

Government introduces *Accessibility for Ontarians with Disabilities Act, 2004*

On December 2, Bill 118, the *Accessibility for Ontarians with Disabilities Act, 2004*, passed second reading in the Ontario Legislature. The Bill aims to achieve accessibility for disabled Ontarians by the year 2025. Unlike the current *Ontarians with Disabilities Act, 2001*, the Bill would apply to the private sector as well as the public sector. Also unlike the current legislation, it would impose binding standards and penalties for violations of its requirements.

ACCESSIBILITY STANDARDS

If the Bill comes into force, it will require the creation of accessibility standards that apply to any company or private or public sector organization that

- provides goods, services or facilities to the public;
- employs persons in Ontario;
- offers accommodation to the public;
- owns or occupies a building, structure or premises that are open to the public; or
- is engaged in a business or activity specified in the regulations.

The accessibility standards will set out measures for the removal of barriers to disabled persons with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises. A "barrier" is defined to mean "anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice". The standards will require the organizations bound by them to implement the measures within specified time frames. The standards, which will be established by regulation, will name the organizations to which they apply, and may create classes of organizations or buildings based on criteria such as the number of persons employed by organizations, the annual revenue of organizations, the type of industry in which they are engaged, or the size of buildings.

PROCESS FOR DEVELOPING ACCESSIBILITY STANDARDS

The Bill provides that the Minister of Citizenship and Immigration will be responsible for establishing standards development committees for different industries and sectors of the economy. These committees will consist of persons with disabilities or their representatives, representatives of the applicable industry or economic sector, and the relevant government ministries.

Starting with terms of reference established by the Minister, each committee will be responsible for developing proposed accessibility standards and the accessibility measures it believes should be implemented in its respective industry or economic sector by January 1, 2025. Each committee will also develop the time frame for progressive implementation of barrier-reducing measures, with the first measures to be implemented no more than five years after the day the committee is established, and successive measures to be implemented no more than five years after the previous implementation dates. Proposed standards will be made available to the public for comment.

COMPLIANCE, INSPECTIONS

The Bill requires companies and organizations to which an accessibility standard applies to comply with the standard within the time frame set out in the standard, and to file annual accessibility reports with the government. Reports may be reviewed to ensure compliance. The Minister may also appoint inspectors to ensure compliance with the requirements of the Bill.

DIRECTORS' ORDERS, APPEALS

The Bill provides that a director appointed under its terms will be able to require organizations to file accessibility reports or other information. A director will also be empowered to order an organization to comply with an accessibility standard, and to levy administrative penalties to

- encourage compliance with the terms of the Bill or with an order;
- prevent an organization from deriving an economic benefit as a result of a contravention of the requirements of the Bill; or
- recover the costs of enforcement against an organization that is required to pay an administrative penalty.

A director will have to give an organization notice of an order and advise it of its right to make written submissions explaining the alleged violation. Organizations will have 30 days from the day notice is received to make their submissions. However, a director will not be required to hold a hearing before making an order. Orders that are not complied with may be filed in the Superior Court and enforced as court orders.

The Bill will not create a new tribunal to hear appeals. Rather, one or more existing tribunals may be designated to hear appeals under the Act, with the matters they are responsible for hearing being set out in the designation. While only organizations that are subject to an order will be able to appeal to a tribunal, the tribunal may grant other persons or organizations standing if it considers it necessary for the proper conduct of the hearing. The tribunal will hold written hearings, unless a party satisfies it that there is good reason to hold an oral hearing.

ADVISORY BODIES, DIRECTORATE

Municipalities with populations of 10,000 or more will be required to establish an Accessibility Advisory Committee, of which the majority of members must be persons with disabilities. The Committees are to advise municipalities regarding the implementation of accessibility standards and the preparation of accessibility reports, among other matters. Two or more municipalities may establish joint Accessibility Advisory Committees.

The Minister will also appoint an Accessibility Standards Advisory Council, with a majority of members being persons with disabilities. The principal function of the Council is to advise on

- the process for developing accessibility standards;
- the progress made by accessibility standards development committees;
- accessibility reports; and
- public information programs.

The Accessibility Directorate of Ontario, created under the *Ontarians with Disabilities Act, 2001*, will be continued as part of the public service. It will have a variety of functions, including

- advising on the standards development process;
- preparing training material, guidelines and reference material for standards development committees;
- advising on the form and content of accessibility reports, the method of reviewing the reports and enforcing the accessibility standards;
- consulting with persons and organizations required to prepare accessibility reports on the preparation of their reports;
- conducting research and programs of public education;
- advising on the implementation and effectiveness of accessibility standards;
- supporting and consulting with the Accessibility Standards Advisory Council; and
- making recommendations on amendments to various Acts and regulations.

INCENTIVE AGREEMENTS

The Bill provides that, if the Minister believes it to be in the public interest, he or she may enter into an agreement with an organization that is bound to comply with an accessibility standard to provide incentives for the organization to exceed the standard within a time period specified in the agreement. The incentives would be specified in the agreement, and may include an exemption from reporting requirements.

OFFENCES

The Bill provides that it is an offence to

- furnish false or misleading information in an accessibility report;
- fail to comply with any order made by a director or a tribunal;
- obstruct an inspector; or
- threaten or retaliate against a person for complying with the terms of the Bill.

Individuals and corporations can be fined up to \$50,000 and \$100,000 respectively for each day or part of a day on which the offence occurs. The Bill stipulates that corporate directors or officers are under a duty to take reasonable care to prevent a corporation from committing an offence, and that failure to carry out that duty can result in a fine of up to \$50,000 a day.

In Our View

It should be noted that there are no timelines in the Bill within which accessibility standards must take effect. While the committees will be subject to deadlines imposed by the Minister and are required to set a target date of five years from the date on which they are formed for implementation of the first set of standards, there is no clear indication of when they will first meet or when the standards will be adopted by regulation.

Also, the Bill does not have a complaint mechanism. Presumably, complaints by persons with disabilities may still be brought under the *Human Rights Code*. Moreover, concerns expressed by members of the public may lead to an inspection being launched and charges being brought against alleged violators.

Finally, the Bill provides for the phased repeal of the *Ontarians with Disabilities Act, 2001*, which currently applies to government ministries, municipalities and a variety of broader public sector organizations. Under the current legislation, these bodies are required to develop accessibility plans in consultation with persons with disabilities. Presumably, the legislation will be repealed as they become subject to the new accessibility standards.

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