FTR Now

Recent Developments under the *AODA*

Date: September 14, 2009

It was a busy summer of new developments under the *Accessibility for Ontarians with Disabilities Act, 2005 ("AODA")*, several of which employers and other organizations should note:

- the "Initial Proposed Accessible Built Environment Standard" was released for public comment;
- the "Final Proposed Accessible Information and Communications Standard" was submitted to the Minister for approval;
- the "Final Proposed Employment Accessibility Standard" was submitted to the Minister for approval; and
- the government began a four-year review of the statute.

In this *FTR Now*, we will review each of these developments.

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 are being 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 compliance reporting, inspectors, director's orders, and the oversight of a tribunal.

In addition to the three standards discussed in this update, there are two others that have been, or are being, developed:

Customer Service – This standard has been passed as a regulation with compliance deadlines of January 1, 2010 for the public sector, and January 1, 2012 for the private and not-for-profit sectors.

Transportation – A final proposed standard was submitted to the Minister of Community and Social Services for approval in late 2008. It has not yet been formalized in a regulation.

INITIAL PROPOSED ACCESSIBLE BUILT ENVIRONMENT STANDARD

In mid-July, the Ontario government released the Initial Proposed Accessible Built Environment Standard for public comment. The proposed Standard is a large, highly technical document that details accessibility requirements for a large variety of buildings, dwellings and public spaces. While the proposed Standard overlaps to a fair degree with the Building Code, it also goes beyond the Building Code and covers elements and places to which the Building Code does not apply, such as play areas and amusement parks.

As currently drafted, the Standard would apply both to new construction, as well as to significant renovations. There is some indication that the Committee may wish to extend the Standard to retrofitting and to private dwellings as well, though this may be beyond the Committee's mandate at this time.

The proposed Standard addresses requirements for such elements as:

- common access and circulation;
- interior accessible routes;
- exterior spaces;
- communication elements and facilities;
- plumbing elements and facilities;
- building performance and maintenance;
- special rooms;
- spaces and other elements;
- transient residential;
- recreation elements and facilities;
- transportation elements; and
- housing.

All organizations should consider reviewing the proposed Standard to determine what impact it might have on your operations and bottom line. You may make submissions to the Committee on the proposed Standard until **October 16, 2009**.

For details on the proposed Standard, including how to submit comments and a costing study performed by the IBI Group, please go to the website of the Ministry of Community and Social Services at:

http://www.mcss.gov.on.ca/mcss/english/pillars/accessibilityOntario/accesson/business/environment/index.htm

FINAL PROPOSED ACCESSIBLE INFORMATION AND COMMUNICATIONS STANDARD

In late May of this year, the Accessible Information and Communications Standards Development Committee submitted its Final Proposed Accessible Information and Communications Standard to the Ministry for approval. The Standard and supporting materials were recently posted on the Ministry's website.

In a previous *FTR Now* published on January 16, 2009 ("Proposed 'Accessible Information and Communications Standard' under the *AODA*"), we discussed the potential impact of the draft version of this Standard, which we noted could be quite substantial for many organizations.

It would appear that the Committee received a large amount of feedback on the proposed Standard and made significant changes in response, including:

- the classes of organizations to which the Standard will apply has been changed to three basic classes based on number of employees – under 50, between 50 and 99, and 100 or more – with no distinction between the public and private sectors;
- the complex distinction between "prepared, predictable, and unpredictable" communications has been removed;
- the references to IT-based information and communication systems and business enterprise systems have been removed (the latter was transferred to the Committee developing the Final Proposed Employment Accessibility Standard to be considered in the context of that standard); and
- the technical requirements for websites and website content have been modified.

There still remain significant obligations on all organizations to whom the Standard applies, including:

- the development of policies, practices and a statement of commitment;
- the establishment of accessible feedback and complaint processes;
- the requirement to provide training to employees, volunteers and third parties;
- the establishment of special rules for the communication of emergency and public service information;

- the requirement to develop accessible websites, web content and other communications;
- new requirements for organizations that generate computerized point of sale receipts; and
- special requirements for “priority areas”, including health, education (including requirements for libraries – both educational and public), legal and financial.

The Committee’s proposals for compliance time frames were contained in a document separate from the Standard. Rather than establish time frames based on class of organization (as was initially proposed), the Committee has now proposed time frames that will take into account both the requirement in question and the class of the organization to which it applies. Most requirements have a compliance time frame of 5 years or less, with a very small number stretching out as far as 10 or 15 years.

While the content of the final proposed information and communication standard may still change upon review by the Minister, all organizations should review it and its proposed time frames to assess its potential impact. More information can be found at:

http://www.mcss.gov.on.ca/mcss/english/pillars/accessibilityOntario/accesson/business/information/index.htm

FINAL PROPOSED EMPLOYMENT ACCESSIBILITY STANDARD

We understand that the Employment Accessibility Standards Development Committee recently submitted the Final Proposed Employment Accessibility Standard to the Minister for approval, but details have not yet been released as of the date of this publication. Hicks Morley will closely follow any developments and will report on them once the details are released.

REVIEW OF THE *AODA*

The *AODA* contains a provision requiring that the government appoint an individual to conduct an independent review of the legislation within four years of its passing. That review process is currently underway. The review is being conducted by Mr. Charles Beer, a former cabinet minister and now a principal with the organization, Counsel Public Affairs Inc.

There are two basic ways to participate in the review. The first is by making written submissions by **October 15, 2009** (the suggested deadline) or **October 31, 2009** (the final deadline). The second is to participate in public meetings, which are scheduled to occur in October in Sudbury, Ottawa, Toronto and London. If you wish to register to participate in a public meeting, you must do so by **September 21, 2009**. Details on the review process can be found at:

http://www.mcss.gov.on.ca/mcss/english/pillars/accessibilityOntario/accesson/participate.htm

For further information, please contact Paul Broad (London) at 519.931.5604 or your regular Hicks Morley lawyer.

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