FTR Now

Giving Accessibility the Green Light: Ontario Government Moves Forward With a Draft "Integrated Accessibility Standards" Regulation Under the AODA

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The Ministry of Community and Social Services (the "Ministry") has released for public comment the long-awaited draft Integrated Accessibility Standards regulation (the "Draft Regulation") under the Accessibility for Ontarians with Disabilities Act, 2005 (the "*AODA*" or the "*Act*"). The 54-page Draft Regulation combines accessibility standards in three areas: information and communication, employment, and transportation. It affects nearly all provincially regulated businesses and organizations in Ontario, and represents a significant development in accessibility law in Ontario.

INTRODUCTION

As we first reported in our September 10, 2010 *FTR Now* – "Integrated Accessibility Regulation Proposed under the *AODA*" – the Ministry originally released in the Fall of 2010 a "summary of requirements" document for public input. That document was the Ministry's first attempt at combining the elements of what were three formerly separate proposed accessibility standards. The Draft Regulation is a significant development as it formalizes the standards that have been in development since 2005 and represents a major step forward in implementing the goals of the *Act*.

Employers have until **March 18, 2011** to submit comments on the Draft Regulation, which can be found by clicking here.

CONTINUED APPLICABILITY OF THE *HUMAN RIGHTS CODE*

The Draft Regulation makes it clear that its requirements do not replace, nor are they a substitute for, the requirements established under the *Human Rights Code*, nor will the standards limit any rights under other pieces of legislation. However, neither the Draft Regulation nor the *AODA* provides any real guidance as to how the standards should be interpreted in light of the *Code* or other sources of obligations for employers and other obligated organizations.

BUSINESSES AND ORGANIZATIONS AFFECTED BY THE DRAFT REGULATION

The Draft Regulation applies to any public, private and non-profit organization that "provides goods, services or facilities to the public or other third parties" and has at least one employee in Ontario. These organizations are referred to as "obligated organizations". Specific requirements and compliance deadlines vary depending on whether the obligated organization is:

- the Government of Ontario;
- a large designated public sector organization (50+ employees);
- a small designated public sector organization (less than 50 employees);
- a large private or not-for-profit sector organization (50+ employees); or
- a small private or not-for-profit sector organization (less than 50 employees)

Small private and not-for-profit sector organizations are exempt from many of the requirements of the Draft Regulation or are provided with longer compliance deadlines.

The following are highlights of the Draft Regulation (we will include some compliance timeframes for reference purposes, but the text of the Draft Regulation should be consulted for details).

PART I: GENERAL STANDARDS

The following general standards are applicable to most obligated organizations (the usual exception being small private and not-for-profit organizations):

1.ESTABLISHMENT OF ACCESSIBILITY POLICIES

All obligated organizations will be required to develop, implement and maintain policies on how they achieve or will achieve accessibility in accordance with the Draft Regulation. Most organizations will be required to include a statement of commitment, prepare written documents describing their policies and to have those documents publicly available and provided in an accessible format upon request.

Compliance timelines range from January 1, 2013 for large designated public sector organizations to January 1, 2015 for small private and not-for-profit organizations.

2.ACCESSIBILITY PLANS

Most organizations (except small private and not-for-profit organizations) will be required to prepare, document and post on their website, if any, and provide in accessible format upon request, a multi-year accessibility plan on how they intend to prevent and remove barriers to accessibility. The plan must be reviewed and updated at least once every five years.

Designated public sector organizations in particular will be required to consult with persons with disabilities or with members of their accessibility advisory committee, where applicable, when updating the plan. They will also prepare an annual status report on their progress on their plan and post the status report on their website.

Similar compliance timelines apply as with accessibility policies.

3.PROCURING OR ACQUIRING GOODS, SERVICES OR FACILITIES

When procuring or acquiring goods, services or facilities, designated public sector organizations will be required to incorporate “accessibility criteria and features”, unless it is not practicable to do so, in which case the affected organization must explain why it did not do so (if requested).

4.SELF-SERVE KIOSKS

Designated public sector organizations shall “incorporate” accessibility features – whereas private and not-for-profit organizations shall “have regard to” accessibility – when designing, procuring or acquiring self-serve kiosks.

5.TRAINING

All obligated organizations must provide training on the requirements of the accessibility standards in the Draft Regulation to their employees, volunteers, persons who participate in developing the organization’s policies, and “all other persons” who provide goods and services on behalf of the organization. The training is to be provided as soon as practicable and anytime after any changes are made to the accessibility policies. The training “shall be appropriate to the duties” of these individuals. Most organizations will be required to keep a record of training, including the dates the training was provided and the number of individuals to whom it was provided.

6.FILING ACCESSIBILITY REPORTS

To the extent that the Draft Regulation requires accessibility reports to be filed by obligated organizations, this will not apply to any small organizations.

PART II: INFORMATION AND COMMUNICATIONS STANDARDS

All obligated organizations will be required to adhere to the first four requirements discussed under this portion of the Draft Regulation.

1.FEEDBACK PROCESSES

Obligated organizations with feedback processes already in place will have to ensure that the processes are accessible by providing accessible formats and communications support upon request.

2.ACCESSIBLE FORMATS AND COMMUNICATION SUPPORTS

More generally, obligated organizations must, upon request, provide or arrange for the provision of accessible formats and communications supports: (1) in a timely manner that takes into account the disabled person's accessibility needs; and (2) at a cost not exceeding the regular cost charged to other persons. Organizations must consult with the person making the request on the suitability of an accessible format or communication support; however, the organization would make the final determination as to which accessible format or communication support is used.

3.EMERGENCY PROCEDURE, PLANS OR PUBLIC SAFETY INFORMATION

Organizations that prepare emergency procedures, plans or public safety information that is available to the public must also make such information available in an accessible format or with appropriate communication supports, as soon as practicable and upon request.

4.ACCESSIBLE WEBSITES AND WEB CONTENT

Most organizations will be required to make their internet websites and web content conform with the World Wide Web Consortium Web Content Accessibility Guidelines (WCAG) 2.0, initially at Level A, and increasing to Level AA. New websites and web content must conform with WCAG 2.0 Level A by January 1, 2014. All websites and web content must conform with WCAG 2.0 Level AA by January 1, 2021 (subject to some limited exceptions).

5.EDUCATIONAL AND TRAINING RESOURCES AND MATERIALS

The provisions described in this section apply to organizations governed by the *Education Act* (e.g. school boards), the *Post-Secondary Education Choice and Excellence Act, 2000*, the *Private Career Colleges Act, 2005,* as well as to colleges of applied arts and technology and universities, and to any public or private organizations that provide diploma or certificate courses under the *Education Act.*

These organizations will be required to provide educational or training resources or materials in an accessible format if "notification of need" is given. They may do so by procuring or obtaining by other means, or if not available, by arranging for comparable resources in an accessible format. Student records and information on programs will need to be provided in an accessible format.

6.TRAINING TO EDUCATORS

School boards and other educational and training institutions will be required to provide their educators with accessibility awareness training on accessible program or course delivery and instruction.

7.PRODUCERS OF EDUCATIONAL OR TRAINING MATERIAL

Producers of training or education textbooks and of print-based educational or training supplementary learning resources for

educational or training institutions will be required to make accessible or conversion-ready versions of their textbooks and other materials available upon request.

8.LIBRARIES OF EDUCATIONAL AND TRAINING INSTITUTIONS

Such libraries will be required to provide, procure or otherwise acquire an accessible or “conversion ready” format of print, digital or multimedia resources or materials, upon request. This would not apply to special collections, archival materials, rare books or donations.

9.PUBLIC LIBRARIES

Public libraries will be required to provide access to, or arrange for, the provision of access to accessible materials where they exist, make information about the availability of accessible materials publicly available, and provide that information in an accessible format or with appropriate communication supports upon request. They may (but are not required to) provide accessible formats for archival materials, special collections, rare books and donations.

PART III: EMPLOYMENT STANDARDS

The employment accessibility standards apply only with respect to the employment of individuals. They do not apply to the engagement of volunteers and other “non-paid” individuals. It is interesting to note that “employee” is not a defined term in the Draft Regulation, so it remains to be seen how broadly it will be interpreted, and whether it will apply to dependent or independent contractors, or to employee-like relationships (e.g. office holders).

In general (and subject to a few exceptions), the compliance timeframes for the employment accessibility standards are:

- January 1, 2014 – large designated public sector organizations;
- January 1, 2015 – small designated public sector organizations;
- January 1, 2016 – large private and not-for-profit organizations; and
- January 1, 2017 – small private and not-for-profit organizations.

1.RECRUITMENT

All employers will be required to notify their employees and the public about the availability of accommodation for applicants with disabilities in their recruitment process.

2.RECRUITMENT, ASSESSMENT OR SELECTION PROCESS

All employers must notify job applicants when they are selected to participate further in the selection process that accommodations are available upon request in relation to the materials or processes to be used. Employers must consult with an applicant who is selected and who requests an accommodation and must provide or arrange for the provision of “suitable” accommodation as determined by the employer.

3.NOTICE TO SUCCESSFUL APPLICANTS

When making offers of employment, all employers must notify the successful applicant of their policies for accommodating persons with disabilities.

4.INFORMING EMPLOYEES OF SUPPORTS

Employers will be required to inform all their employees of their policies (and any updates to those policies) used to support employees with disabilities, including information on accommodation. New employees are to receive this information as soon

as practicable after they start employment.

5.ACCESSIBLE FORMATS AND COMMUNICATION SUPPORTS

Where a disabled employee requests it, every employer will be required to consult with the employee to provide or arrange to provide accessible formats and communication supports for information needed to perform his or her job and information that is generally available to other employees. In determining the suitability of an accessible format or communication support, an employer shall consult with the employee making the request, but the final determination as to which accessible format or communication support is to be used rests with the employer.

6.WORKPLACE EMERGENCY RESPONSE INFORMATION

All employers must provide “individualized” workplace emergency response information to disabled employees if individualized information is necessary based on the type of disability and if the employer is aware of the need for accommodation. Employers must provide this information as soon as practicable after becoming aware of the need for such accommodation.

This workplace response information may be shared with a person designated by the employer to provide assistance to the disabled employee if the disabled employee consents. Individualized workplace emergency response information must be reviewed if the disabled employee moves to a different work location in the organization, when his or her overall accommodation needs or plans are reviewed, and when the employer reviews its general emergency response policies.

7.DOCUMENTED INDIVIDUAL ACCOMMODATION PLANS

Most employers must develop a written process to develop documented individual accommodation plans for disabled employees. The written process must address a number of required elements set out in the Draft Regulation, including, for example, the manner in which the disabled employee requesting accommodation can participate in the development of the plan, the means by which the employee is assessed on an individual basis, and the manner by which an employer can request an evaluation by an outside medical or other expert, at the employer’s expense.

8.RETURN TO WORK PROCESS

Most organizations will need to develop, implement, and document a return to work process for employees who have been absent from work due to a disability and who require disability-related accommodations in order to return to work. The return to work process shall outline the steps the employer will take to facilitate the return to work and must include an individual documented accommodation plan. This return to work process does not replace or override any other return to work process created by or under any other statute (e.g. the *Workplace Safety and Insurance Act*).

9.PERFORMANCE MANAGEMENT, CAREER DEVELOPMENT AND ADVANCEMENT, AND REDEPLOYMENT

Employers who:

- conduct performance management,
- provide career development and advancement to employees, or
- engage in employee redeployment,

must take into account the accessibility needs of disabled employees as well as individual accommodation plans.

PART IV: TRANSPORTATION STANDARDS

It is beyond the scope of this *FTR Now* to discuss the transportation accessibility standards to any degree. It is sufficient to

note that they create very detailed and technical accessibility standards, and any operator of a transportation system should carefully review them. There are also specific standards for organizations that provide transportation services, but without being primarily engaged in the transportation industry – for example, school boards, hospitals, colleges and universities.

PART V: COMPLIANCE PROVISIONS

The Draft Regulation sets out a series of compliance provisions that apply not only to the standards contained in the Draft Regulation, but also to the Accessibility Standards for Customer Service (the initial accessibility standard passed under the *AODA*).

The Draft Regulation would enable a government official – a "director" – to assess an administrative penalty based on a consideration of the severity of the impact of the contravention (e.g. administrative oversight vs. health and safety risk), the contravention history of the person or organization in question, and the nature of the organization (corporation, unincorporated association or individual).

For example, penalties for individuals and unincorporated associations would generally range from $200 (for a contravention of minor impact and a minor contravention history) to $2,000 (for a contravention of major impact and a major contravention history). The range for corporations would generally go from $500 to $15,000. However, in the case of contraventions of major impact coupled with a major contravention history, the administrative penalties can be assessed on a daily basis to a maximum of $100,000 for a corporation and $50,000 for an individual or unincorporated association.

CONCLUDING COMMENTS

As can be seen by this lengthy "summary", the Draft Regulation covers a broad range of topics and is extremely detailed. Because some organizations are exempt from some requirements, and others are not required to comply until years from now, the Draft Regulation's complex matrix of substantive requirements and compliance timelines means that organizations will face a challenge in navigating through the proposals as each compliance deadline approaches.

While the Draft Regulation is still in draft form, it is much closer to final form than before, and the Ministry is accepting public comment until **March 18, 2011**. We encourage readers to consider providing feedback, especially given the broad impact that the standards will have on all aspects of an organization's affairs. Again, the Draft Regulation can be found by clicking here.

MOVING FORWARD

Hicks Morley has been actively following developments on the *AODA* since 2005. We will continue to monitor and report on developments of this and other proposed *AODA* standards. For further information, please contact Paul Broad at 519.931.5604, or your regular Hicks Morley lawyer.

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