

Enabling Individuals with Disabilities

The Accessibility for Ontarians with Disabilities Act, 2005



by Ella Forbes-Chilibeck

The *Accessibility for Ontarians with Disabilities Act, 2005*, ("AODA") made Ontario the first jurisdiction in Canada to adopt legislation on the development, implementation, and enforcement of mandatory accessibility standards for people with disabilities. The legislation affects the more than 1.85 million Ontarians who have a disability, a number that is expected to increase over the next twenty (20) years as a result of an aging population. The AODA defines "disability" very broadly and includes both visible and non-visible disabilities. The AODA uses the same definition of disability found in the Ontario *Human Rights Code*, but offers employees more extensive protection than current protections available under the *Code*.

The AODA has far-reaching implications, in part due to the extremely broad definitions of "disability" and "barrier". "Disability" refers not only to physical disabilities but also includes mental impairments and disorders, developmental disabilities and learning disabilities. "Barrier" is defined as "anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability" and includes physical barriers, architectural barriers, information and communication barriers, attitudinal barriers, technological barriers and policy and practice barriers.

Seeking to improve accessibility, the AODA mandates Accessibility Standards in key areas of public life, including customer service, the built environment, employment, information and communications and transportation.

The Act's accessibility standards are chiefly outlined in the Regulations, which are staggered to come into force over a number of years, with the goal of making Ontario "barrier free" by 2025. Employers will be expected to comply on a certain timeline depending on the type of employer (public or private), and the employer's type of goods (transportation, communications or another sector) and/or the service they deliver (to the public or privately). Public employers are required to follow the *Accessibility Standards for Customer Service* ("ASCS") by January 1, 2010, whereas private employers do not have to comply until January 1, 2012.

The ASCS applies to all public or private organizations (with more than one employee) that provide goods and services to the public in Ontario. Unions and professional organizations are considered providers of goods and services because they provide a good or service to their members. The standards of the ASCS are applicable by January 2010 only to public sector organizations, such as Ontario municipalities, Government of Ontario ministries, hospitals, colleges and universities. This list is not exhaustive.

As the requirements are quite extensive, we can treat them only briefly here. The Regulation obliges the employer to create policies, practices and procedures; outlines how to treat disabled persons; requires public notice in advance of a disruption in services used by disabled persons; and requires training of staff with respect to the purpose of the Act and the requirements of the ASCS and in how to interact and communicate with persons with various types of disability.

The *ACSC* places an obligation on businesses and organizations to establish policies, practices and procedures to govern the provision of goods or services to persons with disabilities. An organization covered by an "Accessibility Standard" will be required to file an annual Accessibility Report that will be used to determine whether it is complying with accessibility reporting requirements or the provision of accessibility standards.

Although the Act does not enable individuals to claim damages against an organization for a failure to meet the accessibility standard, substantial fines can be levied against individuals and organizations. Where an organization fails to comply or is found to have committed an offence under the Act, substantial fines of \$100,000 for each day or part day on which the offence occurs or continues to occur may be awarded. Where a Director or Officer of a corporation fails to carry out their duty to take all reasonable care to prevent the corporation from committing an

offence, that individual is guilty of an offence and liable on conviction to a fine of up to \$50,000 for each day or part of a day on which the offence occurs or continues to occur. Individuals guilty of an offence under the Act may be fined in this manner as well.

The Ministry of Community and Social Services provides resource materials at www.AccessON.ca/compliance to assist organizations to comply with the *Accessibility Standards for Customer Service*.

Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, c. 11.
Accessibility Standards for Customer Service, O. Reg. 429/07.

Ella Forbes-Chilibeck practises employment law with the law firm Nelligan O'Brien Payne, OCASA's legal services provider.

Nelligan O'Brien Payne was selected by the Ontario College Administrative Staff Association (OCASA/APACO) as the preferred law firm for its membership.

Visit our website at

www.nelligan.ca

to find a large selection of articles written by the lawyers at our firm.



NelliganO'BrienPayne

Lawyers/Patent and Trade-Mark Agents
Avocats/Agents de brevets et de marques de commerce