implementation, and external independent reviews (each of which is contained in the Ontario legislation). The primary use of each of these mechanisms is to provide adequate information to allow the disability community to praise a government providing leadership toward barrier-removal or hold the government to account for any lack of political will. Barrier-Free Manitoba should advocate to ensure that as many strong public accountability mechanisms as possible are incorporated within the legislation.

Interaction of the Accessibility Standards and the Manitoba Human Rights Code: If the legislation is to have a broad and sustained impact on the accessibility of Manitoban society, a principled approach must be taken on how standards interact with the *Code*. As quasi-

constitutional legislation, the *Code* supersedes all other legislation unless specifically stated otherwise and the standards could be used to raise the level of accessibility required by providing the “floor” of accessibility (as in Ontario). In practice, this rule creates uncertainty over which provides the higher level of accessibility as the *Code*’s requirements are presumably less certain than those of the standards. Alternatively, compliance with a standard can act as a defence to a related claim of discrimination under the *Code*, which ensures greater certainty at the cost of accessibility. In light of Barrier-Free Manitoba’s principle that the standards not diminish other legal and human rights protections and supersede all other provincial legislation that proves lesser protections, there can be little doubt that the floor model is the most appropriate.

Interaction of the Accessibility Standards with Other Legislation: Where two laws conflict with one another, the legislation may say that the law that requires the highest level of accessibility prevails and may also provide specific exception to this general rule; this is the approach in Ontario. If the legislation is silent, traditional principles of statutory interpretation will dictate that the more recent, more specific, or more exhaustive statute will prevail in case of conflict. To best ensure that existing standards are not diminished, the legislation should specifically state that whatever legislation or standard sets the higher level of accessibility prevails. If exceptions to that general rule are required, the standards or legislation can explicitly state otherwise.

Conclusion: The new disability-related legislation that has been proposed in Manitoba provides the possibility of a significant advance in the accessibility of the province. The legislation provides an excellent opportunity for the proactive identification and removal of barriers of all kinds across Manitoba. With draft legislation being considered, it is time to focus energy on the content of the legislation itself. While some factors beyond the scope of the legislation will affect its success, including the content of the standards and maintaining momentum, it is time to focus the community’s energy on ensuring the strongest possible legislation is adopted. Throughout this process, the disability community should remain mindful of the Ontario experience and continue to draw lessons from it, particularly as Charles Beer’s independent review of the legislation concludes.

ACCESSIBILITY STANDARDS LEGISLATION: A STRATEGIC OPTIONS PAPER PREPARED FOR BARRIER-FREE MANITOBA

1. Introduction

a. Time for a Complementary Approach?

Over 22 years have passed since the Manitoba *Human Rights Code* (“*Code*”) became law and people with disabilities continue to experience widespread discrimination across the province. In 2008, the Manitoba Human Rights Commission reported that 41% of all complaints of discrimination related to disability.¹ In fact, both the quantity of disability-related complaints and the percentage of all complaints that relate to disability have increased over the last 10 years.

While the *Code* is an important part of the solution to discrimination and inaccessibility experienced by people with disabilities, it is time to evaluate whether the *Code* is the only or most adequate tool available for creating an accessible province for people with disabilities. A more broad-based, planned, faster-paced, and intentional approach to barrier-removal ought to be considered to complement the *Code*.

In Ontario, for example, the legislature enacted the *Accessibility for Ontarians with Disabilities Act* (AODA) with the goal of making the province fully accessible to people with disabilities by 2025 (attached as Appendix A is the full text of the legislation).² This legislation, modeled on the *Americans with Disabilities Act*, creates a system whereby accessibility standards of broad application are developed and enacted. These standards apply to the public and private sectors and allow for the gradual, intentional, and timely removal of barriers.

These standards do not replace the Ontario *Human Rights Code*, but rather complement it by providing a proactive means of removing barriers. As the Ontario Human Rights Commission noted in relation to the AODA’s predecessor:

A strong and effective [*Ontarians with Disabilities Act*] would complement and build on the work of the OHRC in the area of disability. The OHRC strongly supports amendments to the ODA that would make it an agent of real change for persons with disabilities in the Province of Ontario. ...

The OHRC’s recent work on disability has made it clear that government, institutions, and private sector organizations need to work together proactively to create a province that allows all its citizens to contribute and participate fully. A strong *ODA*, together with the [Ontario] *Code*, can ensure that no new barriers are created for persons with disabilities, and that existing ones are removed. The OHRC looks forward to a time when the rights of persons with disabilities do not have to be advanced one complaint at a time, and persons with disabilities will see the substantial changes they have so long awaited.³

b. Barrier-Free Manitoba

Barrier-Free Manitoba was formed in recognition of the need for another tool to remove barriers to accessibility. Barrier-Free Manitoba is a non-profit, non-partisan, cross-disability initiative that is working toward the enactment of accessibility-standards legislation. Barrier-Free Manitoba believes that the legislation should be strong, effective and require the orderly and timely removal of the pervasive barriers faced by persons with disabilities, as well as prevent the creation of new barriers. An incredible array of consumer and service organizations from the fields of disability, health, aging and social justice, along with over five hundred individuals, have joined in this call for accessibility-standards legislation.⁴

As a result of Barrier-Free Manitoba's advocacy efforts, Manitoba's new premier, the Honourable Greg Selinger, committed to enact accessibility-rights legislation during the recent NDP leadership campaign. He stated that he would bring in legislation, modeled on the *Accessibility for Ontarians with Disabilities Act*, imposing a deadline for the province to become fully accessible for people with disabilities.

With this promise, Barrier-Free Manitoba is now considering what the legislation must contain to ensure its effectiveness for Manitobans with disabilities. Early in its work, Barrier-Free Manitoba set out nine principles for the legislation. It must:

- Cover all disabilities;
- Reflect a principled approach to equality;
- Move beyond the complaints-driven system to comprehensively address discrimination and barriers;
- Establish a definite target date to achieve a barrier-free Manitoba;
- Require the development of clear, progressive, mandatory and date-specific standards in all major areas related to accessibility that will apply to public and private sectors;
- Establish a timely and effective process for monitoring and enforcing the standards;
- Incorporate ongoing leadership roles for the disability community;
- Supersede all other provincial legislation, regulations or policies which provide lesser protections; and
- Not diminish other legal and human rights protections.

These principles are based on a set of similar principles that were developed to support earlier advocacy efforts in Ontario.⁵

c. This Paper

The purpose of this paper is to form the basis for discussion within the disability community on the content of the proposed legislation. The paper identifies and assesses basic options related to key aspects of accessibility-standards legislation that should be considered in informing the design and development of legislation in Manitoba. It does not provide legal advice, but rather references particular legal principles as a basis for policy discussions.

While there are a multitude of important considerations that will require attention, this paper focuses on seven major legislative design issues, chosen in consultation with Barrier-Free Manitoba based on their impact on the overall legislation. These are:

1. How disability is defined;
2. How accessibility standards are developed;
3. How compliance with the standards is monitored;
4. How compliance with the standards is enforced;
5. How the government can be held publicly accountable for the implementation of the legislation;
6. How the accessibility-standards legislation and the accessibility-standards will interact with the Manitoba Human Rights Code; and
7. How the accessibility-standards legislation and the accessibility-standards will interact with other legislation.

This paper does not provide a holistic comparative analysis of the possible approaches under similar legislation in other jurisdictions. Nor does it provide a holistic analysis of the legislative approaches outside the area of accessibility rights. Instead, it identifies and assesses basic options related to key aspects of accessibility standards legislation that should be considered in informing the design and development of legislation in Manitoba. To do this, we review the approaches of other jurisdictions and compare them against Barrier-Free Manitoba's nine principles. Where there is sufficient evidence, we recommend an approach.

Much of the analysis relies on the experience of the Ontario model. This is not because of its superiority over other models but because it is the model which Premier Selinger indicated the legislation would be based upon and it provides the Canadian example of accessibility-standards legislation. Therefore praise and criticism of it are especially relevant to the analysis.

2. Definition of Disability

The importance of the definition of disability depends on the type of legislation and the means utilized to implement it. In broad accessibility-standards legislation, where rights are not granted to specific individuals, such as under the *Accessibility for Ontarians with Disabilities Act*, there will be little analysis of whether a particular individual qualifies as a person with a disability. The definition serves as a tool to identify and remove barriers and answers the question of barriers to which group of people?

In contrast, if the legislation grants rights to individuals, as the *Americans with Disabilities Act* and the *Manitoba Human Rights Code* do, the definition is of greater significance because it serves as a benchmark for the determination of an individual's right to a remedy. In this type of legislation the question is not simply about identification of barriers for a group of people, but whether one particular individual has experienced a barrier constituting discrimination. Therefore their individual condition is much more relevant.

As a result, the importance of this section depends in large part on what models are adopted in other parts of the legislation.

a. Models for Comparison

There are two main approaches to defining disability in rights-based legislation: the Canadian approach and the American approach. A third group of definitions, those under financial benefits programs, are inappropriate for comparison. Each of these models is mutually exclusive.

Broad and Inclusive Definition: The Canadian Model

The Canadian model of disability defines the term in a broad manner such that conditions of all kinds, whether they result in functional limitations or only the perception of limitations, qualify as a disability. Past and future disabilities also qualify. There is no exclusion for conditions perceived to be self-inflicted or otherwise blameworthy. The Supreme Court of Canada stated the following:

Whatever the wording of the definitions used in human rights legislation, Canadian courts tend to consider not only the objective basis for certain exclusionary practices (i.e. the actual existence of functional limitations), but also the subjective and erroneous perceptions regarding the existence of such limitations. Thus, tribunals and courts have recognized that even though they do not result in functional limitations, various ailments such as congenital physical malformations, asthma, speech impediments, obesity, acne and, more recently, being HIV positive, may constitute grounds of discrimination.⁶

This definition of disability can be achieved by providing no definition, such as under the *Code* and the *Canadian Charter of Rights and Freedoms* (notably, the Manitoba Human Rights Commission has explicitly adopted this definition).⁷ Alternatively, it can be achieved with explicit

language such as in Ontario where the *Accessibility for Ontarians with Disabilities Act* and the *Human Rights Code* define disability as:

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; (“handicap”).⁸

Substantial Impact: The American Model

In contrast, the *Americans with Disabilities Act (ADA)* defines disability in a narrower manner. To qualify as a person with a disability, the individual must demonstrate that they currently have, previously had or are perceived to have a physical or mental impairment that substantially limits one or more major life activities. Three factors are considered in determining whether a person's impairment substantially limits a major life activity: its nature and severity, how long it will last or is expected to last, and its permanent or long term impact, or expected impact. The *ADA* reads:

- 12102.(1) The term "disability" means, with respect to an individual
- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
 - (B) a record of such an impairment; or
 - (C) being regarded as having such an impairment (as described in paragraph (3)).
- (2) (A) For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.
- (B) For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- (3) For purposes of paragraph (1)(C):
- (A) An individual meets the requirement of “being regarded as having such an impairment” if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of

an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.⁹

The American definition goes on to specifically exclude certain conditions perceived to be self-inflicted or blameworthy, such as active addictions, sexual and behavioral disorders, compulsive gambling, kleptomania, and pyromania. This exclusion, while part of the American definition, can, at least theoretically, be included as part of either model of disability and therefore will be examined separately.

Definition Based on Impact to Earn Income

An alternative definition, or category of definition, exists in legislation that grants financial benefits to people unable to earn income as a result of their disability. Manitoba's Income Assistance for Persons with Disabilities (IAPD) program, for example, is only available to persons with disabilities:

- (a) who by reason of age or by reason of physical or mental ill health, or physical or mental incapacity or disorder that is likely to continue for more than 90 days
 - (i) is unable to earn an income sufficient to meet the basic necessities of himself and his dependants, if any; or
 - (ii) is unable to care for himself and requires to be cared for by another person or in an institution or home for the aged or the infirm;¹⁰

This definition, with its reference to an inability to earn an income or care for oneself, is better suited to income replacement programs because the objectives of the program are served by narrowing the definition to evaluate ability to work. This type of a definition is ill-suited for rights-based legislation with the objective of ensuring accessibility and removing barriers. As a result, this category of definition is explicitly rejected as appropriate for comparison and will not be further analyzed.

b. Analysis of Different Models

Comparison of the Canadian and American Models

A major difference between the Canadian and American definitions is the reference to "substantial limitations" in the United States. Even though a person may experience barriers or discrimination as a result of their physical or mental condition, if it does not substantially limit a major life activity or only does so intermittently, that person would not qualify for protection. For example, protection has been denied to individuals who worked while experiencing the side effects of cancer treatment and therefore did not satisfy the "substantial limitation" standard.¹¹

The "substantial limitation" clause also affects persons with a controlled impairment. If an individual experiences a temporary impairment, occurring episodically, or one that is effectively masked by medication, then no life activity is impaired. In one case, for example, the United States District Court held that a woman did not qualify as a person with a disability because her

sensitivities to chemicals only affected a major life function (breathing) while at the office and exposed to chemicals.¹²

The courts, when applying the *ADA*, have been very reluctant to deem conditions of “moral fault”, “voluntary weakness”, or “motivational disability” as coming within the definition of disability. In a case called *Argen*, the U.S. Supreme Court found that a student with a learning disability did not qualify for *ADA* protection “on the grounds that his functional need for more time and a quiet exam is compatible with the unworthy disability of lack of motivation or the inability to overcome stress and nervousness.”¹³

Because of the focus on the severity of an individual’s disability, much of the focus in litigation in the United States is on the person’s medical condition and its limitations rather than on the required accommodations and acts of discrimination. This forces individuals claiming the protection of human rights law to first argue the significance of their impairment, in order to even qualify for protection.¹⁴ Many of these individuals have been unsuccessful in establishing their eligibility as a person with a disability. For example, the Courts have been split over whether people with asymptomatic HIV qualify.¹⁵

Commentators have questioned the extent to which this interpretation reflects Congress’s intent and a principled approach to equality. For example, Catherine Lanctot stated the following:

Could Congress reasonably have intended to make protection against discrimination contingent on detailed medical determinations about the underlying disability? Does the *ADA* really require *ad hoc* scrutiny of each individual plaintiff’s medical condition before its protections may be invoked? These questions lie at the heart of the definitional dilemma posed by the *ADA*. One way to answer this question is to remember that Congress sought to eradicate prejudice against people with disabilities when it passed the *ADA*. By definition, prejudice against people with certain disabilities does not rest on a fact-specific inquiry. Prejudice is not tailored to a person’s particular set of symptoms. Prejudice is not determined by the degree to which a medical condition substantially limits a major life activity. Prejudice stems from over generalizations, myths and stereotypes, unwarranted assumptions and fear.¹⁶

In contrast, Canadian litigation rarely addresses the severity of an individual’s disability or whether a particular condition qualifies as a disability. Instead, the focus is on what accommodations the individual requires, which requires some inquiry into their medical circumstances, and the reasonableness of their provision or denial. The terms *any degree* and *any existing* mental or physical disability are used to indicate that a broad range of disabilities are protected under the laws.

While the legislative and court interpreted definitions of disability in Canada are more comprehensive than those of the United States, they are still based largely on the medical model of disability. They focus on the medical component of the disability located within the person instead of on the social barriers faced by persons with impairments. However, we note that the focus of criticism of the American definition is based on narrow court interpretations, which Congress has attempted to change, rather than the language of the definition itself as discussed above.¹⁷

An Alternative Model

A further alternative model would define disability based on the social construction of disability. This definition locates the disability in society, not within the individual. The disability no longer resides within the individual, but in the “social, attitudinal, architectural, medical, economic and political environment” that failed to adapt to the disparate needs of the community.¹⁸

This model is primarily reflected in critical disability commentaries rather than legislation, though the broad and inclusive definition of disability adopted in Canada does reflect a similar approach to disability. For example, the Federal Court of Appeal recognized morbid obesity as a disability as such determinations must take into account the obstacles faced, though the evidence in the case did not establish that it would qualify as a disability on a biomedical definition. The Court stated that “it would take very clear words to hold that the existence of a disability is to be determined without regard for context. Arguably, no disability exists in the abstract.”¹⁹

This model, with its focus on the removal of barriers that lead to disparities in opportunity, is particularly well-aligned with the objectives of standard-based legislation. It would also be a model that promotes universal design as barriers are experienced by people other than those that might otherwise be defined as a person with a disability, such as parents with strollers.²⁰

However, this model is particularly difficult to define precisely in legislation. It therefore would leave much uncertainty and much to the discretion of the standards-developers in identifying barriers of all types.

Conclusion

The Canadian model of defining disability best promotes two of Barrier-Free Manitoba’s the first nine principles: covering all disabilities and reflecting a principled approach to equality. Whether that definition is specified in the legislation or incorporated through the Canadian jurisprudence matters little. Specifically defining disability in the legislation will better ensure certainty and clarity. However, an explicitly defined term also leaves less flexibility for the inclusion of conditions not currently anticipated.

RECOMMENDATION 1: The definition of disability ought to be based on the broad Canadian definition. If defined explicitly within the statute, the definition should be non-exhaustive.

As noted above, one sub-issue for consideration is whether specific conditions, particularly those often perceived as self-inflicted or blameworthy, such as certain psychiatric disorders, substance abuse, or obesity, should be considered within the definition of disability. Some such conditions are specifically excluded from the American definition, but they are not excluded from the Manitoba or Ontario definition.²¹ Nonetheless, such specific exclusion could form part of either model.

In Canada, such a specific exclusion might be constitutionally invalid as many of these conditions have been specifically found to qualify as a disability in Canada.²² Further, the Supreme Court of Canada has decided that a definition of disability that excludes certain conditions (in these cases mental health, temporary versus permanent disabilities, and chronic pain) may be unconstitutional as it discriminates between people with disabilities.²³ While a legal opinion on the constitutionality of such a provision is beyond the scope of this paper, it is

worth noting the Supreme Court's statement in *Martin* on the exclusion of certain conditions from Nova Scotia's worker's compensation regime:

... there could be no doubt that a legislative distinction favouring persons of Asian origin over those of African origin would be "based on" race, ethnic origin or colour, or that a law imposing a disadvantage on Buddhists relative to Muslims would draw a distinction "based on" religion. It would be no answer for the legislator to say there is no discrimination because both persons born in Asia and persons born in Africa have a non-Canadian national origin, or that Muslims, like Buddhists, belong to a minority religion in Canada. Likewise, in the present case, it is no answer to say that all workers subject to the scheme are disabled.²⁴

This approach of the Supreme Court also corresponds with the principles developed by *Barrier-Free Manitoba*. The desire to cover all disabilities, by necessity, requires that no conditions are specifically-excluded from the definition.

RECOMMENDATION 2: The definition of disability should not exclude any specific conditions.

3. Development of Accessibility Standards

The legislation is expected to create a system whereby accessibility standards are developed for the progressive removal of barriers to accessibility across Manitoba. Therefore the mechanism through which those standards are developed is a central question.

a. Models for Comparison

Government Development and Imposition

The most common method of standard development, more commonly referred to as regulations, is through government imposition. The legislation can delegate the authority to make accessibility standards to a government agency, which can either be part of the government itself or an arm's length body. That agency develops detailed standards of accessibility internally and unilaterally imposes them on the sectors subject to the standard. Public consultation can be part of this process, but the agency has responsibility for deciding whether to incorporate comments or reject them.

This model is based largely on how standards are developed under much of the *Americans with Disabilities Act*.

Committee Development

Legislation can state that committees, with representation from various stakeholder groups (industry, government and persons with disabilities), will be formed by the government to develop accessibility standards. Committee members are invited without a formal selection process and are compensated for their time.

The general process of standard development within the committee is outlined in legislation, with specific terms of reference later formulated by the government body in charge of overseeing the legislation (see Appendix B for sample Terms of Reference from Ontario). In reaching a decision, committees utilize consensus decision-making models. Committees have traditional roles such as chairs and facilitators to mediate disputes and lead the committee's discussions.

Once a committee has developed a standard, its passage into law is dependant on the Minister's approval or modification. Once the standard has become legally enforceable, the committee continues to exist in order to supplement and change standards over time.

This model is largely based on the *Accessibility for Ontarians with Disabilities Act* and may occur with public consultations at any time within the committee process. The following are the key provisions of the AODA as it relates to standard development committees:

8. (1) ... Each standards development committee is responsible for,
 - (a) developing proposed accessibility standards for such industries, sectors of the economy or classes of persons or organizations as the Minister may specify; and

(b) further defining the persons or organizations that are part of the industry, sector of the economy or class specified by the Minister under clause (a).

...

(4) The Minister shall invite the following persons or entities to participate as members of a standards development committee:

1. Persons with disabilities or their representatives.
2. Representatives of the industries, sectors of the economy or classes of persons or organizations to which the accessibility standard is intended to apply.
3. Representatives of ministries that have responsibilities relating to the industries, sectors of the economy or classes of persons or organizations to which the accessibility standard is intended to apply.
4. Such other persons or organizations as the Minister may consider advisable.

...

9. (2) Promptly after its establishment, each standards development committee shall determine the long-term accessibility objectives for the industry ... by identifying the measures, policies, practices and requirements that it believes should be implemented by the members of the industry, sector or class on or before January 1, 2025.

(3) Each standards development committee shall determine an appropriate time-frame for the implementation of the measures, policies, practices and requirements identified under subsection (2) taking into account,

- (a) the range of disabilities that the measures, policies, practices and requirements are intended to address;
- (b) the nature of the barriers that the measures, policies, practices and requirements are intended to identify, remove and prevent;
- (c) any technical and economic considerations that may be associated with their implementation; and
- (d) any other consideration required under the committee's terms of reference.

...

(7) No later than 90 days after receiving a proposed accessibility standard under subsection (6), the Minister shall decide whether to recommend to the Lieutenant Governor in Council that the proposed standard be adopted by regulation under section 6 in whole, in part or with modifications.

Development by Industry

Standards can also be developed by the businesses, industries and sectors who must comply with the standards. The legislation requires certain industries and sectors to develop standards and details the requirements for standards. As under the Australian *Disability Discrimination Act*, the industries and sectors can be required to:

- (a) devise standards for accessibility in specified areas, such as employment, the built environment and communications;

-
- (b) communicate these policies and programs to persons in the industry or sector and encourage their implementation;
 - (c) review the practices within the industry or sector with a view to the identification and removal of any discriminatory practices; and
 - (d) set goals and targets, against which the success of the standards may be assessed.

Once developed, these standards provide guidance for businesses, industries and sectors in conducting their affairs. This model may include public consultations, but the business, industry or sector has responsibility for deciding whether to incorporate comments or to reject them.

This model is largely based on the Australian *Disability Discrimination Act*.²⁵

b. Comparison of Models

There are many combinations of models that can be adopted for the development of standards. Most of the details of each model can be modified. The most relevant distinguishing factors for the method of development are the extent to which they best reflect Barrier-Free Manitoba's principles of ensuring progressive standards and incorporating ongoing leadership roles for the disability community.

Progressive Standards

The method through which the standards are developed does not necessarily have an impact upon the content of the standards, but for the sake of this analysis we assume that standards that are developed solely by industry or persons with disabilities are more likely to reflect that perspective. We further assume that standards developed by government or jointly by people with disabilities and industry are more likely to reflect a compromise between differing perspectives. We also presume that standards developed by or in meaningful consultation with stakeholders are more likely to be accepted by those stakeholders, whether that is industry or the disability community. However, this also depends on the quality of that input.

Codes developed by industry, while likely to be accepted by the industries subject to them, are unlikely to result in progressive accessibility standards to achieve full accessibility across the province by the target date. As a result, this model is rejected. Either of the other two models is capable of ensuring that the standards developed are adequately progressive in advancing equality and providing for a leadership role of the disability community.

The Ontario experience with standard development committees demonstrates that their proper functioning depends, in large part, on the exact details that are not likely to be specified within legislation. The process of committee development adopted in Ontario has been criticized by the disability community. Disability representatives have less resources and access to experts in accessibility and legal advice than industry representatives; they are largely volunteers or from non-profits and therefore do not have adequate time to fully consider extensive documents provided; and they may be expected to represent the entire disability community and spectrum of types of disabilities, which they may not be able to. Further, uneven representation on the committees may result in being out-voted by industry representatives and therefore the committees may become little more than vetting grounds for industry codes.

These criticisms, while valid, do not warrant a full rejection of the committee model as they could be improved upon. However, it does mean that the success of this model is largely dependent on the exact model that is used, which is beyond the scope of this paper. Such details are also unlikely to be outlined in the legislation itself. In Ontario, for example, these details are outlined in the terms of reference of the committee or developed by the Chair of any individual committee (see Appendix B for sample Terms of Reference from Ontario).

The details of the government imposition model can vary dramatically. However, such variations are more relevant to the leadership role of the community rather than the content of the standards.

RECOMMENDATION 3: The standards ought to be developed through either standard development committees or government imposition.

RECOMMENDATION 4: If the legislation uses standard development committees, the community must carefully review the procedures outlined in the legislation, regulations and terms of reference to ensure the proper functioning of those committees.

Leadership Role for the Disability Community

Leadership for the disability community is important because it ensures that a key stakeholder, with great expertise in the barriers faced by individuals, is able to influence the standards. It is also to the benefit of government and industry as meaningful consultation and input will ensure that people with disabilities have faith in the process and standards developed.

While the standard development committee model has a leadership role for the disability community built into it, either that model or the government imposition model can also include a much broader role for community consultation and leadership. Such leadership can be included through opportunities to assist in the drafting process itself, participation in focus groups, providing expert advice to the drafters, or commenting on drafts. However, the key is not necessarily the mechanism through which comments are provided, but how meaningful the consultation is and whether the comments are incorporated in further revisions. In Ontario, the Accessibility for Ontarians with Disabilities Act Alliance (Alliance) has been “very concerned that the government substantially disregarded the feedback from the disability community, when it finalized the customer-service accessibility standard.”²⁶

One factor to consider in the development of a leadership role for the disability community is the availability of resources within it or from government to regularly review and comment on draft standards. If inadequately resourced and regularly asked to comment, the capacity of the disability community may be quickly exhausted. There would then be a risk of the industry representatives having their concerns weighed more heavily than those of the disability community.

One recommendation in Ontario that could have alleviated some of these concerns about the capacity of the disability community would have been to include a role for the human rights commission in the standard development process.²⁷

RECOMMENDATION 5: The legislation ought to create many opportunities for meaningful public comment on draft standards early enough in the process that such feedback can be incorporated in subsequent drafts.

RECOMMENDATION 6: Representatives of the disability community must be provided with resources, financial, informational, and expert, to inform their participation in the standard development process and other public consultations.

RECOMMENDATION 7: The Manitoba Human Rights Commission should have an active role in the preparation of standards, whether imposed by government or developed through committees.

4. Monitoring Compliance with the Standards

After standards are developed the next question is how can we ensure their implementation? This raises two related questions: how is compliance monitored and how is non-compliance prevented? These two questions are dealt with in this section and the one that follows. In this section we begin by examining different models for how the disability community and government can monitor the extent to which organizations are complying with the standards or not.

a. Models for Comparison

Annual Reporting

Every agency or sector to which the legislation or standards apply may be required to file an annual report with the monitoring body. The legislation can specify the requirements of such reports and may require the following information:

- (a) what the organization has done to ensure compliance with the standards;
- (b) if not in compliance, a plan and timeline for complying with the standard;
- (c) what further barriers have been identified for removal; and
- (d) how people with disabilities have been involved in the implementation process.

These annual reports can be made publicly accessible on the government and/or the organization's website. Where the results of the monitoring indicate that an entity may have failed to comply with a requirement under the legislation, the process under one of the enforcement models is employed.

This model is based upon the United Kingdom's *Equality Act* and Australia's *Disability Discrimination Act*.²⁸

Complaints-Based System

The legislation may state that the primary means of monitoring compliance is through complaints filed by persons with disabilities. No government agency is responsible for proactively monitoring compliance with the legislation or standards. Instead, individuals who identify a contravention may report it to an enforcement body. They are then responsible for advancing the complaint through the complaints system.

This model is based on that provided by the Manitoba *Human Rights Code* and other human rights codes in Canada.²⁹

Investigations

The legislation may identify a government body to carry out inspections of some or all organizations required to comply with the standard. These investigations may be carried out

randomly or where there is a suspected contravention. They may also be carried out based on sectors that have been identified as the highest risk of non-compliance and the highest impact on people with disabilities.

Investigators may have broad powers to inspect documents and premises and question individuals on matters relevant to the investigation. Warrants are not required for the investigation to take place on premises other than dwellings.

Both the *Accessibility for Ontarians with Disabilities Act* and the Code have provisions for inspectors to carry out investigations.³⁰

b. Comparison of Models

These models are not mutually-exclusive and in fact the legislation could adopt all of them. However each of them has underlying strengths and weaknesses. The primary difference between the models is who bears the burden of identifying non-compliance: the person with a disability, industry, or a government agency?

Annual Reporting

Meaningful annual reporting can be an effective means of forcing organizations to self-evaluate their compliance with standards and identify steps to be taken towards compliance. However, the key is meaningful reporting. Just as with annual reports prepared by government (see public accountability section below), reporting is meaningless for an organization that is intentionally or negligently contravening the standards.

For example, the Accessibility Directorate of Ontario developed a means to evaluate compliance using a checklist of the requirements and asking whether the agency has in fact complied (see Appendix C).³¹ If an organization reports non-compliance it is asked to explain what steps it will take to become compliant. This checklist is supported by a Compliance Manual and Guide that assist organizations to understand their obligations under the customer services accessibility standard.³²

These self-evaluation mechanisms force organizations to turn their minds to the requirements of the standards and their individual practice. The practice of reporting may bring non-compliance to the attention of the organization and allow them the opportunity to come into compliance. Other than encouraging greater self-reflection, the agencies that are aware of and report their non-compliance are not the primary targets of monitoring and enforcement. Rather, the bodies that are unaware of their non-compliance or are intentionally flouting the standards are the organizations that enforcing agencies ought to be concerned with. However, both of these types of organizations are likely to indicate that they are in fact complying with the standards.

Annual reports that require information on how the organization complied are likely to be much more useful as this would allow an enforcing agency to conduct a paper audit of such reporting and identify organizations to target with further education or enforcement measures. The self-evaluation required of this reporting is also much more likely to be meaningful as it would require the organization to consider the meaning of the standard and what it has done in response. However, in its advocacy, the community ought to be mindful that such reports, if required annually for multiple accessibility standards, may place an onerous burden on

organizations, including charitable organizations. One solution may be to create different reporting requirements for small organizations or not-for-profit organizations. In Ontario, organizations with less than 20 employees are not required to report on their compliance with the customer service standard.³³

If published, these annual reports could be used by the disability community to both monitor and report on inaccuracies. The reporting could also be used to identify organizations that are failing to meet, meeting or surpassing the standards and target personal and institutional expenditures accordingly. However, both of these uses would be informal and would clearly not be outlined in the legislation.

RECOMMENDATION 8: Organizations may be required to submit annual reports describing their compliance with the accessibility standards. However, such reports are unlikely to have a significant impact on the success of the legislation and therefore should not be a focus of advocacy.

Individual Complaints v. Investigations: The Ontario Debate

Before 2008 Ontario's human rights system resembled that of Manitoba. An individual who had experienced discrimination would file a complaint with the Ontario Human Rights Commission. The Commission would attempt to resolve the complaint and if unsuccessful would launch an investigation and fact-gathering exercise. If there was enough evidence to support the complaint of discrimination it was referred to the Human Rights Tribunal of Ontario where the matter was litigated. The Commission was typically a party at the Tribunal and would assist the individual to argue their case of discrimination.

This system was heavily criticized because of the gate-keeper role played by the Commission. It was perceived by some as an additional obstacle to complainants rather than a tool for advancing their complaints.³⁴ As a result of these criticisms, the government abolished the Commission's gate-keeper function and created a system whereby complainants had direct access to the Tribunal to litigate their complaints of discrimination.

However, the new model has had mixed reviews from the disability community. ARCH, the Disability Law Centre, supported the new process as long as appropriate legal services were available for complainants.³⁵ The Accessibility for Ontarians with Disabilities Act Alliance strongly criticized the new model as placing the burden on people with disabilities and adding additional obstacles to remedying discrimination.³⁶

Why is this relevant to Manitoba's accessibility standards legislation? This debate demonstrates the weaknesses of a system where complainants have little control, such as in an investigative system, or where they have too much control, such as an individual complaint-based system.

This is especially true where the objective of the legislation is to promote province-wide barrier-removal. Complaint-based systems typically only address one individual, facing one barrier, with one organization. Investigations are much better able to deal with a whole industry or group of barriers proactively.³⁷ This conclusion is also reflected by Barrier-Free Manitoba's principle that the legislation move beyond a complaints-driven system to comprehensively address discrimination and barriers.

However, investigations may also be subject to government whims, appropriate financing, and proper targeting of non-complying organizations or sectors. If under-resourced, an investigative body will be able to do little to monitor and enforce compliance. Similarly, a complaint-based system does not necessarily remedy this as the adjudicative body may also be significantly under-resourced.

Based on the foregoing, a combination of the two models may be best: a system whereby a government agency is primarily responsible for monitoring compliance, such as in food safety or liquor control. The agency identifies organizations to investigate based on previously identified priorities. The agency also may accept and investigate complaints of non-compliance filed by people with disabilities. The investigating agency must be independent of government as government forms a significant portion of those organizations likely subject to the standards.

RECOMMENDATION 9: The legislation ought to primarily adopt a monitoring system using investigations by an independent agency. When deciding which organizations to investigate, the body ought to consider complaints of non-compliance received by people with disabilities.

5. Ensuring Compliance with the Standards

As noted in the previous section, there are two considerations on enforcement: identifying non-compliant organizations and ensuring compliance with the standards. This section addresses the latter of these two.

a. Models for Comparison

These models are in addition to the general education efforts that the government generally undertakes with any new legislation. The government can be expected to undertake broad educational campaigns to advise organizations of their obligations and encourage compliance as the Accessibility Directorate of Ontario is doing.³⁸ The models below are proposed as supplements, not replacements, for the initial efforts to educate organizations about their obligations.

The Carrot: Incentive Agreements

A government agency overseeing the legislation can enter into an incentive agreement with businesses or sectors that plan to exceed the requirements of an accessibility standard. If the agency exceeds the standards, they may be exempted from reporting requirements, provided with financial incentives, or otherwise benefit.

This model is largely based on the *Accessibility for Ontarians with Disabilities Act*.

Provincial Offences

If an agency fails to comply with a standard or its reporting obligations, an order for compliance may be made. Failure to comply with an order is a provincial offence. It could also be a provincial offence to engage in the following activities:

- providing false or misleading information in reporting;
- obstructing investigations; and
- intimidating, coercing, penalizing or discriminating against another person because that person has sought or is seeking the enforcement of the legislation; has co-operated or may co-operate with an investigation; or has provided, or may provide, information in the course of an investigation.

Where a person or agency is convicted of an offence, they are fined an amount for every day of the contravention. The legislation would state that the fine must be no more than a set amount, such as \$50,000, but it could be less.

This model of enforcement is used for a large number of provincial statutes, including Manitoba's *Personal Health Information Act*.³⁹

Discrimination and Administrative Penalties

Contravention of a standard could also constitute discrimination under the Manitoba *Human Rights Code*. The matter can be brought before the tribunal, either by an individual, or a government agency so assigned, to determine whether the agency has breached the standard.

Where a contravention is found, administrative penalties are imposed. The tribunal may make an order for compliance, including requiring reports on how compliance will be achieved. The tribunal may also award financial penalties to be paid, or damages to be paid where an individual has alleged the contravention.

The Accessibility for Ontarians with Disabilities Act allows the government to draft regulations to create a process for determining these administrative penalties. It states that the Lieutenant Governor in Council may create regulations to “prescribe the amount of an administrative penalty or provide for the determination of the amount of the penalty” and “provide for different amounts to be paid, or different calculations or criteria to be used, depending on the circumstances that gave rise to the administrative penalty.” No such regulations have yet been released.

This model is largely based on provisions of the *Americans with Disabilities Act* and the *Disability Discrimination Act* (U.K.).

b. Comparison of Models

There are many articles and government reports on the question whether incentive-based programs (carrots) or penalty-based programs (sticks) is best to achieve regulatory compliance.⁴⁰ A thorough review of this literature is beyond the scope of this paper. However, suffice it to say that a simple review of current regulatory approaches in Canada clearly demonstrates that both play a role.

Clearly for an incentive to be an adequate motivator for reform absent penalties, the incentive must be significant. For the purpose of this analysis we assume that the government is unable or unwilling to invest sufficient resources to provide financial encouragement to all organizations in the province. Ontario’s use of incentive agreements to encourage organizations to surpass the standards is an alternative. However, while it is useful for large and motivated organizations, is not likely to cause organizations to remedy non-compliance.

A carrot that is available to government, with little or no cost, is the purchasing power of Manitobans with disabilities, and their families, friends and advocates. This is one of the approaches being taken by the Accessibility Directorate of Ontario. Its document *About the Accessibility for Ontarians with Disabilities Act (2005)* explains that:

Improving accessibility is the right thing to do. It’s also the smart thing to do. According to the Royal Bank of Canada, people with disabilities have an estimated spending power of about \$25 billion annually across Canada. People with disabilities also represent a large pool of untapped employment potential. When we make Ontario accessible to people with disabilities everyone benefits.

Penalties must also be significant to cause unwilling organizations to undertake potentially costly changes to their programs. Whether in the form of fines or damages makes little difference so long as the quantum is sufficient to discourage non-compliance.

The legislation or regulations therefore ought to provide direction as to the calculation of fines or damages to ensure that they are sufficiently large to discourage non-compliance. The means of calculation should not be based on either damages under the *Code* or damages in a negligence context as neither will likely be sufficient. Awards of damages under the *Code* are typically \$1,000-\$5,000.⁴¹ Similarly, calculations based on the type of calculation used in negligence cases, which looks to an injury to the individual, are not likely to result in significant financial awards for the majority of instances of non-compliance as little quantifiable injury will typically result.

It should also be noted that the simple existence of a monitoring mechanism, or “watch-dog”, as discussed in the previous section, also plays a role in encouraging compliance with the standards. If organizations are aware that there is (or is not) a monitoring mechanism and are aware of its effectiveness as a mechanism, they are much more likely to comply. Therefore, from the perspective of ensuring compliance, it is important not only that the mechanism exists, but that organizations know of its existence.

RECOMMENDATION 10: The legislation should incorporate both carrots and sticks, incentives and penalties, but the financial penalties must be large enough to ensure adequate disincentive for non-compliance.

6. Public Accountability

The success or failure of the proposed legislation depends significantly on maintaining the political will to properly resource standard development and enforcement and develop progressive standards. Achievement of the objective can easily be undermined by under-resourcing or developing weak standards. Therefore, an important aspect of the legislation is providing a means by which the government and standard-developers, if independent from government, can be held accountable for implementing the legislation in a meaningful way that advances its objective.

One mechanism for doing so is through ongoing political activism by the disability community and not allowing politicians to simply meet their campaign promises by enacting legislation, but also ensuring that the legislation is implemented. The Accessibility for Ontarians with Disabilities Act Alliance has had great success in doing so in Ontario. This group of volunteers have proactively monitored and commented on the implementation of the *Act*, including very practical matters such as the functioning of the standard development committees. They also accept all opportunities to provide formal feedback through the standard development process and the current review of the legislation.⁴²

Other assurances of public accountability should be incorporated within the legislation itself over and above the disability community's ability to maintain political pressure.

a. Models for Comparison

Reporting Model

The government body responsible for implementing the legislation may be required to submit a report annually to the Legislative Assembly regarding the implementation and effectiveness of the legislation. The legislation may state that the report must include:

- an analysis of how effective the standard development process provided for under the legislation is in furthering the purpose of the legislation;
- an analysis of how effective the standards themselves are in furthering the purpose of the legislation;
- an analysis of how effective the enforcement mechanism provided for under the legislation is in furthering the purpose of the legislation; and
- recommendations for improving the effectiveness of the legislation.

This model is based upon the annual reporting requirement in the *Accessibility for Ontarians with Disabilities Act*.

Directive Legislation Model

Certain provisions in the legislation can be mandatory rather than permissive (“shall” is used rather than “may”), therefore requiring the government to act. Legislation may require that:

- Accessibility standards shall be developed by a specified date;

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- Accessibility standards shall be implemented by a specified date;
 - Public entities shall establish a plan to comply with the legislation which sets out milestones;
 - Committees shall be established pursuant to the legislation and will include persons with disabilities; and
 - A notice issued by the enforcement body to an entity that has failed to comply with the legislation shall include an explanation of why the non-compliance notice was issued.

The legislation can also include a set objective, such as complete accessibility within a specified period of time.

This model is based upon the *Accessibility for Ontarians with Disabilities Act* and the *Disability Discrimination Act* (UK).

Consultation Model

Public consultation may be required throughout the standard development process. Public consultation may also be required where a government body or an independent body undertakes a review of the legislation. The legislation may specifically require that public consultation includes, in particular, consultation with persons with disabilities.

Any hearings that are mandated under the legislation can be required to be open to the public, including widely publishing the times and dates of hearings, as well as any decisions.

This model is based upon the *Accessibility for Ontarians with Disabilities Act* and the *Manitoba Human Rights Code*.

Monitoring Model

An external, independent body can conduct a comprehensive review of the effectiveness of the legislation every three years, and report on its findings to the Legislative Assembly. This external body could be pre-existing, such as Manitoba's Ombudsman, or newly established.

This model is based upon the comprehensive review requirement in the *Accessibility for Ontarians with Disabilities Act*.

b. Comparison of Models

These models are not mutually exclusive and in fact all of them could be adopted. As a result, this analysis focuses on which will provide the best assurance of public accountability rather than which are inappropriate based on the objectives of the legislation or the principles of Barrier-Free Manitoba.

Unfortunately there is little written that compares the effectiveness of different models to ensure public accountability of government in implementing legislation. As a result, this analysis

focuses on general strengths and weaknesses of each model without specific reference to literature on the subject. It also relies heavily on the Ontario experience and the criticisms of the AODA's public accountability mechanisms.

Annual Reports

Annual reports require the government to reflect and comment upon the extent to which it is fulfilling the objective of the legislation. However, these reports are generally viewed as self-serving and ineffective. The *Accessibility for Ontarians with Disabilities Act* requires the government to provide an annual report with analysis on the effectiveness of the “standards development committees, the accessibility standards and the enforcement mechanisms.” The reports flowing from this requirement have been criticized by the Alliance as:

...unbalanced, self-congratulatory narratives on what a great job the government is doing. As such, they are of little use. They do not provide the public or the Legislature with a helpful way to size up whether the AODA is working to its full potential, or whether it needs improvement. Contrary to s. 40(2) of the AODA, they do not include “an analysis of how effective the standards development committees, the accessibility standards and the enforcement mechanisms provided for under this Act are in furthering the purpose of this Act.”⁴³

While such reports can be meaningful, the Ontario experience demonstrates that they are also not necessarily useful to ensure public accountability for implementation of the legislation. As a result, annual reports are not adequate to ensure public accountability, though they may be useful to monitor what steps are taken.

Directive Legislation Model

The directive legislation model provides certainty that the government will take particular steps, but provides no assurance at all as to the quality of those steps. For example, the legislation may require the government to develop standards and even provide guidance as to content, but the legislation is unlikely to provide sufficient direction that would require the government to develop particularly strong or progressive standards. Similarly, there is little assurance that the government will appropriately fund standard development, monitoring and enforcement to make the standards meaningful. Directive legislation, while useful, is not sufficiently strong to be the primary means of ensuring public accountability.

Public Consultation

Public consultation, particularly with the disability community, can take place in a number of different ways: in the standard drafting process, participation in focus groups, through public consultation on draft standards, or through public reviews (as discussed below). This consultation is important as it allows the intended beneficiaries of the legislation to have a voice in how it is implemented.

For public consultation to be meaningful background documents and information must be included and the consultation must allow an adequate amount of time for a response. The

comments provided also ought to be made public. This would address some of the concerns raised about the public consultations in Ontario.

RECOMMENDATION 11: When asked to comment, the public ought to be provided as much time as possible, relevant background and supporting documents, and the opportunity to have their comments properly weighed and considered.

Perhaps the most useful aspect of public consultation is that it will assist the disability community to remain informed about the progress that is being made pursuant to the legislation. Such information can be very useful in political campaigns to hold government accountable if it fails to meet the targets of the legislation.

One factor to consider in using public consultation to hold the government accountable is the availability of resources within the disability community to monitor the process and provide feedback. The capacity of the disability community may be quickly exhausted if asked for regular input and not further resourced. If the disability community is unable to provide continuing commentary and feedback, public consultation will not ensure public accountability of the government in implementation. As a result, this mechanism, on its own, may be inadequate.

RECOMMENDATION 6: Representatives of the disability community must be provided with resources, financial, informational, and expert, to inform their participation in the standard development process and other public consultations. (This recommendation is repeated from page 14.)

Monitoring

Monitoring conducted by an independent third party may be given much greater weight than perspectives espoused by either government or the disability community, as both are perceived as having a particular agenda. The first independent review required by the Ontario legislation is not yet complete and therefore it is too early to assess its impact on ensuring the effective implementation of the legislation. However, as an independent review, it is most likely to be useful in political advocacy and holding the government to account much as ombudsman, judicial inquiry, or auditor reports do.

However, this model, like the others, cannot provide any guarantee of compliance by government. An unsupportive government may choose an individual who is particularly supportive of its perspective or may simply ignore the findings.

c. Conclusion

Legislation is a powerful but imperfect solution to changing behaviour and encouraging accessibility and the Premier's promise to introduce this type of legislation encourages optimism that progress will be made. Governments change and political priorities shift, thus ongoing advocacy, political pressure and vigilance by the disability community are important tools to ensure strong and effective implementation. None of the models provide absolute certainty, but these legislative mechanisms can supplement political pressure and provide information to monitor whether the implementation of the legislation fulfills its promise. As a result, the best

mechanism for public accountability is to provide information to the electorate and the disability community and set specific benchmarks (such as a target date of complete accessibility) so that advocates may praise a government fulfilling the promise of the legislation or hold a government accountable should political will be lacking.

RECOMMENDATION 12: Manitoba should ensure that as many strong public accountability mechanisms as possible are incorporated within the legislation, including directive legislation, annual reports, independent monitoring and consultation with the disability community.

7. Interaction of the Accessibility Standards and the Manitoba Human Rights Code

If the legislation is to have a broad and sustained impact on the accessibility of Manitoban society, a principled approach must be taken to how standards interact with other legislation, including the Manitoba *Human Rights Code*. In the event of a conflict between such legislation and the *Code*, the purpose of the standards may inadvertently be undermined. The models for interaction with legislation other than the *Code* are discussed in the section that follows.

a. Models for Comparison

Floor of Accessibility: Supremacy and the Most Accessible Standard

The *Code* supersedes all other legislation unless specifically stated otherwise.⁴⁴ If, for example, the *Code* requires a higher level of accessibility than the standard, the *Code* requirements would prevail. In the event that an accessibility standard is higher than that contemplated by the *Code*, the *Code*'s supremacy would not lower the accessibility requirements of the standards as the *Code* is only supreme for the purpose of expanding human rights. It cannot act as a shield to requests for greater accessibility. In essence, this means that the *Code* provides the floor of accessibility (unless expressly stated otherwise in legislation).

If the *Code* is supreme, where two rights are in conflict with one another, the *Code*'s balancing of rights would prevail rather than the most accessible requirement, provided the *Code*'s requirements allow for a higher level of accessibility.

As the *Code* is viewed as quasi-constitutional legislation, no specific language is required in the legislation to give effect to this model. Specific language can also be used for greater clarity. One particular approach is to use the language of the *Accessibility for Ontarians with Disabilities Act*, which reads:

3. Nothing in this Act or in the regulations diminishes in any way the legal obligations of the Government of Ontario or of any person or organization with respect to persons with disabilities that are imposed under any other Act or otherwise imposed by law.

...

38. If a provision of this Act, of an accessibility standard or of any other regulation conflicts with a provision of any other Act or regulation, the provision that provides the highest level of accessibility for persons with disabilities with respect to goods, services, facilities, employment, accommodation, buildings, structures or premises shall prevail.⁴⁵

Ceiling of Accessibility: Compliance with a Standard as a Defence

The Australian *Disability Discrimination Act* states that if an organization has complied with the accessibility standards, the prohibitions on discrimination do not apply.⁴⁶ Or in other words, if you have complied with the standard you cannot be discriminating. As such, the standard

creates the ceiling for accessibility rather than the floor. For example, if a standard states that an organization must allow interpreters at the individual's own expense, an organization complying with that standard could not be found to be discriminating by failing to pay for an interpreter's service.

Specific language is required in the legislation for this model to have effect and can be modeled on the language of the *DDA*, which states "If a person acts in accordance with a disability standard this Part [prohibiting disability discrimination] does not apply to the person's act."⁴⁷

b. Comparison of Models

The models described above are mutually exclusive. The fundamental difference is whether the standards provide the floor of accessibility or the ceiling. Balancing against the level of accessibility is the certainty provided by the models. The term certainty does not refer to whether the *Code* or standard applies. Rather, certainty refers to the exact requirements of the *Code* or the standards. The *Code*'s requirements of non-discrimination, reasonable accommodation to the point of undue hardship will vary based on the circumstances and individuals involved and therefore are not as certain as specific standards might be.

Floor or Ceiling: Promotion of Accessibility versus Certainty of Requirements

If the floor model is adopted, such a model would ensure that whatever rule provided for the highest level of accessibility would be the rule that prevails. Any requirement that provides for a lower level of accessibility would be superseded by the other rule. This ensures that the accessibility standards are certain to increase the level of accessibility (or at worst have no effect) rather than lowering the accessibility and creating new barriers.

While this general rule may seem simple enough, in practice it will be much more difficult to determine which rule in fact creates the higher level of accessibility. The *Code* does not state exactly what must be done to comply with it. Instead, it says that it constitutes discrimination to fail "to make reasonable accommodation for the special needs of any individual or group, if those special needs are based upon" a listed ground, including disability.⁴⁸ What constitutes reasonable accommodation will depend on the needs of the person with a disability and the circumstances of the organization (eg. cost, health and safety).⁴⁹ As a result, it is difficult to know in advance what is reasonable and what is not.

For example, in Ontario the initial draft transportation standard did not require transit providers to have automated stop announcement for buses for eighteen years (or eight years for subways). This standard was released in 2007. After the standard was drafted and while it was pending public review, the Human Rights Tribunal of Ontario held that the *Human Rights Code* required the Toronto Transit Commission (TTC) to announce all stops within 30 days.⁵⁰

Because Ontario has implemented a floor model, the Tribunal decision, rather than the accessibility standard itself, is supreme. In contrast, if the ceiling model were implemented, compliance with the standard (if it had already been enacted) would have acted as a defence to the complaint of discrimination, thereby lowering the level of accessibility required.

In light of Barrier-Free Manitoba's principle that the standards not diminish other legal and human rights protections and supersede all other provincial legislation that provide lesser protections, there can be little doubt that the floor model is the most appropriate.

However, it must also be noted that the model that best promotes accessibility also provides the least certainty. If the accessibility standards provide only the floor, organizations subject to the standard, such as transit-providers, can never be certain as to the requirements imposed upon them. In contrast, if compliance with the standard acts as a defence (as it does in the ceiling model) the organizations can be certain whether they are in compliance or not. However, this certainty is attained at the expense of accessibility.

A positive effect of such uncertainty is that organizations may be encouraged to exceed the requirements of the accessibility standards to provide greater certainty that they are in compliance with both the standards and the *Code*. An organization can manage the risk of this uncertainty by proactively identifying and removing barriers and developing internal processes for resolving barriers as they are identified.⁵¹ While still not providing absolute certainty, the more accessible the organization, the less likely they will be found to be discriminating under the *Code*.

An alternative might be to develop a model whereby the standards are revised following Tribunal decisions that set a higher level of accessibility. This option has not been discussed here as we have not identified any comparator model. However, it must be noted that uncertainty remains as an organization will be unaware what the standards may require in the near future.

Further, there are practical difficulties with the implementation of this alternative. Most Tribunal decisions under the *Code* relate to the situation of a specific respondent, such as the TTC in the example above. Decisions must be closely examined to determine the extent to which the reasoning extends beyond that specific respondent. For example, the Tribunal might find that the cost of an accommodation is reasonable for a large company, but does that reasoning extend to smaller companies as well? Even if the standard was to be amended in light of this decision, it would be difficult to determine the extent of the amendment.

RECOMMENDATION 13: The legislation should specifically state that where there is a conflict, the rule that creates the highest level of accessibility is supreme, but that compliance with the standard is not a defence. However, in its advocacy, the community ought to be mindful of the uncertainty this may cause for organizations subject to the standards.

Consideration of the Code in the Standard Development Process

If the above-noted recommendation is accepted, the community also ought to be aware that the failure of Ontario some of the standards to be consistent with or set a higher level of accessibility than the Ontario *Human Rights Code* is one of the criticisms leveled against the standards. The Accessibility for Ontarians with Disabilities Act Alliance, in its comments to the public review on the *AODA*, stated the following:

One of our serious concerns was that neither the final Customer Service Standard nor the proposed Transportation Standard appears to live up to the baseline requirements of the Ontario Human Rights Code. We were advised that

in the standards development process, you viewed the Human Rights Code as separate from and not a part of the Accessibility for Ontarians with Disabilities Act. We were also told that in that process, you viewed that the Human Rights Code's requirements set a standard that is not possible for AODA accessibility standards to reach, and which is ever-rising over time. We expressed our serious concern that your approach to the development of accessibility standards under the AODA appears to be fundamentally flawed, and out of touch with the core aims of the AODA, a law for which we fought for ten years. The AODA was intended to set standards that meet or exceed the Human Rights Code's requirements. Far from being separate from the AODA, the Human Rights Code is the bedrock foundation on which the AODA was built. The AODA was intended to provide more effective implementation of the rights which the Human Rights Code guarantees, without the need to litigate barriers one at a time.⁵²

To avoid remedy this problem, the Alliance recommends that the AODA be amended "to require that accessibility standards enacted under it should at a minimum meet the accessibility requirements in the Ontario Human Rights Code."⁵³ This recommendation also applies to Manitoba as it will best promote Barrier-Free Manitoba's principles that existing human rights are not diminished while removing barriers across the province.

RECOMMENDATION 14: The legislation should be clear that standards must, at minimum, comply with the requirements of the *Code*.

How Standards are Balanced against Other Rights

Regardless of which model is employed, situations will arise where the accessibility standards conflict with the rights of people with disabilities or other groups protected under the *Code*. None of the above models address this situation specifically. However, the approach currently taken by courts and tribunals is to balance the conflicting rights against one another and determine the most appropriate resolution accordingly.

For example, rights-based conflicts have arisen and been discussed in the jurisprudence regarding service animals and severe allergies to animals. In *Dewdney*, a woman complained that a taxi driver refused her service because she used a service animal.⁵⁴ The Tribunal held that the driver's animal allergy constituted a disability and the two conflicting accommodations had to be balanced against one another. Because the passenger could easily obtain services from another driver without an allergy and the driver could not easily remedy the non-accommodation of his allergy, the Tribunal found for the taxi company in its balancing of these conflicting rights.

This issue was also considered in *Fitton*, where several passengers with service animals were not able to board a plane, as the pilot had severe allergies to dogs.⁵⁵ The Agency concluded that the airline had fulfilled its obligations by considering less intrusive alternatives, although none were operationally feasible. Nonetheless, the Agency recommended that the airline investigate development of a system that would cross-reference this information in its booking system.

Situations of conflict may also arise where other rights, such as religious beliefs, and disability accommodations conflict. While the most accessible standard model may suggest that in the case of conflict accessibility for a person with a disability would supersede the rights of others,

this is unlikely to occur. The courts have repeatedly held that the *Code* and the *Charter* do not create a hierarchy of rights.⁵⁶ Even if this were not the case, Barrier-Free Manitoba's principles require both a principled approach to equality and that other legal and human rights protections not be diminished. In light of these principles it is difficult to justify a situation where certain equality rights are supreme to others.

RECOMMENDATION 15: The approach adopted should ensure that the balancing of conflicting rights continues rather than creating a hierarchy of equality rights.

8. Interaction of the Accessibility Standards with Other Legislation

The accessibility standards may also conflict with laws other than the *Code*. For example, a standard may set requirements that are in conflict with the requirements of building codes. Therefore the question arises as to how these conflicts will be resolved.

a. Models for Comparison

Floor Model: The Most Accessible Standard

This first model is the same as those models in the previous section. Where two laws conflict with one another, the law that requires the highest level of accessibility prevails. This is true regardless of which legislation sets the standard. The statute may read:

If a provision of this Act, of an accessibility standard or of any other regulation conflicts with a provision of any other Act or regulation, the provision that provides the highest level of accessibility for persons with disabilities with respect to goods, services, facilities, employment, accommodation, buildings, structures or premises shall prevail.

Specific language is required to give effect to this model, which is based on the *Accessibility for Ontarians with Disabilities Act*.

Traditional Statutory Interpretation

If the legislation makes no particular statement about how conflicts are to be resolved, traditional principles of statutory interpretation will determine which prevails. In the case of conflict, or where the legislation provides for varying requirements for compliance in the same area, the legislation that is the most recent, the legislation that is exhaustive of the issue, or the legislation the more specific legislation will prevail.⁵⁷ For example, if an accessibility standard conflicts with the *Manitoba Building Code*, the more exhaustive, recent, or specific rule will prevail.

No specific language is required to give effect to this model as it is based on the general rules for statutory interpretation in Canada.

Specific Exceptions for Other Legislation

The legislation or accessibility standards can create specific exceptions to the general or specific rules on conflicts in statutes. This can be in addition to either of the above models. For example, the *Accessibility Standards for Customer Service* under the *Accessibility for Ontarians with Disabilities Act* primarily uses the floor model, but it also specifically states the service animal requirements only apply if the animal is not otherwise excluded by law.⁵⁸

Specific language would be required in the legislation or standards to give effect to this model. This is the approach taken in portions of the *Americans with Disabilities Act*.

b. Comparison of Models

We will not repeat the analysis of the previous section on the strengths and weaknesses of the floor model. However, we note that it provides the highest level of accessibility. Uncertainty is less of a problem in conflicts with other legislation as they are likely to vary less than the *Code* does. However, individuals that are not well-informed as to the requirements of the standards or legislation may not fully understand their obligation to comply with it in addition to any legislation they are more familiar with such as legislation specific to their sector.

The traditional model of statutory interpretation has too many elements to be reviewed here, but one aspect is that where two statutes conflict with one another the most specific prevails.⁵⁹ As a result, a detailed statute on a subject will prevail over broader legislation.

If there are specific circumstances where either of the above models should not apply, the accessibility standards or the legislation may explicitly provide another means of resolving the conflict.

For example, the *Accessibility Standards for Customer Service* under the *Accessibility for Ontarians with Disabilities Act* states that if a person with a disability is accompanied by a service animal, they must be allowed entry. However, Regulations to the *Food Safety and Quality Act* specify that service animals are not allowed into areas of a meat plant where food animals are contained, received, or processed.⁶⁰ The standard resolves this conflict by stating that the requirement that the service animal be allowed to accompany a person with a disability “unless otherwise excluded by law.”

In light of Barrier-Free Manitoba’s principles, the obvious choice as to model is the one adopted in Ontario: the highest level of accessibility with allowance for specific exceptions. This model will best promote accessibility, but the standards-developers must remain careful not to create exceptions that create new barriers rather than removing barriers. This is one of the criticisms leveled against the Ontario *Accessibility Standards for Customer Service*.⁶¹

RECOMMENDATION 16: The legislation should specifically state that whatever legislation or standard sets the higher level of accessibility prevails. If exceptions to that general rule are required, the standards or legislation can explicitly state otherwise, but care must be taken to ensure such exceptions do not create new barriers for people with disabilities.

9. Conclusion and Summary of Recommendations

The new disability-related legislation that has been proposed in Manitoba provides the possibility of a significant advance in the accessibility of the province. The legislation provides an excellent opportunity for the proactive identification and removal of barriers of all kinds across Manitoba. As this paper demonstrates, there are many factors that go into the success of the legislation contemplated by the Manitoba government. However, the complexity of these issues and the uncertainty of success should not dissuade Manitobans from taking this positive step toward accessibility.

With draft legislation being considered, it is time to focus energy on the content of the legislation itself. While some factors beyond the scope of the legislation will affect its success, including the content of the standards and maintaining momentum, it is time to focus the community's energy on ensuring the strongest possible legislation is adopted. Throughout this process, the disability community should remain mindful of the Ontario experience and continue to draw lessons from it, particularly as Charles Beer's independent review of the legislation concludes.

Not all of the issues of relevance to the legislation have been discussed in this paper, but it has attempted to address those issues of most significant relevance to its success or failure to people with disabilities. In so doing, it weighed the options against the nine principles developed by Barrier-Free Manitoba, which require that the legislation:

- Cover all disabilities;
- Reflect a principled approach to equality;
- Move beyond the complaints-driven system to comprehensively address discrimination and barriers;
- Establish a definite target date to achieve a barrier-free Manitoba;
- Require the development of clear, progressive, mandatory and date-specific standards in all major areas related to accessibility that will apply to public and private sectors;
- Establish a timely and effective process for monitoring and enforcement of the standards;
- Incorporate ongoing leadership roles for the disability community;
- Supersede all other provincial legislation, regulations or policies which provide lesser protections; and
- Not diminish other legal and human rights protections.

Based on these nine principles, the paper makes the following recommendations for the legislation and the disability community's advocacy position:

1. The definition of disability ought to be based on the broad Canadian definition. If defined explicitly within the statute, the definition should be non-exhaustive.
2. The definition of disability should not exclude any specific conditions.
3. The standards ought to be developed through either standard development committees or government imposition.

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4. If the legislation uses standard development committees, the community must carefully review the procedures outlined in the legislation, regulations and terms of reference to ensure the proper functioning of those committees.
 5. The legislation ought to create many opportunities for meaningful public comment on draft standards early enough in the process that such feedback can be incorporated in subsequent drafts.
 6. Representatives of the disability community must be provided with resources, financial, informational, and expert, to inform their participation in the standard development process and other public consultations.
 7. The Manitoba Human Rights Commission should have an active role in the preparation of standards, whether imposed by government or developed through committees.
 8. Organizations may be required to submit annual reports describing their compliance with the accessibility standards. However, such reports are unlikely to have a significant impact on the success of the legislation and therefore should not be a focus of the community's advocacy.
 9. The legislation ought to primarily adopt a monitoring system using investigations by an independent agency. When deciding which organizations to investigate, the body ought to consider complaints of non-compliance received by people with disabilities.
 10. The legislation should incorporate both carrots and sticks, incentives and penalties, but the financial penalties must be large enough to ensure adequate disincentive for non-compliance.
 11. When asked to comment, the public ought to be provided as much time as possible, relevant background and supporting documents, and the opportunity to have their comments properly weighed and considered.
 12. The community should advocate to ensure that as many strong public accountability mechanisms as possible are incorporated within the legislation, including directive legislation, annual reports, independent monitoring and consultation with the disability community.
 13. The legislation should specifically state that where there is a conflict, the rule that creates the highest level of accessibility is supreme, but that compliance with the standard is not a defence. However, in its advocacy, the community ought to be mindful of the uncertainty this may cause for organizations subject to the standards.
 14. The legislation should be clear that standards must, at minimum, comply with the requirements of the *Code*.
 15. The approach adopted should ensure that the balancing of conflicting rights continues rather than creating a hierarchy of equality rights.
 16. The legislation should specifically state that whatever legislation or standard sets the higher level of accessibility prevails. If exceptions to that general rule are required, the standards or legislation can explicitly state otherwise, but care must be taken to ensure such exceptions do not create new barriers for people with disabilities.

Endnotes

¹ Manitoba Human Rights Commission, *Annual Report 2008* (2008), online: Manitoba Human Rights Commission <http://www.gov.mb.ca/hrc/english/docs/annual_report2008.pdf> at p. 25.

² *Accessibility for Ontarians with Disabilities Act 2005*, S.O. 2005, c. 11 (“AODA”).

³ Ontario Human Rights Commission, *Submissions of the Ontario Human Rights Commission to the Ministry of Citizenship and Immigration Regarding the Consultations to Strengthen the Ontarians with Disabilities Act (2004)* (March 31, 2004), online: Ontario Human Rights Commission <<http://www.ohrc.on.ca/en/resources/submissions/SubmOnDisAct/pdf>> at p. 10.

⁴ See <http://www.barrierfreemb.com/endorsers>.

⁵ Ontarians with Disabilities Act Committee, *Making Ontario Open for People with Disabilities: a Blueprint for a Strong and Effective Ontarians with Disabilities Act* (April 22, 1998), online: Ontarians with Disabilities Act Committee, < <http://www.odacommittee.net/brief98a.html>>.

⁶ *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City)*, 2008 SCC 48, [2008] 2 S.C.R. 698; *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, 2000 SCC 27, [2000] 1 S.C.R. 665 at para. 48.

⁷ Manitoba Human Rights Commission, *Policy and Procedures Manual, Policy #L-5: Defining Physical and Mental Disability* (April 11, 2003), online: Manitoba Human Rights Commission, <<http://www.gov.mb.ca/hrc/english/publications/policies/L5.pdf>>.

⁸ *Human Rights Code*, R.S.O. 1990, c. H.19 at s. 10(1); AODA at s. 2.

⁹ *Americans with Disabilities Act*, 42, U.S.C. § 12102 (1990) (“ADA”) (it should be noted that this definition was recently amended to address some of the more controversial decisions of the Courts that acted to limit the scope of the definition).

¹⁰ *Employment and Income Assistance Act*, C.C.S.M. c. E98 at s. 5(1).

¹¹ *Madjlessi v. Macy’s West Inc.*, 993 F. Supp. 736 (N.D. Cal. 1997).

¹² *Jones v. Ind. Civ. Rights Comm’n*, LEXIS 23954 (U.S. Dist., 2006).

¹³ *Ralph J. Argen v. New York State Board of Law Examiners*, 860 F.Supp. 84 (N.Y. 1994).

¹⁴ G. Quinn, M. McDonagh & C. Kimber, *Disability Discrimination Law in the United States, Australia, and Canada* (Dublin: Oak Tree Press, 1993).

¹⁵ *Bragdon v. Abbott*, 524 U.S. 624 (1998); *Runnebaum v. NationsBank of Maryland*, 95 F.3d 1285, 1297 (4th Cir. 1996).

¹⁶ Catherine J. Lanctot, “Ad Hoc Decision Making and Per Se Prejudice: How Individualizing the Determination of ‘Disability’ Undermines the ADA” (1997) 42 Vill. L. Rev. 327 at p. 337.

¹⁷ Bonnie Poitras Tucker, “The Supreme Court’s Definition of Disability under the ADA: a Return to the Dark Ages,” (2000-2001) 52 Ala. L. Rev. 321.

¹⁸ J.E. Lord, *Understanding the Role of an International Convention on the Human Rights of People with Disabilities* (Washington, DC: National Council on Disability, 2002), online: National Council on Disability, <http://www.ncd.gov/newsroom/publications/2002/unwhitepaper_05-23-02.htm>.

¹⁹ *McKay-Panos v. Air Canada*, 2006 FCA 8, [2006] 4 F.C.R (“McKay-Panos”). See also: Law Commission of Ontario, *The Law as it Affects People with Disabilities: Preliminary Consultation Paper: Approaches to Defining Disability* (June 2009), online: < <http://www.lco->

cdo.org/sites/default/files/Disabilities%20Threshold%20Paper%20-%20July%202009_0.pdf>; Canada, *Defining Disability: A Complex Issue* (2003), online: March of Dimes, <http://www.marchofdimes.ca/NR/rdonlyres/2E50F250-5EC5-4064-BF73-F3F67AAFBEDC/0/defining_disability.pdf>.

²⁰ The Centre for Universal Design, *Universal Design Principles* (April 1, 1997) online: Centre for Universal Design <http://www.design.ncsu.edu/cud/about_ud/udprincipleshtmlformat.html#top>.

²¹ Manitoba Human Rights Commission, *Policy and Procedures Manual, Policy #L-5: Defining Physical and Mental Disability* (April 11, 2003), online: Manitoba Human Rights Commission, <<http://www.gov.mb.ca/hrc/english/publications/policies/L5.pdf>>; *Human Rights Code*, R.S.O. 1990, c. H.19.

²² *Entrop v. Imperial Oil Ltd.*, 50 O.R. (3d) 18, [2000] O.J. No. 2689 (ON C.A.); *McKay-Panos*.

²³ *Winko v. British Columbia (Forensic Psychiatric Institute)*, 1999 CanLII 694 (S.C.C.), [1999] 2 S.C.R. 625; *Granovsky v. Canada (Minister of Employment and Immigration)*, 2000 SCC 28 (CanLII), [2000] 1 S.C.R. 703, 2000 SCC 28; *Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur*, 2003 SCC 54, [2003] 2 S.C.R. 504 (“*Martin*”).

²⁴ *Martin* at para. 80.

²⁵ *Australia Disability Discrimination Act 1992* (Cth.) (“*Australia DDA*”).

²⁶ Accessibility for Ontarians with Disabilities Act Alliance, *Brief of the AODA Alliance to the Charles Beer 2009 Independent Review of the Implementation of the Accessibility for Ontarians with Disabilities Act* (December 11, 2009), online: Accessibility for Ontarians with Disabilities Act <<http://www.aodaalliance.org/docs/1209-Charles-Beer-Review-AODAA-Brief.doc>> at pp. 129-132 (“*Alliance Brief*”).

²⁷ *Alliance Brief* at p. 57.

²⁸ *United Kingdom Equality Act 2006*, c. 3; *Australia DDA*.

²⁹ See eg. *The Human Rights Code*, C.C.S.M. c. H175 (“*Code*”) at s. 22; *Human Rights Code*, R.S.O. 1990, c. H.19 at s. 31.

³⁰ See eg. *Code* at s. 47; *AODA* at s. 18.

³¹ Ontario, *Accessibility Report on the Customer Service Standard* (January 28, 2009), online: Ministry of Community and Social Services, <http://www.mcscs.gov.on.ca/en/mcscs/programs/accessibility/ComplyingStandards/toolstohelpyoucomply_accessreportsstandards.aspx>, see Appendix A.

³² Ontario, *Guide to the Accessibility Standards for Customer Service, Ontario Regulation 429/07* (April 2009), online: Ministry of Community and Social Services, <<http://www.mcscs.gov.on.ca/documents/en/mcscs/accessibility/ComplyingStandards/guidestandard/Guidestandard.pdf>>; Ontario, *Compliance Manual Accessibility Standards for Customer Service, Ontario Regulation 429/07* (October 2008), online: Ministry of Community and Social Services, <http://www.mcscs.gov.on.ca/documents/en/mcscs/accessibility/ComplyingStandards/compmanreg429_07/ComplianceManual.pdf>

³³ *Exemption from Reporting Requirements*, O.Reg. 430/07; *Accessibility Standards for Customer Service*, O.Reg. 429/07 (“*Accessibility Standards for Customer Service*”) also creates different documentation requirements for organizations with less than 20 employees.

³⁴ University of Toronto Faculty of Law, “The Human Rights Process in Ontario: Can We Do This Better?” (Human Rights Roundtable, 14 January 2005), online: <http://74.125.95.132/search?q=cache:_MQiH8dfvzIJ:www.law.utoronto.ca/documents/conferences/admin05_agenda.ppt+cornish+review+human+rights+ontario&cd=2&hl=en&ct=clnk>. See also, Laurie Letheren and Roberto Lattanzio, “Reforming the Human Rights Process in Ontario” *Arch Alert* (3 August 2006), online: <http://www.archdisabilitylaw.ca/ARCH/liveaccess/documents/uploaded_file/ARCH%20Alert%20Special%20Issue%20-%20Aug%203%202006.doc> (“Letheren and Lattanzio”).

³⁵ Letheren and Lattanzio.

³⁶ AODA Alliance, *Draft Submission to the Standing Committee on Justice Policy on Bill 107, The Proposed Ontario Human Rights Code Amendment Act* (undated), online: <<http://www.aodaalliance.org/reform/standing-committee-submission.asp>>.

³⁷ Eg., the Ontario Human Rights Commission, in its role as an investigator (rather than in hearing complaints), reviewed and identified barriers to people with disabilities in the restaurant industry (Ontario Human Rights Commission, *Final Report on the Restaurant Accessibility Initiative* (2006), online: OHRC <http://www.ohrc.on.ca/en/resources/discussion_consultation/RestaurantRepBarrierFreeENG/pd>).

³⁸ See eg. Minister of Community and Social Services, *2008 Annual Report, Accessibility for Ontarians with Disabilities Act, 2005* (December 2008), online: Ministry of Community and Social Services <http://www.mcsc.gov.on.ca/documents/en/mcss/publications/accessibility/Annual_Report_08_FINAL2.pdf> at 15-16.

³⁹ *Personal Health Information Act*, C.C.S.M. c. P33.5.

⁴⁰ See eg. E. Baar, Department of Justice Canada, *Positive Compliance Programs: Their Potential as Instruments for Regulatory Reform* (Ottawa: Department of Justice Canada, 1991).

⁴¹ See eg. *Wendy Hiebert v Martin-Liberty Realty Ltd.* (September 30, 2009) ordering payment of \$1,000; *Ursel v. LMG Properties Ltd. O/A Bay Hill Inns and Suites* (June 15, 2009) ordering payment of \$3,000; *Werestiuk v. Small Business Services Inc. and K. Reyes* (October 30, 1998) ordering payment of approximately \$4,600; *Bourrier v. Phil-Can Services Limited and A. Caron* (January 18, 1999) ordering payment of \$2,000; *Budge v. Thorvaldson Care Homes Ltd.* (March 19, 2002) ordering payment of \$4,000; *Dubeck v. VY-CON Construction* (December 20, 2002) ordering payment of approximately \$3,475.

⁴² See <http://www.aodaalliance.org>.

⁴³ *Alliance Brief* at pp. 123-129.

⁴⁴ *Code* at s. 58.

⁴⁵ AODA.

⁴⁶ *Australia DDA* at s. 34.

⁴⁷ *Australia DDA* at s. 34.

⁴⁸ *Code* at s. 9(1).

⁴⁹ See eg. Manitoba Human Rights Commission, *Guidelines to Reasonable Accommodation under the Human Rights Code (Manitoba) for employers, unions, landlords, service providers,*

and persons or groups with special needs (September 2004), online: Manitoba Human Rights Commission, <http://www.gov.mb.ca/hrc/english/publications/reasonableaccommodation.pdf>.

⁵⁰ *Lepofsky v. TTC #2*, 2007 HRTO 23.

⁵¹ See eg. Ontario Human Rights Commission, *Policy and Guidelines on Disability and the Duty to Accommodate* (November 23, 2000), online: Ontario Human Rights Commission, <<http://www.ohrc.on.ca/en/resources/Policies/PolicyDisAccom2/pdf>>.

⁵² *Alliance Brief*, at pp. 41-42.

⁵³ *Alliance Brief*, at pp. 41-42.

⁵⁴ *Dewdney v. Bluebird Cabs Ltd.*, [2003] B.C.H.R.T.D. No. 5.

⁵⁵ *Fitton et al. v. Air Georgian Ltd.* (5 October 2004), CTA Decision No. 528-AT-A-2004, online: CTA <<http://www.otc-cta.gc.ca/decision-ruling/decision-ruling.php?id=22430&lang=eng>>.

⁵⁶ See eg. *Dagenais v. Canadian Broadcasting Corp.*, [1994] 3 S.C.R. 835 at p. 877, [1994] S.C.J. No. 104. See also: *M. (A.) v. Ryan*, [1997] 1 S.C.R. 157 at para. 100, [1997] S.C.J. No. 13; *Lavoie v. Canada*, 2002 SCC 23 at para. 51, [2002] 1 S.C.R. 769; *Chamberlain v. Surrey School District No. 36*, 2002 SCC 86 at para. 126, [2002] 4 S.C.R. 710.

⁵⁷ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 5th ed. (Markham: LexisNexis Canada, 2008) (“Sullivan”) at pp. 331-334 & 343-350.

⁵⁸ *Accessibility Standards for Customer Service*.

⁵⁹ Sullivan at p. 337; *Lévis (City) v. Fraternité des policiers de Lévis*, 2007 SCC 14, [2007] 1 S.C.R. 591 at paras. 58-62.

⁶⁰ *Meat*, O. Reg. 31/05, made pursuant to *Food Safety and Quality Act, 2001*, S.O. 2001, c. 20 44.

(1) Subject to subsections (2) and (4), no person shall permit any animal, other than a food animal that is to be slaughtered or euthanized in accordance with this Regulation, to be in any room or area of the meat plant.

(2) A service dog serving as a guide for a blind person or for a person with another medical disability who requires the use of the dog as a guide is permitted to be in an area of the meat plant,

(a) where food is served, sold or offered for sale to consumers; or

(b) that does not contain food animals and that is not used for the receiving, processing, packaging, labelling, shipping, handling or storing of carcasses, parts of carcasses or meat products.

(3) For the purposes of subsection (2), a dog is a service dog for a person with a medical disability if,

(a) it is readily apparent to an average person that the dog functions as a guide for the person; or

(b) the person can provide, on request, a letter from a physician or nurse confirming that the person requires the use of the dog as a guide.

⁶¹ See eg. Accessibility for Ontarians with Disabilities Act Alliance, *Accessibility for Ontarians with Disabilities Act Alliance Update: The First and Only Accessibility Standard Enacted under the AODA is a Major Let-Down – Customer Service Accessibility Standard is weak and*

Ineffective (September 12, 2007), online: Accessibility for Ontarians with Disabilities Act Alliance < <http://www.aodaalliance.org/strong-effective-aoda/09122007.asp>>. The standard is criticized as it allows organizations to require that a person with a disability be accompanied by a support person where necessary to protect their health or safety or the health of safety for others. It further allows organizations to charge admission for support persons so long as it advises people with disabilities in advance, which the Alliance argues is not permitted under the Ontario *Human Rights Code*.

Appendix A: Accessibility for Ontarians with Disabilities Act

PART I INTERPRETATION

Purpose

1. 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. 2005, c. 11, s. 1.

Definitions

2. In this Act,

“accessibility standard” means an accessibility standard made by regulation under section 6; (“norme d’accessibilité”)

“barrier” means anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice; (“obstacle”)

“director” means a director appointed under section 30; (“directeur”)

“disability” means,

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; (“handicap”)

“Minister” means the Minister of Citizenship and Immigration or whatever other member of the Executive Council to whom the administration of this Act is assigned under the *Executive Council Act*; (“ministre”)

“organization” means any organization in the public or private sector and includes,

- (a) the Government of Ontario and any board, commission, authority or other agency of the Government of Ontario,

(b) any agency, board, commission, authority, corporation or other entity established under an Act,

(c) a municipality, an association, a partnership and a trade union, or

(d) any other prescribed type of entity; (“organisation”)

“prescribed” means prescribed by regulation; (“prescrit”)

“regulations” means the regulations made under this Act, unless the context indicates or requires otherwise; (“règlements”)

“Tribunal” means, with respect to an appeal of an order made by a director under this Act, the tribunal designated by the Lieutenant Governor in Council under section 26 for the purposes of hearing that appeal. (“Tribunal”) 2005, c. 11, s. 2; 2009, c. 33, Sched. 8, s. 1.

Recognition of existing legal obligations

3. Nothing in this Act or in the regulations diminishes in any way the legal obligations of the Government of Ontario or of any person or organization with respect to persons with disabilities that are imposed under any other Act or otherwise imposed by law. 2005, c. 11, s. 3.

PART II APPLICATION

Application

4. This Act applies to every person or organization in the public and private sectors of the Province of Ontario, including the Legislative Assembly of Ontario. 2005, c. 11, s. 4.

Crown bound

5. This Act binds the Crown. 2005, c. 11, s. 5.

PART III ACCESSIBILITY STANDARDS

ESTABLISHMENT OF STANDARDS

Accessibility standards established by regulation

6. (1) The Lieutenant Governor in Council may make regulations establishing accessibility standards. 2005, c. 11, s. 6 (1).

Application of standards

(2) An accessibility standard shall name or describe the persons or organizations to which it applies. 2005, c. 11, s. 6 (2).

Same

(3) An accessibility standard may apply only to a person or organization that,

(a) provides goods, services or facilities;

(b) employs persons in Ontario;

(c) offers accommodation;

(d) owns or occupies a building, structure or premises; or

(e) is engaged in a prescribed business, activity or undertaking or meets such other requirements as may be prescribed. 2005, c. 11, s. 6 (3).

Same, Legislative Assembly

(4) An accessibility standard that applies to the Legislative Assembly may impose obligations on the Speaker of the Assembly and may apply with respect to all or part of the Legislative Building or of such other offices that fall within the jurisdiction of the Legislative Assembly and are identified in the accessibility standard. 2005, c. 11, s. 6 (4).

Several applicable standards

(5) A person or organization may be subject to more than one accessibility standard. 2005, c. 11, s. 6 (5).

Content of standards

(6) An accessibility standard shall,

- (a) set out measures, policies, practices or other requirements for the identification and removal of barriers with respect to goods, services, facilities, accommodation, employment, buildings, structures, premises or such other things as may be prescribed, and for the prevention of the erection of such barriers; and
- (b) require the persons or organizations named or described in the standard to implement those measures, policies, practices or other requirements within the time periods specified in the standard. 2005, c. 11, s. 6 (6).

Classes

(7) An accessibility standard may create different classes of persons or organizations or of buildings, structures or premises and, without limiting the generality of this power, may create classes with respect to any attribute, quality or characteristic or any combination of those items, including,

- (a) the number of persons employed by persons or organizations or their annual revenue;
- (b) the type of industry in which persons or organizations are engaged or the sector of the economy of which persons or organizations are a part;
- (c) the size of buildings, structures or premises. 2005, c. 11, s. 6 (7).

Same

(8) An accessibility standard may define a class to consist of one person or organization or to include or exclude a person or organization having the same or different attributes, qualities or characteristics. 2005, c. 11, s. 6 (8).

Scope

(9) An accessibility standard may be general or specific in its application and may be limited as to time and place. 2005, c. 11, s. 6 (9).

STANDARDS DEVELOPMENT PROCESS

Process for development of standards

7. The Minister is responsible for establishing and overseeing a process to develop and implement all accessibility standards necessary to achieving the purposes of this Act. 2005, c. 11, s. 7.

Standards development committees

8. (1) As part of the process referred to in section 7, the Minister shall establish standards development committees to develop proposed accessibility standards which shall be considered for adoption by regulation under section 6. 2005, c. 11, s. 8 (1).

Responsibility for specified industries, etc.

- (2) Each standards development committee is responsible for,
- (a) developing proposed accessibility standards for such industries, sectors of the economy or classes of persons or organizations as the Minister may specify; and
 - (b) further defining the persons or organizations that are part of the industry, sector of the economy or class specified by the Minister under clause (a). 2005, c. 11, s. 8 (2).

Consultation with ministries

(3) Before establishing a standards development committee for a particular industry, sector of the economy or class of persons or organizations, the Minister shall consult with other ministers having responsibilities relating to that industry, sector or class of persons or organizations. 2005, c. 11, s. 8 (3).

Composition of standards development committee

(4) The Minister shall invite the following persons or entities to participate as members of a standards development committee:

1. Persons with disabilities or their representatives.
2. Representatives of the industries, sectors of the economy or classes of persons or organizations to which the accessibility standard is intended to apply.
3. Representatives of ministries that have responsibilities relating to the industries, sectors of the economy or classes of persons or organizations to which the accessibility standard is intended to apply.
4. Such other persons or organizations as the Minister may consider advisable. 2005, c. 11, s. 8 (4).

Participation of Council members

(5) The Minister may invite members of the Accessibility Standards Advisory Council to participate as members of a standards development committee. 2005, c. 11, s. 8 (5).

Terms of reference

(6) The Minister shall fix terms of reference for each standards development committee and shall establish in the terms of reference the deadlines that each committee must meet throughout the various stages of the standards development process. 2005, c. 11, s. 8 (6).

Committee members' allowance

- (7) The terms of reference may,
- (a) provide for the Minister to pay members of a standards development committee an allowance for attendance at committee meetings and a reimbursement for expenses incurred by members in an amount that the Minister determines; and
 - (b) specify the circumstances in which the allowance or reimbursement may be paid. 2005, c. 11, s. 8 (7).

Terms of reference made public

(8) After fixing the terms of reference under subsection (6), the Minister shall make the terms of reference available to the public by posting them on a government internet site and by such other means as the Minister considers advisable. 2005, c. 11, s. 8 (8).

Minutes of meetings

(9) A standards development committee shall keep minutes of every meeting it holds and shall make the minutes available to the public by posting them on a government internet site and by such other means as the terms of reference may provide. 2005, c. 11, s. 8 (9).

Development of proposed standards

9. (1) Each standards development committee shall develop proposed accessibility standards in accordance with the process set out in this section and with the terms of reference established by the Minister. 2005, c. 11, s. 9 (1).

Determination of long-term objectives

(2) Promptly after its establishment, each standards development committee shall determine the long-term accessibility objectives for the industry, sector of the economy or class of persons or organizations in relation to which the committee has responsibilities under subsection 8 (2), by identifying the measures, policies, practices and requirements that it believes should be implemented by the members of the industry, sector or class on or before January 1, 2025. 2005, c. 11, s. 9 (2).

Progressive implementation

(3) Each standards development committee shall determine an appropriate time-frame for the implementation of the measures, policies, practices and requirements identified under subsection (2) taking into account,

- (a) the range of disabilities that the measures, policies, practices and requirements are intended to address;
- (b) the nature of the barriers that the measures, policies, practices and requirements are intended to identify, remove and prevent;
- (c) any technical and economic considerations that may be associated with their implementation; and
- (d) any other consideration required under the committee's terms of reference. 2005, c. 11, s. 9 (3).

Time-frame

(4) The time-frame referred to in subsection (3) shall enable the measures, policies, practices and requirements identified under subsection (2) to be implemented in stages according to the following rules:

1. The standards development committee shall fix a target date for the implementation of the measures, policies, practices and requirements that the committee identifies for implementation at the first stage and the target date shall be no more than five years after the day the committee was established.
2. The standards development committee shall fix successive target dates for the implementation of the measures, policies, practices and requirements that the committee identifies for implementation at each of the following stages and each target date shall be no more than five years after the previous target date. 2005, c. 11, s. 9 (4).

Initial proposed standard

(5) Within the time period specified by the committee's terms of reference, each standards development committee shall prepare a proposed accessibility standard and submit it to the Minister for the purposes of making the proposed standard public and receiving comments in accordance with section 10. 2005, c. 11, s. 9 (5).

Finalizing initial proposed standard

(6) After considering the comments received under section 10, a standards development committee may make any changes it considers advisable to the proposed accessibility standard and provide the Minister with the proposed accessibility standard within the time period specified by the committee's terms of reference. 2005, c. 11, s. 9 (6).

Minister's response

(7) No later than 90 days after receiving a proposed accessibility standard under subsection (6), the Minister shall decide whether to recommend to the Lieutenant Governor in Council that the proposed standard be adopted by regulation under section 6 in whole, in part or with modifications. 2005, c. 11, s. 9 (7).

Same

(8) On making a decision under subsection (7), the Minister shall inform, in writing, the standards development committee that developed the proposed standard in question of his or her decision. 2005, c. 11, s. 9 (8).

Development of subsequent proposed standards

(9) Within five years after an accessibility standard is adopted by regulation or at such earlier time as the Minister may specify, the standards development committee responsible for the industry, sector of the economy or class of persons or organizations to which the standard applies shall,

- (a) re-examine the long-term accessibility objectives determined under subsection (2);
- (b) if required, revise the measures, policies, practices and requirements to be implemented on or before January 1, 2025 and the time-frame for their implementation;
- (c) develop another proposed accessibility standard containing such additions or modifications to the existing accessibility standard as the standards development committee deems advisable and submit it to the Minister for the purposes of making the proposed standard public and receiving comments in accordance with section 10; and
- (d) make such changes it considers advisable to the proposed accessibility standard developed under clause (c) based on the comments received under section 10 and provide the Minister with the subsequent proposed accessibility standard. 2005, c. 11, s. 9 (9).

Completion of process

(10) Subsection (9) applies with necessary modifications to the development of successive proposed accessibility standards until such time as all the measures, policies and practices and requirements identified under subsection (2) and by subsequent reviews under clause (9) (b) are adopted by regulation. 2005, c. 11, s. 9 (10).

Proposed standards made public

10. (1) Upon receiving a proposed accessibility standard from a standards development committee under subsection 9 (5) or clause 9 (9) (c), the Minister shall make it available to the public by posting it on a government internet site and by such other means as the Minister considers advisable. 2005, c. 11, s. 10 (1).

Comments

(2) Within 45 days after a proposed accessibility standard is made available to the public in accordance with subsection (1) or within such other period of time as may be specified by the Minister, any person may submit comments with respect to a proposed accessibility standard to the appropriate standards development committee. 2005, c. 11, s. 10 (2).

Progress reports

11. (1) Each standards development committee shall provide the Minister with periodic reports on the progress of the preparation of the proposed standard as specified in the

committee's terms of reference or as may be required by the Minister from time to time. 2005, c. 11, s. 11 (1).

Progress reports made public

(2) Upon receiving a report under subsection (1), the Minister shall make it available to the public by posting it on a government internet site and by such other means as the Minister considers advisable. 2005, c. 11, s. 11 (2).

Assistance for standards development committees

12. The Minister may retain, appoint or request experts to provide advice to a standards development committee. 2005, c. 11, s. 12.

COMPLIANCE WITH STANDARDS AND REVIEW OF REPORTS

Compliance with accessibility standard

13. A person or organization to whom an accessibility standard applies shall comply with the standard within the time period set out in the standard. 2005, c. 11, s. 13.

Accessibility report

14. (1) A person or organization to whom an accessibility standard applies shall file an accessibility report with a director annually or at such other times as the director may specify. 2005, c. 11, s. 14 (1).

Report available to public

(2) A person or organization shall make an accessibility report filed under subsection (1) available to the public. 2005, c. 11, s. 14 (2).

Form

(3) An accessibility report shall be in the form approved by the Minister and the Minister may require that the report or a part of the report be provided electronically in a format approved by the Minister. 2005, c. 11, s. 14 (3).

Content

(4) An accessibility report shall contain such information as may be prescribed. 2005, c. 11, s. 14 (4).

Certification of accessibility report

15. (1) An accessibility report shall include a statement certifying that all the information required to be provided in the report under this Act has been provided and that the information is accurate and the statement shall be signed,

- (a) if the person preparing the report is an individual, by the individual; and
- (b) in all other cases, by a director, a senior officer or other responsible person with authority to bind the organization. 2005, c. 11, s. 15 (1).

Electronic signature

(2) If an accessibility report is filed in an electronic format approved by the Minister, the requirement that a person sign the report under subsection (1) shall be met if he or she provides an electronic signature. 2005, c. 11, s. 15 (2).

Definition

(3) In subsection (2),

“electronic signature” means a personal identification number (PIN), password, biometric information or any other electronic information that a person creates or adopts to be used

in the place of his or her signature to authenticate his or her identity and that is in, attached to or associated with an accessibility report. 2005, c. 11, s. 15 (3).

Review of director

16. A director may review an accessibility report filed under section 14 to determine whether it complies with the regulations and whether the person or organization who submitted the report has complied with all applicable accessibility standards. 2005, c. 11, s. 16.

Other reports and information

17. At the request of a director, a person or organization shall provide the director with reports or information relating to the compliance of the person or organization with the accessibility standards. 2005, c. 11, s. 17.

PART IV INSPECTIONS

Inspectors

18. (1) The Deputy Minister shall appoint one or more inspectors for the purposes of this Act and the regulations within a reasonable time after the first accessibility standard is established under section 6. 2005, c. 11, s. 18 (1).

Certificate of appointment

(2) The Deputy Minister shall issue to every inspector a certificate of appointment bearing his or her signature or a facsimile of his or her signature. 2005, c. 11, s. 18 (2).

Production of certificate

(3) An inspector carrying out an inspection under section 19 shall produce his or her certificate of appointment upon request. 2005, c. 11, s. 18 (3).

Inspections without warrant

19. (1) An inspector may carry out an inspection under this Act for the purpose of determining whether this Act and the regulations are being complied with. 2005, c. 11, s. 19 (1).

Entry

(2) In the course of carrying out an inspection, an inspector may, without warrant, enter any lands or any building, structure or premises where the inspector has reason to believe there may be documents or things relevant to the inspection. 2005, c. 11, s. 19 (2).

Time of entry

(3) The power to enter and inspect a place without a warrant may be exercised only during the place's regular business hours or, if it does not have regular business hours, during daylight hours. 2005, c. 11, s. 19 (3).

Dwellings

(4) An inspector shall not enter into a place or part of a place that is a dwelling without the consent of the occupant. 2005, c. 11, s. 19 (4).

Powers

- (5) Upon entering a place under subsection (2), an inspector may,
- (a) require any person in the place to produce any document, record or thing that is relevant to the inspection;
 - (b) upon giving a receipt for it, remove any document, record or thing that is relevant to the inspection for the purposes of making copies or extracts;

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- (c) question any person present in the place on matters relevant to the inspection;
 - (d) use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document or record in readable form. 2005, c. 11, s. 19 (5).

Written demand

(6) A demand that a document, record or thing be produced for inspection must be in writing and must include a statement of the nature of the document, record or thing required. 2005, c. 11, s. 19 (6).

Assistance

(7) An inspector may be accompanied by any person who has special, expert or professional knowledge and who may be of assistance in carrying out the inspection. 2005, c. 11, s. 19 (7).

Use of force prohibited

(8) An inspector shall not use force to enter and inspect premises under this section. 2005, c. 11, s. 19 (8).

Obligation to produce and assist

(9) A person who is required to produce a document, record or thing under clause (5) (a) shall produce it and shall, on request by the inspector, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document or record in readable form. 2005, c. 11, s. 19 (9).

Return of removed things

(10) An inspector who removes any document, record or thing from a place under clause (5) (b) shall,

- (a) make it available to the person from whom it was removed, on request, at a time and place convenient for both the person and the inspector; and
- (b) return it to the person being inspected within a reasonable time. 2005, c. 11, s. 19 (10).

Admissibility of copies

(11) A copy of a document or record certified by an inspector to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2005, c. 11, s. 19 (11).

Search warrant

20. (1) Upon application made without notice by an inspector appointed under this Act, a justice of the peace may issue a warrant, if he or she is satisfied on information under oath or affirmation that there is reasonable ground for believing that,

- (a) a person has contravened or is contravening this Act or the regulations; and
- (b) there are in any building, dwelling, receptacle or place any documents, records or other things relating to a contravention of this Act or the regulations. 2005, c. 11, s. 20 (1).

Powers

(2) A warrant obtained under subsection (1) may authorize an inspector named in the warrant, upon producing his or her appointment,

- (a) to enter any place specified in the warrant, including a dwelling; and
- (b) to do any of the things specified in the warrant. 2005, c. 11, s. 20 (2).

Conditions on search warrant

(3) A warrant obtained under subsection (1) shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances. 2005, c. 11, s. 20 (3).

Expert help

(4) The warrant may authorize persons who have special, expert or professional knowledge to accompany and assist the inspector in respect of the execution of the warrant. 2005, c. 11, s. 20 (4).

Time of execution

(5) An entry under a warrant issued under this section shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise. 2005, c. 11, s. 20 (5).

Expiry of warrant

(6) A warrant issued under this section shall name a date of expiry, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 30 days, upon application without notice by the inspector named in the warrant. 2005, c. 11, s. 20 (6).

Use of force

(7) The inspector named in the warrant may call upon police officers for assistance in executing the warrant and the inspector may use whatever force is reasonably necessary to execute the warrant. 2005, c. 11, s. 20 (7).

Obstruction prohibited

(8) No person shall,

- (a) obstruct an inspector carrying out an inspection under a warrant issued under this section;
- (b) refuse to answer questions on matters relevant to the inspection;
- (c) provide the inspector with information on matters relevant to the inspection that the person knows to be false or misleading; or
- (d) withhold from the inspector any information that is relevant to the inspection. 2005, c. 11, s. 20 (8).

Application

(9) Subsections 19 (9), (10) and (11) apply with necessary modifications to an inspection carried out pursuant to a warrant issued under this section. 2005, c. 11, s. 20 (9).

PART V

DIRECTOR'S ORDERS AND ADMINISTRATIVE PENALTIES

Orders

Determination of applicable standard

21. (1) For the purposes of determining whether an accessibility standard applies to a person or organization, a director may order that,

- (a) the person or organization be treated as being part of a particular industry, sector of the economy or class of persons or organizations; and
- (b) two or more persons or organizations be treated as one person or organization. 2005, c. 11, s. 21 (1).

Same

(2) One of the circumstances in which a director may make an order under subsection (1) is where a person or organization has organized his, her or its businesses, activities or undertakings in a particular manner and the intent or effect of doing so is to permit the person or organization not to comply with a particular accessibility standard or to otherwise defeat the purposes of this Act. 2005, c. 11, s. 21 (2).

Compliance order, reporting requirements

(3) If a director concludes that a person or organization has contravened section 14 or 17, the director may, by order, require the person or organization to do any or all of the following:

1. File an accessibility report that complies with the requirements under this Act within the time specified in the order.
2. Provide the director with such reports or information as may be required under section 17 within the time specified in the order.
3. Subject to subsection (6), pay an administrative penalty in accordance with the regulations. 2005, c. 11, s. 21 (3).

Same, standards and regulations

(4) If a director concludes that a person or organization has contravened a provision of an accessibility standard or of any other regulation, the director may, by order, require the person or organization to do either or both of the following:

1. Comply with the accessibility standard or other regulation within the time specified in the order.
2. Subject to subsection (6), pay an administrative penalty in accordance with the regulations. 2005, c. 11, s. 21 (4).

Failure to comply with previous order

(5) If a person or organization fails to comply with an order made under subsection (3) or (4) within the time specified in the order and no appeal of the order is made within the time specified in subsection 27 (1), a director may, subject to subsection (6), make an order requiring the person or organization to pay an administrative penalty in accordance with the regulations. 2005, c. 11, s. 21 (5).

Administrative penalties

(6) An administrative penalty may be ordered under this section for one or more of the following purposes:

1. To encourage compliance with this Act or with an order made under this Act.
2. To prevent a person or organization from deriving, directly or indirectly, any economic benefit as a result of a contravention of this Act or the regulations.
3. To recover the costs of enforcing this Act and the regulations against the person or organization that is required to pay the administrative penalty. 2005, c. 11, s. 21 (6).

Content of order

(7) An order under this section shall,

- (a) in the case of an order under subsection (1), inform the person or organization of the nature of the order and of the reasons for the order;
- (b) in the case of an order under subsections (3), (4) and (5),

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- (i) contain a description of the contravention to which the order relates and, in the case of an order under subsection (5), identify the previous order to which that order relates,
 - (ii) inform the person or organization of what must be done in order to comply with the order, and
 - (iii) specify the time within which the person or organization must comply with the order; and
- (c) inform the person or organization of the right to appeal the order to the Tribunal under section 27 within 15 days after the day the order is made. 2005, c. 11, s. 21 (7).

Notice of order

22. (1) A director shall not make an order under section 21 unless, before doing so, he or she gives notice of the order to the person or organization that is the subject of the proposed order and gives the person or organization an opportunity to make submissions with respect to the proposed order in accordance with this section. 2005, c. 11, s. 22 (1).

Content of notice

- (2) The notice shall inform the person or organization,
- (a) of the nature of the order that the director proposes to make;
 - (b) of the steps that the person or organization must take in order to comply with the order;
 - (c) of the right of the person or organization to make written submissions to the director explaining the alleged failure to comply; and
 - (d) of the time within which the submissions must be made. 2005, c. 11, s. 22 (2).

Written submissions

(3) The person or organization that receives notice under this section may make written submissions to the director to explain any alleged contravention of section 14 or 17, of an accessibility standard or of any other regulation within 30 days of the day notice is received or within such further time as may be specified in the notice. 2005, c. 11, s. 22 (3).

Enforcement of administrative penalties

23. (1) If a person or organization fails to comply with an order to pay an administrative penalty within the time specified in the order and no appeal of the order is made within the time specified in subsection 27 (1), the order may be filed with a local registrar of the Superior Court of Justice and may be enforced as if it were an order of the court. 2005, c. 11, s. 23 (1).

Same

(2) Section 129 of the *Courts of Justice Act* applies in respect of an order filed with the Superior Court of Justice under subsection (1) and, for the purpose, the date on which the order is filed shall be deemed to be the date of the order. 2005, c. 11, s. 23 (2).

Failure to pay after appeal

(3) Subsections (1) and (2) apply with necessary modifications to an order of the Tribunal requiring a person or organization to pay an administrative penalty. 2005, c. 11, s. 23 (3).

Stay where appeal

(4) If a person or organization gives notice of appeal of an order to pay an administrative penalty within the time specified in subsection 27 (1), the requirement to pay is stayed until the disposition of the appeal. 2005, c. 11, s. 23 (4).

No hearing required prior to order

24. A director is not required to hold a hearing or to afford a person or organization an opportunity for a hearing before making an order under section 21. 2005, c. 11, s. 24.

Order reviewed, etc.

25. Within a reasonable time after making an order under section 21, a director may review the order and vary or rescind it. 2005, c. 11, s. 25.

PART VI**APPEALS TO TRIBUNAL****Designation of tribunals**

26. (1) The Lieutenant Governor in Council shall, by regulation, designate one or more tribunals for the purposes of this Act and of the regulations within a reasonable time after the first accessibility standard is established under section 6. 2005, c. 11, s. 26 (1).

Responsibility of tribunals

(2) Each tribunal designated under subsection (1) shall be responsible for hearing such matters arising under this Act as are specified in the designation. 2005, c. 11, s. 26 (2).

Powers and duties

(3) A tribunal designated under subsection (1) may exercise such powers and shall perform such duties as are conferred or imposed upon it by or under this Act. 2005, c. 11, s. 26 (3).

Appeals to Tribunal

27. (1) A person or organization that is the subject of an order made by a director under section 21, 25 or subsection 33 (8) may appeal the order by filing a notice of appeal with the Tribunal within 15 days after the day the order is made. 2005, c. 11, s. 27 (1).

Notice of appeal

(2) A notice of appeal shall be in a form approved by the Tribunal and shall contain the information required by the Tribunal. 2005, c. 11, s. 27 (2).

Filing fee

(3) A person or organization that appeals an order to the Tribunal shall pay the prescribed filing fee. 2005, c. 11, s. 27 (3).

Hearing

(4) The Tribunal shall hold a written hearing with respect to an appeal under subsection (1) unless a party satisfies the Tribunal that there is good reason to hear oral submissions. 2005, c. 11, s. 27 (4).

Panels

(5) Despite the requirement of any other Act, the chair of the Tribunal may appoint a panel of one or more persons to hold hearings under this Act in the place of the full Tribunal and the panel has all the powers and duties of the Tribunal under this Act. 2005, c. 11, s. 27 (5).

Parties to appeal

(6) The parties to an appeal to the Tribunal are,

(a) the person or organization that made the appeal to the Tribunal;

(b) the director who made the order; and

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- (c) any other person or organization that the Tribunal considers necessary for the proper conduct of the hearing. 2005, c. 11, s. 27 (6).

Order of Tribunal

(7) After holding a hearing into the matter, the Tribunal may confirm, vary or rescind an order of the director. 2005, c. 11, s. 27 (7).

Mediation

28. The Tribunal may attempt to effect a settlement of all or part of the matters that are the subject of an appeal by mediation if,

- (a) the parties consent to the mediation; and
- (b) the Tribunal considers that it is in the public interest to do so. 2005, c. 11, s. 28.

PART VII

MUNICIPAL ACCESSIBILITY ADVISORY COMMITTEES

Accessibility advisory committees

29. (1) The council of every municipality having a population of not less than 10,000 shall establish an accessibility advisory committee or continue any such committee that was established before the day this section comes into force. 2005, c. 11, s. 29 (1).

Small municipalities

(2) The council of every municipality having a population of less than 10,000 may establish an accessibility advisory committee or continue any such committee that was established before the day this section comes into force. 2005, c. 11, s. 29 (2).

Members

(3) A majority of the members of the committee shall be persons with disabilities. 2005, c. 11, s. 29 (3).

Duties of committee

- (4) The committee shall,
- (a) advise the council about the requirements and implementation of accessibility standards and the preparation of accessibility reports and such other matters for which the council may seek its advice under subsection (5);
 - (b) review in a timely manner the site plans and drawings described in section 41 of the *Planning Act* that the committee selects; and
 - (c) perform all other functions that are specified in the regulations. 2005, c. 11, s. 29 (4).

Duty of council

(5) The council shall seek advice from the committee on the accessibility for persons with disabilities to a building, structure or premises, or part of a building, structure or premises,

- (a) that the council purchases, constructs or significantly renovates;
- (b) for which the council enters into a new lease; or
- (c) that a person provides as municipal capital facilities under an agreement entered into with the council in accordance with section 110 of the *Municipal Act, 2001* or section 252 of the *City of Toronto Act, 2006*. 2005, c. 11, s. 29 (5); 2006, c. 32, Sched. C, s. 1.

Supplying site plans

(6) When the committee selects site plans and drawings described in section 41 of the *Planning Act* to review, the council shall supply them to the committee in a timely manner for the purpose of the review. 2005, c. 11, s. 29 (6).

Joint committees

(7) Two or more municipalities may, instead of each establishing their own accessibility advisory committee, establish a joint accessibility advisory committee. 2005, c. 11, s. 29 (7).

Application

(8) Subsections (3) to (6) apply with necessary modifications to a joint accessibility advisory committee. 2005, c. 11, s. 29 (8).

PART VIII ADMINISTRATION

Directors

30. (1) The Deputy Minister shall appoint one or more directors for the purposes of this Act and the regulations. 2005, c. 11, s. 30 (1).

Responsibility

(2) A director is responsible for the application of all or any part of this Act and of the regulations with respect to any class of persons or organizations specified in the director's appointment. 2005, c. 11, s. 30 (2).

Powers and duties

(3) A director shall perform such duties and exercise such powers as may be specified in this Act or the regulations, subject to such conditions and restrictions as may be set out in the appointment. 2005, c. 11, s. 30 (3).

Delegation

(4) A director may, in writing, authorize any person to exercise any power or perform any duty of the director, subject to such conditions and restrictions as may be set out in the authorization. 2005, c. 11, s. 30 (4).

Same

(5) An authorization under subsection (4) may authorize an inspector appointed under this Act and named in the authorization to make orders under subsections 21 (3), (4) and (5). 2005, c. 11, s. 30 (5).

No liability

(6) No action or other proceeding for damages shall be instituted against a director or a person authorized to exercise a power of a director under subsection (4) for any act done in good faith in the execution or intended execution of the person's power or duty or for any alleged neglect or default in the execution in good faith of the person's power or duty. 2005, c. 11, s. 30 (6).

Accessibility Standards Advisory Council

31. (1) The Minister shall establish a council to be known in English as the Accessibility Standards Advisory Council and in French as Conseil consultatif des normes d'accessibilité. 2005, c. 11, s. 31 (1).

Members

(2) A majority of the members of the Council shall be persons with disabilities. 2005, c. 11, s. 31 (2).

Remuneration and expenses

(3) The Minister may pay the members of the Council the remuneration and the reimbursement for expenses that the Lieutenant Governor in Council determines. 2005, c. 11, s. 31 (3).

Duties

- (4) At the direction of the Minister, the Council shall advise the Minister on,
- (a) the process for the development of accessibility standards and the progress made by standards development committees in the development of proposed accessibility standards and in achieving the purposes of this Act;
 - (b) accessibility reports prepared under this Act;
 - (c) programs of public information related to this Act; and
 - (d) all other matters related to the subject-matter of this Act that the Minister directs. 2005, c. 11, s. 31 (4).

Public consultation

(5) At the direction of the Minister, the Council shall hold public consultations in relation to the matters referred to in subsection (4). 2005, c. 11, s. 31 (5).

Reports

(6) The Council shall give the Minister such reports as the Minister may request. 2005, c. 11, s. 31 (6).

Accessibility Directorate of Ontario

32. (1) The directorate known in English as the Accessibility Directorate of Ontario and in French as Direction générale de l'accessibilité pour l'Ontario is continued. 2005, c. 11, s. 32 (1).

Employees

(2) Such employees as are necessary for the proper conduct of the Directorate's work may be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2005, c. 11, s. 32 (2); 2006, c. 35, Sched. C, s. 2.

Functions of Directorate

- (3) At the direction of the Minister, the Directorate shall,
- (a) advise the Minister with respect to the establishment and composition of standards development committees and with respect to the standards development process established under section 9;
 - (b) prepare training material for members of the standards development committees and guidelines and other reference material that may be used in preparing proposed accessibility standards;
 - (c) advise the Minister as to the form and content of accessibility reports and as to the method of reviewing the reports and enforcing the accessibility standards;
 - (d) consult with persons and organizations required to prepare accessibility reports under this Act on the preparation of their reports;
 - (e) conduct research and develop and conduct programs of public education on the purpose and implementation of this Act;
 - (f) consult with organizations, including schools, school boards, colleges, universities, trade or occupational associations and self-governing professions, on the provision of information and training respecting accessibility within such organizations;

- (g) inform persons and organizations that may be subject to an accessibility standard at a future date of preliminary measures, policies or practices that they could implement before the accessibility standard comes into force in order to ensure that the goods, services, facilities, accommodation and employment they provide, and the buildings, structures and premises they own or occupy, are more accessible to persons with disabilities;
- (h) examine and review accessibility standards and advise the Minister with respect to their implementation and effectiveness;
- (i) support the Accessibility Standards Advisory Council and consult with it;
- (j) examine and review Acts and regulations and any programs or policies established by Acts or regulations and make recommendations to the Minister for amending them or adopting, making or establishing new Acts, regulations, programs or policies to improve opportunities for persons with disabilities; and
- (k) carry out all other duties related to the subject-matter of this Act that the Minister determines. 2005, c. 11, s. 32 (3).

PART IX INCENTIVE AGREEMENTS

Agreements

33. (1) If the Minister believes it is in the public interest to do so, the Minister may enter into agreements under this section with any person or organization required under this Act to comply with an accessibility standard, in order to encourage and provide incentives for such persons or organizations to exceed one or more of the requirements of the accessibility standards. 2005, c. 11, s. 33 (1).

Content of agreements

(2) A person or organization who enters into an agreement with the Minister under this section shall undertake to exceed one or more of the requirements of an accessibility standard applicable to that person or organization and to meet such additional requirements as may be specified in the agreement, within the time period specified in the agreement, in relation to accessibility with respect to,

- (a) goods, services and facilities provided by the person or organization;
- (b) accommodation provided by the person or organization;
- (c) employment provided by the person or organization; and
- (d) buildings, structures or premises owned or occupied by the person or organization. 2005, c. 11, s. 33 (2).

Exemptions and other benefits

(3) In consideration for the undertaking referred to in subsection (2), the Minister may, in an agreement under this section, grant such benefits as may be specified in the agreement to the person or organization who gave the undertaking and may exempt the person or organization from,

- (a) the requirement of filing an accessibility report under section 14 or such part of the report as may be specified in the agreement; and

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- (b) any obligation to file or submit information, documents or reports to a director or to the Minister that is required by regulation and referred to in the agreement. 2005, c. 11, s. 33 (3).

Same

(4) An exemption under subsection (3) may be granted for the period of time specified in the agreement. 2005, c. 11, s. 33 (4).

Other reporting requirements

(5) An agreement made under this section may specify such reporting requirements as may be agreed to by the parties instead of those required by this Act or the regulations. 2005, c. 11, s. 33 (5).

Enforcement of agreement

(6) The Minister may appoint an inspector for the purposes of determining whether the person or organization has failed to comply with the accessibility requirements of the agreement. 2005, c. 11, s. 33 (6).

Application

(7) Sections 18, 19 and 20 apply with necessary modifications to an inspection carried out for the purposes of determining whether a person or organization has failed to comply with the accessibility requirements of an agreement entered into under this section. 2005, c. 11, s. 33 (7).

Director's order

(8) A director who concludes that a person or organization has failed to comply with the accessibility requirements of an agreement entered into under this section may, by order, require a person or organization to do either or both of the following:

1. Comply with the requirements of the agreement within the time period specified in the order.
2. Pay an administrative penalty in accordance with the regulations. 2005, c. 11, s. 33 (8).

Application

(9) Subsections 21 (5), (6) and (7) and sections 22, 23, 24 and 25 apply with necessary modifications to an order made under subsection (8). 2005, c. 11, s. 33 (9).

Alternative remedy

(10) Nothing in this section affects any remedy available at law to the Minister for breach of the agreement. 2005, c. 11, s. 33 (10).

PART X GENERAL

Delegation of Minister's powers

34. The Minister may delegate any of his or her powers under this Act to a director, whether or not the director is an employee of the Ministry, or to such employees of the Ministry as may be named in the delegation. 2005, c. 11, s. 34.

Document formats

35. (1) Despite any requirement in this Act that a notice, order or other document given or made by the Minister, a director or the Tribunal be in writing, if a request is made by or on behalf of a person with disabilities that the notice, order or document be provided in a format

that is accessible to that person, the notice, order or document shall be provided in such a format. 2005, c. 11, s. 35 (1).

Same

(2) A notice, order or other document provided to a person with disabilities under subsection (1) shall be provided within a reasonable time after the request is made. 2005, c. 11, s. 35 (2).

Service

36. (1) Any notice given under section 22 or 33 and any order made under section 21, 25, 27 or 33 shall be given or served only,

- (a) by personal delivery;
- (b) by a method of delivery by mail that permits the delivery to be verified; or
- (c) by telephonic transmission of a facsimile of the document or by electronic mail if the person is equipped to receive such transmissions or mail. 2005, c. 11, s. 36 (1).

Personal delivery to various entities

(2) Service by personal delivery of a notice or order referred to in subsection (1) shall be delivered,

- (a) in the case of service on a municipal corporation, to the mayor, warden, reeve or other chief officer of the municipality or to the clerk of the municipality;
- (b) in the case of service on a corporation other than a municipal corporation, to a director or officer of the corporation or to a manager, secretary or other person apparently in charge of a branch office of the corporation;
- (c) in the case of service on a partnership, to a partner or person apparently in charge of an office of the partnership; and
- (d) in the case of service on any other organization, to a person apparently in charge of an office or of any place at which the organization carries on business. 2005, c. 11, s. 36 (2).

Deemed service

(3) If service is made by mail, the service shall be deemed to be made on the fifth day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice or order until a later date. 2005, c. 11, s. 36 (3).

Same

(4) A document that is served by a means described in clause (1) (c) on a Saturday, Sunday or a public holiday or on any other day after 5 p.m. shall be deemed to have been served on the next day that is not a Saturday, Sunday or public holiday. 2005, c. 11, s. 36 (4).

Exception

(5) Despite subsection (1), the Tribunal may order any other method of service it considers appropriate in the circumstances. 2005, c. 11, s. 36 (5).

Offences

37. (1) A person is guilty of an offence who,

- (a) furnishes false or misleading information in an accessibility report filed with a director under this Act or otherwise provides a director with false or misleading information;
- (b) fails to comply with any order made by a director or the Tribunal under this Act; or

(c) contravenes subsection 20 (8) or subsection (2). 2005, c. 11, s. 37 (1).

Same, intimidation

(2) No person shall intimidate, coerce, penalize or discriminate against another person because that person,

- (a) has sought or is seeking the enforcement of this Act or of a director's order made under this Act;
- (b) has co-operated or may co-operate with inspectors; or
- (c) has provided, or may provide, information in the course of an inspection or proceeding under this Act. 2005, c. 11, s. 37 (2).

Penalties

(3) Every person who is guilty of an offence under this Act is liable on conviction,

- (a) to a fine of not more than \$50,000 for each day or part of a day on which the offence occurs or continues to occur; or
- (b) if the person is a corporation, to a fine of not more than \$100,000 for each day or part of a day on which the offence occurs or continues to occur. 2005, c. 11, s. 37 (3).

Duty of director or officer

(4) Every director or officer of a corporation has a duty to take all reasonable care to prevent the corporation from committing an offence under this section. 2005, c. 11, s. 37 (4).

Offence

(5) Every director or officer of a corporation who has a duty under subsection (4) and who fails to carry out that duty is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for each day or part of a day on which the offence occurs or continues to occur. 2005, c. 11, s. 37 (5).

Conflict

38. If a provision of this Act, of an accessibility standard or of any other regulation conflicts with a provision of any other Act or regulation, the provision that provides the highest level of accessibility for persons with disabilities with respect to goods, services, facilities, employment, accommodation, buildings, structures or premises shall prevail. 2005, c. 11, s. 38.

Regulations

39. (1) The Lieutenant Governor in Council may make regulations,

- (a) governing the time-frames for the development of proposed accessibility standards by standards development committees established under section 8, for the implementation of accessibility standards and for the review of those standards and providing different time-frames for different accessibility standards relating to different industries, sectors of the economy or classes of persons or organizations;
- (b) governing reports or information to be provided to a director for the purposes of this Act and requiring persons or organizations to provide such information;
- (c) governing accessibility reports, including the preparation of such reports;
- (d) respecting the manner in which accessibility reports shall be made available to the public and requiring persons and organizations to make the reports available in a prescribed manner;

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- (e) prescribing the times at which accessibility reports shall be filed with a director, including prescribing different times for different classes of persons and organizations;
 - (f) prescribing the information to be included in accessibility reports, including prescribing different information to be included in reports prepared by different classes of persons and organizations;
 - (g) governing the appointment and qualifications of inspectors appointed under section 18;
 - (h) governing director's orders made under Part V of this Act;
 - (i) governing the administrative penalties that a director may require a person or organization to pay under this Act and all matters necessary and incidental to the administration of a system of administrative penalties under this Act;
 - (j) designating one or more tribunals for the purposes of this Act and respecting the matters that may be heard by each designated tribunal;
 - (k) prescribing the filing fee for filing an appeal to the Tribunal and respecting the payment of the fee including prescribing the person or entity to which the fee shall be paid;
 - (l) governing mediations conducted by the Tribunal under section 28 including prescribing any fees relating to the mediation process and requiring persons to pay the fees;
 - (m) specifying additional functions of municipal accessibility advisory committees for the purposes of clause 29 (4) (c);
 - (n) respecting what constitutes a significant renovation for the purposes of clause 29 (5) (a) and what constitutes a new lease for the purposes of clause 29 (5) (b);
 - (o) respecting the powers of a director;
 - (p) governing agreements made under section 33;
 - (q) defining the terms "accessibility", "accommodation" and "services" for the purposes of this Act and of the regulations;
 - (r) exempting any person or organization or class thereof or any building, structure or premises or class thereof from the application of any provision of this Act or the regulations;
 - (s) prescribing or respecting any matter that this Act refers to as a matter that the regulations may prescribe, specify, designate, set or otherwise deal with;
 - (t) respecting any transitional matters necessary for the effective implementation of this Act and the regulations;
 - (u) respecting any matter necessary to the enforcement and administration of this Act. 2005, c. 11, s. 39 (1).

Administrative penalties

- (2) A regulation under clause (1) (i) may,
 - (a) prescribe the amount of an administrative penalty or provide for the determination of the amount of the penalty by prescribing the method of calculating the amount and the criteria to be considered in determining the amount;

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- (b) provide for different amounts to be paid, or different calculations or criteria to be used, depending on the circumstances that gave rise to the administrative penalty or the time at which the penalty is paid;
 - (c) provide for the payment of lump sum amounts and of daily amounts, prescribe the circumstances in which either or both types of amounts may be required;
 - (d) prescribe the maximum amount that a person or organization may be required to pay, whether a lump-sum amount or a daily amount, and, in the case of a daily amount, prescribe the maximum number of days for which a daily amount may be payable;
 - (e) specify types of contraventions or circumstances in respect of which an administrative penalty may not be ordered;
 - (f) prescribe circumstances in which a person or organization is not required to pay an administrative penalty ordered under this Act;
 - (g) provide for the form and content of an order requiring payment of an administrative penalty and prescribe information to be included in the order;
 - (h) provide for the payment of administrative penalties, prescribe the person or entity to which the penalty is to be paid and provide for the investment of money received from administrative penalties, including the establishment of a special fund, and the use of such money and interest earned thereon;
 - (i) prescribe procedures relating to administrative penalties. 2005, c. 11, s. 39 (2).

Exemptions

(3) A regulation under clause (1) (r) shall state the reasons for exempting the persons, organizations, buildings, structures or premises or classes thereof, described in the regulation, from the application of the provisions specified in the regulation. 2005, c. 11, s. 39 (3).

Draft regulation made public

(4) The Lieutenant Governor in Council shall not make a regulation under subsection (1) unless a draft of the regulation is made available to the public for a period of at least 45 days by posting it on a government internet site and by such other means as the Minister considers advisable. 2005, c. 11, s. 39 (4).

Opportunity for comments

(5) Within 45 days after a draft regulation is made available to the public in accordance with subsection (1), any person may submit comments with respect to the draft regulation to the Minister. 2005, c. 11, s. 39 (5).

Changes to draft regulation

(6) After the time for comments under subsection (5) has expired, the Lieutenant Governor in Council may, without further notice, make the regulation with such changes as the Lieutenant Governor in Council considers advisable. 2005, c. 11, s. 39 (6).

Classes

(7) A regulation under this section may create different classes of persons or organizations or of buildings, structures or premises and, without limiting the generality of this power, may create classes with respect to any attribute, quality or characteristic or any combination of those items, including,

- (a) the number of persons employed by persons or organizations or their annual revenue;

(b) the type of industry in which persons or organizations are engaged or the sector of the economy of which persons or organizations are a part;

(c) the size of buildings, structures or premises. 2005, c. 11, s. 39 (7).

Same

(8) A regulation under this section may define a class to consist of one person or organization or to include or exclude a person or organization having the same or different attributes, qualities or characteristics. 2005, c. 11, s. 39 (8).

Same

(9) A regulation under this section may impose different requirements, conditions or restrictions on or in respect of any class. 2005, c. 11, s. 39 (9).

Scope

(10) A regulation under this section may be general or specific in its application and may be limited as to time and place. 2005, c. 11, s. 39 (10).

Annual report

40. (1) The Minister shall prepare an annual report on the implementation and effectiveness of this Act. 2005, c. 11, s. 40 (1).

Content of report

(2) The report shall include an analysis of how effective the standards development committees, the accessibility standards and the enforcement mechanisms provided for under this Act are in furthering the purpose of this Act. 2005, c. 11, s. 40 (2).

Tabling of report

(3) The Minister shall submit the report to the Lieutenant Governor in Council and shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session. 2005, c. 11, s. 40 (3).

Review of Act

41. (1) Within four years after this section comes into force, the Lieutenant Governor in Council shall, after consultation with the Minister, appoint a person who shall undertake a comprehensive review of the effectiveness of this Act and the regulations and report on his or her findings to the Minister. 2005, c. 11, s. 41 (1).

Consultation

(2) A person undertaking a review under this section shall consult with the public and, in particular, with persons with disabilities. 2005, c. 11, s. 41 (2).

Contents of report

(3) Without limiting the generality of subsection (1), a report may include recommendations for improving the effectiveness of this Act and the regulations. 2005, c. 11, s. 41 (3).

Tabling of report

(4) The Minister shall submit the report to the Lieutenant Governor in Council and shall cause the report to be laid before the Assembly if it is in session or, if not, at the next session. 2005, c. 11, s. 41 (4).

Further review

(5) Within three years after the laying of a report under subsection (4) and every three years thereafter, the Lieutenant Governor in Council shall, after consultation with the Minister, appoint a person who shall undertake a further comprehensive review of the effectiveness of this Act and the regulations. 2005, c. 11, s. 41 (5).

Same

(6) Subsections (2), (3) and (4) apply with necessary modifications to a review under subsection (5). 2005, c. 11, s. 41 (6).

42. Omitted (amends or repeals other Acts). 2005, c. 11, s. 42.

43. Omitted (provides for coming into force of provisions of this Act). 2005, c. 11, s. 43.

44. Omitted (enacts short title of this Act). 2005, c. 11, s. 44.

Appendix B: Built Environment Standards Development Committee Terms of Reference

The Accessibility for Ontarians with Disabilities Act, 2005 ("the Act") received Royal Assent and became law on June 13, 2005. The purpose of the Act is to:

- Develop, implement and enforce accessibility standards with the goal of achieving accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises by January 1, 2025; and
- Provide 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 accessibility standards.

The Minister of Community and Social Services ("the Minister") is responsible for establishing and overseeing a process to develop and implement all accessibility standards under the Act, necessary to achieving the purposes of the Act. Accessibility standards are established by regulation made by the Lieutenant Governor in Council.

As part of the standards development process under the Act, the Minister is required to establish standards development committees that will develop proposed accessibility standards to be considered for adoption by regulation.

Committee members include:

1. Persons with disabilities or their representatives;
2. Representatives of industries, sectors of the economy or classes of persons to which an accessibility standard applies;
3. Representatives of Ontario government ministries; and
4. Other persons or organizations the Minister considers advisable.

Individuals may be appointed to serve on the Committee as advisory members. Advisory members may bring to the Committee additional perspectives, advice, technical expertise and other input. Advisory members will be comprised of balanced representation from Ontario government ministries and persons with disabilities or their representatives.

Committee membership is structured so that overall 50 per cent of voting and advisory members are comprised of persons with disabilities or their representatives.

Standards development committees under the Act are not agencies of the Government of Ontario, and therefore their non-government members will not be considered government appointees, nor will they be in an employment relationship with the government.

The Minister is required to fix Terms of Reference for each committee and make those Terms of Reference public. If there should be a conflict between the Act and the Terms of Reference, the Act shall take precedence.

1. Common Accessibility Standards

The Minister has established standards development committees to develop proposed common standards that may address barriers that are common to all sectors, and may apply broadly to all persons and organizations in Ontario.

The Customer Service Standards Development Committee established in February 2006 fulfilled its mandate. A customer service standard has been adopted by regulation and is in force as of January 1, 2008.

The intention is to develop additional common standards in the following areas. A Standards Development Committee has been established for each area:

- Built environment - Refers to access to, from and within buildings, and outdoor street spaces such as pedestrian access routes and signal systems.
- Employment - Refers to hiring and retaining paid employees/workers.
- Information and Communications - refers to, but is not limited to, information and communication provided to the consumer or end-user through print, telephone, electronically and in person.

Proposed common accessibility standards, once adopted in regulation, may apply across all industries and sectors of the economy.

2. Sector-Specific Accessibility Standards

In February 2006, the Minister also established a standards development committee to develop a proposed sector-specific accessibility standard in the area of transportation. Transportation, in this context, refers to modes of passenger transportation within provincial and municipal jurisdiction (such as municipal transit). The committee's initial proposed standard was posted for public review in summer 2007.

If required, additional standards development committees may be established to develop other proposed accessibility standards that are specific to a particular sector.

Proposed sector-specific accessibility standards, once adopted in regulation, may apply to persons and organizations in that sector only, and may address barriers that are unique to the sector, not addressed by the common standards.

3. Purpose

A standards development committee was established under the Accessibility for Ontarians with Disabilities Act, 2005, to be known as the Built Environment Accessibility Standards Development Committee ("the committee"). The Minister has fixed and made public the Terms of Reference in April 2007 for the committee and has authority over them.

Since the posting of the 2007 Terms of Reference, adjustments have been made to the standards development committees to ensure 50 per cent membership from the disability community. Ministries will no longer participate in voting but they will continue to bring their valuable expertise to the table.

Because of such adjustments, 2008 Revised Terms of Reference have been developed and made public.

The purpose of these revised Terms of Reference is to direct and guide the committee in carrying out its roles and responsibilities. Additional direction on the scope and application of the proposed standard may be provided by the Accessibility Directorate of Ontario ("the Directorate") from time to time and will form part of these revised Terms of Reference.

4. Mandate

The Built Environment Accessibility Standard Development Committee will develop and give to the Minister, a proposed Built Environment Accessibility Standard as required by the Act and these revised Terms of Reference.

In developing the proposed accessibility standard, the committee will:

- identify and consider the nature of the barriers experienced by people with a range of disabilities in the area of the built environment in Ontario;
- develop accessibility requirements - the committee is not charged with determining the need for creating or adjusting government policies or programs or the means of regulating the proposed standard;
- consider the work and recommendations of other standards development committees established under the Act, including proposed accessibility standards and regulations developed under the Act, pertinent to the development of the proposed Built Environment Accessibility Standard;
- work with costing consultants, technical consultants and other individuals engaged to support the committee's work in considering both current, emerging and future technical, economic and other relevant factors;
- for members who are endorsed by one or more organizations, regularly seek input from the organization(s) and provide input on behalf of the organization(s), to the committee in support of the standards development process.

5. Scope of the proposed Built Environment Accessibility Standard

For the purpose of discussion and development of a proposed Built Environment Accessibility Standard, the focus is to be on built public open spaces and streetscape elements as well as building elements in a range of occupancies. Occupancies may include, but are not limited to, business and industrial occupancies, multi-residential occupancies, hotels, motels, assembly occupancies such as theatres, recreational facilities, interior and exterior transportation infrastructure (boarding platforms, facilities, bus stops, etc.).

In accordance with these revised Terms of Reference and the Act, the proposed accessibility standard will set out the policies, practices or other requirements for the identification and removal of barriers with respect to the built environment for persons with a range of disabilities.

6. Guiding Principles for Developing a Proposed Built Environment Accessibility Standard

The proposed accessibility standard should:

- In line with the principles, purpose and requirements of the Accessibility of Ontarians with Disabilities Act, develop standards to achieve accessibility for Ontarians with disabilities on or before January 1, 2025, taking into account:
 - the range of disabilities that the measures, policies, practices and requirements are intended to address;
 - the nature of the barriers that the measures, policies, practices and requirements are intended to identify, remove and prevent;
 - any technical and economic considerations that may be associated with their implementation
- focus on first 5 year efforts on preventing barriers, on a go forward basis;
- build on existing Ontario legislative and regulatory frameworks, including the Building Code, wherever possible;
- promote the integration of needs of people with disabilities in the design of the built environment;
- address barriers to people with disabilities in using, accessing and/or circulating through buildings and built spaces;
- be sufficiently flexible to allow for innovation and best practices, but provide sufficient guidance so that obligated organizations may know when regulations have been met;
- recognize that while the built environment in Ontario should be accessible to people with as wide a range of disabilities and abilities as possible, there will continue to be a need for individual accommodation for persons with disabilities;
- where appropriate, reflect existing international standards, legislation, regulation, codes, and best practices in Ontario, other Canadian provinces, and internationally, in the area of built environment accessibility

7. Committee Roles and Responsibilities

The committee will:

- Make achieving the purpose of the Accessibility for Ontarians with Disabilities Act, 2005, the primary consideration in all of the committee's work including its deliberations, activities and deliverables.
- Fulfil its responsibilities under the Act and these revised Terms of Reference through a consensus-based decision-making process; consensus means substantial agreement of members through a process taking into account the views of all members in the resolution of disputes; unanimous decisions are not necessarily required to achieve consensus.
- Appreciate and advance, in a balanced and fair way, the views and interests of persons with disabilities and the public and private sectors of the Ontario economy affected by a proposed Built Environment Accessibility Standard.
- Carry out committee work in a manner that preserves and enhances public trust in the integrity and skill of the committee to carry out its duties under the Act in the public interest and in a fair, effective and timely manner.
- To the extent possible, provide that all materials produced by the committee, whether written or otherwise, that are to be shared with the public, are clear and in plain language, concise, logical and unambiguous. Such materials include committee meeting minutes, progress reports and the proposed Built Environment Accessibility Standard.
- Accommodate persons with disabilities on the committee throughout the committee process.

- Abide by these revised Terms of Reference, the revised Committee Rules and Procedures as provided to the committee, any direction the Minister may issue, and the Act as it relates to the committee's roles and responsibilities.
- Review and consider all information, material and guidance provided by committee members, the Minister and the Accessibility Directorate of Ontario ("The Directorate") and any consultants or subject matter experts to assist the committee in its work.
- As required by the Act, determine long-term accessibility objectives for Ontario industries, sectors of the economy or classes or persons or organizations impacted by a proposed Built Environment Accessibility Standard.
- The SDC, from time to time, may receive and consider, advice and information from the Accessibility Standards Advisory Council, (ASAC), and through the SDC Chair, provide information about the SDC's progress to the Council.
- Identify the persons or organizations that must implement the proposed Built Environment Accessibility Standard and, specify the dates by which requirements should be implemented, in increments of five years or less.
- Submit the initial proposed Built Environment Accessibility Standard to the Minister.

Following the public review of the initial proposed standard, finalize the proposed standard by:

- Considering the comments received during the public review;
- Making any changes the committee considers advisable;
- Submitting the final proposed standard to the Minister; and
- Approving committee meeting minutes and providing them to the Minister to be made public.
- Responding in a timely fashion to requests for information and reports as may be required from time to time by the Minister.

8. Key Deliverables and Timelines

The committee will complete the following key deliverables within the specified timelines:

- **Mandatory Orientation and Training** - New members of the committee must undergo orientation and training conducted by the Directorate.
- **Committee Work Plan:** Once the committee re-convenes in spring 2008, it will prepare and give to the Minister a work plan no later than the second meeting of the newly constituted committee. The work plan will outline key milestones, activities, and timelines to achieve deadlines established in these revised Terms of Reference. Thereafter, the committee will update the work plan as necessary and submit a copy to the Minister.
- **Long-term accessibility objectives report:** The committee will identify the long term objectives for accessibility respecting the built environment in Ontario, by identifying the measures, policies, practices and requirements that it believes should be implemented on or before January 1, 2025.

9. Proposed Built Environment Accessibility Standard

No later than 10 months after re-convening in spring 2008, the committee will deliver to the Minister the initial proposed Built Environment Accessibility Standard intended for public review. The proposed standard will specify the following:

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- The requirements for the identification, removal and prevention of barriers with respect to the built environment.
 - The persons or organizations required to implement the requirements.
 - Dates by which requirements should be implemented, in increments of five years or less.

10. Finalizing the Proposed Accessibility Standard

A report on comments received during the public review will be prepared by the Directorate and the comments will be given to the committee for its consideration. The committee will consider public comments, seek additional information if needed and may make changes to the initial proposed standard based on public comments, as the committee deems advisable. Following this review, the committee will submit the final proposed standard to the Minister along with a report on its consideration of public comments.

11. Meeting Minutes and Progress Reports

No later than the committee's next meeting, the committee will approve and provide the Minister its Meeting Minutes which are to include a progress report on the development of the proposed Built Environment Accessibility Standard. Note: minutes for committee meetings that occurred prior to January 2008 do not require the approval of new members.

12. Member Roles and Responsibilities

In addition to contributing to the fulfillment of the roles and responsibilities assigned to the committee as a whole, all committee members will:

- complete all mandatory training and orientation designed to assist the committee in carrying out its roles and responsibilities;
- actively participate in all scheduled committee meetings;
- during all committee meetings and activities, present their respective views and interests at the strategic level to the best of their abilities, and present the views and interests of those organizations, industries, sectors of the economy or other classes of individuals or organizations or communities of interest which have endorsed members for the purpose of representing or presenting such views or interests;
- review materials and background information prior to committee meetings and be prepared to discuss materials at committee meetings;
- review committee minutes for accuracy and check that interests are properly documented;
- carry out individual assignments within set timelines;
- participate effectively and in good faith in all committee activities;
- work collaboratively with other committee members to achieve consensus on all decisions;
- provide input into committee agenda items and priorities;
- participate in sub-committees, if required;
- work with individuals and organizations outside the committee if required to support the work of the committee;
- consider the advice and input of other parties including members of the public who are called to present to the committee or who otherwise assist the committee in its work;
- disclose to the Chair any conflict of interest, as is defined within these revised Terms of Reference; and

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- abide by confidentiality requirements, as are defined within these revised Terms of Reference.

13. Chair

The Minister will assign an independent and experienced individual to chair committee proceedings and an individual to perform this role in the absence of the Chair.

14. Chair Responsibilities

In carrying out his or her duties, the Chair will:

- act in an impartial manner and be non-partisan;
- assist in the preparation of meeting agendas;
- encourage the balanced and strategic analysis of all relevant issues and questions from a variety of perspectives;
- mediate disputes in accordance with the revised Committee Rules and Procedures as provided to the committee;
- determine when a consensus is reached;
- determine when an initial proposed standard and a final proposed standard, in whole or in part, are submitted to the Minister;
- record in writing any declared conflict of interest and provide to the Minister;
- verify that minutes of the meetings are accurately recorded;
- lead the development of a committee work plan;
- determine the need for sub-committees in consultation with the Facilitator and the Directorate;
- consider and authorize any nominated alternates/proxies on a meeting-by-meeting basis; and
- monitor the work of the committee, and sub-committees if any, against the requirements of the Act, these revised Terms of Reference and as outlined in the work plan, with a view to keeping it on track to meet timelines.

15. Facilitator

The Directorate may determine the need and provide for, the services of an independent facilitator to support the committee in its work.

16. Role of Facilitator

In carrying out his or her duties, the Facilitator may support the Chair in exercising his or her duties by:

- guiding discussions to assist the committee in meeting its deliverables;
- supporting the committee by facilitating discussion, openness and collaboration;
- providing for the effective, balanced, fair and equal participation all committee members during committee deliberations and discussions;
- supporting the Chair in dispute resolution; and
- in consultation with the Directorate, advising the Chair on the establishment of sub-committees and facilitating the work and discussions of sub-committees where established.

17. Term of Membership

Members shall participate on the committee until such time as the Minister writes to the Committee about whether he/she will recommend that the final proposed Built Environment Accessibility Standard be adopted in regulation, in whole, in part, or with modifications. It is anticipated that the committee will be in place for a period of no longer than 18 months from its spring 2008 meeting. The Minister may at his/her discretion vary the duration of individual membership, including termination of membership, and the duration of the committee as a whole.

Unless otherwise determined by the Minister, the committee ceases to exist once the Minister has informed the committee of his/her decision on whether or not to recommend to the Lieutenant Governor in Council that the proposed standard be adopted by regulation in whole or in part or with modifications. The Minister may terminate the committee's mandate at his/her discretion.

18. Accessibility Directorate of Ontario

The Directorate will support the Minister in carrying out his/her roles and responsibilities under the Act. The Directorate will assist the committee in carrying out its roles and responsibilities to provide for the efficient and effective operation of committee proceedings and activities in accordance with the Act, these revised Terms of Reference, and revised Committee Rules and Procedures to be provided to the committee.

The Directorate will receive reports and other materials produced by the committee intended for the Minister and provide meeting management support including:

Support all standards development committee meetings;

- assist the Chair in his/her responsibilities through the encouragement of a balanced and strategic analysis of all relevant issues and questions from a variety of perspectives;
- ensure the deliberations of the standards development committee are consistent with the intent, spirit, and the letter of the Act;
- drafting and distributing committee agendas, minutes, and other material for committee review on a timely basis;
- acting as the repository of all committee records and documentation;
- providing administrative support to the committee as required;
- administering all financial matters related to the committee's work;
- providing appropriate and timely accommodation for persons with disabilities with respect to all aspects of committee work, proceedings and activities; and
- consulting with and informing other ministries of any issues or concerns throughout the duration of the committee's mandate.

19. Conflict of Interest

A conflict of interest arises when a member's private or personal interests may take precedence over or compete with his or her responsibilities as a member of a standards development committee. A conflict of interest may be actual, perceived or potential and may occur before, during and after membership on a standards development committee.

Without limiting the generality of the foregoing, it shall be a conflict of interest for a member or a member's family to derive a personal gain or benefit arising from his or her membership on a standards development committee. It shall also be a conflict of interest for a member to use or disclose confidential information without prior written permission of the Minister or the Chair, as appropriate.

A member of the committee must, without delay, disclose to the Chair in writing any situation that may be reasonably interpreted as being an actual, perceived or potential conflict of interest.

The Chair must, without delay, disclose to the Minister in writing any situation that may be reasonably interpreted as being an actual, perceived or potential conflict of interest.

Non-compliance with the above may result in the Minister rescinding a member's or Chair's invitation to participate on the committee.

The Minister will determine if a situation constitutes a conflict of interest and will work with the Chair and/or members as appropriate to address the situation.

20. Transparency

In addition to what is prescribed by the Act or elsewhere in this revised Terms of Reference, any documents and materials developed by or for the Committee will be accessible to the public upon request. Committee documents and material are subject to the Freedom of Information and Protection of Privacy Act (FIPPA).

21. Confidentiality

In the course of carrying out their roles and responsibilities as members of the committee and if necessary, committee members may be given access to sensitive or confidential information by other committee members, the Directorate or others. All personal information provided to committee members and others engaged in committee activity should be treated with sensitivity/confidentiality. In addition, all personal information is subject to the privacy provisions of FIPPA.

Committee members may share information with non-committee members in the course of bringing informed views, interests and positions to the committee and advancing the capacity to achieve consensus. Please note, that although this is not considered breach of confidentiality, personal information should not be disclosed unless there is the legislative authority to do so, or the individual to whom the personal information relates has provided consent to release the information.

All committee documents, communications, work and activities is subject to the Freedom of Information and Protection of Privacy Act and any other applicable federal and provincial privacy legislation.

22. Expenses

There is opportunity for committee members to apply in writing for reimbursement of travel-related expenses through the Directorate, if required. Expenses may be reimbursed in

accordance with the government's Travel, Meal and Hospitality Expenses Directive, which will be provided to committee members.

Committee members who require additional assistance may direct their inquiries to the Directorate. Assistance may be provided as appropriate at the discretion of the Minister.

23. Accommodation Support for Members

Supports to accommodate people with disabilities will be provided as required. Such supports may include, but are not limited to, the provision of materials in preferred formats such as electronic, print, Braille or large print, the provision of interpreter services or personal attendants, and reimbursement of out-of-pocket accommodation-related expenses (such as travel expenses for personal attendants or caregivers in accordance with the government's Travel, Meal and Hospitality Expenses Directive).

Committee members are responsible for identifying their accommodation needs to the Directorate prior to the committee orientation and training, so that accommodations are provided in a timely manner.

24. Meetings and Time Commitment

The committee will normally meet in Toronto for one to two days, approximately every six to eight weeks. Additional time between meetings to review materials and carry out other tasks will likely be required, particularly by members of sub-committees.

25. Quorum

At least 50 per cent of the voting members plus 1 voting member will constitute a quorum. Meetings will not normally be held unless there is quorum and there is representation from voting members of each sector represented on the committee.

26. Alternates or Proxies

If necessary, committee members may nominate alternates or proxies in their place, provided that such alternates or proxies have similar expertise and experience as the original member.

Alternates or proxies must be endorsed by the organization they represent and must be able to act as agents on behalf of the committee member, with full voting authority.

If alternates or proxies are nominated for individuals (i.e. members not representing an organization), then the original member must demonstrate to the Chair that the alternate or proxy has full voting authority on behalf of the member.

The Chair will consider and authorize any nominated alternates or proxies on a meeting-by-meeting basis.

Appendix C: Accessibility Report for Ontario Customer Service Accessibility Standard

These are the questions for the accessibility report on the Accessibility Standards for Customer Service.

Each question includes a reference to the corresponding section of the standard.

1. a) Does your organization have policies, practices and procedures on providing goods or services to people with disabilities? [s. 3(1)]	Yes <input type="checkbox"/>	No <input type="checkbox"/>
1. b) Does your organization use reasonable efforts to ensure that these policies are consistent with the principles of independence, dignity, integration and equality of opportunity? [s.3(2)]	Yes <input type="checkbox"/>	No <input type="checkbox"/>
2. Do your organization's policies address the use of assistive devices by people with disabilities to access your organization's goods or services, or any available alternative measures that enable them to do so? [s. 3(3)]	Yes <input type="checkbox"/>	No <input type="checkbox"/>
3. Do your organization's policies, practices and procedures require your organization to take a person's disability into account when communicating with the person? [s. 3(4)]	Yes <input type="checkbox"/>	No <input type="checkbox"/>
4. Do members of the public or other third parties have access to premises that your organization owns or operates? [s. 4(1)] If no, then skip to question 7 below.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
5. a) Does your organization permit people with disabilities to keep their service animals with them on the parts of your premises that are open to the public or other third parties, except where the animal is excluded by law, and is this included in your policies, practices and procedures? [s. 4(2) & (7)]	Yes <input type="checkbox"/>	No <input type="checkbox"/>
5. b) If a service animal is excluded by law from your premises, does your organization ensure that alternate measures are available to enable the person to access your goods or services (s.4.(3)]	Yes <input type="checkbox"/>	No <input type="checkbox"/>
6. Does your organization permit people with disabilities to enter the parts of your premises that are open to the public or other third parties with their support person, and provide notice of any fee charged for the support person, and is this included in your policies, practices and procedures? [s. 4(4) (6) & (7)]	Yes <input type="checkbox"/>	No <input type="checkbox"/>
7. Does your organization post a notice at a conspicuous place on your premises, on your website, or by another reasonable method, of any temporary disruption in facilities or services that people with disabilities usually use to access your organization's goods or services, including the reason, duration and any alternatives available? [s. 5(1) (2) & (3)]	Yes <input type="checkbox"/>	No <input type="checkbox"/>
8. Has your organization established and documented a process to receive and respond to feedback on how its goods or services are	Yes <input type="checkbox"/>	No <input type="checkbox"/>

provided to people with disabilities, including actions that your organization will take when a complaint is received? [s. 7(1), (3) & (4)]		
9. Does your organization make information about its feedback process readily available to the public, including how feedback may be provided (e.g. in person, by telephone, in writing, by email, on diskette or otherwise)? [s. 7(1) & (2)]	Yes <input type="checkbox"/>	No <input type="checkbox"/>
10. Does your organization ensure that the following people receive training about providing your goods or services to people with disabilities: <ul style="list-style-type: none"> ▪ every person who deals with the public or other third parties on behalf of your organization, and ▪ every person who participates in developing your organization's policies, practices and procedures on providing goods or services? [s. 6(1)] 	Yes <input type="checkbox"/>	No <input type="checkbox"/>
11. Does this training include your organization's current policies, practices and procedures required under the Customer Service Standard and all the topics listed in section 6(2) of the standard? [s. 6(2) & (4)]	Yes <input type="checkbox"/>	No <input type="checkbox"/>
12. Does your organization have a written training policy that includes a summary of the contents of the training (per question 11 above) and details of when the training is to be provided, and does your organization keep records of the dates that training was provided and how many people were trained? [s. 6(5) & (6)]	Yes <input type="checkbox"/>	No <input type="checkbox"/>
13. Does your organization post a notice at a conspicuous place on your premises, on your website, or by another reasonable method, that the documents required by the Customer Service Standard are available upon request, and do you provide those documents in a format that takes a person's disability into account? [s. 8(1) & (2) & 9(1)]	Yes <input type="checkbox"/>	No <input type="checkbox"/>

