

## FTR Now

# Ontario Government Releases Final Integrated Accessibility Standards Regulation Under the AODA

**Date:** June 9, 2011

On June 3, 2011, the Ontario government released the final Integrated Accessibility Standards regulation (the “Final Regulation”) under the *Accessibility for Ontarians with Disabilities Act, 2005* (the “AODA” or the “Act”). The Final Regulation combines accessibility standards in three areas – information and communication, employment, and transportation – and comes into force July 1, 2011.

We have been following the development of the Integrated Accessibility Standards regulation for some time, from the release of its proposed content in the fall of 2010 (the subject of a September 10, 2010 [FTR Now](#)) to the release of a draft regulation earlier this year (the subject of a March 1, 2011 [FTR Now](#)) to the release of the Final Regulation this past week (the subject of this *FTR Now*..”

The development of the Final Regulation represents a significant shift in human rights and accessibility law affecting nearly all organizations in Ontario with respect to their human resources practices and in the way they do business. We strongly encourage employers in Ontario to pay particular attention to these developments.

## INTRODUCTION

In the Final Regulation, the Ontario government has preserved nearly all of the contents of the draft regulation released earlier this year, but has made a number of very important and far-reaching changes. The most noteworthy change is the new requirement that organizations provide training on the *Human Rights Code* as it pertains to persons with disabilities.

The following are highlights of the Final Regulation along with commentary on important changes from the draft regulation. An official copy of the Final Regulation ([Ontario Regulation 191/11](#)) has been posted on the e-Laws website and can be accessed by clicking [here](#).

## CONTINUED APPLICABILITY OF THE *HUMAN RIGHTS CODE*

The Final Regulation makes it clear that its requirements do not replace, nor are they a substitute for, the requirements established under the *Human Rights Code* (the “Code”), nor will the standards limit any rights under other pieces of legislation. However, neither the Final 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 FINAL REGULATION**

The Final 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 and Legislative Assembly;
- 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 Final Regulation or are provided with longer compliance deadlines.

## **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 Final 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 be required to 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.

There was a clarification in the Final Regulation that “kiosk” includes point-of-sale devices.

### **5. TRAINING**

As mentioned above, the most significant change in the Final Regulation from the draft is the new requirement that all obligated organizations must provide training “on the *Human Rights Code* as it pertains to persons with disabilities.” This human rights training is to be provided in addition to the training on the requirements of the accessibility standards set out in the Final Regulation.

This new requirement is quite remarkable given the very broad scope of human rights issues that could be seen to “pertain to” persons with disabilities. Unfortunately, the Final Regulation provides no guidance on the scope of the required training, and it remains to be seen how this requirement will be interpreted and what resources the government may make available to obligated organizations.

The required training is to be provided to an obligated organization’s employees, volunteers, persons who participate in developing the organization’s policies, and “all other persons” who provide goods, services or facilities on behalf of the organization in accordance with the following schedule:

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

- January 1, 2016 – small private or not-for-profit sector organizations.

Training is also 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 Final 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 Final 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. The Final Regulation now requires that such organizations notify the public about the availability of accessible formats and communication supports.

### **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.

The draft regulation expressly stated that organizations have the final determination as to which accessible format or communication support is used. This provision has been removed from the Final Regulation. While the removal of the provision creates some ambiguity regarding the government’s intent, the final decision should remain with the organization as the Final Regulation does not establish a collaborative decision-making process, but only a consultation obligation.

The requirements must be completed in accordance with the following schedule:

- January 1, 2015 – large designated public sector organizations;
- January 1, 2016 – small designated public sector organization;

- January 1, 2016 – large private or not-for-profit sector organization; and
- January 1, 2017 – small private or not-for-profit sector organization.

### **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*. The Final Regulation now states that these provisions also apply to “private schools” within the meaning of 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. The Final Regulation now requires obligated organizations to keep training records, including the dates on which training is provided and the number of individuals to whom it is provided.

### **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 ACCESSIBILITY 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 Final 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 accommodation is 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.

The draft regulation expressly stated that employers have the final determination as to which accommodation is to be provided. This provision has been removed from the Final Regulation. As noted previously, while the removal of the provision creates some ambiguity regarding the government’s intent, the final decision should remain with the organization as the Final Regulation does not establish a collaborative decision-making process, but only a consultation obligation.

### **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.

The draft regulation expressly stated that employers have the final determination as to the choice of the accessible format or communication support to be used. This provision has been removed from the Final Regulation. As noted previously, while the removal of the provision creates some ambiguity regarding the government’s intent, the final decision should remain with the organization as the Final Regulation does not establish a collaborative decision-making process, but only a consultation obligation.

### **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.

Every obligated organization must meet the requirements in this section by January 1, 2012.

## **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 Final 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, to assist in its determination on whether accommodation can be achieved.

## **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, 1997*).

## **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. However, there are a number of notable changes in the Final Regulation from its draft form on standards relating to transportation. For example, there are new requirements on:

- keeping training records;
- availability of emergency preparedness and response policies;
- developing steps to reduce waiting times; and
- ensuring on-board announcements of destination points or available route stops are audible.

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.

We encourage you to contact your Hicks Morley lawyer for detailed advice regarding the new transportation standards.

## PART V: COMPLIANCE PROVISIONS

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

The Final 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.

The government has designated the Licence Appeal Tribunal as the tribunal responsible for hearing matters arising under the AODA.

## CONCLUDING COMMENTS

Accessibility law in Ontario is changing. The government is moving forward with the implementation of these new Integrated Accessibility Standards under the *AODA* at a time when many employers are still addressing the requirements of the *AODA*'s customer service standards. The draft Built Environment standards, the only remaining standards under the *AODA*, are still under review by the government. Developments in other areas, such as the new Work Re-integration Program of the Workplace Safety and Insurance Board, mean organizations are well advised to take the time to understand and assess the impact of these new developments in accessibility law.

## MOVING FORWARD

Hicks Morley has been actively following *AODA* developments since 2005 and is a leader in this area. We will continue to monitor and report on developments of this and other proposed *AODA* standards. For further information, please contact [Paul E. Broad](#) at 519.931.5604, or your regular [Hicks Morley lawyer](#).

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