

FTR Now

Proposed “Accessible Information And Communications Standard” Under The AODA

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In late 2008, a proposed new standard under the *Accessibility for Ontarians with Disabilities Act, 2005* (the “AODA”) was released for public comment. The standard relates to accessible information and communications, and if approved in its present form, will have a significant impact on employers and most organizations in Ontario.

BRIEF OVERVIEW OF THE AODA

The fundamental purpose of the AODA is to make Ontario fully accessible for persons with disabilities by 2025, which is to be accomplished by the gradual establishment and implementation of accessibility standards for the following areas: customer service; transportation; information and communications; the built environment; and employment. These standards will be given the force of law by being adopted as binding regulations. While voluntary compliance is a goal of the legislation, in time the AODA envisions an enforcement process involving inspectors, directors and the oversight of a tribunal.

At this time, the Customer Service standard has been approved and passed as a regulation. We discussed that standard in some detail in our Fall 2007 issue of [FTR Quarterly](#).

The Transportation standard was released for public comment in June 2007. It appears that the Committee has recently submitted this standard to the Minister of Community and Social Services for final approval, and so a regulation may soon be issued.

THE PROPOSED INFORMATION AND COMMUNICATIONS STANDARD

In November 2008, the proposed Information and Communications Standard (the “Standard”) was released for public comment. The Standard is notable for its breadth of coverage, and for the potential commitment in terms of time, money and other resources for employers and other organizations. We recommend that all employers review the Standard and consider making submissions on it to the Government.

The Standard is divided into eight main sections, which are as follows:

- Scope and Application
- Organizational Requirements
- IT-Based Information and Communication Systems
- Business Enterprise Systems
- Accessible Formats and Methods
- Requirements for Educational Organizations and Regulatory Bodies
- Accessible Municipal and Provincial Elections
- Definitions

We will briefly review some of the key points from the Standard in the following sections.

SCOPE AND APPLICATION

The Standard divides organizations in the Province into three classes: Class 1 is comprised of the private sector and non-profit organizations with 1-19 employees; Class 2 is comprised of the private sector and non-profit organizations with at least 20 employees; and Class 3 is comprised of public sector organizations with at least 1 employee.

Despite the vision of accessibility by 2025 in the *AODA*, the proposed Standard envisions a much quicker compliance time frame: Class 1 by December 31, 2013; Class 2 by December 31, 2012; and Class 3 by December 31, 2011.

Each requirement under the proposed Standard specifies the classes to which the requirement applies and how it applies. Most of the requirements apply in full to Class 2 and Class 3 organizations, as well as to Class 1 organizations that provide “critical services”, a term that is not defined, but is intended to cover such services as medical, legal, counseling and financial services.

ORGANIZATIONAL REQUIREMENTS

Some of the key requirements in this section include:

- the development of policies, practices and procedures that will ensure compliance with the Standard;
- the development and maintenance of a Statement of Commitment;
- the development of accessible user request and feedback processes;
- the training of employees, volunteers and any other individuals who are responsible for designing or providing and receiving information on behalf of the organization; and
- the development of emergency and public safety information systems both for the public and for employees (there is a proposed 3 month time limit to comply with this requirement).

IT-BASED INFORMATION AND COMMUNICATION SYSTEMS

These are systems designed to receive or deliver information and communications through a computer, such as websites, software applications, and computer-based telecommunication systems.

Essentially, this section requires that new IT-based systems have an accessible user interface and content file format by default when they are made available for use. New content delivered through existing systems will have to be made available in an accessible digital file format. Finally, the software user interfaces of existing systems must be accessible.

BUSINESS ENTERPRISE SYSTEMS

Business enterprise systems are IT applications that support fundamental internal or external business processes that are critical to the continued operation and growth of the organization. Some examples given are Human Resources systems, payroll systems, inventory control systems, student enrollment systems, patient records systems and taxation systems.

For these systems, the Standard sets more comprehensive requirements than for other IT-based systems. First, newly acquired systems must meet the technical requirements of Section 5 and Schedule 1 of the Standard (see below). Where a commitment has already been made to a new system, the organization will have 3 years to meet the same requirements, except that user interfaces and data formats must be compliant at the time they are made available for use. For existing systems, there will be a 6-year compliance period, and user interfaces and data formats must be compliant by 2012.

SECTION 5 AND SCHEDULE 1

Section 5 addresses “Accessible formats and methods”, while Schedule 1 addresses “Technical Requirements”. These sections are extensive, specific, and far-reaching. We cannot review all of the proposed requirements in detail, but can summarize some of them in very brief form:

- organizations are required to have the capacity to provide information and communications in an accessible format upon request;
- special requirements are established for “prepared communications” (i.e. those that are prepared before they are delivered), including such requirements as making available print materials in alternative formats, having accessible websites, text transcriptions or captions of spoken or audio recordings, and captions and transcriptions of video recordings (including synchronized interpretations in sign language);
- special requirements are established for “predictable communications” (i.e. communications where the responses are limited and predictable, such as multiple choice options on a website), including requirements where the communication is done by voice commands, by typing or pointing devices or by handwriting, requirements to permit alternatives to signatures, and requirements related to mechanical and touch controls and biometrics;
- special requirements are established for “unpredictable communications” to and from a person with a disability; and
- requirements to address information and communication needs of persons with disabilities in the context of a pre-arranged appointment that has a “significant personal impact” for the individual.

Schedule 1 sets out detailed technical requirements that will apply to the requirements of Section 5. For example, it would require compliance with various components of the W3C Accessibility Guidelines 2.0 for websites. Readers are encouraged to review these technical requirements directly.

REQUIREMENTS FOR EDUCATIONAL ORGANIZATIONS AND PROFESSIONAL, REGULATORY AND LICENSING BODIES

Special requirements are established for educational organizations and licensing and other regulatory bodies. We have prepared a special FTR Now to address these issues, which has been sent out as a companion piece to this update. We would refer you to that document for further information.

CONCLUDING THOUGHTS

As can be seen from this review, the proposed Standard could have a significant impact on virtually every organization in Ontario. In a Cost Impact Assessment prepared by KPMG, it has been estimated that the costs associated with compliance with the Standard could be quite significant (up to 5 to 9% of operating revenue for some types of organizations). These estimates are based on some key assumptions, which may or may not come to pass. There will also be significant time commitments, especially if the Committee’s rather aggressive timelines are adopted.

We recommend that all employers and organizations review the proposed standard in detail, and consider making submissions to the Committee. **The deadline for submissions is February 6, 2009.** You may find copies of the proposed Standard, along with additional resources and contact information, at:

<http://www.mcass.gov.on.ca/mcass/english/pillars/accessibilityOntario/accesson/business/information/>

If you have any questions, please do not hesitate to contact your regular [Hicks Morley lawyer](#).

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