

Second Legislative Review of the  
Accessibility for Ontarians with Disabilities  
Act, 2005

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Reviewer

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## Reviewer's Introduction

I am very honoured to have been asked to undertake the Second Legislative Review of the Accessibility for Ontarians with Disabilities Act, 2005 (AODA). Section 41 of the AODA calls for a comprehensive review of the effectiveness of the Act and regulations after four years, and subsequent reviews every three years. The person undertaking the review is to consult with the public and, in particular, with persons with disabilities, and may make recommendations.

The terms of reference for the Second Legislative Review direct me to conduct a comprehensive review of all parts of the Act and its regulations, including effectiveness to date. I was asked specifically to evaluate the effectiveness of the compliance assurance framework and to advise on ways to encourage greater compliance, and also to consider the five accessibility standards now the law in Ontario. As well, recommendations resulting from the Review are to take into account the principles of Ontario's Open for Business initiative.

The AODA is no ordinary piece of legislation. Created against the backdrop of an increasingly rights-conscious society, the AODA is a novel and ambitious means to ensure the inclusion of persons with disabilities. The ultimate goal of the AODA is to create a society where it is possible for all persons to realize their full potential. It operates by creating standards that are designed to ensure accessibility in the key areas of everyday life. In the language of the Act itself, its purpose is to "benefit all Ontarians by 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". The importance of that goal to all Ontarians was expressed in the fact that in 2005 the AODA passed unanimously in the Legislative Assembly of Ontario.

In the First Legislative Review of the AODA, which took place in 2009-2010, Charles Beer commented that accessibility matters because full equality and participation are fundamental to our values as a society. Both in Canada and globally, we are increasingly conscious of the rights of all persons and the inherent injustice of discrimination. Accordingly, in Ontario now the rights of persons with disabilities are protected under the provincial Human Rights Code and the Canadian Charter of Rights and Freedoms as well as by the United Nations Convention on the Rights of Persons with Disabilities. However, the framers of the AODA and the people of Ontario also aimed at something beyond this – they understood that we needed proactive legislation to achieve this kind of large-scale change in our everyday lives. That was the impetus behind the AODA.

An inclusive society that ensures the full participation of all is important to both the quality of individual and the quality of collective lives. Creating a society where all can realize their potential and contribute is vital for both individual prosperity and for the social good as well. In addition to enabling all human beings to flourish, a society that

includes rather than marginalizes individuals is healthier along many dimensions. Just as each individual benefits from the opportunity to use his or her talents, so too does society benefit from the wider perspectives and wider participation of all – in education, in political and social institutions, and in the economy. This then was the cultural shift, the change in mindsets, that the AODA aimed to achieve in creating an accessible Ontario by 2025.

This Second Legislative Review of the AODA takes place at an important juncture. The AODA was passed nearly 10 years ago. Its stated goal is to achieve accessibility for Ontarians with disabilities along a number of crucial dimensions by 2025. Therefore, we are essentially half way through the implementation period of that ambitious goal. At this halfway point, it is the right time to ask how we are progressing towards our goal. Because the First Legislative Review took place before most of the standards – which are at the heart of the regime – were in place, there were many issues that it was not possible to address. At this midpoint, however, it is imperative to ask ourselves hard questions about our progress. If course adjustments are necessary, they must be undertaken quickly or we will fall short of our commitment to achieve accessibility by 2025.

The timing of this Review is also crucial because there is a new government which holds the promise of creating renewed momentum for accessibility in Ontario. In addition, with Ontario hosting the Pan Am/Parapan Am Games next year, we have a key opportunity to showcase an accessible Ontario and to build a strong and lasting legacy that advances our shared goals. The eyes of the world will be on Ontario and, as a province that has championed accessibility and implemented an innovative regime to achieve that goal, this is a rare chance for us to shine.

Economic and demographic trends also reinforce the urgency of this Review. To begin with, it has become increasingly apparent that in addition to being the just and right thing to do, accessibility and inclusion make good economic sense. As a study by the Martin Prosperity Institute<sup>1</sup> has found, just a 2 percentage point increase in the proportion of persons with disabilities who have jobs would generate more than \$500 million in economic benefits to the province in terms of higher employment income and reduced disability support payments. Moreover, increased access by people with disabilities to retail and tourism opportunities would accelerate growth in these sectors, while clusters of accessibility-focused businesses could open up new global markets for the province.

This Review also took place against the backdrop of an aging society. Baby boomers began to enter the 65 or older age group in 2011, with the number of Ontario seniors projected to more than double between 2009 and 2030, increasing from 1.8 million to 3.7 million. The prevalence of disability rises with age. In the Canadian Survey on Disability, conducted by Statistics Canada in fall 2012, 15.4 per cent of Ontarians aged

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<sup>1</sup> Martin Prosperity Institute. Releasing Constraints: Projecting the Economic Impacts of Increased Accessibility in Ontario. <[http://martinprosperity.org/media/ReleasingConstraints\\_14-05-01.pdf](http://martinprosperity.org/media/ReleasingConstraints_14-05-01.pdf)> retrieved on 2014-10-21 at pp. 1, 15.

15 and over reported having a disability. The level was 11.4 per cent among people aged 15 to 64, rising to 37.1 per cent among those 65 and over. These findings confirm the trend towards a steadily increasing population of people with disabilities in the coming years.

The heartening message that was expressed over and over again in the course of this Review is that the value of accessibility and inclusion is widely shared and supported. Much work remains to be done, however. I hope that this Report and its recommendations will assist in moving forward that very important project at this critical juncture.

## **Outline of Report**

This remainder of this Report is divided into three main sections.

Because of the complexity of the AODA regime and its evolution, I start with a section entitled **Background and Context**, which sets out the basic elements of the legal framework and then provides an overview of the AODA itself.

Next, I outline the nature of the consultations and what I heard during those consultations in a section entitled **What the Review Heard**. Because this was the first opportunity that many had to provide substantive input into the AODA regime, I have outlined the feedback in some detail in the hope that it may be helpful. The feedback is organized according to the dominant themes that emerged during the consultations.

Following this, I set out my findings and recommendations in a section entitled **Reviewer's Comments and Recommendations**.

# Background and Context

As noted above, the AODA emerged from a broader legal and social framework that is important to its understanding. Though I cannot outline all of the elements of that framework here, below I describe some of the most significant legal developments that provide the background and context for the AODA.

## Legal Framework for Disability Rights

An extensive and rather complex legal framework safeguards the rights of Ontarians with disabilities and encourages their full participation in society. Since the AODA exists within this wider framework, I will begin by setting out some of its key elements – one of the most important of which is the Canadian Charter of Rights and Freedoms.

### Charter of Rights and Freedoms

A critical cornerstone is found in the Charter – specifically, the equality guarantee, Section 15, which became effective in 1985. This provides that every individual has the right to the equal protection and equal benefit of the law without discrimination. It explicitly includes mental or physical disability among its prohibited grounds. Though s. 15 applies only to the federal and provincial governments, the interpretation of its provisions by the Supreme Court of Canada has had a strong impact on the thinking of other courts and human rights tribunals.

An example will capture the flavour of the Supreme Court's approach. In a British Columbia case<sup>1</sup>, the Court ruled that the failure of the medicare system to provide sign language interpreters where necessary for effective communication denied deaf persons the equal benefit of the law.

As the Court explained:

The principle that discrimination can accrue from a failure to take positive steps to ensure that disadvantaged groups benefit equally from services offered to the general public is widely accepted in the human rights field....

It is also a cornerstone of human rights jurisprudence...that the duty to take positive action to ensure that members of disadvantaged groups benefit equally from services offered to the general public is subject to the principle of reasonable accommodation....

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<sup>1</sup> Eldridge v. British Columbia (Attorney General), [1997] 3 SCR 624, 1997 CanLII 327 (SCC), <<http://canlii.ca/t/1fqx5>> retrieved on 2014-09-18 at para. 78-79, 94.

The evidence clearly demonstrates that, as a class, deaf persons receive medical services that are inferior to those received by the hearing population. Given the central place of good health in the quality of life of all persons in our society, the provision of substandard medical services to the deaf necessarily diminishes the overall quality of their lives. The government has simply not demonstrated that this unpropitious state of affairs must be tolerated in order to achieve the objective of limiting health care expenditures. Stated differently, the government has not made a “reasonable accommodation” of the appellants’ disability. In the language of this Courts’ human rights jurisprudence, it has not accommodated the appellants’ needs to the point of “undue hardship”.

At the outset, the Court had found that hospitals were delivering a government program and the Medical Services Commission, in deciding which services were insured benefits, was acting in a governmental capacity. Accordingly, both were subject to the Charter.

### **Human Rights Code**

Ontario’s Human Rights Code also prohibits discrimination on the basis of disability. This protection, using the language of “handicap”, was added to the Code in 1982 and the terminology was changed to “disability” in 2002. Under the Code, every person has a right to equal treatment with respect to services, goods, facilities, occupancy of accommodation, employment, and membership in trade unions, occupational associations or self-governing professions, without discrimination because of disability. The Code requires accommodation of the needs of persons with disabilities unless this would cause undue hardship, considering the cost, outside sources of funding, if any, and health and safety requirements.

As the Ontario Human Rights Commission has underlined, the duty to accommodate has two components:<sup>1</sup>

- Procedural – referring to the process (the considerations, assessments and steps taken) for responding to an accommodation need; and
- Substantive – referring to the appropriateness or reasonableness of the accommodation provided, or the reasons for not providing an accommodation.

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<sup>1</sup> See, for example, *Adga Group Consultants Inc. v. Lane*, 2008 CanLII 39605 (ON SCDC), <<http://canlii.ca/t/205dq>> retrieved on 2014-09-18, at para. 104; *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 SCR 3, 1999 CanLII 652 (SCC), <<http://canlii.ca/t/1fqk1>> retrieved on 2014-09-18 at para. 66.



Both components are equally important.<sup>1</sup> A case before the Human Rights Tribunal of Ontario illustrating this involved a municipal bus system, which improved service frequency from every 40 minutes to every 20 minutes but offered low-floor buses only on every other trip. As a result, a person who used a wheelchair did not benefit from the schedule change and filed a claim of discrimination. The Tribunal found that the municipality had met its duty to accommodate to the point of undue hardship. It was in the midst of a longstanding program that provided funding to replace high-floor buses with low-floor buses at the end of their useful life. The entire fleet was scheduled to consist of low-floor buses within about two years of the shift to more frequent service. It would be unreasonable to require a delay in improvements for the broader public to ensure that service levels were identical for those requiring low-floor buses.<sup>2</sup>

In another case, a person using a wheelchair filed an application with the Tribunal almost two years after requesting a convenience store to install a power door so he could enter without someone having to hold the door for him. The Tribunal agreed with the applicant that the operators had “brushed off” this request, and noted that they made no attempt to show that the expense involved would constitute undue hardship. Upon reviewing the substantive and procedural components of the duty, the Tribunal found that the operators had failed to accommodate the applicant’s needs arising from his disability.<sup>3</sup>

The Code stipulates that “no person” shall infringe a human right. Its provisions have primacy over all other Ontario legislation, including the AODA. The relationship between the Code and the AODA is an important one and will be discussed in further detail later in this Report.

## **International Convention**

In addition to these domestic legal obligations, it is also noteworthy that Canada has ratified the Convention on the Rights of Persons with Disabilities, adopted by the United Nations General Assembly in 2006. The Convention entered into force for Canada on April 12, 2010. The Convention aims to enable persons with disabilities to live independently and participate fully in all aspects of life. Among its other requirements, the Convention commits states to taking measures to ensure access to persons with disabilities, on an equal basis with others, to the physical environment, transportation, information and communications – including information and communications

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<sup>1</sup> Ontario Human Rights Commission. Policy on preventing discrimination because of gender identity and gender expression, April 14, 2014. <<http://www.ohrc.on.ca/sites/default/files/Policy%20on%20preventing%20discrimination%20because%20of%20gender%20identity%20and%20gender%20expression.pdf> > retrieved on 2014-09-19 at p. 24.

<sup>2</sup> *Wozenilek v. Guelph (City)*, 2010 HRT0 1652 (CanLII), <<http://canlii.ca/t/2c091>> retrieved on 2014-09-18

<sup>3</sup> *Wozenilek v. 7-Eleven Canada*, 2010 HRT0 407 (CanLII), <<http://canlii.ca/t/288m6>> retrieved on 2014-09-18

technologies and systems – and other facilities and services open or provided to the public. These measures are to include the identification and elimination of obstacles and barriers to accessibility. The Convention also requires the promotion of universal design, particularly in the development of standards and guidelines.

### **Limitations of Legal Framework**

Although this legal framework is crucial for persons with disabilities, it also has shortcomings. The international Convention, although powerful and capable of playing a valuable role in interpretation, imposes obligations only on states and is not directly enforceable by individuals. In contrast, the obligations under both the Charter and the Code do proceed on a case-by-case basis and, under both regimes, disability-related cases have been significant and frequent. For example, an ongoing research study is analyzing disability rights issues in 16 Charter challenges heard by the Supreme Court of Canada over a 28-year period.<sup>1</sup> And, at the provincial level, 54 per cent of the 3,242 applications received by the Human Rights Tribunal of Ontario in 2013-14 involved disability.<sup>2</sup>

However, such legal proceedings are typically very time-consuming, complex and costly. Moreover, achieving broader systemic change is not easily accomplished through case-by-case determinations. At least in part for this reason, those concerned with accessibility for persons with disabilities began to examine further means of reaching the goal of inclusion.

### **Ontarians with Disabilities Act, 2001**

One important milestone in these efforts was the passage of the Ontarians with Disabilities Act (ODA) in 2001. The ODA, which is the precursor to the AODA, covers the provincial government and the broader public sector. It requires provincial ministries, municipalities, public transportation organizations, hospitals, school boards, universities and colleges of applied arts and technology to prepare annual accessibility plans. The plans address the identification, removal and prevention of barriers to persons with disabilities in legislation or regulations or in by-laws, as well as in policies, programs, practices and services.

The ODA also imposes specific obligations on the Government concerning barrier-free design guidelines for new or renovated buildings, accessible formats for websites and publications, accommodation of employees' accessibility needs, accessibility in capital

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<sup>1</sup> Charter Challenges and Disability. Canadian Disability Policy Alliance. <[http://www.disabilitypolicyalliance.ca/federal\\_policy\\_team/federal\\_charterchallengesanddisability/charter-challenges-and-disability.html](http://www.disabilitypolicyalliance.ca/federal_policy_team/federal_charterchallengesanddisability/charter-challenges-and-disability.html)> retrieved on 2014-09-17

<sup>2</sup> <http://www.hrto.ca/hrto/index.php?q=en/node/234> retrieved on 2014-09-17

projects under government-funded programs, and accessibility as a consideration in the procurement of goods and services.

Under the ODA, municipalities with a population of 10,000 or more are obliged to establish an accessibility advisory committee with persons with disabilities comprising a majority of members. These committees advise on the annual accessibility plan and on the accessibility of buildings the municipality constructs, acquires or renovates. They also review site plans and drawings under the Planning Act. As well, municipalities must consider accessibility when procuring goods or services.

In addition to these elements, the ODA created the Accessibility Directorate of Ontario (ADO) with a mandate to develop and conduct public education programs, consult with obligated organizations on accessibility planning and recommend changes to laws, programs and policies to improve opportunities for people with disabilities.

### **Accessibility for Ontarians with Disabilities Act, 2005**

Although the ODA was a very positive step in moving towards a more inclusive society, its limited scope meant that there was an important opportunity to do more. That opportunity was taken up in 2005. The AODA was passed unanimously by the legislature in May 2005 and received Royal Assent and took effect on June 13, 2005. Its purpose, as expressed in section 1, 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.”

The AODA defines disability broadly, adopting the same definition as the Human Rights Code. The definition includes:

- any degree of physical disability, infirmity, malformation or disfigurement caused by bodily injury, birth defect or illness
- a condition of mental impairment or a developmental disability
- a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language
- a mental disorder or
- an injury or disability covered by the Workplace Safety and Insurance Act, 1997.

Unlike the ODA, which applies only to the provincial government and broader public sector, the AODA applies to “every person or organization in the public and private sectors of Ontario.” The AODA authorizes the Government to establish accessibility standards by regulation. Accessibility standards are a critical part of the AODA. The standards set out requirements for the identification, removal and prevention of barriers that keep persons with disabilities from participating fully in all aspects of society. The standards also contain time periods for implementing the required measures.

### *Standards Development Process*

The Minister assigned to administer the Act – now the Minister of Economic Development, Employment and Infrastructure – is responsible for the process of developing and implementing all accessibility standards necessary to achieve the purposes of the legislation. In order to accomplish this, the Minister establishes standards development committees (SDCs) to develop proposed standards for the Government to consider adopting by regulation. These committees include persons with disabilities or their representatives, representatives of the sectors to which the standard is to apply and representatives of ministries with responsibilities relating to those sectors.

Each SDC determines the long-term accessibility objectives for the affected sectors by identifying the requirements to be implemented by 2025, as well as the time frame for implementation in stages of five years or less. It then prepares an initial proposed standard, which is released for public comment. After considering the input, the committee makes any changes deemed advisable and submits the final proposed standard to the Minister. It is then up to the Minister to decide whether to recommend that the Government adopt the proposed standard by regulation in whole, in part or with modifications.

In addition, the AODA provides that an accessibility standard must be reviewed – and may be revised to create a new standard – at intervals of five years or less. The standards development process used to develop the initial standard also applies to each subsequent review.

While the AODA spells out the composition of SDCs in general terms, it does not specify either the proportion or the voting status of each category of member. In the original five committees, people with disabilities were in the minority and government representatives were entitled to vote. At the urging of disability stakeholders, the Government decided to modify this arrangement. Since the appointment and terms of reference of SDCs are entirely within the purview of the Minister, this was done without the need for legislative or regulatory amendments.

An extremely important change was found in the Government commitment that persons with disabilities or their representatives should make up 50 per cent of the membership of each SDC. At the same time, representatives of ministries ceased to be voting members of the committees, while still able to attend meetings. These changes affected the four committees still operating in early 2008, the first committee having completed its work.

### *Compliance and Enforcement*

The AODA requires organizations to file accessibility reports when directed to do so, confirming compliance with applicable standards. This self-reporting mechanism is fundamental, as the review of reports is the primary tool for monitoring compliance. Self-reporting represents the first stage in a progressive enforcement regime that also encompasses inspections, orders, administrative penalties, appeals, and ultimately prosecutions and fines.

The AODA provides for the appeal of orders (including penalties) to a tribunal to be designated by the Government. The Government has designated the Licence Appeal Tribunal (LAT) for this purpose. The LAT adjudicates appeals under more than 25 statutes, such as the Alcohol and Gaming Regulation and Public Protection Act, 1996, the Building Code Act, 1992, the Consumer Protection Act, 2002, the Gaming Control Act, 1992, the Highway Traffic Act, the Liquor Licence Act, the Private Career Colleges Act, 2005, the Real Estate and Business Brokers Act, 2002 and the Travel Industry Act, 2002. Proposed legislation to move authority for the automobile insurance dispute resolution system to the LAT is before the House.

### *Further Provisions*

As well, the AODA provides for creation of the Accessibility Standards Advisory Council (ASAC), with persons with disabilities making up a majority of members, to advise on the standards development process, accessibility reports, public information programs and other accessibility-related matters. And, in addition to the standards reviews, the AODA calls for periodic, comprehensive reviews of the effectiveness of the legislation and regulations. As noted at the beginning of the Report, this Review is the second comprehensive review of the AODA.

While introducing many new features, the AODA retains a number of features of the ODA. For example, it continues the requirement for municipal accessibility advisory committees (MAACs) and gives them the additional role of advising on the implementation of accessibility standards and the preparation of accessibility reports. The legislation also maintains the ADO and specifically its public education role while also assigning the ADO new functions such as advising on and supporting the standards development process.

Finally, the AODA calls for repeal of the ODA at a date to be proclaimed by the Government. The ODA currently remains in force as no repeal date has yet been proclaimed.

## **First Legislative Review of AODA – 2010**

The First Legislative Review of the AODA was conducted by Charles Beer. His report was tabled in May 2010. Key recommendations in the Beer Report may be summarized as follows:

- Harmonize the five accessibility standards.
- Renew government leadership by:
  - Designating a Minister Responsible for Accessibility
  - Elevating the assistant deputy minister for the ADO to the rank of deputy minister to lead a change management strategy within government
  - Develop and maintain a public awareness and education campaign
  - Develop a provincial policy framework for accessibility to clarify the vision for 2025 and set out principles to guide standards development and evaluation of the AODA.
- Develop, communicate and implement a compliance and enforcement framework.
- Support efforts by obligated organizations to meet the 2025 goal by:
  - Providing effective and timely compliance tools
  - Exploring incentives such as tax credits and other tax policies.
- Repeal the ODA once the five standards are in place, after determining which ODA obligations, if any, should be moved into the AODA.
- Develop timely regional forums for MAACs as well as mechanisms for sharing best practices, and encourage MAACs to bring together other advisory and informal organizations in their communities that are assisting obligated sectors to comply with the AODA.
- Replace the standards development committee process with an arm's length advisory body to develop and review standards.

The last recommendation was proposed to address significant challenges with the standards development process highlighted during Mr. Beer's consultations, including the technical complexity of the subject matter, the absence of central coordination, the inadequate evidentiary base, and procedural issues. In response to this recommendation, the Government in January 2013 announced that responsibility for standards development would be consolidated in ASAC. In effect, ASAC has added the standards development committee process to its previous roles. Like the earlier changes to the process, this was accomplished without legislative or regulatory amendments.

ASAC has now completed its five-year review of the first standard – for Customer Service. This work occurred at the same time as this comprehensive Second Legislative Review of the entire AODA regime.

Other steps taken by the Government in response to the Beer Report include harmonizing four standards – Employment, Information and Communications, Transportation, and Design of Public Spaces (Built Environment) – in the Integrated Accessibility Standards regulation (IASR) and hosting six MAAC regional forums in 2011 and again in 2013.

The implementation of the Beer Report was the subject of much comment during this review, as will be outlined below.

## **Standards Adopted as Regulations**

As of the date of this review, five standards have been established in regulation under the AODA.

The **Customer Service** standard became law on January 1, 2008. It is designed to ensure equal opportunity for people with disabilities to obtain, use and benefit from goods and services. The standard requires providers of goods or services to take steps that include the following: establish policies, practices and procedures for accessible customer service; train staff and volunteers; allow service animals and support persons in areas that are open to the public; and create a feedback process.

This was followed by the **IASR** on July 1, 2011, which initially included three standards:

- **Information and Communications.** This standard deals with the way organizations create and communicate information and outlines how they are to make information and communications accessible to people with disabilities. The standard requires the provision of accessible formats and communication supports on request and also covers such areas as emergency and public safety information; websites; feedback processes; educational, training and library materials and resources; and training of educators.

- **Employment.** This standard requires organizations to establish processes that provide for accessibility across the employment life cycle. It focuses on such areas as recruitment, job accommodation, return to work, performance management, career development, redeployment, and access to workplace and job-related information as well as customized emergency response information.
- **Transportation.** This standard contains a variety of technical, policy, and operational requirements to prevent and remove barriers in both conventional and specialized public transportation services. Among the numerous topics covered are the content of and process for developing accessibility plans; fare parity between conventional and specialized services; and technical requirements for new transit vehicles. Obligations are also imposed on municipalities that license taxicabs as well as on school boards and other public sector organizations that provide transportation services.

The **Design of Public Spaces (Built Environment)** standard was added to the IASR on January 1, 2013. Its goal is to prevent barriers for people with disabilities in newly constructed or redeveloped public-use areas. Public spaces and features affected include recreational trails and beach access routes, outdoor public eating areas, outdoor play spaces, exterior paths of travel (such as sidewalks), parking areas, service counters, queuing guides and waiting areas.

Apart from the specific standards, the IASR also enacts general requirements concerning, for example, accessibility policies, multi-year accessibility plans, accessibility in procurement, and training of staff and volunteers on the IASR standards and the Human Rights Code.

As well, enhanced accessibility standards for the **Built Environment** covering new construction or extensive renovation of buildings have been incorporated into the Building Code, effective January 1, 2015. These amendments update requirements for barrier-free path of travel throughout buildings; elevator access; visitable apartment suites; visual fire safety devices; public washrooms; access to public pools; accessible and adaptable seating in theatres and other public assembly buildings; and renovations. These standards were placed in the Building Code, which has included barrier-free design provisions since 1975, presumably because it makes obvious sense to consolidate all accessibility requirements for buildings in one place. However, this approach means that these standards are not a regulation under the AODA and therefore are not covered by the AODA's enforcement regime or standards review process. The Building Code does not require retrofitting of existing buildings to improve accessibility and most of the accessibility provisions do not apply to houses.



## **AODA Obligations Currently in Effect**

As the above paragraphs indicate, it has taken several years to develop the first five accessibility standards as steps towards realizing the vision in the legislation. Moreover, a major feature of the AODA regime that was built into the standards was the idea of phased or rolling implementation. The result is that, although there are five standards currently in effect, the obligations under those regulations are only partially applicable at this time since they are gradually being phased in – some not until 2021.

Compliance dates for requirements vary according to sector and size of organization. For each of the relevant obligations under the standards, the AODA model typically begins implementation with the Ontario Government, then extends it to the public sector and finally to the private sector, usually according to size. Thus, for example, the Ontario Government was obliged to establish accessible employee-recruitment practices by 2013, large public sector organizations were obliged to do so by 2014, small public sector organizations must comply by 2015, large private sector organizations by 2016 and small private sector organizations by 2017. (A large organization has 50 or more employees, while a small organization has at least one but fewer than 50 employees.) Because the implementation schedule that has resulted is very complex and cannot be easily summarized here, I have provided an overview in the form of a timeline chart, found in the Appendix.

As a snapshot, below I have listed some of the significant AODA requirements that were in place by 2013 and hence are the most relevant for this Review:

- All providers of goods and services were required to comply with all Customer Service standards.
- Compliance with most Transportation standards was required.
- All sectors were obliged to make public information on emergency procedures accessible on request, and to provide individualized workplace emergency response information to employees with disabilities, if necessary.
- The Government and large public sector organizations were required to establish accessibility policies, prepare multi-year accessibility plans, and incorporate accessibility features when procuring goods, services or facilities – including electronic kiosks.
- Employment standards covering such areas as recruitment and documented accommodation processes were obligatory for the Government – as were general requirements to train staff on the IASR and the Human Rights Code and make feedback processes accessible.
- Large educational or training institutions were required to provide accessible formats for learning resources, student records and information, if notified of need, as well as to train educators on accessible instruction.

- Public libraries were obliged to provide access to existing accessible materials.

The staged implementation schedule has significance for the scope of this Legislative Review because, although the AODA was enacted in 2005 and five standards are in place, many of the obligations under those standards have not yet come into effect even in the public sector. In the private sector, even fewer obligations were in force as this Review got under way in fall 2013. This reality poses a challenge when it comes to assessing the effectiveness of the AODA and its regulations.

# What the Review Heard

## Consultation Process

The core of the Review has been an extensive consultation process to gather input from as broad a cross-section of Ontario society as possible. The Review is extremely fortunate to have received thoughtful and detailed input from many individuals and groups including individuals with disabilities and representatives of sectors with obligations under the legislation. This input was vital to this Report.

I was pleased to personally host accessible, open public meetings in Toronto in March and April 2014 as well as in London and Thunder Bay, also in April. (A meeting scheduled for Ottawa did not proceed due to low registration.) As well, I held two online sessions in April where participants could log in and make comments verbally or by typing in text, or could call in by phone with comments transcribed into the online chat. In addition, I was invited to attend a number of large meetings, including one with public sector representatives and accessibility advisory committee members in Niagara Falls in March, as well as a session at the Inclusive Design Institute in Toronto in May. In addition to these public consultations, throughout the course of the Review I spoke with a wide array of individuals and groups who shared their views about the AODA.

The Review also established an independent website designed with accessibility in mind, using the WCAG 2.0 standards. Participants were invited to make written submissions through a comment form on the website or through a document upload function. Many individuals and groups connected electronically through the website or by email to give feedback about the AODA to the Review. A total of 77 written submissions were received.

In all, more than 200 individuals or organizations took part in the Review through the various channels provided.

*The Review benefited enormously from the openness and generosity of those who participated – people with disabilities, the obligated sectors and the public.*

May I say again, this Review is deeply indebted to all of those who participated so generously in it, often travelling significant distances to attend the public consultations or taking time out of busy lives to share their views. The AODA is no ordinary piece of legislation, as noted above, and the issues it addresses touch individual lives, organizations and society at large in the most profound ways possible. Sharing feedback in such a context can be challenging. I am very grateful to all of the individuals and groups who opened up and shared their personal stories. The Review benefited enormously from the openness and generosity of those who participated – people with disabilities, the obligated sectors and the public. I deeply appreciate the contribution of

all the participants who freely shared their expertise, ideas, suggestions and life experiences. The commentary in both the public and the private sessions was often very moving and though I am well aware that I cannot do full justice to that in this Report, I do want to acknowledge the very personal way that accessibility issues touch so many lives. Below, I attempt to distill the main themes that emerged from the consultations.

## Key Themes from Consultations

The input from the consultations can be grouped under several themes:

- Commitment to Accessibility
- Reflections on Concept of Accessibility
- Significance of Accessibility for Persons with Disabilities
- Progress towards 2025 Goal
- Implementation Challenges
- Accessibility within Government
- Suggestions for Improvement
- AODA's Relationship with Other Legislation
- Issues Beyond AODA's Scope

As might be expected with such extensive input, a variety of perspectives was offered on these topics. The following summary is an effort to capture the main points raised.

### COMMITMENT TO ACCESSIBILITY

It is important to begin by noting the overwhelming support that was expressed during the consultations for the vision of accessibility behind the AODA. Recognition of the importance of the value of inclusion at both an individual and a collective level was one of the dominant themes of the consultations. The full range of obligated organizations – from municipalities, hospitals, school boards, universities and colleges, to businesses large and small – voiced their commitment to an accessible Ontario and to steady improvements in accessibility.

*Overwhelming support was expressed during the consultations for the vision of accessibility behind the AODA.*

The Review heard that financial services providers, for example, want to attract and keep customers and employees with disabilities – and see accessibility as the key to doing this. Hospitals remarked that all their patients have temporary or long-term disabilities, so accessibility is crucial to their mission. Municipalities declared their support for increased accessibility in all aspects of community and civic life, and school

boards said they are working hard to incorporate the spirit of accessibility into classrooms and workplaces.

It was widely recognized that accessibility benefits everyone by removing barriers that exclude members of our community from fully participating in and contributing to all aspects of everyday life. Moreover, the barriers that affect people with disabilities often affect others as well, including those with young children. Many participants also pointed to current economic and social trends as another reason that accessibility makes sense. The economy will benefit from the growing consumer demand and rising employment that an accessible society generates. Moreover, as the demographic profile of our society changes – with the number of Ontario seniors projected to increase dramatically – accessibility becomes a more urgent priority.

## **REFLECTIONS ON CONCEPT OF ACCESSIBILITY**

The concept of accessibility under the AODA itself was a topic of much discussion. While the commitment to enabling people with disabilities to participate fully in society is strong, there are many different views of what accessibility is and how the AODA's goal should be conceptualized.

One Toronto presenter observed that the AODA has no measuring stick for gauging improved accessibility – the very thing it is intended to produce. Another participant called for clear targets and indicators of success to track the achievement of standards. A business stakeholder observed that compliance reports reflect no measurable objectives that would tell organizations where they are, what remains to be done or how they rate. On the other hand, some participants felt that, in adopting testable standards, the AODA may be trying to engineer social changes that are not engineerable. They suggested that it may be preferable to adopt a more flexible approach in which people with disabilities provide ongoing feedback on what does and does not work. Regulation that is more spirit- or values-based rather than testable could facilitate such an approach.

*The Review was reminded of the “curb-cut effects” that occur when accessibility improvements confer widespread advantages.*

The Review also heard some calls for a cultural shift towards more inclusive thinking based on removing and preventing barriers from the outset. Some participants suggested that accessibility should be reframed as a service co-created by persons with disabilities and obligated organizations to make Ontario more inclusive and provide advantages for everyone. They stressed that inclusion will enable society to see the world from the disability perspective, contributing to the diversity of ideas and approaches in spheres ranging from the workplace to the arts.

A forum between disability advocates and obligated organizations was suggested to seek common ground on what can reasonably be done. Along the same lines, the

Government was urged to accept the recommendation in the Beer Report to develop a provincial policy framework that would clarify the goals and expectations for an accessible Ontario.

The issue of retrofits to remove existing barriers was a particular subject of discussion during the consultations. Current accessibility requirements apply to new buildings and extensive renovations as well as to newly constructed or redeveloped public spaces. They do not call for the retrofitting of the built environment, but many in the disability community and in the business sector do not realize this. As a result, people with disabilities may feel betrayed when they encounter physical barriers, while some businesses are turned against accessibility by what they fear will be high retrofit costs.

The Review also heard from many in the disability community who feel that “full accessibility” is not a realistic goal without major retrofits. Some suggested that we should stop using the term “full accessibility” as it raises expectations that will never be met. In the obligated sectors, many believe it is simply not financially feasible to make everything accessible. They also point out that, since the definition of a barrier-free society is always evolving, it makes more sense to frame the goal as simply meeting legislated targets. On the other hand, others – mainly in the disability community – are not willing to settle for anything less than “full accessibility”, while still others believe it should remain the vision even if it is unattainable, to provide a focus for barrier removal efforts.

*Many people spoke of their hope for a life that did not revolve around their disability and their desire for access to the activities of a full life.*

As well, the Review was reminded of the “curb-cut effects” that occur when accessibility improvements confer widespread advantages – just as curb cuts for wheelchairs are useful for bicycles and any device with wheels. To generate these effects, many believe that the key is a participatory system in which people who experience barriers are engaged in identifying and resolving them and a dialogue develops between those responsible for implementing change and those who are expected to benefit. Open information about AODA implementation is essential to make this work, including contacts within organizations and the public release of compliance reports.

## **SIGNIFICANCE OF ACCESSIBILITY FOR PERSONS WITH DISABILITIES**

The Review heard a particularly powerful message about the importance of accessibility to persons with disabilities. The objective, many participants said, is to put them on an equal footing with other members of society. It is about dignity, independence, integration and equal opportunity. Many people spoke of their hope for a life that did not revolve around their disability and their desire for access to the activities of a full life. The basic problem, the Review was told, is that the people who built the world did not consider people with disabilities – while overlooking the fact that everyone may have a disability at some point.

Barriers to employment received considerable emphasis during the consultations. Individuals and organizations discussed the fundamental importance of a job to quality of life. Viewed in this context, the unemployment of people with disabilities is harmful, not only because it causes poverty, but also because it means decisions in government, education, health care, business and other fields are made without their input. “It is easy to ignore or forget about us,” as one presenter at a Toronto session said.

Many people with disabilities also underlined the importance of safe and reliable transportation. As one participant noted, if you can’t go out to events, your life is totally cut off. Indeed, the Review was told of the difficulty that people with disabilities had in arranging to attend some of the AODA public consultations because of transportation challenges. One participant told the Review that the provincial Aging at Home Strategy will mean just exchanging one form of institutionalization for another if accessible transportation is not part of the picture.

Just as transportation is essential to broader participation, so too is information technology in the digital age. The idea that information technology can be an enabler for people with disabilities if it is accessible and a barrier if it is not was frequently voiced throughout the consultations. We also live in the consumer age – and people with disabilities expect the same access to goods and services as everyone else. As well, the Review was often reminded that access to buildings – perhaps the first kind of accessibility that comes to mind – is a critical prerequisite for access to employment, goods and services and almost every other aspect of social life.

*“It is easy to ignore or forget about us.” – A presenter at a Toronto session*

Overall, the consultations confirmed the strong link between accessibility and Ontarians’ ideals of social inclusion. Many people believe that Ontario has a unique opportunity to be a leader in creating an accessible society, and that this would benefit us collectively as well as individually. Bolstering this sense is the view that the AODA and accessibility draw strength from and reinforce the vision of social inclusion that underlies Canada’s Charter of Rights and Freedoms. And from a global perspective, the AODA is viewed as a crucial part of the larger social project reflected in the United Nations Convention on the Rights of Persons with Disabilities. All stakeholders share the ultimate goal of an accessible Ontario – a goal endorsed by the people of Ontario through the legislature’s unanimous passage of the AODA in 2005.

## **PROGRESS TOWARDS 2025 GOAL**

One of the most discussed questions during the Review was whether we are on schedule with the goal of the AODA to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises by 2025. As one presenter from a municipal accessibility advisory committee put it, “You will get to your destination faster if you are honest about

where you actually are.” Put simply, how are we doing on dismantling barriers to accessibility and ensuring the inclusion of persons with disabilities?

The Review received a great deal of feedback on this issue. The AODA is a novel regime, a fact which inevitably entails certain challenges. At this half-way point to the 2025 date, it seems clear that much good work has been done and considerable learning has taken place. However, the novelty of the regime has also meant that the pace of change has been slower than many hoped. Although the AODA overall continues to be positively viewed – including by people with disabilities – the rate of progress is a widespread source of concern.

### **Lived Experience of Persons with Disabilities**

According to many people with disabilities, their day-to-day experience proves we are not on schedule. For example, a presenter in Toronto called the AODA the “Great Disappointment Act” while a speaker in London said we could be facing a lost generation because of the slow rate of change. One called 2025 “a joke” because of continued discrimination; another felt it was a pipe dream. Other participants said they felt frustrated, angry or let down. One asked, “How much longer do we have to wait?” – while another observed that “change is not trickling down – things have not changed for persons with disabilities.”

*“You will get to your destination faster if you are honest about where you actually are.” –  
A municipal accessibility advisory committee member*

Most of these concerns were not so much with the AODA itself, as with the very slow pace that has characterized its implementation. Some people with disabilities stressed that they were better off with the AODA than without it, and the efforts that have gone into implementation in the public sector were widely acknowledged. One disability group observed that specialized transit in general has become substantially more accessible in a number of municipalities. Despite the frustrations, the AODA is still regarded with pride and hope by most of the people with disabilities I met. The AODA was referred to as “a step in the right direction to improve lives”, “landmark legislation” or “good regulation in its infancy.” Clearly, the AODA continues to be seen as having transformational potential.

Nevertheless, during the Review a host of examples were cited of barriers facing people with disabilities nine years after the enactment of the AODA. Though I cannot capture all of it, a cross-section of this input follows.



## *Access to Goods and Services*

Many people with disabilities have confronted personal issues with access to goods and services, despite the Customer Service standards. For example, one person with a disability told of being talked down to in a threatening way by staff of a government program. A ServiceOntario office gave a customer with a white cane a piece of paper with a number on it and told him to watch the video screen. A shop in Windsor refused to admit two women in wheelchairs, and many businesses are still denying access to guide dogs. A store clerk refused to help a person with a disability fill out a form for a points card – an accommodation that would have cost nothing. All in all, businesses may be doing more paperwork and filing more forms under the Customer Service standard, said one participant, but little change is happening at the storefront level.

*Travellers have the strong impression that Ontario is far behind the United States as far as accessibility goes.*

Individuals with hearing loss often find they are expected to bring their own interpreter or facilitator, even when the service provider is responsible for two-way communication. People with speech and language disabilities not caused by hearing loss worry about the lack of awareness and availability of simple tools such as alphabet boards and communications assistants in hospitals. More generally, it is felt that police, health care professionals and social service workers, in their day-to-day interaction with the public, “don’t have a clue” about deafness and other disabilities and the impact on people’s lives.

Travellers have the strong impression that Ontario is far behind the United States as far as accessibility goes. One presenter, who is blind, explained that the biggest difference was in awareness – in the United States the welcome received when entering a business was always positive, as opposed to what was described as avoidance and marginalization found when using services in Ontario. Another speaker remarked that restaurant employees in the U.S. are used to reading menus to customers out loud instead of suggesting they order one of the specials. One participant said that if you try renting a cottage, bed and breakfast or room in Ontario’s main tourist areas with a service animal, you are probably out of luck.

The Review also heard that although the Customer Service standard requires organizations to make information about their customer service feedback process readily available, many are not doing so effectively. The result is that few people know that there is an avenue that could help to correct problems and organizations do not receive the feedback that could enable them to remedy problems and improve their customer experience. Moreover, some participants suggested that people may be reluctant to use feedback mechanisms for fear of being seen as troublemakers.

### *Access to Information*

Customer service is more and more closely linked to access to information. The Review heard that obtaining information in usable formats remains a major problem. This is particularly so for people who are blind or have low vision.

During the Review, many examples were given to make this point. Numerous participants indicated that private sector websites are largely inaccessible. The Presto smart card, being introduced for transit fares, shows the card balance on a screen but has no audio jack. Independent shopping in grocery stores is described as pretty much impossible because information is not accessible on products – expiry dates, ingredients and prices – or from in-store staff. One woman said things she used to do in person must now be done online and problems with screen-reading technology make this difficult. And perhaps most worrisome, the Review was told that all too often even the Ontario Government publishes documents only as inaccessible PDF files when it would be easy to also post them in accessible Word or HTML formats.

### *Accessible Transportation*

According to many people with disabilities who participated in the consultations, transportation barriers continue to restrict employment and participation in the life of the community. The Review was told that people with disabilities in Toronto are frustrated that many subway stations lack elevators and other accessibility features and that the TTC has declared it does not have the funding to make the final 17 stations accessible by 2025. Moreover there was concern that in at least some stations, the new subway cars have too wide a gap and too high a step for a wheelchair to get safely onto the platform.

*The overall impression from the consultations with persons with disabilities is one of continued support for the AODA, mingled with frustration that its slow implementation has resulted in rather modest change on the ground.*

Elsewhere in the province, the Review was told, some 200 standards violations were observed on a regional bus system over a period of six months – mainly a failure to call stops. Able-bodied passengers sometimes refuse to give up courtesy seats to people with disabilities, forcing them to get off and wait for the next bus. The malfunctioning of a wheelchair lift on an intercity bus, which trapped a woman with a disability, was cited as showing the inadequacy of staff training. The point was made that training should include not only how to operate equipment but what to do if it breaks down. Better training was also urged to show drivers how to tie down wheelchairs with straps and to sensitize them not to drive off before people in wheelchairs have backed into their spots safely.

### *Built Environment*

Perhaps the most overwhelming number of concerns with barriers were those raised about the built environment, specifically access to buildings and public spaces. Again, many examples were cited to the Review – including provincial government offices located in inaccessible premises, or even relocating to inaccessible buildings. Participants told of brand new private sector buildings with no power doors, a new city park that was inaccessible to people with mobility devices, and hospital renovations completed without way-finding for people who are blind. A new playground banned children in wheelchairs from using a splash pad because it was felt the wheels could damage the surface.

*Perhaps the most overwhelming number of concerns with barriers were raised about the built environment.*

Many people also reported that facilities that are marked accessible may not be in fact. A Thunder Bay woman who uses a wheelchair found that supposedly accessible washrooms in a recently renovated city hall and hospital could not accommodate her and she was told it would cost too much to fix them now. Restaurants that advertise as accessible often have stairs and don't have power doors and accessible washrooms. A small business owner reported that most business networking events are inaccessible – and invited anyone who wants to see how accessible Ontario is to borrow her wheelchair for a day.

### *Access to Employment*

The Review heard that the AODA has made little difference on the employment front. People with mental health issues still face stigma in the job market and in the workplace. Employees with episodic disabilities, such as HIV/AIDS or multiple sclerosis, may need flexible work schedules but often are not offered this accommodation. The Review was told that managers frequently overestimate how much accommodation will cost and conclude they can't afford to hire someone with a disability. Employers are sometimes unfair in interpreting medical certificates, leading to inadequate individual accommodation plans.

### *Small Communities*

The Review was also told of the special challenges facing small and rural communities – both the barriers facing people with disabilities and the difficulties local organizations have in removing them. In smaller towns, for example, taxis are often the only viable form of public transit, but more often than not are inaccessible or in short supply. As one speaker put it, "...those of us with disabilities living in rural communities have been left out of the AODA." Public sector representatives from small communities also discussed

the difficulty they had accessing the resources or expertise needed to meet AODA obligations.

Generally speaking, the overall impression from the consultations with persons with disabilities is one of continued support for the AODA, mingled with frustration that its slow implementation has resulted in rather modest change on the ground.

### **Awareness of AODA**

Awareness of the AODA is another important element that bears upon how well we are doing in achieving our accessibility goals. The issue of awareness of the AODA was a theme that was frequently commented upon by participants in the Review. In the context of the AODA, awareness has three dimensions. It refers to awareness among the general public of the AODA's existence and what it stands for; awareness among people with disabilities as to what the AODA does for them; and awareness of obligated organizations that the AODA requires them to do something (as opposed to details on exactly what, which must be conveyed through targeted communications initiatives). The strong message given by participants in the consultations was that efforts to raise awareness have fallen seriously short in all three areas. Participants see this education and promotion function as chiefly the Government's job, though organizations supporting people with disabilities or representing obligated organizations also have a role to play.

### *Upcoming Games*

Several participants pointed out that a unique opportunity to raise the public profile of the AODA is fast approaching – the Pan Am/Parapan Am Games to be held in Ontario in summer 2015, coinciding with the 10<sup>th</sup> anniversary of the enactment of the AODA. Many spoke of their hope that the Parapan Games would attract intense media coverage, as the London Paralympics did in 2012. The Review was told of how parathletes became celebrities in Britain and of how the increased visibility of people with disabilities reportedly led to more positive attitudes about their role in society.

*The Pan Am/Parapan Am Games in Summer 2015 will coincide with the 10<sup>th</sup> anniversary of the AODA, creating a unique public awareness opportunity.*

According to many of the participants in the consultations, the Ontario Games could set the stage for a marketing campaign encouraging businesses and other organizations to welcome visitors with disabilities and profiling accessible facilities and services, especially in the tourism sector. This could serve as a good opportunity, it was suggested, to bring along the private sector where, the perception is, awareness and compliance are both low.

### *Long-Term Campaign*

In the longer term, participants stressed the need for sustained, ongoing multi-media initiatives to promote accessibility. The campaign against drinking and driving was frequently cited as a model for changing public attitudes. An emphasis on how accessibility benefits everyone was suggested, coupled with illustrations of how removing barriers can affect the lives of those with disabilities.

Some stakeholders shared their belief that a surprising number of people with disabilities have never heard of the AODA. This group, it was felt, should be a prime audience within overall public awareness initiatives. More focused communications were also suggested, such as a plain language guide for people with disabilities and the general public that outlines accessibility obligations under the AODA and what to expect from businesses and other organizations.

The Review heard repeatedly that business awareness is very low. This was the opinion of municipal accessibility advisory committee members, municipal officials, representatives of hospitals and other public sector organizations, as well as of business groups themselves. One private sector stakeholder described penalties being imposed on small businesses as appearing to come “out of the blue” and argued that government at this stage should concentrate on education rather than enforcement. Tourism representatives stressed that leaders in their industry understand that accessibility is a competitive necessity and have embraced it with enthusiasm. Smaller “mom and pop” operations, however, are a different story, as they are often unaware of or do not understand accessibility requirements.

*The AODA is getting lost among the array of government regulations and activities that command the attention of business, especially smaller firms.*

Business and some other observers sent a strong message that education must precede enforcement. Time and again, the Review was told that businesses will comply if they know what is required. Municipal stakeholders reported that the Province led them to expect much fanfare around the effective date of the Customer Service regulation in the private sector, but nothing happened. One suggestion going forward was to link public awareness campaigns with compliance – for example, insert a reminder about filing deadlines at the end of public service announcements.

The suggestion was also made multiple times that the Government should introduce initiatives that would simultaneously raise awareness of accessibility and recognize successful efforts, thereby creating an incentive for other obligated organizations to get on board. Many examples were given but the two most prominent ones were references to the Leadership in Energy and Environmental Design (LEED) standards and the display of a logo by accessible businesses in the United States, as is done for hotel rooms complying with the Americans with Disabilities Act. Participants also suggested that it would be helpful to create a certification program for AODA-compliant builders; awards for accessible tourism; and a rating system – like colour-coded public health

notices for restaurants – that would identify compliant businesses and those that have gone beyond the minimum requirements. A further suggestion for reaching business was to include information about the AODA in the renewal process for business licences.

### *Outreach to Business*

Business communications face a number of challenges. One concern expressed by a private sector group is that the AODA is getting lost among the array of government regulations and activities that command the attention of business, especially smaller firms. Moreover, the AODA is widely believed to require massive facility upgrades despite the fact that retrofits to remove existing barriers are not actually required by the current standards. A number of participants worried that an unjustified fixation on ramps, elevators and other capital improvements may be scaring many firms and keeping them from making progress in other much less costly areas.

As a solution, business stakeholders and accessibility experts called for more emphasis on the business case for accessibility. Begin by dispelling myths about retrofits and costs, they suggested, and then present accessibility as an opportunity to reach more customers and expand the talent pool, especially as society ages. Ultimately, many believed that Ontario could reach a tipping point where accessibility is a commonly accepted part of doing business.

## **IMPLEMENTATION CHALLENGES**

Closely related to the awareness and communications challenges discussed above is the issue of implementation. This was another major theme that emerged from the consultations.

*The Review repeatedly heard about “fatigue” – implementation fatigue, training fatigue and review fatigue.*

The Review was told that implementation of the AODA has proven challenging for many obligated organizations. The Review repeatedly heard about “fatigue” – implementation fatigue, training fatigue and review fatigue. The time and energy of people with disabilities involved in implementation – for example, those who participated in consultations for this Review – as well as of public sector staff responsible for accessibility – have, according to many, been taxed to the maximum. Similarly, the complexity of the AODA regime and the lack of support for implementation has meant, according to many obligated organizations, that they spend undue time and resources simply trying to fulfil the most basic of the requirements.

## Interpretation of Standards

One of the most common pieces of feedback received by the Review focussed on the difficulty of interpreting the meaning of the standards under the AODA. Both the public and private sectors said they had problems understanding their obligations because the standards are often not clear enough or specific enough about what is required. Public sector organizations, while doing their best to comply, are often uncertain about what exactly compliance with the standards requires. The fact that the standards have been framed very generally means that it is hard to know when they have been met. For example, the standards do not offer reference points for several general obligations, such as what it means to provide accessible formats or incorporate accessibility features into procurement. This leaves organizations to depend on guesswork or expensive consultants and lawyers to determine what compliance entails.

The harmonization of four standards into one regulation, the Integrated Accessibility Standards Regulation (IASR), received mixed reviews. Some municipal stakeholders thought the effort was a success, but other municipalities and some business groups felt the requirements – with numerous compliance dates and different classes of organization – were extremely complex and difficult to follow. Despite this, there was a strong feeling in both the public and private sectors that integration should be completed by folding the Customer Service standard into the IASR.

*Both the public and private sectors said they had problems understanding their obligations because the standards are often not clear enough or specific enough about what is required.*

The Review was also told that the most confusing standards of all are those concerning accessible websites – even lawyers are said to have trouble with them. For example, the interpretation of where meeting a requirement is “not practicable” should be clarified – specifically concerning the need to convert all documents to accessible formats when a website is refreshed. Advice is also needed on what constitutes a “significant refresh” of a website. As well, it was suggested that the exclusion of intranets (with the exception of the government intranet) seems inconsistent with the Employment Standard that requires accessible formats and communication supports for employees.

Similar difficulties were reported with a number of elements of the transportation standards. A case in point is the provision on “origin to destination services”, which permits specialized transportation providers to offer an overall package of services to people with disabilities and which may include service on accessible conventional services. Some disability stakeholders consider this provision obscure, while others believe it creates an “escape hatch” that allows transit operators to deliver services as they wish. As well, it was suggested to the Review that requirements for accessible signage on transit vehicles should be more detailed so each provider does not have to figure them out on its own. And the status of not-for-profit groups providing transportation is considered unclear, a real concern in small communities.

Municipalities also raised numerous issues about the Design of Public Spaces (DoPS) standards. The most frequently cited issues are as follows:

- The compliance dates for projects – based on dates contracted, substantial completion dates and type and size of organization – are confusing; it was suggested that instead compliance should be tied to specific milestones in the development process.
- A series of technical questions have been asked about the design and placement of accessible pedestrian signals at street crossings.
- There appear to be conflicts between the DoPS standards and the recent Building Code amendments regarding the width of sidewalks, as well as between AODA standards and the Highway Traffic Act regulations on accessible parking.

Municipalities also want the province to clarify who is responsible for tracking AODA-required training by third-party vendors. On the surface, the requirement to ensure that training is provided to all persons who provide goods, services or facilities on behalf of an organization seems to oblige municipalities to track the training activities of their contractors. If so, the municipalities suggested that this would be an unsustainable administrative burden given that one medium-size municipality, for instance, has over 10,000 contractors in a given year.

## **Costs**

One of the biggest weaknesses of the AODA, the Review heard from many – particularly in the public sector – is that it does not contain any mechanisms to address cost. If Ontario wants accessibility standards, participants emphasized, it will be necessary to fund the sizable investments involved. In this context, Ontario’s massive infrastructure backlog was often mentioned, with AODA requirements seen as adding to this problem. Hospitals, municipalities and others also worry that large-scale projects such as website accessibility and accessible information formats will require significant, unbudgeted resources. Operating costs as well are mounting to cover areas ranging from ongoing facility maintenance to the rising demand for specialized transit.

*One of the biggest weaknesses of the AODA, the Review heard from many, is that it does not contain any mechanisms to address cost.*

Municipalities put forward various suggestions for new provincial funding, such as cost-sharing of accessibility capital projects, allocations to introduce the Design of Public Spaces standards into ongoing capital plans, and new programs to enable full municipal compliance without affecting other services. The education sector pointed out that the school system is totally funded by the Ministry of Education and relies on the Ministry to build accessibility improvements into the funding formula. Small business said the cost of complying with regulations at all levels of government is an increasing challenge and



the needs of small firms in particular should be kept in mind when bringing in new regulations.

While many public sector organizations contend that the AODA imposes new and unfunded obligations on them, disability stakeholders expressed varying views on the cost issue. Some point out that accessibility has been required under the Human Rights Code since 1982 and suggest that it should simply be viewed as a cost of doing business. It was also noted that the private sector has an obligation to invest its fair share in building an accessible Ontario.

Some in the disability community called for a more balanced approach to calculating the costs of accessibility. It was argued that the cost of compliance with AODA standards should be measured against the pre-existing cost of compliance with the Human Rights Code, offset against the economic benefits of accessibility.

A number of suggestions were also made for incentives to promote accessibility. There was particular interest in the idea of tax incentives. For example, one proposal was for the province to provide tax benefits as an incentive for redevelopment that meets AODA objectives. Similarly, some participants suggested that businesses or homeowners could receive tax credits to retrofit buildings or dwellings. Others thought that it may be helpful to create a central fund to help small businesses cover accommodation costs for employees with disabilities.

### **Supply-Side Concerns**

Public sector stakeholders underlined the need for vendors who could supply the accessible goods and services required to implement the AODA standards. As the economic development ministry, the Ministry of Economic Development, Employment and Infrastructure (MEDEI) is viewed by many as well positioned to tackle this challenge.

Some examples of supply problems brought to the Review's attention are as follows:

- Accessible website software that does not support all required formats.
- Lack of Ontario suppliers of raised tactile walking surfaces required by the DoPS standards, so materials must be imported.
- Website designers who do not have the claimed accessibility expertise.
- Vendors of electronic kiosks who do not understand universal design.
- Licensing restrictions that limit school libraries' access to e-books.

Municipalities observed that there are very few experienced, competent consultants for them to draw upon. International recruitment may be necessary. Some stakeholders called on the ADO to establish qualification standards for consultants offering advice on

AODA implementation. Others pointed out that this field looks like a growth area and colleges should be encouraged to train students to take advantage of this opportunity. Specialized skills ranging from website technical support to sign-language interpreting and closed-captioning services were also reported to be in short supply.

In the longer term, professional education is seen as a key to building an accessible Ontario. People with disabilities and others emphasized that an understanding of accessibility should be incorporated into training for such professions as architecture, engineering, medicine and law.

## **ACCESSIBILITY WITHIN GOVERNMENT**

One of the prominent themes that emerged from the consultations was the belief of the disability community that the Government of Ontario has not succeeded in embedding accessibility into its internal operations. Stakeholders urged the appointment of a single minister – and a full-time deputy minister – to be responsible for ensuring that the Ontario Public Service (OPS) becomes a fully accessible employer and service provider. This new Cabinet post would focus on internal government operations, while the MEDEI minister would remain responsible for the development and enforcement of accessibility standards. To an extent, this thinking echoes the recommendation in the Beer Report to elevate the role of the assistant deputy minister in the ADO to the rank of deputy minister to lead a change management strategy within government. Many believe that there is an important opportunity for the Government to be seen as an accessibility champion, setting an example for other organizations.

*The disability community believes that the Government of Ontario has not succeeded in embedding accessibility into its internal operations.*

A particular concern with the Government, the Review heard, arose where public funds were actually used to create new barriers. Examples given include the Presto smart card, where the cash balance is shown on a screen that cannot be read by people with vision loss or dyslexia; and the absence of accessibility requirements for information technology and electronic kiosks in the Government's 10-Year Infrastructure Plan. These cases sparked some groups to recommend a comprehensive strategy to ensure public money is never used to create, maintain or worsen barriers against people with disabilities. It was also suggested that establishing compliance with the Human Rights Code, as well as the AODA, should be a precondition to obtaining public funds through procurement, grants or loans.

Disability stakeholders welcomed the merger of Infrastructure with the Ministry of Economic Development, Trade and Employment to form the new Ministry of Economic Development, Employment and Infrastructure. This is seen as an opportunity to kick-start the effort to insert accessibility criteria into capital and infrastructure spending.

People with disabilities also expressed the hope that accessibility should become part of the Government's DNA. It was suggested that the Premier's Office should direct the Secretary of Cabinet – the head of the public service – to take all steps necessary to keep the Government's accessibility commitments. This goal could be furthered, the Review was told, by ensuring that all forthcoming legislation, regulation and policies undergo analysis through a disability lens to confirm no new barriers are being created or maintained. The accessibility of OPS workplaces, facilities and services should be monitored through on-site audits and inspections. As well, obligated organizations stressed that ministries should coordinate their efforts and align, support and fund accessibility priorities across the various public sectors.

A further concern involving the Government of Ontario itself was the slow pace of the Government's promised review of provincial laws and regulations to identify and then remove accessibility barriers. Premier McGuinty promised this review during the 2007 election campaign and reiterated the commitment during the 2011 campaign. In 2013 the Government stated that, by the end of 2014, 13 ministries will have reviewed 51 statutes and considered steps to remove any barriers identified. Disability stakeholders pointed out that this leaves about 700 other statutes, as well as 1,500 regulations, still to be examined. The Government was urged to complete the review of all legislation by 2015, and all regulations by 2016.

The upcoming Pan Am/Parapan Am Games were repeatedly cited as an opportunity for the Province of Ontario to show leadership and move accessibility forward. Participants in the consultations stressed that the Government should ensure that all venues for Games-related activities are fully accessible. In addition, it was suggested that the Government should prepare a comprehensive plan to ensure the Games leave a legacy of accessibility, such as accessible housing units and investment in Ontario's parasports system.

*People with disabilities expressed the hope that accessibility would become part of the Government's DNA.*

The Review also heard calls for Ontario to press the federal government to do more on accessibility. The suggestion was that a national strategy could help raise the profile of the issue. Moreover, with other provinces bringing in their own accessibility measures, the lack of nationwide harmonization is emerging as a concern for businesses operating in more than one jurisdiction.

As well, it should be remarked that people with disabilities emphasized that their criticism of the Government was not a reflection on the dedicated public servants who are working hard to improve accessibility despite the lack of leadership. Indeed, many voiced appreciation for the individuals involved and their commitment. The target of the criticism was higher up, the Review was told, aiming at the leadership and hoping to "put wind at their backs", as one stakeholder put it.

## **SUGGESTIONS FOR IMPROVEMENT**

These then were the main themes that emerged from the consultations regarding how Ontario is currently doing in meeting its goals under the AODA. The overall picture is mixed. Participants in the consultations from all of the various sectors of Ontario society strongly supported the AODA and believe that its aspirations are important both individually and collectively. At the same time, there was a strong sense that the implementation of the Act has not matched up. The pace of change is seen as agonizingly slow by persons with disabilities, while the complexity of the regime and the inadequacy of support for implementation mean that the obligated sectors are nonetheless struggling with compliance.

The Review received many suggestions for improving the implementation of standards as well as the content of the standards themselves. These will be discussed in the following sections.

### **Enforcement**

There can be no doubt of one central theme that emerged loud and strong from all of the consultations, and that is the vital importance of robust, effective and visible enforcement to the integrity of the AODA regime. A wide range of stakeholders reported that the lack of visible enforcement is a critical impediment that is holding Ontario back from achieving the 2025 goal for an accessible province. Just as the Ontarians with Disabilities Act was criticized by the disability community as “toothless”, some now feel the same way about the AODA. This concern, it should be noted, is by no means limited to disability advocates. Others including business groups observed that the Government has shown little appetite to wield the substantial enforcement mechanisms contained in the legislation. The result as reported to the Review is a very mixed message about the importance of the AODA.

*The pace of change is seen as agonizingly slow by persons with disabilities, while the complexity of the regime and the inadequacy of support for implementation mean that the obligated sectors are nonetheless struggling with compliance.*

Much of the enforcement discussion focused on the private sector. Figures released by the Government in November 2013 showed that only about 30 per cent of the 51,000 organizations with 20 or more employees that were required to file compliance reports had done so. Based on publicly available information, participants said there was no evidence of penalties having been imposed for non-compliance, undermining efforts to persuade organizations to meet their obligations. These statistics were said to bear out the anecdotal impression that businesses are not complying well. (Further enforcement information is presented in the Reviewer’s Comments and Recommendations section.)

Disability stakeholders described the tolerance of such non-compliance as a “stunning contrast” with the way government enforces other laws, such as environmental

protection measures. A number of consultants and disability groups that work with the private sector feel some businesses are waiting to see who gets fined and will not move until they see enforcement happening. As one participant put it, how effective would speed limits be without speeding tickets? Many called for the Government to take steps to ensure non-compliant organizations correct their infractions in a timely fashion. The Review was frequently told that a few high-profile fines could make a big impact. Despite weak public education efforts by Government, some disability stakeholders felt that the private sector has still had ample notice of the AODA's requirements. Hence they did not believe that enforcement should be delayed while publicity campaigns are ramped up.

*A wide range of stakeholders reported that the lack of visible enforcement is holding Ontario back from achieving the 2025 goal for an accessible province. One asked, "How effective would speed limits be without speeding tickets?"*

Disability groups, business and the public sector all urged the Government to be more transparent about its enforcement activities. Data on compliance levels and enforcement actions overall and by sector and class of organization should be compiled in periodic reports. Government should also make its enforcement intentions known, to counter the perception that non-compliance with the AODA has no consequences.

Various ideas were tabled for strengthening the enforcement function. One was to empower and train inspectors under other legislation to check for AODA compliance whenever inspecting or investigating an organization for any reason. Another suggestion, along similar lines, was to require each ministry to take responsibility for AODA compliance and enforcement in the sectors within its mandate. In health care, a suggestion was made to link AODA compliance to the annual hospital accreditation process. Regarding the Information and Communications standard, there was a proposal to achieve economies of scale by hiring one company to audit all public sector websites. Another suggestion was to send summer students with disabilities to visit business premises to test the accessibility of services.

### *Complaints Process*

The most frequently mentioned enforcement idea was the introduction of a new tool: a complaints process for the AODA. It was repeatedly observed that no such mechanism now exists, forcing people who encounter barriers to file complaints with the Human Rights Tribunal – a cumbersome and time-consuming process. Some participants pointed out that a complaints system was especially needed because the Government is not doing enough proactive enforcement through audits and inspections.

A number of options for a complaints process were put forward. For example:

- Set up an accessible, toll-free telephone number to report AODA violations, such as the confidential tip line for abuse of the federal Temporary Foreign Worker Program.
- Empower municipalities or municipal accessibility advisory committees to operate a local complaints process and track and report on complaints.
- Create an Ombudsman for an Accessible Ontario or give the existing Ombudsman of Ontario the power to investigate complaints of AODA non-compliance. (It was noted that further study would be needed as Ombudsmen generally have the power only to make recommendations and not to impose penalties.)
- Establish a complaints process in hospitals and other health care facilities to address concerns of patients and families.

*The most frequently mentioned enforcement idea was the introduction of a new tool – a complaints process.*

Another alternative was to build on the feedback process that organizations are currently obliged to establish under the Customer Service standard. This would be done by requiring organizations to compile and disclose data on the number and nature of complaints received as well as on their responses. It was also suggested that organizations identify contacts to engage in a dialogue with people concerned about barriers. Contact points were also proposed for customers to obtain information about the accessible services an organization offers, which would be especially helpful for publicly funded services.

### **Compliance and Implementation Support**

While visible enforcement is a central pillar of the AODA regime, it is only one means to the goal of full compliance with accessibility standards. Another and possibly more effective means to this end is support for the overwhelming majority of obligated organizations that the Review was repeatedly told want to do the right thing and will comply willingly once they understand what is expected. The following section highlights areas where the Review heard that additional guidance, resources and tools are needed, as well as some of the suggestions offered for meeting these needs.

#### *More Proactive Guidance*

A further recurring theme in the consultations was a call for the Government to support both compliance and enforcement objectives by providing more in-depth policy guidelines as well as guidance on the interpretation of various provisions. Both public

and private sector stakeholders reported that the ADO appeared to be reluctant to give guidance on the meaning of the standards when asked. When callers sought details beyond prepared answers, the Review was told that they were advised to contact their own lawyers or consultants. However, members of the obligated sectors all stressed that the interpretation of standards should not be so complex as to require legal counsel – a heavy expense for smaller organizations in particular.

*Visible enforcement is only one means to the goal of full compliance with accessibility standards. Another and possibly more effective means is support for the overwhelming majority of obligated organizations that want to do the right thing.*

Members of the now-disbanded standards development committees recalled that these groups produced extensive guidelines that were intended for release as appendices but were not published with the regulations. It was suggested that these documents should be released now and could form the basis of interpretation bulletins along the lines of those issued by the Canada Revenue Agency. Many commentators felt that this would simplify compliance and avoid unnecessary costs. There was also a suggestion that it may be helpful to set up a resource centre that businesses in particular could contact to ask questions and get quick answers.

Compliance reporting under the AODA was one key area where the need for ADO support and guidance was suggested. While disability groups tended to feel the reporting requirements are quite minimal – often checking yes or no to a short series of questions – many obligated organizations said they had trouble determining how to complete the forms. The Review was told that some questions really combined several issues; it was suggested that response options other than a simple yes or no would be more meaningful. Hospitals observed that the content of AODA compliance reports overlapped with their annual Quality Improvement Plans, and these processes should be integrated to avoid duplication of effort.

Moreover, the online reporting system itself was said to be full of problems. Obligated organizations noted that the system crashes during the rush around December 31 each year, and sends error messages advising that help will be provided but not until well after the deadline.

Participants in the Review also identified a number of other key areas where more guidance was needed. Some of the most frequently mentioned include the following:

- The 2013 Building Code amendments – These were described as extraordinarily complex. However, the Review was told that no guidelines or detailed explanations have been provided despite the fact that the effective date is only a few months away.
- Construction of transit shelters – The lack of guidelines forces municipalities to develop their own designs, which is an unnecessary expense and is especially difficult for small municipalities that do not have accessibility staff.

- Design of playgrounds – The comments on this topic were similar to those concerning transit shelters. Providing suggested models would enable municipalities to avoid hiring consultants.
- Detailed specifications for transit buses – Again, the view was that this would make ordering easy and ensure compliance.
- Templates or guidelines for accessibility plans – Such templates would enable the obligated sectors to understand what content is expected and would also promote consistency across the province.
- More toolkits on how to incorporate accessibility into procurement – Ease of integration would enhance compliance and consistency, the Review was told.
- A method or model for assessing a website’s baseline accessibility – This would make it easier to determine the changes needed to comply with requirements.

### *Resources and Materials*

The ADO has created or worked with partners to produce an assortment of guides, tools and other resources to facilitate compliance with the AODA. The Review heard consistently positive comments about the expertise and commitment of those working within the ADO. The personnel of the ADO are widely seen as being as positive and proactive as possible, within the limits that they have been given. To the extent that there were concerns expressed about the support provided by the ADO, those concerns focused on the level of resourcing that was allotted to the ADO as well as on the political direction that the ADO would require in order to better enable it to support the obligated sectors.

*The Review heard consistently positive comments about the expertise and commitment of those working within the ADO.*

The Review received many comments on the utility, scope and timeliness of the materials provided by the ADO. Generally speaking, resources developed through the ADO’s EnAbling Change program, which shares the costs of projects to educate an industry or sector on its obligations, were highly regarded. However, both public and private sector stakeholders described these materials as falling far short of meeting the needs of the full range of obligated organizations, especially small business. Many stakeholders found the ADO materials too general. They recommended tailoring content more specifically to the needs of sectors and including more details on exactly what must be done. The suggestion was also repeatedly made that the ADO should step up communications to inform organizations about the availability of these resources since many do not seem to be aware of the many good resources that in fact exist.



The Review also heard many comments about the ADO's online Accessibility Compliance Wizard, which tells users which requirements they have to meet and when, based on answers to a few questions about an organization's size, type and activities. Overall, the response to the Wizard was very positive. A variety of stakeholders described it as a valuable tool and suggested that it should be publicized more widely. Small businesses advocated a more ambitious undertaking: an integrated portal that would bring together support materials for all the different regulations by different ministries, in one place.

While the ADO's website contains useful resources, some participants said they found it hard to locate information. Problems mentioned were that the site is text-heavy, titles on links do not clearly reflect the content, and the content needs to be simplified.

*The Government should establish programs for the sharing of best practices and information within sectors, such as municipalities or school boards.*

Obligated organizations said that for planning purposes they need support materials to be provided in a more timely way – shortly after standards become law. They pointed out that the materials on the IASR were late – not arriving until more than a year after its enactment. A municipal stakeholder also urged the ADO to let organizations know what tools and resources the Government is developing well in advance, so overlapping efforts can be avoided.

A key priority was the sharing of best practices. The Review was told that there has been much duplication within sectors as organizations all hire their own consultants and lawyers, and pursue their own research and planning activities. The Review heard calls for the Province to establish programs for the sharing of best practices and information within sectors, such as municipalities or school boards. Since the Government of Ontario was the first to come under the regime, it was felt that that should have provided a basis for sharing of best practices and learning from experience, but it did not. However, it was felt that much could still be learned from the Government's experience and the Government was urged to share its materials as widely and quickly as possible. For example, the Review learned that government information technology staff have produced a dozen videos on how to create accessible documents, which could be very helpful to other organizations in both the public and private sectors. The desirability of sharing resources and best practices was a common theme of the consultations.

### *Training Support*

Meeting the training requirements under the standards consumes much time and effort, the Review was told. Hospitals employ thousands of people and engage thousands of volunteers who require training. School boards must train personnel – i.e., teachers – who spend most of their time in classrooms. Even moderately sized transit systems have hundreds of drivers to train.

Public sector stakeholders stressed that more efficient delivery of training is imperative to moving forward under the AODA. Many believe that the ADO could play a much more pivotal role here. As a step in this direction, there was a suggestion that the training requirements in the IASR and the Customer Service standards should be combined. More emphasis on online training was proposed. The [accessforward.ca](http://accessforward.ca) website, which contains modules for all IASR training requirements, was praised and considered a good start. The Ministry of Labour's online training module on health and safety awareness for all employees in Ontario was also mentioned as a potential model. On the other hand, some people with disabilities contended that face-to-face training was more effective than online programs.

The Review heard that the training standards are silent on the outcomes expected and the level of competence that must be reached. Uncertainty about content leads organizations to devise their own solutions, impeding collaboration and the economies of scale it could bring. This situation contributed to duplication, the Review was repeatedly told. For example, in the hospital sector, organizations often came up with their own training packages – in essence reinventing the wheel. The ADO was urged to develop standardized minimum requirements for the content of training in order to support implementation and foster collaboration. On the positive side, the Review repeatedly heard that sector-specific materials developed through the EnAbling Change program worked very well for members of obligated sectors such as universities and school boards.

Stakeholders observed that the standards require the training of new employees even though they may have had comparable AODA training with their previous employer. Retraining was described as an especially heavy burden for small businesses and not-for-profits, as well as in the hospital sector where employees tend to move from one employer to another. Participants suggested that a mechanism for recognizing previous AODA training should be built into the regulations. Standardized content requirements would facilitate the portability of training and well as encouraging collaboration.

*Participants suggested that a mechanism for recognizing previous AODA training should be built into the regulations.*

Some organizations have found it challenging to keep training records, the Review was told. For example, some school boards described the process of keeping records on training as onerous. In addition to streamlining and clarifying the content of the training materials, it was also suggested that the Government provide support for learning management systems that track participation automatically.

## **Renewing Government Leadership**

Closely related to the themes of enforcement, compliance support and OPS accessibility that emerged during the consultations, was the refrain of the need to revive government

leadership. Participants often mentioned the recommendation in the Beer Report for the Government to revitalize the implementation of the AODA. Mr. Beer urged the Government to “breathe new life” into the AODA by building momentum for change internally, across the obligated sectors and among the public at large. However, the general impression conveyed to the Review is that, despite the progress that has been made and the considerable learning that has taken place, the momentum seems to have stalled. The overall perception is that the pace of change is extremely slow and much remains to be done to achieve the goals under the AODA. In the words of a participant in an online session, “We need to get the momentum started again so that accessibility will go forward until 2025 and onward from there”.

A number of reasons were cited to explain why AODA implementation has not delivered the expected results. Among these, commentators from all sectors stressed the lack of awareness of the legislation and the lack of enforcement – the result, some said, of an absence of government leadership. The Government was also said to be neglecting its responsibilities to get its own house in order and to develop all standards necessary to reach an accessible Ontario. To reassert provincial leadership, disability stakeholders called on the Government to establish a three-year action plan describing the steps it will take, with timelines, to ensure Ontario becomes fully accessible by 2025.

*“We need to get the momentum started again so that accessibility will go forward until 2025 and onward from there”. – A participant in an online session*

On the positive side, stakeholders from both obligated sectors and the disability community generally applauded the move of the Accessibility Directorate of Ontario to the Ministry of Economic Development, Trade and Employment (now the Ministry of Economic Development, Employment and Infrastructure). The ministry that deals with business and industry seems a logical home for efforts to bring the private sector on side with accessibility. The move fits in with the message that accessibility makes good business sense and generates economic benefits. The Ministry’s employment mandate was also welcome, as a recent survey showed that employment is the most important issue for people with disabilities. On the other hand, some felt the Ministry was moving too slowly on its promised strategy to increase private sector employment of people with disabilities.

### **Content of Standards**

Much of the feedback summarized above concerns the implementation and enforcement of the existing standards under the AODA. However, the Review also heard considerable discussion about the content of the standards. In particular, members of the disability community emphasized that the five standards in place so far – even if complied with to the letter – will not get us to full accessibility by 2025, or in fact ever. They identified two problems. First, the current standards have serious gaps and deficiencies. And second, important aspects of everyday life fall entirely outside the

scope of the current requirements. At the same time, obligated organizations also provided valuable feedback about the content of the current standards and some of the challenges that they pose. Below, I summarize the central themes of the feedback on these issues, including both suggestions about where there may be gaps in the existing standards as well as recommendations for additional standards.

### *Proposed Revisions to Current Standards*

The Review heard many comments that suggested revisions to existing standards. Various disability groups advocated specific changes to the standards to better reflect the needs of their members and clients. More generally, many participants believed that timelines in the standards are too long, several requirements are weak, little is being done to remove existing barriers, and exemptions and exceptions are too broad. One disability stakeholder considered the deficiencies in the IASR so serious that the mandatory review of the Transportation, Employment and Information and Communications standards should begin in 2015 instead of 2016 as currently planned. Many obligated organizations in both the public and private sectors had other concerns, emphasizing that the overall AODA regime is too complex and should be simplified as much as possible.

*Members of the disability community emphasized that the five standards in place so far – even if complied with to the letter – will not get us to full accessibility by 2025, or in fact ever.*

### IMPACT ON SPECIFIC DISABILITIES

The Review was told by some participants that they do not believe that the AODA has been effective in addressing non-visible disabilities, such as mental illness, autism, learning disabilities, traumatic brain injuries and others. They suggested that more extensive training requirements to recognize and respond to the needs of people with these disabilities were essential.

The mental health community feels strongly that mental health and other non-visible disabilities should be better integrated into the content of standards. For example, it was suggested that the Employment standard should provide clear guidelines for accommodating employees with mental health disabilities.

Groups supporting people who are deaf or have hearing loss pointed out that the vagueness about support persons leaves doubt about an organization's responsibility to provide interpreters or other communication facilitators. Individuals with speech and language disabilities not caused by hearing loss believe standards should more fully outline requirements for communications assistance, especially in essential services.

People with environmental sensitivities and multi-chemical sensitivities want to see these conditions explicitly included in the definition of disability. Participants with episodic or fluctuating disabilities likewise urged a direct reference to their type of disability in the definition. Representatives of people with bowel disorders called for a network of open, accessible public toilets to be established through the Customer Service, Transportation and Design of Public Spaces standards.

*The Review was told that the AODA has not been effective in addressing non-visible disabilities.*

## EXEMPTIONS AND EXCEPTIONS

The existing regulations set different requirements based on the size of the organization. Where the line should be drawn between small and large businesses was a major source of contention in the feedback received by this Review. In fact, some felt it was a mistake to create any exemptions on the basis of the number of employees, as very small organizations can have huge revenue streams.

At present, there are many exemptions under the IASR for organizations with under 50 employees. For example, they are exempt from requirements to prepare multi-year accessibility plans, make their websites accessible, develop a written process for employment accommodation, provide accessible exterior paths of travel, prepare written accessibility policies and file compliance reports, among other obligations. It was suggested that one reason the AODA has not lived up to its potential is the number of organizations that are exempt from such obligations.

The Customer Service standard currently sets the threshold for certain requirements at 20 employees rather than 50. Currently, organizations with under 20 employees are exempt from requirements to prepare documents on their accessibility policies – including policies on service animals and support persons and the handling of service disruptions – and to produce copies on request, as well as from obligations to document training policies, keep training records and file accessibility reports. In its review of the Customer Service standard – which coincided with this Review – ASAC proposed to raise that threshold to 50 employees instead of 20 to align with the IASR, and several disability groups voiced their concerns about this proposal to this Review.

In addition to the exemptions based on organizational size, the Review also received some feedback on several other provisions that were questioned including the following:

- Exemption of owner-operated sole proprietorships from the entire IASR as they have no employees.
- Exclusion of the entire private sector from the duty to incorporate accessibility criteria and features when acquiring goods, service and facilities.

- Exclusion of products and product labels from the Information and Communications standard.
- Exclusion of unconvertible information from accessible format requirements, which some described as a loophole that should be closed.
- Exemptions for all organizations except the provincial Government from the website provisions on live captioning and pre-recorded audio descriptions.

As well, disability stakeholders took issue with various exceptions that are less exacting than undue hardship under the Human Rights Code. This issue will be addressed later in the section on the AODA's Relationship with Other Legislation.

## GAPS IN STANDARDS

Beyond exemptions and the impact on certain disability groups, participants highlighted a host of gaps in existing standards and put forward numerous suggestions to close them.

### Information and Communications

One of the gaps identified that was among the most serious sources of concern was the exclusion of extranets from the website standards. An extranet is a controlled extension of an organization's internal network that allows access to outside users over the internet. It was pointed out that the standards development committee expected everything behind the log-in to be covered. The fact that this was not done is seen as a step backward.

*Unless Ontario keeps standards in line with evolving information technology, we risk reaching 2025 and realizing we have made Ontario accessible, but for the citizens of 2005.*

The importance of keeping the Information and Communications standards in line with evolving international standards was also stressed. Unless a mechanism is created to do this, the Review was told, we risk reaching 2025 and realizing we have made Ontario accessible, but for the citizens of 2005.

Some participants raised concerns about the provision of accessible formats for various purposes "on request". They proposed that all educational resources should be accessible, with no need for a request. On the other hand, some post-secondary stakeholders pointed out that this might not be a wise use of resources as there may turn out to be no demand for many of the materials.

## Transportation

Many transit stakeholders trace problems with the Transportation standards back to the standards development process itself. The Review was told that this became almost a negotiation between the sector and the disability community rather than an effort to identify barriers based on evidence. Moreover, transportation was considered in isolation, resulting in very detailed requirements rather than setting higher-level goals as the other standards do. The Review heard that this process led to problems with the content of the standard.

As an example of a non-evidence-based standard and the problems thereby created, the Review was referred to the provision on free travel for support persons. The standard leaves it up to the transit system – in practice, often the driver – to determine if a support person is needed. As a result, different transit systems in the Greater Toronto Area have different eligibility criteria, undermining the goal of seamless integrated travel across the GTA and the province. This also places a burden on transit operators. They strongly urged the Government to define criteria for support persons and apply them province-wide.

*Many transit stakeholders trace problems with the Transportation standards back to the standards development process itself.*

Capacity issues in specialized transit were frequently raised by people with disabilities. The standard requires service providers to estimate demand and develop steps to reduce wait times, but it does not actually guarantee that any action will be taken. People with disabilities from rural areas pointed out that specialized transportation there often takes the form of taxicabs and urged that all taxis should be accessible by 2025.

## Customer Service

Some disability stakeholders feel the Customer Service Standard is not specific enough to be effective. It explicitly addresses only a few named barriers, like those concerning service animals and support persons. Otherwise accessibility largely depends on the hard-to-enforce criterion of “reasonable efforts” to follow such principles such as dignity, integration and equal opportunity.

Concerns were expressed that the ASAC proposal – during the standard review – to require that a service animal be trained to assist a person with a disability would exclude emotional support animals, which may have no training or certification. It was pointed out that this would be detrimental to those with mental health issues and also inconsistent with the Human Rights Code.

The Review also heard that the existing standard creates a new barrier by allowing service providers to require a customer with a disability to bring a support person where the health and safety of the person with a disability or others is at risk. As well, there

were calls to remove provisions that allow support persons to be charged a fee. Transit operators, for example, contended that support persons should have free access to any service that requires an admission charge, not just transit. With the decline of full-service gas stations, the Review also heard that drivers with disabilities are finding it hard to get gas. A presenter in Toronto proposed a system known as “fuel call” in which a gas station posts a wheelchair symbol on its signs when an attendant is available, and the attendant responds when a button near the pump is pushed.

### Employment

Several participants argued that the Employment Standard in the IASR should be extended to cover volunteers and other unpaid workers. Mental health patients often perform unpaid work as a pathway to employment and the Ontario Human Rights Commission has made it clear that the Human Rights Code applies to work-like contexts.

Business and disability stakeholders both observed that the standards address the stages in the employment lifecycle but leave out measures to actually promote employment. Disability groups proposed creation of an accessibility employment centre under the standard. This would develop a database on the skills and qualifications of people with disabilities – helping them to find jobs and employers to find candidates. A business group tabled a similar proposal for an employment “hub” that would link multiple employers with people with disabilities seeking work. More generally, a number of participants noted the importance of increasing the employment of persons with disabilities as a key element in ensuring full inclusion.

*Business and disability stakeholders both observed that the standards address the stages in the employment lifecycle but leave out measures to actually promote employment.*

### Built Environment

As mentioned above, the current Built Environment Standards do not cover retrofits to remove existing barriers. Many disability stakeholders argued that this must change. They pointed out that barriers in buildings mean people with disabilities cannot use them, whether to shop, study, work, play or obtain services from health care to driver’s licences.

During the Review, considerable discussion of retrofits arose in different sectors. Many concerns were raised about the built environment in health care, such as lack of elevators to doctors’ offices and inaccessible hospital washrooms. A strong view was expressed that all health care facilities in particular should be physically accessible to people with disabilities. The importance of access to buildings was also underlined in



the education sector. In the housing sector, a suggestion was made for retrofits of all apartment suites to install power door openers.

Generally speaking, the Review heard that if accessibility standards were expanded to require building retrofits, it would be necessary to create exemptions in cases of undue hardship. For example, some people with disabilities who contended that the AODA should require retrofits of ramps and door openers felt this should apply only where it can be done without undue hardship. Other disability stakeholders observed that such exemptions would be inconsistent with the usual approach under the Building Code, which is to impose accessibility requirements without providing for exceptions if the cost would result in undue hardship. It was argued that this usual practice should be overlooked if it stands in the way of retrofits to improve accessibility.

Some municipalities expressed concerns about enforcement of the Design of Public Spaces (DoPS) Standard. They pointed out that there is no mechanism for verifying that a project has met DoPS requirements, or that exemptions are justified, prior to construction. The building permit process will ensure compliance with the recent Building Code amendments, but does not cover the DoPS standards. Hence municipalities could be put in the position of approving site plans or building permits that contravene the AODA regulations. Problems will likely not come to light until complaints are made after construction, when it will be more costly or impossible to fix them.

Proposed solutions include utilizing the building permit process or the site plan control process to review projects and consider exemption requests, or having a provincial body like the ADO do this. It was pointed out that if existing municipal processes are used, provincial funding would be required to cover the additional costs.

*Barriers in buildings mean people with disabilities cannot use them.*

The Review also heard a number of other comments with regard to accessibility in the Built Environment. With regard to on-street parking, disability stakeholders observed that the only obligation is for consultation on the number, location and design of parking spaces. They felt that specific requirements should be spelled out so people with disabilities do not have to lobby on this issue in every community. One Toronto participant also noted that many elevators cannot handle the weight of modern wheelchairs, and suggested adjusting the Building Code to include a minimum capacity for public lifts of 800 pounds.

People with environmental and multi-chemical sensitivities pointed out that the Built Environment Standard as proposed by the standards development committee included air quality and ventilation provisions. They were extremely disappointed to find that these requirements did not appear in the final regulations.

### *Proposals for New Standards*

There was considerable discussion during the Review on the question of the creation of new standards under the AODA. People with disabilities and the obligated sectors had different perspectives on this issue.

People with disabilities felt strongly that it was critical to enact new standards if we are to meet the 2025 goal. At the Niagara Falls meeting, it was suggested that one way to assess the need for new standards is to look at gaps in accessibility and ask how to address them. In the disability community, the view was widely held that the Government should direct ASAC to begin work immediately on new standards for education – including the pre-school, school and post-secondary stages – and for the entire health care system. It was also suggested that residential housing should be addressed as well, as part of the next phase of the Built Environment Standard. In addition, disability stakeholders made a specific suggestion for the Government to consult with the public for three months on the need for other standards (beyond education and health care), announce its decision within a further three months and set ASAC to work on any further standards no later than 2016.

*People with disabilities and the obligated sectors had different perspectives on the creation of new standards under the AODA.*

On the other hand, many members of the obligated sectors described themselves as struggling to contend with the standards that are currently in place and about to come on stream. As noted above, obligated organizations told the Review of many challenges – such as difficulty in interpreting requirements and applying them to their own circumstances, the need for mass training of employees and volunteers with multiple timeframes and associated record-keeping, poor availability of services like closed captioning, and funding pressures especially for technology upgrades and improvements to the built environment. In this atmosphere, it is not surprising that the development of new standards was not a top-of-mind issue for most obligated organizations.

The municipal sector did offer the explicit opinion that the current range of standards is comprehensive and new standards or significant revisions to existing standards are not required at this time. There was some support for sector-specific standards among health care and education stakeholders. The private sector had little to say on the topic of new standards, likely due to the fact that most of the current requirements are not yet in force for them and to the low level of awareness about the AODA regime. All in all, the obligated sectors focused their submissions on ways to strengthen the existing accessibility regime and to support compliance. Given the magnitude of the obligations about to come on stream, they expressed little enthusiasm for the enactment of new standards.

## EDUCATION

Some participants observed that education is not just another business. They expressed the view that education is now “buried” in the existing standards and requirements are vague, leaving organizations to guess how general principles apply to them. Accordingly, it was suggested that education needs a standard of its own. One proposal made to the Review was to transfer the task of developing an accessibility standard to the Ministry of Education with a mandate to work with students, teachers and people with disabilities. Other stakeholders suggested a dialogue between education organizations and organizations serving people with disabilities on practicable measures to overcome barriers to full accessibility.

A number of ideas were offered for the content of an education standard, including as follows:

- Physical access to all school buildings.
- Special support services for students and teachers.
- Training for all teachers on all forms of disability and the impact of disability on the learning process.
- Sensitivity training for all students on disability issues.
- Timelines for the accommodation process at the post-secondary level.
- Universal design principles to be built into all courses, programs and learning tools.
- A permanent program to educate school students on accessibility, including a sample curriculum.

*The general point was made that even five years is probably not sufficient time to assess how well a standard may be working.*

Other observers, however, were not supportive of an additional standard for education. Some participants referred to the complexity of the sector, both in terms of the Education Act and other legislative requirements and the number and diversity of stakeholders. Moreover, because of the slow rollout of the current obligations, it could be difficult to determine where any remaining gaps in accessibility lie until all elements of the existing standards are actually implemented and everyone can see how well they are working. The general point was made to the Review that even five years is probably not sufficient time to assess how well a standard may be working.

## HEALTH CARE

In terms of health care, the hospital sector proposed developing a hospital or health-specific standard that would encompass the requirements of the existing AODA standards and adapt them to a health-care setting. Hospitals are serving patients with temporary or permanent disabilities at all times, which sets them apart from other organizations. Accessibility in a retail environment, for example, may not reflect the needs of health care patients. A health-specific standard would also reflect the complex statutory and regulatory environment in which health care functions, including the Excellent Care for All Act that has areas of overlap with the AODA.

*Accessibility in a retail environment may not reflect the needs of health care patients.*

There were several calls for standards on accessible diagnostic equipment and adjustable examination tables. Standards were also proposed to ensure that attendant care services are available to assist all who need this support at work or school or at home.

## RESIDENTIAL HOUSING

One of the biggest issues for people with disabilities is finding a place to live, the Review was told. Yet the AODA barely touches on this. Visitability standards were urged for all new home construction. This refers to basic accessibility, not full universal design, and includes such features as an open plan, wider hallways and low-resistance flooring, which many new homes already offer – along with a zero-step entrance. The Review was told that visitability standards have the potential to gradually increase the inventory of accessible homes and are seen as a crucial response to the trend towards aging at home.

Other participants called for accessibility features to be included when private homes undergo extensive renovations. In addition, proposals were made to require a certain portion of new homes and of new social housing units to be accessible.

## ELECTIONS

While some participants called for an elections standard under the AODA, the wider view was that accessible elections should be achieved through amendments to the existing provincial and municipal election laws. Disability stakeholders called on the Government to appoint an independent person to conduct a review of barriers impeding voters and candidates with disabilities. The idea was that this review could propose reforms to ensure that voters would be able to independently mark their own ballot in private and verify their choice – including telephone and internet voting. The review would also

serve as a means to guarantee full physical accessibility to all polling stations and all-candidates debates.

### *Standards Development and Review Process*

During the consultations, the Review found general support for the consolidation of responsibility for standards development in the Accessibility Standards Advisory Council, a step taken by the Government in response to recommendations in the Beer Report. Some, however, observed that the benefits anticipated from this move have yet to materialize.

With three standards in the IASR scheduled to begin the mandatory five-year review by 2016, concerns were raised about ASAC's capacity to do so much at once. One suggestion was to appoint subcommittees to work on different standards, each with at least 50 per cent representation from the disability community, like ASAC itself. The ADO would be expected to provide staff support to the disability representatives on ASAC and the subcommittees.

*The Review found general support for the consolidation of responsibility for standards development in the Accessibility Standards Advisory Council.*

The review of the Customer Service Standard, which began in September 2013, prompted comments from the public sector that five years was not long enough to gauge a standard's impact and provide informed feedback. It was felt the timelines for standards review should be extended.

Transit stakeholders reported that they sought minor refinements to the IASR prior to the five-year review under the AODA, such as changing the term "courtesy seating" to "priority seating", but the Government did not take action. They believe a mechanism to revisit standards between review periods is needed. There appeared to be a more general view that it would be helpful to have a process to make minor adjustments without a complete review.

As noted earlier, the Built Environment standards have been split between two different regulations. Standards affecting the accessibility of buildings have been incorporated into the Building Code, while standards for public spaces have been included in the IASR. Some disability stakeholders called for re-enactment of the Building Code accessibility provisions, including the 2013 amendments, as a regulation under the AODA. In this way, all Built Environment requirements would be subject to the AODA enforcement mechanism as well as to the five-year standards review process.

The Review also heard calls for greater transparency in the latter stages of the standards development process – that is, the transition of the final proposed standard into a government regulation. Some standards development committee members said they would have appreciated the opportunity to comment on a draft regulation before the

Government issued the final version. It was also suggested that the initial and final standards proposed by standards development committees remain on the government website permanently.

### **Role of Municipal Accessibility Advisory Committees**

It was generally agreed that municipal accessibility advisory committees (MAACs) have made a significant contribution to improving accessibility on the ground in Ontario communities. However, some smaller centres reported such challenges as trouble finding enough members, lack of training and weak municipal support.

MAACs were set up under the ODA to advise on local solutions to local barriers. Under the AODA, they have taken on the additional function of advising on the implementation of standards and the preparation of accessibility reports – tasks that are more technical and administrative in nature. The municipal sector suggested that the Government review the effectiveness of MAACs and then determine their appropriate role and the support needed to fulfil it. Some disability groups called for changes to MAAC membership – such as requiring the chair to be a person with a disability or mandating representation of various types of disability.

*It was generally agreed that municipal accessibility advisory committees have made a significant contribution to improving accessibility in Ontario communities.*

MAACs often receive requests to advise and assist the private sector with compliance, but as volunteers can do only so much. It was suggested that business might benefit from a MAAC-like structure of its own, perhaps organized through chambers of commerce. Disability stakeholders also proposed the creation of health care accessibility advisory committees for Local Health Integration Networks.

### **AODA'S RELATIONSHIP WITH OTHER LEGISLATION**

As noted earlier, the AODA is part of the legal framework protecting disability rights that includes two other Ontario laws: the Human Rights Code and the Ontarians with Disabilities Act, 2001. The AODA's relationship with these statutes was another key theme in the Review's consultations.

#### **Human Rights Code**

The Review was told that complete alignment between the AODA and the Human Rights Code is necessary to reduce confusion and that more clarity is needed about how these two laws interact.

As some observers noted, while the Code is about individual cases, the AODA is about proactive change and can't be everything for everybody. It was recognized that the Code has primacy and its undue hardship criterion is understood to provide a higher level of accessibility than the AODA does currently. One result, as a Toronto presenter noted, is that the timelines in the AODA's Employment Standard send a mixed message to employers, since what they speak to is already implicitly required by the Code.

*The Review heard of confusion and anger on the part of businesses that find that complying with one law does not protect them against complaints under another.*

Municipal stakeholders urged the Government to search for ways to harmonize AODA standards with the Code. Otherwise obligated organizations in compliance with the AODA remain vulnerable to legal challenges under the Code. The Review heard of confusion and anger on the part of businesses that find that complying with one law does not protect them against complaints under another. In particular, there seems to be an expectation that complying with the AODA satisfies one's accessibility obligations under the Human Rights Code when in fact it does not. The resulting confusion was frequently commented upon as a matter that should be addressed in order to reduce complexity for obligated organizations.

In response to this issue, it was suggested to the Review that AODA regulations adopt accessibility-related human rights principles to help guide overall interpretation of the standards. These principles include fostering inclusive design, creating no new barriers, identifying and removing existing barriers and achieving results progressively. It was also suggested to the Review that the concurrent duty under the Code to accommodate short of undue hardship should be explicitly recognized in the guides and educational resources promoting compliance with the AODA standards.

Several participants stressed that current AODA standards do little to remove existing barriers, though the AODA calls for this, leading people with disabilities to seek facility retrofits in particular through the Human Rights Tribunal. A business group suggested removing disputes over retrofits from the realm of human rights and coming up with an objective standard for the accessibility of buildings to be applied province-wide.

The Review was told that a number of standards have weak or vague requirements that are out of step with the Human Rights Code. Among the examples cited were:

- Complete exemption of smaller organizations from many technical requirements, such as accessible websites.
- Exemption of volunteers from the Employment Standard.
- "Where not practicable" exemptions such as those concerning websites, accessibility in procurement, or external paths of travel.
- Exemption of transit vehicles in a fleet as of July 1, 2011.

Disability stakeholders contend that standards that fall short of the undue hardship requirements of the Code should be amended through the Accessibility Standards Advisory Council review process. Another suggestion was to involve the Ontario Human Rights Commission more extensively in the process of standards development.

### **Repeal of ODA**

The AODA provides for repeal of the Ontarians with Disabilities Act on a date to be proclaimed by the Government. Now that standards under the AODA have been acted, public sector stakeholders urged repeal of the ODA to reduce confusion and avoid duplication of effort – specifically, regarding the accessibility planning requirements in the statutes, which overlap.

Some disability stakeholders, however, cautioned against immediate repeal. They argued that nothing should be done to diminish any legislation that could help achieve full accessibility by 2025. Other participants suggested that, prior to repeal, certain government obligations in the ODA should be moved to the AODA. Specific reference was made to the provisions on barrier-free design guidelines for new or renovated government buildings, the fund for reimbursing ministries for employment accommodation costs, and annual ministry accessibility plans.

*Public sector stakeholders urged repeal of the ODA to reduce confusion and avoid duplication of effort.*

### **ISSUES BEYOND AODA'S SCOPE**

A recent study of disability policy in Canada identified more than 40 Ontario statutes with an impact on persons with disabilities. So it is not surprising that a number of comments during the consultations fell outside the scope of the AODA and the mandate of this Review. The sheer number and the care paid to many of these submissions reflects the need for an opportunity to be heard and the difficulty of finding a venue for providing meaningful feedback on issues that profoundly affect individual lives.

Though I cannot do full justice to the issues raised in the consultations for this Review that go beyond the scope of the AODA, I do want to note some of the matters that were often raised. For example, the Review was frequently told of how hard it is to find supportive housing and the long waiting lists associated with such places. The Review also received comments on issues ranging from Assistive Devices Program funding to the psychoeducational assessment of school children to the system of accessible parking permits and spaces. As well, the Review heard moving testimony about problems with the Workplace Safety and Insurance Board coverage and policies. Proposals to review the Ontario Disability Support Program were also voiced during the consultations.



Although, as noted above, these issues do not directly affect this Review because they do not touch on the AODA, I understand the concern about the difficulties with finding the appropriate venue to give feedback. Accordingly, where the ministries or programs involved could be identified, I have forwarded these comments to the officials responsible.

## Reviewer's Comments and Recommendations

Before I begin outlining my recommendations, I would like to offer some overarching observations. As noted earlier in the Report, the commitment to accessibility is strong and a sense of the importance of building an inclusive Ontario is widely shared. The foundations that underlie the AODA are therefore extremely solid.

At the same time, given the timing of this Review halfway through the implementation period for the AODA, the slow and challenging implementation to date, the imminent Pan Am/Parapan Am Games and new government leadership, this is an extremely key opportunity for Ontario to show a strong commitment to accessibility.

In introducing the AODA in the legislature in 2004 – a bill that eventually passed unanimously – Premier McGuinty said the following:

This bill should make Ontario proud. Every person deserves the opportunity to learn, work and play to his or her full potential. This bill will help make Ontario more productive. All Ontarians benefit when we tap into the potential of each Ontarian. I often say that Ontario succeeds when we all work, dream and build together, and "all" must certainly include in every way the 1.5 million Ontarians with a disability.

We are now at the half-way mark to 2025. Considerable progress has been achieved under the AODA and much has been learned and refined along the way. Despite good intentions, however, for various reasons the AODA has not lived up to that early promise. Fortunately, it is not too late for it to do so. Indeed, this is a very good time for the Province to show the kind of leadership that will breathe new life into the AODA. This is important not only because it will enable us to keep our 2025 commitment, but also because accessibility affects a large and growing segment of the population. An inclusive society of the kind that the AODA aims at will be healthier and more robust along many dimensions. So few other issues have the kind of long-term implications that the AODA does.

Below I set out the recommendations that I hope will help to move the AODA forward. The commitment of the Premier and through her the Government of Ontario can make a critical difference at this time.

### Recommendations to the Government

#### **Recommendation 1: Renew Government Leadership.**

The philosophy of the AODA is that the Government of Ontario leads the way. This is why the Government itself is the first to come under most of the various obligations. In addition to having the practical benefit of enabling the sharing of information, learning and best practices from government, this leadership also has a moral dimension.

I must repeat, as Charles Beer said, that re-establishing the leadership and the commitment of the Government of Ontario to accessibility is critical to the momentum of the AODA. Ontario has the potential to be a leader in this regard but, in order to do so, it must firmly establish accessibility as a government-wide priority. With a new government in place, an extraordinary opportunity exists to renew the momentum behind the AODA.

Strong central leadership is critical for a variety of reasons. It would drive accessibility across the range of government programs, services, facilities and workplaces. It would sustain and facilitate initiatives involving different ministries like joint inspections and joint analysis of where new standards are necessary. Similarly, a central commitment and focus on accessibility should also lead to greater linkages to capital and other spending decisions to ensure accessibility objectives are addressed, as well as to the review of proposed policies and legislation through an accessibility lens.

It is up to the Premier to ensure that the administrative structure is put in place to make all of this happen. One does not have to be an organizational design expert to see that nothing gets done in government unless someone is held accountable for results. I therefore recommend that the Premier formally charge the Minister of Government and Consumer Services with responsibility for ensuring that the Ontario Public Service becomes a fully accessible employer and service provider. An associate deputy minister position could be created to support the Minister in this role.

Of course, the Minister of Economic Development, Employment and Infrastructure would remain responsible for the administration of the AODA, including the development and enforcement of standards. Following another of Charles Beer's recommendations, I believe the Minister of Economic Development, Employment and Infrastructure should be given the additional title of Minister Responsible for Accessibility and use it when performing his accessibility-related duties. This would help to raise the public profile of the AODA.

The Government recently took a major step to enhance its leadership on accessibility when it appointed David C. Onley, Ontario's 28<sup>th</sup> Lieutenant Governor – who made accessibility the theme of his term – as a Special Advisor to champion accessibility in Ontario. To support this appointment and the efforts to make the Government itself a leader in accessibility, the Premier should explicitly and prominently direct all ministries to treat accessibility as a key government-wide priority. With strong government leadership by example and a renewed commitment to progress, Ontario can lead the way in creating an inclusive society.

### **Recommendation 2: Enforce the AODA.**

A dominant theme in many of the submissions to the Review was the critical importance of enforcing the AODA and of making known the results of that enforcement. It should

be noted that this view was widely shared by a number of different constituencies. Because of this, and because of the complexity and the helpful feedback received by the Review, I have addressed this issue in considerable detail below.

As many have pointed out to this Review, reliable information regarding enforcement of the AODA is difficult to locate. However, according to current information made available to the Review, all public sector organizations with obligations have filed the first two accessibility reports, due in 2010 and 2013. Following up, the ADO conducted 277 audits of public sector organizations between 2010 and 2012 and more public sector audits are under way in 2014. These are desk audits of documentation to confirm that an organization is meeting all requirements, as reported. If noncompliance is found, the ADO negotiates a compliance plan indicating the steps the organization will take to meet its obligations, such as revision of customer service policies or training of more staff.

In the private sector, however, statistics released by the Government in November 2013 in response to a Freedom of Information request showed that only about 30 per cent of organizations with 20 or more employees that were required to file compliance reports as of December 2012 had done so. The number of filed reports increased from 15,293 as of November 2013 to 17,904 as of October 2014, according to information the ADO provided to the Review. The ADO completed more than 1,900 private sector audits in 2013, with more audits under way in 2014. Starting in late 2013, the ADO sent notices of proposed orders to private sector organizations that had not filed reports, with 2,500 notices issued by year-end. The ADO has not publicly released information on the number of orders – as opposed to proposed orders – actually issued, or on the amount of penalties proposed or imposed. The Review is aware that the Licence Appeal Tribunal has heard a number of appeals of enforcement actions under the AODA.

Although it is beyond the scope of this Review to set out a detailed plan for the enforcement of the AODA, the consultations identified a number of elements that ought to form part of any enforcement plan. The following recommendations are offered in order to assist in the development of an enforcement plan, or in the refinement of a plan the Government may already have developed.

#### **A. Prepare and make public an enforcement plan.**

Because of the uncertainty that has existed concerning the enforcement of the AODA, it is especially important for the Government to develop and make public an enforcement plan in a timely way. If the enforcement plan has not been released by the time this Report is published, I urge the Government to release it immediately. I emphasize that the credibility of the AODA regime at this juncture depends to a significant extent on confidence in the enforcement plan. Timeliness and public release of this plan are key factors in building the credibility that the AODA requires to achieve its crucial goals.

## **B. Build transparency into the enforcement plan.**

Since sharing information can among other things help to enhance compliance, transparency is an increasingly significant feature of modern regulatory systems. Indeed, transparency is a common practice within the Government of Ontario itself. For example, the Ministry of Labour posts the number of employment standards inspections, investigations and prosecutions as well as lists of employers convicted, nature of offences and fines. It also identifies the top five complaints for each year. Similarly, the Ministry of Government and Consumer Services has a searchable online public record that lists businesses that have been charged and/or convicted under consumer protection legislation or that have not responded to the Ministry regarding a complaint. The Ontario Energy Board website posts annual complaints data for electricity retailers and natural gas marketers, by company (number of complaints per 1000 contracts).

In this context, it is important for the AODA enforcement plan to incorporate transparency. Making the results of AODA enforcement activities known in a timely way will achieve key accessibility objectives including encouraging greater compliance as well as enabling consumers and others to direct their choices to organizations that support accessibility.

I emphasize that timeliness is a key aspect of transparency. While time frames vary widely across government, some regulators post enforcement information on a quarterly basis or even more frequently. Given that enforcement was a top issue raised during the consultations for this Review, I recommend that the ADO release information on AODA enforcement actions at least every three months. This information should be posted promptly and should reflect quarterly results as well as year-to-date totals, broken down by sector and size of organization. At a minimum, it should include such measures as:

- Number of notices of proposed order issued
- Total amount of proposed penalties
- Number of orders issued and total amount of penalties imposed
- Number of appeals from orders and the outcome
- Total amount of penalties including changes ordered by the appeal tribunal
- Orders categorized by subject matter.

## **C. Incorporate feedback into compliance and enforcement efforts.**

The designers of the AODA purposefully and thoughtfully chose a non-complaints system. They did so for good reason – such systems often get bogged down in dealing with individual situations and end up being unable to effect more systemic change. Nonetheless, perhaps the concern that was most frequently voiced to the Review was that there was no obvious mechanism for giving feedback on compliance with the AODA.

Although the AODA is not complaints-based legislation, the ADO does have a process for receiving complaints, either directly or through the ServiceOntario contact centre. The ADO redirects complaints by encouraging individuals to contact obligated organizations directly to provide feedback on accessibility barriers (through the process required under the Customer Service standard). As well, individuals who believe they have been discriminated against are advised of their option to file a complaint with the Human Rights Tribunal of Ontario.

The Review was told that the ADO compiles this input and uses it to some extent to target educational and enforcement activity. However, most complaints received are unrelated to AODA violations and mainly concern barriers that are not covered by the standards, such as building retrofits. The ADO indicated that the name of the person making the complaint is generally not recorded, as individuals are informed of the other mechanisms available to resolve their concerns. The ADO does not release public information on complaint volume, subject matter or responses.

It is clear from the consultations, and from a review of best practices, that ensuring meaningful and well-publicized feedback mechanisms will be important to the enforcement plan. Premier Wynne's recent commitment to establish an accessible toll-free phone number to report AODA violations would undoubtedly be a great step forward in accomplishing this and I support rapid implementation of this commitment. Moreover, I would suggest broadening this tool to enable online as well as mail-in reporting, to provide the public with a choice of feedback options.

The enforcement plan should explain clearly what will be done with this feedback. Because the AODA is not a complaints-based system, the use of the information will naturally be general and not specific. Reporting of violations usually will not lead to the investigation of individual cases. However, it is essential to communicate that the feedback will be used in a meaningful way, such as focusing enforcement activities as well as informing educational and outreach activities.

It is common for feedback mechanisms under regulatory regimes to begin with the obligated organization directly. For example, under the Employment Standards Act, the employee first alerts the employer about the issue. Similarly, insurance consumers contact the company first before proceeding to an industry ombudservice. Consumer protection legislation also asks consumers to first share their concerns with the relevant business. Channeling concerns directly to the organization in question is often the best route to achieving compliance in the most timely fashion.

Indeed for this reason feedback requirements are already part of the Customer Service standard, which obliges organizations to establish a process for receiving and responding to feedback on the way they provide goods or services to persons with disabilities – including the steps that are to be taken if a complaint is received. Under the standard, information about the process must be readily available to the public, and organizations with 20 or more employees must prepare a document on the process and give a copy to anyone who requests one.

I recommend that the requirement for a feedback mechanism be extended beyond the Customer Service standard to encompass all of the other standards as the obligations come into effect. In addition to gathering feedback, I further recommend that organizations make public not just the process for feedback but also the types of complaints and their response, in order to enhance both transparency and compliance. The identity of people making complaints should not be disclosed.

Moreover, reporting to the ADO on any complaints received and how they were resolved could be an extremely useful part of regular AODA reporting by obligated organizations. This information could then be integrated with data on complaints made directly to the Government, assisting the ADO to track areas where more education or support is needed as well as to guide enforcement activities. Presentation and analysis of the complaints data on an anonymous, sectoral basis, along with a discussion of how that data was used to shape priorities, should form part of regular public reporting by the ADO.

### **Recommendation 3: Resource and empower the ADO to provide robust compliance support.**

As noted at the opening of this report, the goal of accessibility and faith in its value at both an individual and a collective level command great support in this province. There is also wide support for the approach chosen by the drafters of the AODA. However, the complexity of the model and the fact that many of the obligations are drafted in very general terms means that the AODA can be very demanding to implement. This has ramifications both for the individuals who depend on the accessibility the AODA aims to secure and for organizations that seek to comply with the AODA.

This Review repeatedly heard that obligated organizations need more guidance and more support. In the absence of such guidance, they are spending far too much time and money trying to determine how to satisfy even the most basic elements of the regime. Moreover, tremendous duplication is currently happening as organizations all attempt to resolve the same or very similar questions. Those resources would be far better spent on more ambitious accessibility goals, rather than trying to ascertain the meaning of basic elements of the AODA. More importantly, the fact that it is so complex to navigate the regime saps enthusiasm for going beyond the strict letter of the AODA and engaging in more ambitious accessibility planning.

An example of how difficult it is to understand the basic elements of the regime is found with the filing date for compliance reports on the Customer Service Standard by private sector organizations with 20-49 employees. For such an organization to learn that a report is required by December 31, 2014, it is necessary to piece together sections of three different regulations (the Customer Service regulation, the IASR and the Customer Service reporting exemption regulation) as well as s. 14 of the AODA (on accessibility

reports). Even then, many organizations will likely find they need legal advice to discern the deadline.

Surely it would be helpful to have a clear statement in the Customer Service regulation indicating the due dates for reports on compliance with that regulation by organizations with 20 or more employees. A clear reporting schedule is articulated in the IASR (section 86.1) – by sector and size of organization – but there is no such schedule for Customer Service reporting.

The underlying problem here is the lack of harmonization between the Customer Service regulation and the IASR. In the consultations some stakeholders supported harmonization and I understand that ASAC considered this in its review of the Customer Service standard. I endorse the goal of harmonizing the Customer Service requirements with those in the IASR.

Looking at the big picture, the most effective compliance support would be to simplify the standards themselves so that expectations are clear up front and elaborate explanations are unnecessary. As far as possible, it would also help to bring all new requirements into force on the same date for all obligated organizations. I worry that the strong social consensus behind accessibility could erode if the AODA comes to be seen as nearly as complicated and onerous as the Income Tax Act. I strongly urge ASAC and the Government to make simplification and clarity key objectives when reviewing the current standards or developing new ones.

#### **A. Provide authoritative guidance on AODA requirements.**

During the consultations, as noted above, much support was expressed for the personnel of the ADO and for their commitment. The EnAbling Change program received very good reviews, as did a number of the tools developed by the ADO such as the Wizard. But the consultations were also very clear on the critical importance of enabling the ADO to play a more central role in compliance support. Some of this would be quite simple, such as improving the publicity for the resources that currently exist.

However, in a few key areas, it is crucial for the ADO to take on new levels of compliance support. One of the most significant identified by many participants in the Review was the need to provide more detailed authoritative guidance for compliance. The Review was told that frequently it is very hard to know what needs to be done in order to comply, and the ADO has not felt empowered to take on a more directive role in guiding compliance efforts. Particularly as enforcement efforts step up, it is vital that the ADO become more proactive. This includes developing materials such as interpretive bulletins to guide planning, especially in the areas where the standards are proving difficult to implement, as well as active solicitation and sharing of best practices and models as is common under the Americans with Disabilities Act in the United States. As



well, a resource centre to provide quick answers to questions about compliance could be extremely helpful, especially for small business, as some stakeholders pointed out.

## **B. Make training portable.**

The ADO should also be playing a lead role in developing foundational tools that are broadly required, especially in areas that are posing compliance challenges. They already do this to some extent. A good example that was much appreciated is found in the Customer Service training module on the ADO website, along with training modules for all IASR standards on the [accessforward.ca](http://accessforward.ca) site that were developed through the EnAbling Change program. These were all described as helpful, although the awareness of them seemed to be very low and they were said to be difficult to find, which suggests more publicity would be helpful.

Along similar lines, the ADO should consider partnering to develop a certification program for training that would ensure portability for workers and volunteers. Portability was frequently raised with the Review because retraining is expensive, especially for smaller organizations as well as for organizations like hospitals (which have high turnover and many volunteers). In addition to certification, portability would also require standardizing content requirements – something that obligated organizations repeatedly asked for during this Review.

### **Recommendation 4: Undertake a comprehensive public awareness campaign.**

One of the strongest messages that the Review heard concerned the troubling lack of awareness of the AODA nearly 10 years after its enactment. There was a widespread consensus that it will be impossible to achieve the objectives of the AODA without increased awareness on the part of both the public and the obligated sectors. Accordingly, I recommend that the Government launch a public awareness campaign designed to promote understanding of the value of accessibility generally and the demands of the AODA specifically.

As one illustration of the kind of initiative that could be undertaken, participants in the Review frequently referred to the upcoming Pan Am/Parapan Am Games as an opportunity not to be missed. The Games provide a rare chance to highlight athletes with disabilities to help change attitudes, to encourage businesses to get ready by improving accessibility and to promote accessible facilities and services. Looking beyond the Games, it was emphasized that building awareness will take a sustained, long-term commitment to education and promotion programs by both Government and partners in the obligated sectors and the disability community. I fully agree.

**Recommendation 5: Clarify the relationship between the Human Rights Code and the AODA.**

The relationship between the Human Rights Code and the AODA remains an area of significant confusion. As more and more obligations are enforced under the AODA and as public awareness grows, this confusion will certainly come to the fore. Accordingly, it is important for the Government to clarify the relationship between the Code and the AODA. This is a crucial issue that should be addressed in all relevant communications and public awareness materials. Creating better linkages between the Code and the AODA could also be advanced by having the Ontario Human Rights Commission play a role in the AODA standards development process, for example, and by co-developing communications materials.

**Recommendation 6: Plan for new standards.**

The question of the development of new standards was one of the issues that I found most challenging to address in this Review. On one hand, many obligated organizations described the substantial challenges that they were facing in meeting the current and upcoming requirements. Public sector organizations in particular said they face significant difficulties in finding the resources to fund these new obligations. They feel this especially acutely now because of the number and complexity of the new obligations that they are required to meet over the next couple of years.

For example, new websites created by public sector organizations after the first of this year must be accessible. Next year, in 2015, the latest Building Code accessibility amendments will take effect for all sectors. As well, by 2015 small public sector organizations will be obliged to comply with the Employment Standard, train staff and volunteers on the IASR and the Human Rights Code and make feedback processes accessible – obligations that have applied to large public sector organizations since the beginning of 2014. Also by 2015, small educational or training institutions will be required to train their educators and provide accessible resource materials, as large institutions have been obliged to do since 2013. In addition, by 2015 large public sector organizations will be required to provide accessible formats and communication supports on request, an obligation that will apply to small public sector organizations in 2016. Also in 2016, all public sector organizations will be required to comply with the Design of Public Spaces standards.

Given the many challenges the Review heard of, these concerns about compliance with existing standards seem very well-founded. That would suggest, as the Review was told, that it may not be the time to introduce yet more obligations when so many are on the threshold of coming into effect. Moreover, it seems possible that some of the areas that currently appear to be gaps in the system may be closed once all of the already scheduled obligations have come fully on stream. These are all good arguments for

waiting before beginning the onerous process of developing new standards. They cannot be dismissed lightly.

At the same time, there are also strong arguments against a “wait and see” approach. It was very apparent during this Review that the AODA process from the start of the development of a new standard through to full implementation is an extremely slow one. The time frames have ranged from six years for the Customer Service Standard to roughly nine years for Employment, ten years for the Built Environment, eleven years for Transportation and fourteen years for Information and Communications. Given that so many of the obligations under the current AODA regulations have yet to come on stream, waiting until everything is fully implemented before evaluating the need for new standards makes it very unlikely that we will meet the 2025 target. Thus, the wait-and-see approach is not tenable.

Accordingly, I recommend that the ADO begin a process of identifying the most significant gaps in the current regime with a view to developing supplementary regulated standards to address those gaps in a timely way. This process should include public input.

Specifically, a comprehensive gap analysis should be conducted in order to determine what gaps will remain when all of the obligations currently in place under the standards are in full force and effect. This analysis will then form the evidentiary basis of the process to assess the need for additional standards. As noted, given the timelines under the AODA, it is not feasible to adopt a wait- and-see approach and a robust gap analysis would in any event provide the most reliable evidentiary basis for the development of new standards or for responding to any gaps or difficulties with the current standards.

As a starting point, I outline below the areas highlighted by this Review where some significant gaps have already been identified.

#### **A. Health care and education.**

The clearest areas to consider for the development of new standards are health care and education. These two areas were underlined during the course of the Review as especially requiring additional standards. Thus it comes as no surprise that these two areas have also been recognized by Premier Wynne as the places where preliminary work such as consultation with the relevant ministries is already under way.

The Review has found strong support for the view that it would be helpful to develop an additional standard to address the health care environment. Similarly, solid reasons were presented to develop an additional standard in the area of education. During the consultations it was also emphasized that both health care and education are highly complex fields where close work with the relevant ministries will be essential to ensuring meaningful accessibility requirements. Any process used in these areas must recognize

this complexity, in terms of both the legislative framework in which these sectors operate and the number and diversity of stakeholders.

I agree that health care and education are priority areas. Additional work in these two areas would assist the obligated sectors, bring the AODA into better alignment with the Human Rights Code and promote accessibility in some of the most fundamental services we collectively provide. However, the exact form that the results of these efforts should take is not entirely clear at this stage.

For example, rather than extensive sector-wide obligations (which could easily take a decade or more to develop and implement), the outcome could be a more timely series of targeted standards. Thus requirements might be established for accessible diagnostic equipment in hospitals or elevators in medical offices, or teacher training on specific disabilities or timelines for the accommodation process for postsecondary students. As well, a consensus on practical measures to remove barriers, apart from regulated standards, may well emerge from this work. Such measures could range from new programs and services to changes to laws and regulations governing the sectors. The overall goal should be to make significant progress in enhancing accessibility in these two vital areas as quickly as possible.

It is therefore time for the Government to undertake a serious process to determine the best method to ensure accessibility advances as fast as possible in health care and education. I recommend that, with ASAC oversight, the responsible ministries take the lead and work with people with disabilities and stakeholders in the sectors to identify accessibility barriers and solutions. It is critical that any new obligations should be grounded in the conditions and circumstances of the respective sectors, to avoid the generalities and vagueness that have made compliance with the existing standards difficult for many. This new leadership role for the ministries would serve as an important part of a renewed government-wide commitment to accessibility.

## **B. Building retrofits and website extranets.**

On the content of other possible new standards, it may be helpful to summarize the gap analysis that emerged from the Review. The gap that stood out most clearly from the perspective of this Review concerned the built environment and the issue of retrofits. As mentioned earlier, of all the barriers facing people with disabilities, those involving the built environment attracted the most comment during the Review. Yet, as noted above, barriers in existing facilities – as opposed to those in new construction or renovations – are not covered by the current accessibility standards, leading to much frustration in the disability community. The Review repeatedly heard that in the absence of an obligation to ensure that the built environment eventually incorporates at least some accessibility features, it will be very difficult to celebrate the Ontario of 2025 as a leader in accessibility. At the same time, it is also very clear that retrofit obligations (which many

assume are already part of the AODA standards) can be costly undertakings and imposing any new obligations in this regard requires sensitivity.

Ontario could begin to address this issue by considering standards resembling the U.S. Americans with Disabilities Act (ADA) regulations which require private facilities that provide goods or services to remove existing architectural barriers where this is “readily achievable, i.e., easily accomplishable and able to be carried out without much difficulty or expense.” (ADA Title III Regulations, section 36.304). This approach would lend itself to setting some priorities for accessibility enhancements, such as entry ways and washrooms (the two areas most frequently referred to in the consultations). Although by no means a full solution, beginning to address the built environment through a relatively modest option would significantly improve access for people with disabilities without generating major worries about cost.

As is the case with all AODA standards, compliance with such a requirement would not relieve organizations of their obligation under the Human Rights Code to accommodate people with disabilities to the point of undue hardship. Individuals who believed their needs were not adequately met by “readily achievable” measures would still have the option of seeking recourse through the Human Rights Tribunal of Ontario.

A second area that stood out as a matter of great concern dealt with the scope of the website accessibility requirements and in particular the exclusion of extranets from those requirements. As mentioned above, an extranet is an extension of an organization’s internal network to outside users through the internet. In the words of a consultation participant, it is what lies behind the log-in. The Review heard that as the internet becomes more and more essential as the interface for business as well as personal life, the exclusion of extranets will prove very serious for persons with disabilities. Accordingly, it will be important to develop a plan to address gaps in the current standards that speaks to how to remedy the increasing difficulty that this limitation will pose for persons with disabilities.

**Recommendation 7: Encourage, support and celebrate accessibility planning beyond the AODA.**

Throughout the consultations for this Review, emphasis was placed on the importance of encouraging and celebrating champions of accessibility. However, many stakeholders on all sides of the issue worried that the demands and the complexity of the current regime were such that obligated organizations may be inclined to treat compliance as exhausting their commitment to accessibility. Despite this, most also believed that it was crucial to find ways to encourage organizations to treat the current AODA standards as “the floor, not the ceiling” of their efforts to create an inclusive environment.

**A. Emphasize barrier removal in multi-year accessibility plans and recognize organizations that exceed expectations.**

One tool that appears to hold out some possibility is the multi-year accessibility plan, suggested by the Beer Report. The Report proposed converting the annual public sector plans required by the ODA to multi-year plans, incorporating the ODA planning framework into the AODA regime and possibly extending the planning requirements more widely. All of this has now essentially been done by the IASR. It is important to recognize that the multi-year planning requirements under the IASR – which apply to the Government, all public sector organizations and large private sector organizations – cover not only barrier prevention but also barrier removal. As well, organizations are obliged to post the plans on their website and provide them in an accessible format on request. Thus, the plans could be a valuable tool to both plan and publicize the efforts of organizations to do more than meet their AODA obligations, which centre largely though not entirely on the prevention of new barriers.

Given that so many new standards and obligations were about to come on stream, one of the recommendations in the Beer Report at that time was that the plans should focus on compliance with accessibility standards within the timelines set out. At this juncture, however, encouraging organizations to also include an emphasis on the removal of barriers – especially those in buildings – could be an effective means to enhance accessibility, particularly with the increased transparency that should be part of the regime going forward. The ADO's support materials on accessibility planning, therefore, should underline the purpose of the plans as a roadmap, not only for compliance with current standards, but also for the removal of any barriers that stand in the way of an accessible Ontario. The multi-year plans would also provide a basis for identifying and acknowledging accessibility champions.

Moreover, some kind of certification program to celebrate those who make special efforts to enhance accessibility would also encourage much greater action. Many participants in the consultations pointed to the LEED environmental certification as a good example of what can be achieved through such mechanisms. Developing a means of recognizing those who support ambitious accessibility goals could provide powerful incentives to reach beyond what is required by the AODA standards.

In addition, one significant role a public awareness campaign could play would be to celebrate leaders in accessibility and the benefits of that leadership. This would also provide powerful incentives to exceed the current requirements. Again, the Government's recent announcement of the David C. Onley Award for Leadership in Accessibility is a very positive step in this direction. It is also encouraging that the Ontario Chamber of Commerce has introduced a Leader in Accessible Employment award, which is presented at the annual Ontario Business Achievement Awards gala.

## **B. Introduce accessibility tax incentives for small business.**

Considerable feedback during the consultations reflected on other ways to incentivize ambitious accessibility goals. The Review heard frequent comments that Ontario lags behind the United States in many aspects of accessibility, particularly when it comes to the built environment. Surely one factor in progress south of the border has been the tax incentives in place there since the early 1990s.<sup>1</sup> Currently, a small business tax credit of up to \$5,000 annually is available, equal to about 50 per cent of access costs – including barrier removal in facilities (such as widening a doorway, installing a ramp), provision of accessibility services (such as sign language interpreters), provision of printed material in alternate formats (such as large-print, audio, Braille), and provision or modification of equipment. As well, businesses of any size can take advantage of a tax deduction of up to \$15,000 per year for removal of barriers in facilities or vehicles.

Ontario business groups have suggested the introduction of tax incentives and this possibility was also raised in the Beer Report. Tax measures could help to capture the attention of small businesses – and their accountants – and prompt them to go beyond the AODA requirements and see the business case for accessibility. However, any tax incentives should be designed to motivate firms, not simply to comply with AODA standards, but to exceed them in targeted ways.

### **Recommendation 8: Improve AODA Processes.**

In addition to comments on the various issues discussed above, this Review also received a great deal of helpful feedback on how to improve AODA processes in order to advance the goal of accessibility. Below I describe some of the most important process refinements.

#### **A. Enable minor revisions to standards.**

As noted in the What the Review Heard section, stakeholders highlighted a host of gaps and deficiencies in the five standards now in place. Some issues are a matter of interpretation and could be addressed through more proactive guidance from the ADO. Others seem to call for regulatory changes but are not urgent and should be set aside until the five-year review of the affected standard by ASAC. Still others, however, involve minor regulatory amendments that warrant more immediate action because the current wording makes implementation and enforcement difficult.

Some doubts exist about whether the current process under the AODA provides the means to make small mid-stream changes to standards. This is an undesirable situation. I was frequently told about issues with various standards that were widely

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<sup>1</sup> Expanding Your Market: Tax Incentives for Business. U.S. Department of Justice. Civil Rights Division. Disability Rights Section. <<http://www.ada.gov/taxincent.htm>> retrieved on 2014-10-17

acknowledged to be problematic but will apparently nonetheless remain as is until the five-year review takes place. This category includes, for example, inconsistencies between AODA standards and other legislation or regulations. It is important to have a process for ongoing adjustment and calibration of the standards in order to ensure that they are achieving the goals that they were designed to achieve. Otherwise, the rigidity risks undermining confidence in the wisdom of the system.

Some stakeholders have expressed the view that no changes to standards can be made outside the full standards review process under the legislation. On the face of it, I see nothing that would prevent amending an accessibility regulation once made. However, if this authority is found lacking, the AODA should be revised to provide it. It goes without saying that the Government would be expected to consult with affected stakeholders – including persons with disabilities – in the course of developing such minor amendments.

#### **B. Review the role and resources of municipal accessibility advisory committees (MAACs).**

The consultations confirmed the vital contribution MAACs are making to the improvement of accessibility in Ontario communities. However, concerns were raised about the capacity of MAACs to assume the expanded role they are being asked to play in the implementation of standards – concerns that can only grow as more standards reach their compliance dates. I agree the time has come to review the mandate of MAACs and the resources they need to function effectively. This work could also consider how MAACs can be empowered to raise the local profile of accessibility and, as the Beer Report suggested, work with other local groups to support AODA compliance in all sectors.

Ideally, this would be a much more focused, simpler and shorter process than the standards reviews through ASAC. It could take the form, for example, of a series of regional MAAC meetings like those the ADO hosts periodically, but with a focus on mandate and resources. A major municipal organization could be enlisted as a partner to gather input from municipal leaders, perhaps supplemented by a brief online survey of MAAC chairs and members. Obviously any significant change to the mandate would continue to require legislative amendment.

#### **C. Align the accessibility provisions of the Building Code with the AODA.**

The Built Environment accessibility standards that affect buildings have been incorporated into the Building Code. It obviously makes sense from the industry's point of view to have requirements for the construction and renovation of buildings consolidated in one place. Nonetheless, as the Review heard, this creates certain challenges.



The main problem is that the Building Code accessibility amendments that will take effect in 2015 are not regulations under the AODA and are therefore not subject to the AODA process for standards review every five years or less. One proposed solution is to re-enact the Building Code amendments as a regulation under the AODA. In my mind, enacting the same regulation under two different laws would be confusing for stakeholders and legally dubious. I would prefer a simpler approach, such as inserting a provision in the IASR or the Building Code, or both, calling for review of the Code's barrier-free design requirements through the AODA process.

Municipalities also raised a further matter that may demand a quick response, concerning the enforcement of the Design of Public Spaces standards. The issue is that, unlike the Building Code, the DoPS standards have no provision for pre-construction approval of projects. Hence non-compliance will probably come to light only when people start using the public space. By then, it will be very difficult if not impossible to correct the error. I would advise the Government to reconsider this dimension of the DoPS standards as soon as possible.

#### **D. Repeal the Ontarians with Disabilities Act.**

The Review heard from a number of public sector stakeholders who recommended repeal of the ODA in order to reduce duplication. On the other hand, some disability stakeholders advised against repeal, arguing that any legislation that could contribute to full accessibility by 2025 should not be diminished.

This issue was addressed in detail in the Beer Report, which included a comprehensive strategy for repeal of the ODA. Since the five standards are now in place, the basic precondition set out in the Beer Report has been met. However, the report also pointed out that before repeal an assessment should be completed to determine which provisions of the ODA might need to be incorporated into the AODA's legislative and regulatory framework. The Beer Report outlined a number of steps that should be taken in this analysis. I recommend that the Government follow this advice and conduct the assessment in a timely manner. The ODA can then be repealed in order to simplify the regulatory environment in the spirit of the Government's Open for Business initiative.

#### **E. Reconsider the timing of future reviews.**

During the consultations there was, as mentioned, a great deal of discussion among all stakeholders about "review fatigue". Particular concern was raised about the timing and overlap of reviews, especially since this comprehensive Legislative Review coincided with the review of the Customer Service Standard. In the future, review fatigue is likely to become even more intense, with 15 legislative reviews or standards reviews mandated between now and 2025.

Moreover, during the consultations concerns were expressed that five years from the enactment of standards in regulation was not enough time to fully understand the implications and provide meaningful feedback. The timing of the IASR review – due to begin in 2016 – will pose a problem because it will occur before there is significant data concerning compliance and the general experience under the standards. One option the Government could consider is conducting the IASR review in stages, examining the three standards sequentially.

While some key transportation provisions, such as the requirement for electronic pre-boarding and on-board announcements, do not take effect until 2017, most of the Transportation standard is now in effect. On balance, I believe the review of this standard could begin as scheduled, in mid-2016. (The general provisions of the IASR, such as those on accessibility policies and multi-years plans, will be in full effect by then and could be reviewed in tandem with the Transportation standard.)

The situation with Information and Communications is more complicated. Requirements for new websites are currently in effect and provisions for accessible educational materials and educator training will be fully in place by 2015. However, one of the most significant requirements, for accessible formats and communications supports, is being phased in between now and 2017. In light of this, it would seem to make sense to defer the start of this review until mid-2017 when most of the standard will have been in force for some time and there has been some experience with the accessible formats provisions.

The Employment standard presents the biggest challenge. It is being phased in over five years and will not reach the private sector until 2016 and 2017. Given that more than three quarters of Ontario jobs are found in the private sector, it is clear that little could be accomplished by reviewing this standard before the entire private sector is obliged to comply. It therefore seems reasonable to defer the start of the review of the Employment standard until mid-2018.

Looking at the fourth standard in the IASR, the DoPS requirements will be largely in force by 2017 and I believe the review set for 2018 can proceed on schedule. This would be concurrent with the Employment review as suggested above. To round out the picture, the review of the Building Code accessibility amendments – assuming the Government brings them within the AODA process – would begin five years from their effective date, that is, in 2020.

A phased review would bring another advantage – it would help to address the concerns raised about ASAC's workload and especially its capacity to review three standards at the same time. I understand that some stakeholders will be concerned about any additional delays, but in my view the deferral of the reviews of the Information and Communications and Employment standards is the unavoidable result of the earlier decision to adopt a rolling implementation model that defers compliance with many of the requirements.

As noted previously, the overlap of this Review with the review of the Customer Service standard put much pressure on the time and energy of the participants, most of whom are volunteers or people employed to implement standards, rather than review them. If the timeframes outlined above are adopted, the reviews of the Employment and DoPS standards will be under way during 2018, concurrent with most of the work on the next Legislative Review, which is scheduled to begin three years after this Report is tabled. To avoid repeating the same problem that occurred with this Review, I recommend deferring the Third Legislative Review until 2019.

### Possible Timetable for Future Reviews

Type of Review	Suggested Start Date				
	2016	2017	2018	2019	2020
Transportation standard	√				
IASR General requirements	√				
Information and Communications standard		√			
Employment standard			√		
Design of Public Spaces (Built Environment) standard			√		
Building Code accessibility provisions					√
Third Legislative Review of AODA				√	

## In Conclusion

I would like to close with a quote from the Honourable David Onley, who said in a 2013 speech: “I believe there are things that cannot be enforced by law. In the truest sense, addressing disability is a matter of changing hearts and minds....”<sup>1</sup> At its core, that is the ambition that underlies the AODA.

The recommendations proposed in this Report will not alone directly deliver an accessible Ontario by 2025. But I do hope that they will be part of a larger effort to foster and promote the necessary shift in our collective mindset. Some especially important means by which this larger effort can be nurtured are as follows:

- Government clearly leading by example, motivating others to follow
- Public and stakeholder education designed to increase the understanding of accessibility and awareness of the AODA among obligated organizations and the public
- More and better feedback from people with disabilities on what is and is not working, and encouraging organizations to become more responsive to their needs
- Higher visibility of enforcement efforts, leading to higher compliance
- Recognition of accessibility champions both within their own sectors and among the public to help embed accessibility in business culture
- Incentives to encourage small businesses to come around to the economic case for accessibility
- A start on built environment retrofits, giving organizations a sample of how removal of barriers can help their businesses
- Stronger MAACs resulting in stronger accessibility leadership at the local level where real change happens.

The Review has found a troubling obstacle to the necessary cultural change in the cumbersome process that has emerged in implementing the AODA. From the frustrating standards development work outlined in the Beer Report, to the host of compliance and implementation challenges described earlier in this Report, to the heavy agenda of standards and legislative reviews now under way, the burden of process has taken its toll. It appears to me – and to many others – that process threatens to outweigh results.

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<sup>1</sup> Hon. David C. Onley, Speaking Notes for the Summer Institute on Disability and Theology, University of Toronto, July 19, 2013  
<<http://www.lgontario.ca/en/events/Event%20Speeches/July%2019%20%20Theology%20Disability%20Toronto%20Speech%20FINAL.pdf>> retrieved on 2014-11-05 at p. 7.

It is my hope that the recommendations in this Report on compliance support and process improvements will help to redress this balance.

The bottom line is that the achievement of the 2025 goal depends on a cultural shift – a change of minds and hearts – by public and private sector organizations and indeed on the part of everyone. The AODA remains, as originally conceived, a vital tool for sparking such a transformational change.

### Appendix: Timelines Chart

KEY ACCESSIBILITY REQUIREMENTS	COMPLIANCE DATE											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Customer service standards	▲●○		■□									
Public emergency information			▲●○ ■□									
Workplace emergency response information												
Recruitment and other employment practices				▲	●	○	■	□				
Employee information				▲	●	○	■	□				
Documented employee accommodation processes				▲	●	○	■					
Accessibility policies			▲	●	○■	□						
Multi-year accessibility plans			▲	●	○■							
Procuring goods, services, facilities			▲	●	○							
Self-service kiosks			▲	●	○■	□						
Training of staff/volunteers				▲	●	○■	□					
Feedback processes				▲	●	○■	□					
New websites			▲		●○■							
All websites					▲	●	○■	□			▲	●○■
Accessible formats and communication supports					▲	●	○■	□				
Educational or training institutions – resource materials/educator training				●■		○□						
Producers of textbooks						●■○□						
Producers of printed educational materials											●■	○□
Public libraries – accessible materials				●○								
Educational libraries												
-Print-based resources						●■○□						
-Digital resources											●■○□	
New or redeveloped:												
-recreational trails, beach access routes, parking, service counters, fixed queuing guides, waiting areas						▲	●○	■	□			
-outdoor public use eating areas, outdoor play spaces, exterior paths of travel						▲	●○	■				
Public spaces maintenance						▲	●○	■				
Municipal consultation re taxicabs/bus shelters				●○								
Municipal duties re taxicabs		●○	●○									
Transportation service providers												
-Non-functioning equipment		▲●○										
-Information on equipment, features, emergency response			▲●○									
-Training of staff, volunteers/ support person fares					▲●○							
-Accessibility plans				▲●○								

Organizations by type/size:

- Large public sector (50 or more employees)
- Small public sector (1-49 employees)
- ▲ Government of Ontario

- Large private sector (50 or more employees)
- Small private sector (1-49 employees)

KEY ACCESSIBILITY REQUIREMENTS	COMPLIANCE DATE											
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Conventional transportation service providers:												
-General responsibilities, transit stops, storing mobility aids, courtesy seating			▲●○									
-Mobility aid storage fees, pre-boarding/on-board verbal announcements		▲●○										
-Fare levels		▲●○										
-Alternative transportation method, fare options, service disruptions, fare parity/ same hours of service as specialized service				▲●○								
-Electronic pre-boarding/on-board announcements								▲●○				
-Technical requirements:												
- manufacturing date				▲●○								
- purchase contract date		▲●○										
-Accessible rail cars		▲●○										
Specialized transportation service providers:												
-Categories of eligibility, fare parity, hours of service								▲●○				
-Eligibility application process, booking, trip restrictions					▲●○							
-Visitor eligibility, coordinated service, service delays				▲●○								
-Origin to destination services		▲●○										
-Companions and children			▲●○									
School transportation:												
-Integrated services		●○										
-Individual plans					●○							
Accessible transportation by public sector organizations		●○										
Building Code accessibility updates						●■○						
File accessibility report	▲●○	▲	▲■□*	▲●○	▲■□*	▲●○	▲	▲●○	▲	▲●○	▲■□*	▲●○

Organizations by type/size:

- Large public sector (50 or more employees)
- Small public sector (1-49 employees)
- ▲ Government of Ontario

- Large private sector (50 or more employees)
- Small private sector (1-49 employees)
- \*If 20 or more employees