FTR Now

What Educational Organizations And Regulatory Bodies Need To Know About Proposed AODA Standard

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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 proposed Accessible Information and Communications Standard (the "Standard") addresses all manner of conveyance of information and communications, whether orally, in print or electronic, and will impose a variety of requirements and obligations on organizations. If the Standard is approved in its present form, will have a significant impact on educational organizations and regulatory bodies in Ontario.

In our accompanying *FTR Now*, "Proposed 'Accessible Information and Communications Standard' under the *AODA*", we have provided a more general analysis of the proposed Standard and its impact. We would strongly recommend that you review that publication, in addition to this one.

The Standard also includes a specific set of rules that apply to educational organizations (i.e. those that provide training or education services) and to regulatory and licensing bodies. This special *FTR Now* focuses on these proposed rules.

APPLICATION AND SCOPE

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. The Standard proposes the following compliance time frame: Class 1 by December 31, 2013; Class 2 by December 31, 2012; and Class 3 by December 31, 2011.

SPECIAL REQUIREMENTS FOR EDUCATIONAL ORGANIZATIONS

Section 6 of the Standard creates a number of special requirements that apply to educational organizations. "Educational organizations" would include any organization that has as its primary focus the provision of education or training, and includes elementary, secondary and post-secondary public, private and not-for-profit organizations. It is also possible that an "educational organization" could include an organization for which the provision of training or education is a significant (though perhaps not primary) purpose.

As currently drafted, the requirements are drafted as being mandatory, and do not appear to be triggered by a request or demonstrated need. They are directed at a number of broad categories, and can be summarized as follows.

PROVIDERS OF TRAINING AND EDUCATION

Providers of training and education would be required to order an "accessible electronic format" for all text-based materials and for all multi-media material purchased for the purpose of education or training. The Standard requires that publishers provide this material "at no extra charge", and before or at the same time as the text-based materials or multi-media material are provided.

EDUCATORS

Educational organizations are also supposed to ensure that their “educators” provide educational and training materials to persons with disabilities before or at the same time as all other recipients of the materials. If the materials are in multi-media format, it appears that an “appropriate substitute” may be provided.

EDUCATIONAL LIBRARIES

“Educational libraries” that are affiliated with educational organizations would be required to acquire an accessible electronic format for all new educational, training and reference text-based materials and multi-media materials.

There is an exemption from this acquisition rule for “archival materials”, including special collections, rare books and donations. However, once the Standard is in force, all existing library materials, whether text-based or multi-media, would have to be made available in an accessible format upon request.

DEVELOPERS OF INFORMATION AND COMMUNICATION RESOURCES

If organizations provide training or education on the “design, production and/or delivery of information and communication products (such as software, web applications and sites, computer hardware, marketing and public relations content etc.)”, they must provide training in the following areas:

- information and communication barriers and requirements of persons with disabilities;
- inclusive design principles, resources and tools; and
- testing of information and communication products to ensure they meet with the accessibility needs of persons with disabilities.

SPECIAL REQUIREMENTS FOR PROFESSIONAL, REGULATORY AND LICENSING BODIES

These organizations would be required to ensure that licensing or regulatory requirements for entry into practice and mandatory professional development include training in:

- determining information and communication barriers and requirements of persons with disabilities;
- accessible information and communication resources and tools; and
- adaptation of information and communications to meet the accessibility needs of persons with disabilities.

CONCLUDING COMMENTS

The Standard raises significant questions for all organizations that provide training and education services:

- could the Standard be enforced against publishers that are not located within Ontario?;
- what happens if an “accessible electronic format” is not available (or is not provided) for an education resource? does this mean that the resource cannot be used? (this could have a significant impact on the availability of materials for more specialized or non-traditional areas of study where there may be few resource alternatives);
- how do the Standard’s requirements interact with copyright, intellectual property and other similar laws?; and
- given that educational libraries may contain materials that are old and out of print, how would they provide “existing library materials” in an “accessible electronic form”, and at what cost?

Clearly, all of these issues could have a significant impact on all organizations that provide training and education services. We recommend that all educational 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.mcss.gov.on.ca/mcss/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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