

## **ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT ALLIANCE UPDATE**

### **TELL THE ONTARIO GOVERNMENT IF YOU SUPPORT THE AODA ALLIANCE BRIEF ON THE INITIAL PROPOSED EMPLOYMENT ACCESSIBILITY STANDARD**

May 19, 2009

#### **SUMMARY**

The AODA Alliance has finalized its brief to the Ontario Government on the initial proposed Employment Accessibility Standard. The final brief is set out below. We offer 34 recommendations for improvements to the proposed standard. We have submitted our final brief to the Ontario Government.

We thank all of you who sent us your feedback and ideas as we developed this brief. Our final brief is essentially the same as our draft, with some minor changes to wording in a few places. There are no substantive changes in this brief as compared to our earlier draft brief.

We ask one and all to tell the Ontario Government if you endorse our brief and its recommendations. We will shortly have this brief available for download on the AODA Alliance's website, in MS Word format, complete with a table of contents. In the meantime, if you would like us to email you a copy of the brief in MS Word, just send a request to us by replying to this email, or writing us at: [aodafeedback@rogers.com](mailto:aodafeedback@rogers.com)

Please send the Government a short email to endorse our brief. You can contact the Government at: [accessibility@css.gov.on.ca](mailto:accessibility@css.gov.on.ca)

You can quickly and easily help our campaign for a strong, effective Employment Accessibility Standard if you add your voice to ours by endorsing this brief.

Our brief includes excerpts from the initial proposed Employment Accessibility Standard, where needed to explain our recommendations. If you want to read the entire initial proposed Employment Accessibility Standard, visit: <http://www.aodaalliance.org/strong-effective-aoda/04292009.asp>

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**ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT ALLIANCE**

**BRIEF OF THE ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT  
ALLIANCE ON THE INITIAL PROPOSED EMPLOYMENT ACCESSIBILITY  
STANDARD**

May 13, 2009

# **ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT ALLIANCE**

## **BRIEF OF THE ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT ALLIANCE ON THE INITIAL PROPOSED EMPLOYMENT ACCESSIBILITY STANDARD**

May 13, 2009

### **I INTRODUCTION**

#### **1. General**

This is the Accessibility for Ontarians with Disabilities Act Alliance's brief, submitted to the Ontario Government, on the initial proposed Employment Accessibility Standard. The AODA Alliance welcomes this opportunity to provide its input. We commend the Ontario Government for appointing a Standards Development Committee under the AODA to create an Employment Accessibility Standard. We also commend the efforts of the Employment Standards Development Committee. It is our hope that this brief will help the Employment Standards Development Committee create a strong, effective final proposal for an Employment Accessibility Standard.

The brief's introduction explains who we are, why a strong, effective Employment Accessibility Standard is needed, our vision of barrier-free access to employment for persons with disabilities, how we assessed the initial proposed Employment Accessibility Standard, the principles this Standard should incorporate, and a summary of our feedback on the proposed Standard. Our brief next gives clause-by-clause feedback on the initial proposed Employment Accessibility Standard. After that, it reviews important areas that are not now covered in the proposed Standard, and which we believe need to be added. It then offers some feedback on the Ministry's process for developing this Standard, and on the study which the Government commissioned on the costs associated with implementing this Standard. An Appendix to this brief collects together all the recommendations we offer in the brief.

#### **2. Who Are We?**

The AODA Alliance is a voluntary non-partisan coalition of individuals and organizations. Its mission is:

"To contribute to the achievement of a barrier-free Ontario for all persons with disabilities, by promoting and supporting the timely, effective, and comprehensive implementation of the Accessibility for Ontarians with Disabilities Act."

To learn about us, visit: <http://www.aodaalliance.org>.

Founded in 2005, our province-wide coalition is the successor to the Ontarians with Disabilities Act Committee. From 1994 to 2005, the ODA Committee led the province-wide, decade-long campaign advocating for the enactment of strong, effective disability accessibility legislation,

culminating with the enactment of the Ontarians with Disabilities Act 2001 and later, the Accessibility for Ontarians with Disabilities Act 2005. Our coalition builds on the ODA Committee's work. Picking up where the ODA Committee left off, we draw our membership from the ODA Committee's broad, grassroots base. To learn about the ODA Committee's history, visit: <http://www.odacommittee.net>.

### **3. The Pressing Need For A Strong Effective Employment Accessibility Standard**

There is a pressing need for the Ontario Government to enact a strong, effective Employment Accessibility Standard. Over 1.5 million Ontarians with physical, mental and sensory disabilities face far too many barriers when seeking to get a job, and once employed, to keep their job and advance in their careers. Ontarians with disabilities face horrendous unemployment and underemployment rates that are many times greater than those facing the rest of society. This unacceptable situation continues despite the fact that ongoing and accelerating advances in technology, education and disability rehabilitation combine to substantially expand persons with disabilities' capacity to excel and productively contribute in the workplace, if given the chance.

For 27 years, the Ontario Human Rights Code has guaranteed to Ontarians with disabilities the right to equal treatment in employment without discrimination because of disability. That right includes the right of employees and job applicants with disabilities to have their employment-related needs accommodated up to the point of undue hardship to the employer. These human rights impose on employers the legal obligation to identify and remove existing workplace barriers, and to prevent the creation of new ones. The Supreme Court has held that human rights such as these are to be interpreted broadly. Exceptions to them are to be interpreted narrowly and strictly.

Despite the fact that these rights have been enshrined in law for over a quarter century, Ontarians with disabilities still too often encounter barriers to their full participation in the workplace. These can include such things as physical barriers, technological barriers, communication barriers, information barriers, attitudinal barriers, and policy and bureaucratic barriers. They also too often encounter difficulties in getting their individual workplace accommodation needs effectively address.

The AODA requires employment in Ontario to become fully accessible on or before 2025. A strong, effective Employment Accessibility Standard is needed to achieve this. It would make the human rights of Ontarians with disabilities a practical reality, so they won't have so often to battle workplace barriers one at a time via costly and time-consuming human rights complaints.

Too often, today's workplace has barriers impeding the full participation of employees with disabilities. The workplace of five to ten years from now has not yet been built or even designed. In that future workplace, the individual job duties, office equipment, furniture, office procedures and work activities may well look very different than they do today. A strong, effective Employment Accessibility Standard is needed to ensure that the workplaces of five to ten years from now will be designed to be barrier-free for employees and job applicants with disabilities.

All Ontarians suffer from the harmful consequences of the longstanding, excessive unemployment and underemployment of so many Ontarians with disabilities. Employers lose out on the tremendous untapped pool of talents which so many unemployed and underemployed Ontarians with disabilities have to offer. At the same time, unemployed and underemployed Ontarians with disabilities are deprived of the income, self-respect and chance for personal growth and development that comes with the satisfying pursuit of a career. Those who cannot get a job or who cannot retain their job after the onset or exacerbation of a disability are driven into dependency on social assistance and too often, into poverty. Ontarians with disabilities would rather be working (and paying taxes into the public purse) rather than being dependent on social assistance (drawing on the public purse). As other societies provide persons with disabilities with more competitive work opportunities, Ontario relegates itself to a competitive disadvantage by not doing as much as it can to achieve the same.

Providing a barrier-free workplace ensures not only that the workplace will be open to employees who now have a disability, but also to future generations of employees with disabilities. It will benefit employees and business owners who have no disability now but who will acquire one in the future.

Aging is the greatest cause of disability. Our society is aging. As this progresses, the numbers of employees and business owners who will get a disability will rise commensurately. With the recent removal of some legal protections for mandatory retirement, it is anticipated that more employees will continue to work past age 65. That too will contribute to a greater proportion of the workforce being older, and hence, being increasingly comprised of persons with age-induced disabilities.

#### **4. Vision Of A Barrier-Free Workplace**

In designing a strong and effective Employment Accessibility Standard, it is helpful to have in mind the end result that the Standard is seeking to achieve. A barrier-free workplace is one in which:

Job applicants with disabilities will have equal access to jobs and will receive equal treatment in jobs.

Employees and job applicants with disabilities will have their qualifications and ability to do a job fairly and accurately assessed.

Existing workplace barriers that impede the full participation of employees with disabilities will have been identified and removed along reasonable time lines;

No new barriers will be created that impede employees and job applicants with disabilities.

When the employer designs the workplace, including furniture and office equipment, workplace policies and practices, and job duties, it will take into account the needs of employees and job applicants with disabilities.

Employees and job applicants with disabilities, who need reasonable workplace accommodation, will have their disability-related needs identified and met in a timely fashion.

Where employees and job applicants with disabilities have recurring accommodation needs, the employer will have in place a ready process for addressing these.

The employer and co-workers will provide a welcoming environment to seek and receive accommodations.

In unionized workplaces, management and unions will work together to ensure that the collective agreements they negotiate and implement don't create workplace barriers or impede effective accommodation of employees with disabilities.

## **5. How We Assessed The Initial Proposed Employment Accessibility Standard**

To evaluate the initial proposed Employment Accessibility Standard, we asked the following questions:

1. Will employment in Ontario be fully accessible for persons with disabilities by or before 2025, if the proposed Employment Accessibility Standard is fully implemented along the time lines set out in it?

2. Does the initial proposed Employment Accessibility Standard identify and effectively address all the major barriers that persons with disabilities face when trying to fully participate in employment?

3. Will the initial proposed Employment Accessibility Standard be effectively enforceable? For example:

a) Will it be readily apparent whether employer has done what it is required to do by the time line required?

b) Will Government officials and the public including persons with disabilities be able to easily find out and point out if an employer is not in compliance with the Employment Accessibility Standard?

c) Does the Employment Accessibility Standard set important interim benchmarks between now and 2025, so that it will be clear well before 2025 whether employers are on schedule for full accessibility on or before 2025?

## **6. Principles The Employment Accessibility Standard Should Implement**

The Employment Accessibility Standard should be designed to effectively implement and reflect these principles:

1. These major steps must be undertaken to fulfil obligations under the Human Rights Code regarding employment:

a) Existing workplace barriers must be identified and removed along reasonable time lines;

b) New barriers must not be created;

c) An employer has a duty, when designing, acquiring, or updating equipment, job descriptions, policies or practices in the workplace, to take into account the needs of employees and job applicants with disabilities, so that they can fully participate in the workplace on a footing of equality;

d) Employees and job applicants with disabilities should have their disability-related workplace needs accommodated where necessary to enable them to fully participate in employment based on their individual merits, except where it is impossible to accommodate them without undue hardship;

e) The duty to accommodate includes a duty to investigate solutions to an employee's accommodation needs. The employer may not just consider specific accommodations that the employee or job applicant requests. If, for proper reasons, the employer decides that a solution that the employee requests cannot be implemented because it will cause undue hardship to the employer, the employer has a duty to investigate other solutions until it finds one that solves the workplace accommodation need, without undue hardship;

f) An employer, and where present, a union, has a duty to provide employees and job applicants with disabilities, a welcoming environment within which to seek and receive needed workplace accommodations;

2. This Standard, including specific actions and time lines under it, should not be designed on an incorrect assumption that employers are starting with this activity on Day One, after the Standard goes into operation. Employers have been legally obliged to effectively identify, remove and prevent workplace barriers to full participation, and to accommodate the needs of employees with disabilities for some 27 years i.e. since the Ontario Human Rights Code was amended in 1982 to prohibit employment discrimination because of a mental or physical disability. This is not a new obligation which the AODA or the Employment Accessibility Standard creates.

3. Within any organization, identifying, removing and preventing workplace barriers, and providing needed workplace accommodation, is everyone's business. Responsibility to remove and prevent workplace barriers, and to provide effective workplace accommodation belongs to all those within an organization, not just to an employee with a disability's direct supervisor or the human resources department.

4. If the workplace is unionized, the union, and not just the employer, can have responsibility for the identification, removal and prevention of workplace barriers, such as those that are rooted in a collective agreement. A union as well as the employer must help ensure that a

collective agreement doesn't create or perpetuate workplace barriers. No one, whether an employer or union, may take actions that impede effective accommodation of employees with disabilities.

5. The duty to accommodate under the Human Rights Code requires serious and substantial efforts by the employer. The "undue hardship" defence is a tough test for an employer to meet. An employer must show it is impossible to do anything more to accommodate the employee or job applicant without undue hardship to the employer. Undue hardship must be something much more than inconvenience to the organization. It is the employer's burden to prove that further accommodation of the employee's needs will cause undue hardship. The Human Rights Code presumes that accommodation is feasible, unless the employer can prove the contrary.

6. The cost to an organization of providing a workplace accommodation is a relevant factor in assessing whether a needed accommodation imposes undue hardship on an employer. These principles apply to any consideration of whether the cost of an accommodation amounts to undue hardship to the organization:

a) The cost of providing a workplace accommodation is a regular cost of doing business, and not some special cost. It usually would be tax deductible.

b) Offsetting any cost concerns is the added benefit to the organization that comes from expending those funds on that workplace accommodation. If a retail establishment makes its front door wheelchair accessible to accommodate an employee with a mobility disability, this also enables the store to benefit from additional customers, i.e. those using wheelchairs, and those with a child in a baby stroller.

c) The cost of accommodation can influence how long an organization can take to provide a needed workplace accommodation. If the cost is too much to absorb in an individual year, that doesn't mean the organization need never do anything to accommodate. It may be able to spread that cost over two years, without undue hardship. That in turn may justify a longer time line for delivering the accommodation but doesn't justify a refusal to do anything ever to accommodate.

d) If an organization needs time to effectively implement a long term accommodation to the needs of an employee with a disability, the organization also has a duty in the meantime to provide interim accommodation, unless the employer can show that even providing an interim accommodation would cause it undue hardship.

## **7. Summary Of Our Feedback**

The initial proposed Employment Accessibility Standard includes a number of helpful measures. However, as is, it will not achieve its required goal of fully accessible employment for persons with disabilities by 2025. Several of its provisions lack sufficient detail or are too vague. It needs to be expanded to address important areas which are now unaddressed and which are necessary to achieve fully-accessible workplaces.

In summary we recommend that:

- a) Those areas which the proposed Standard now addresses need to be clarified and strengthened.
- b) Many of the time lines need to be shortened.
- c) The Standard needs to be broadened to cover a range of activities and barriers that it doesn't now address.
- d) Specific provisions should be added addressing the Ontario Government as employer.

## **II CLAUSE BY CLAUSE FEEDBACK**

### **1. Preface**

The Preface now states: "The Ontario Human Rights Code already requires individual accommodation for persons with disabilities to the point of undue hardship."

This statement is accurate, but incomplete. The Human Rights Code also requires employers to identify, remove and prevent barriers against the full participation of persons with disabilities in the workplace. We recognize that the preface isn't intended as an exhaustive description of an employer's duties under the Human Rights Code. However, it is important for the Employment Accessibility Standard not to leave employers with an impression that their obligations under the Code are limited to providing individual accommodation when requested and needed, and that they don't include a duty to pro-actively prevent and remove barriers so as to avert the need for individual accommodation where possible.

We therefore recommend that:

1. The Preface to the Standard be amended to also state that the Human Rights Code requires employers to identify and remove existing barriers and not to create new barriers to the full participation of persons with disabilities in the workplace.

### **2. Purpose of the Employment Accessibility Standard**

It is important for the Employment Accessibility Standard to correctly set out its purpose. It now provides in section 1:

"1 Scope

The long term objective of this initial proposed employment accessibility Standard is to set out policies, procedures and requirements for the prevention, identification and removal of barriers across all stages of the employment life cycle for persons with disabilities."

The Ministry of Community and Social Services website says the following about the purpose of the proposed Employment Accessibility Standard:

"The goal of the proposed Standard is to help employers create equal employment opportunities

for people with disabilities.” See: <http://www.mcss.gov.on.ca/mcss/english/pillars/accessibilityOntario/accesson/business/employment/>

Both of these substantially understate the purposes of the Employment Accessibility Standard. The AODA requires that people with disabilities experience full accessibility to employment on or before 2025. Thus, the goal of the employment accessibility Standard should be the achievement of barrier free workplaces and full accessibility to employment for persons with disabilities on or before 2025.

It is therefore recommended that:

2. Section 1 of the Standard be amended to include a provision that states that the purpose of the Standard is to ensure that workplaces in Ontario are barrier free and that people with disabilities have equal access to employment on or before 2025.

### **3. Scope of Standard**

Section 2 of the proposed Employment Accessibility Standard states that it does not cover internships. It appears from other parts of the Standard that the Standards Development Committee meant for paid internships to be covered.

The Standard should be amended to make it 100% clear that any paid internship is cover by the Standard. We note that the duty to accommodate would apply in any event to unpaid internships, as a service as opposed to employment.

We therefore recommend that:

3. Section 2 be amended to make it clear that paid internships are covered by the Standard.

### **4. Defining Classes of Organizations**

Section 2 defines the different classes of employers for purposes of this Standard. We agree that it is appropriate to define different classes of employers for this Standard. We also agree that these classes need not be defined the same way as the classes in other accessibility Standards. We have recommended that the classes in the Information and Communication Accessibility Standard should not be defined solely by an organization’s number of employees. Yet the number of an organization’s employees is a more suitable criterion for the Employment Accessibility Standard.

The proposed Employment Accessibility Standard asks for input on how these classes should be defined. This is difficult to comment on in the abstract. We prefer to focus our comments on what the specific obligations and time lines should be for each class.

We believe that any classification system should consider not only the numbers of employees in that organization, but as well the number of employees in any related organization that functions either as a combined operation, or with any degree of common management or shared human resources support. A large organization should not be artificially defined as a smaller

organization because it subdivided its operations into artificial units that belie the fact that it is in reality one larger organization.

We considered whether an added factor that could govern the classification of an organization is its gross revenues. An organization might at first appear to warrant treatment as a small organization because it only has 10 employees. However, if it has a substantial revenue stream, it might be in a position to do more, and more quickly, to achieve a barrier-free workplace than an organization with 10 employees and a small revenue stream.

We have opted not to recommend that this be made a criterion for deciding how to classify an organization. This is because we recognize that there is a strong interest in ensuring that it is easy for an organization to quickly tell in which classification it fits under the Employment Accessibility Standard. To add an assessment of an organization's revenue stream would substantially and unnecessarily complicate this process.

We therefore recommend that:

4. Section 2 be amended to provide that an organization's classification will be assessed by regard to the number of employees in that organization and any related, jointly operated or co-managed organizations.

## **5. General Principles for Accessible Employment Policy Statement**

Section 3.1 provides a general statement of principle governing policy statements on the duty to accommodate employees with disabilities. Of course, there are many ways these can be written. We don't propose to address extensive attention on this. However, it would help to spell out as many of the general principles listed above as possible. This will help educate employers who may not have extensive knowledge about these issues.

At a bare minimum, it would be worthwhile to at least reiterate the duty to prevent and remove workplace barriers, in addition to providing requested workplace accommodation when needed.

Where this general statement refers to barriers, it only refers to attitudinal and physical barriers, not the full range of barriers set out in the Accessibility for Ontarians with Disabilities Act, and later in the Standard's definitions. Section 3.1 of the Standard here states: "Removal of attitudinal and physical barriers is the responsibility of all workplace parties."

In contrast, the AODA defines barriers as:

"barrier" means 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; ("obstacle")

We therefore recommend that:

5. Section 3.1's General Statement be amended to:

- a) address all barriers, not just physical and attitudinal barriers, and
- b) indicate that employers are obliged to identify, remove and prevent workplace barriers.

## **6. Employer's Accessibility Policy Statement**

Section 3.2 of the proposed Employment Accessibility Standard requires employers to establish an accessible employment policy statement. We are asked to give input on whether small private organizations should be required to do this. We believe that it will be beneficial for all organizations to have some sort of an accessible employment policy statement. The policy statements for organizations with fewer than 6 employees might be considerably less elaborate. Before the Employment Accessibility Standard goes into effect, the Ontario Government should make available a series of templates of accessible employment policy statements from which employers of different size organizations can choose. By doing this, it should not be a burdensome or time-consuming undertaking for any organization to adopt such a policy. Those organizations could either choose from templates that the Government offers, or come up with their own, so long as it meets clear minimum requirements under the Standard.

We therefore recommend that:

- 6. All employers be required to have an accessible employment policy statement, though the amount of detail to be required in an accessible employment policy statement can vary depending on the size of organization.

## **7. Training**

It is beneficial that section 3.4 provides for training of employees. It would be helpful to expand the topics that are covered in the training.

We therefore recommend that:

- 7. Section 3.4 be amended to also require training of all employees on:
  - a) The duty under the Human Rights Code to identify, remove, and prevent workplace barriers, and the duty to accommodate employees and job applicants with disabilities.
  - b) How employees and job applicants can seek and receive workplace accommodation.
  - c) The duties of co-workers to facilitate workplace accommodation
  - d) the duty of all to provide a welcoming environment in which to seek and receive workplace accommodation, and
  - e) The benefits to employees and customers of workplace accommodation.

It is preferable in larger organizations for this training to be delivered in person, not on-line. That would enable employees to interact with each other, ask questions, and give feedback. We recognize that that is not practical for small organizations.

## **8. Recruitment, Assessment, Selection and Hiring Requirements**

It is helpful that section 4 addresses the topic of accommodation of job applicants. However, s. 4.1 only requires the employer to explain the availability of workplace accommodation if the job applicant requests this information. It states:

4.1.1 Organizations shall explain, upon request, that accommodation shall be provided to applicants with disabilities to enable their participation in the recruitment, assessment, selection and hiring stages of the employment life cycle.

This assumes that all job applicants know they can ask for accommodation at this stage, and feel at liberty to make these requests. We believe that too many job applicants with disabilities may not have this knowledge or feel fully at liberty to make such requests.

It would be far better for employers to make it generally known to job applicants that accommodation in the application process, and if hired, accommodation on the job, is available. This is part of an employer's broader duty to create a welcoming environment within which to seek and receive accommodation. It will also help create a more supportive culture for accommodation in the workplace, beyond the job application stage. This notification involves no major burden on employers.

We therefore recommend that:

8. Section 4.1.1 be amended to provide that employers advise job applicants about the availability of workplace accommodations, whether or not the job applicant asks if these are available.

## **9. Identifying Vacant Jobs' Essential Duties**

Section 4.2.2 states:

“4.2.2 For recruitment purposes, organizations shall document the essential duties of vacant jobs.”

We do not see a pressing need for employers to have to go through the process of identifying the essential duties of all vacant jobs. We recognize the need to ensure that job applicants with disabilities are not deterred from applying for a job because a job ad sets out a requirement that is not essential to that job. For example, if a job ad says that a valid driver's license is required this obviously can deter blind applicants from even applying. If the job doesn't require any ability to drive as an essential duty, this would serve as a barrier to employment.

We would encourage the Employment Standards Development Committee to consult with

employers to devise a more focused measure to achieve this goal, without requiring all vacant jobs' essential duties to be pre-documented.

We therefore recommend that:

9. Section 4.2.2 should be removed from the Standard, so that employers will not be obliged to pre-identify any vacant job's essential duties, unless asked by a job applicant.

10. The Employment Standards Development Committee develop alternative options, in consultation with employers and the disability community, to help avoid the risk of job applicants with disabilities being deterred from applying for jobs for which they may be qualified, because of job advertisements that set out non-essential qualifications.

## **10. Job Advertisements**

We commend the proposed Standard' for seeking to create a mechanism for alerting persons with disabilities about job openings. Section 4.3.1 provides:

“4.3.1 When recruiting, organizations shall provide information, including contact details, about the employment opportunity to organizations that provide employment services for persons with disabilities.”

This provision has the right idea. It needs to be refined to make it easy for employers to comply with it. Employers will need to know which organizations to notify and the format to use to ensure that job postings are disability-accessible. The easiest way for this to be done is for the Government to set up a one-click service to which employers can send job postings, in an accessible format such as MS Word or HTML. The Government could provide a mechanism for sending out those postings to community organizations that provide employment services to persons with disabilities. Employers would thus not have to worry about knowing which organizations to notify.

We therefore recommend that:

11. Section 4.3.1 be amended to require the Ontario government to set up a one-click network to which employers can send job postings, which the Government would then distribute to organizations that serve persons with disabilities.

The proposed Standard states:

“4.3.2 Organizations that advertise or post employment opportunities shall note in the advertisement or posting that individual accommodation shall be provided for applicants who meet required qualifications.”

It is good that the Standard will require advertising that workplace accommodation is available. However, it should not be limited to applicants “who meet required qualifications.” The purpose of an interview is to determine if a job applicant meets the job qualifications.

We therefore recommend that:

12. Section 4.3.2 be amended to provide that job advertisements offer workplace accommodation to job applicants, without limiting this offer to applicants who meet required qualifications.

## **11. Individual Accommodation Plans**

The Standard has detailed requirements on how organizations will deliver individual accommodation to employees with disabilities. Section 5.1 states:

### **“5.1 Providing individual accommodation plans for employees**

Organizations shall develop, adopt, document and maintain a procedure for the establishment of individual accommodation plans when requested by the employee. The procedure shall define:

- a) how an accommodation may be requested;
- b) how individuals requesting accommodation shall be consulted;
- c) how the privacy of accommodation plan information shall be managed and protected; and
- d) how individual accommodation plans shall be reviewed and modified.

Organizations shall communicate the individual accommodation plan procedure for the establishment of individual accommodation plans to all employees.

Organizations shall develop, adopt, document and maintain a procedure for resolving disputes related to individual accommodation plans.

Individual accommodation plans shall:

- a) assess and accommodate an employee on an individual basis;
- b) consider input, as appropriate, from workplace, medical and/or other experts;
- c) detail the accommodations to be provided;
- d) detail timing for the provision of accommodations;
- e) include individualized emergency evacuation procedures if required; and
- f) include the decision making process used to develop the plan.”

We agree with the spirit of this provision. We want to make sure that this process doesn't get bogged down in unnecessary bureaucracy. We also want to be sure that employers have the

flexibility they need to develop and deliver timely, effective workplace accommodation when needed. We want to be sure that the Standard doesn't impose on employers excessive bureaucratic and paper-trail burdens. It is better for resources to go right into actual workplace accommodation, not the generation of excessive paper trails. More involved processes are appropriate for large organizations (over 100 employees) or for public sector organizations.

At a minimum, it should be made clear within an organization to whom an employee with a disability makes an accommodation request, and, if there is any dispute, to whom the issue can be taken within the organization for a prompt resolution. In larger organizations, and public sector organizations, it is very beneficial for each major department, ministry or agency to designate one of their existing employees as the disability employment accessibility and accommodation coordinator. This does not mean that any new staff need to be hired for this purpose.

We therefore recommend that:

13. Section 5.1's provisions regarding workplace accommodation plans be amended to ensure that:

a) the process of developing and providing workplace accommodation is flexible and non-bureaucratic.

b) It is clear to whom an employee makes an accommodation request;

c) there is a speedy process within the organization for resolving any dispute or disagreement over an accommodation request;

d) A public sector organization, and possibly a very large private sector organization, should designate an existing employee within their organization as the disability accessibility and accommodation coordinator to oversee workplace accommodation issues;

e) If an employer declines to provide workplace accommodation to an employee or job applicant, the employer shall give the employee or job applicant its reasons for not providing any accommodation, or if further accommodation is requested but declined, the further accommodation.

## **12. Employee Orientation**

The Standard states:

“5.2.2 Organizations shall maintain documented employee orientation records.”

We understand that there is some benefit to an organization keeping such records. If there is to be a requirement in this area, we believe it should be minimal, straightforward and clear, so employers know what they need to do. This reflects our priority on directing actual effort at removing and preventing workplace barriers.

We therefore recommend that:

14. Section 5.2.2 be amended to make any record-keeping requirements regarding new worker orientation clear, straightforward and easy to do.

The Standard includes a provision regarding worker orientation which we regrettably do not understand: It states:

“5.2.3 Organizations shall ensure that new employees receive orientation to the organization and training on essential job duties consistent with individual accommodation needs or plans.”

We require clarification of what this means before we can offer input on it. If it means that during job orientation, employees with disabilities should have their disability-related needs accommodated, so that they can fully participate in the job orientation process, then this is a helpful, though unclearly worded, repetition of the existing duty to accommodate.

### **13. Return to Work**

The Standard includes a provision regarding return to work practices. It doesn't appear to include any real substance. Section 5.5 states:

“Return to work (Non-WSIB) requirements

5.5 Organizations shall develop, adopt, document and maintain a procedure for the return to work of employees who are absent from work as a result of a disability not related to a WSIB-related injury or illness.

Organizations shall document efforts made to return employees to the same or equivalent job.”

We agree that a return to work provision would be beneficial. It would be helpful if this provision were expanded to include specifics. Otherwise an empty, toothless pro forma policy could be adopted that would fulfil the Standard, but that accomplishes little or nothing for employees with disabilities.

We therefore recommend that:

15. Section 5.5 be amended to specify key minimum requirements of any return to work policy, aimed at maximizing the opportunity for return to work. These minimum requirements can vary depending on the class of organization, with less extensive requirements for smaller organizations.

### **14. Redeployment Policies**

It is good that the Standard seeks to address the treatment of employees with disabilities in the redeployment process. However, the Standard needs more detail to make it effective. It now states:

#### “5.65.5 Redeployment requirements

Where organizations have a procedure for redeployment, the procedure shall:

- a) apply to employees with disabilities;
- b) assess individual accommodation needs or plans;
- c) include consultation with the employee and/or the employee’s representative upon request.”

During any redeployment process, it is important where possible to protect employees with disabilities from being “bumped” into different jobs if bumping them will displace their workplace accommodation, or will confront them with additional workplace barriers. For example, an employee with a disability should not be bumped from a job in an accessible venue or workplace to a job in a less accessible workplace or venue.

In any redeployment process, account should be taken of the added time that an employee with disability-related accommodation needs may need to move from an existing or previous job to a new job.

We therefore recommend that:

16. Section 5.5 be amended to specify minimum requirements for employees with disabilities involved in any redeployment process, which:

- a) Take into account and effectively address any accommodation needs of employees with disabilities being redeployed, and
- b) Protect, where feasible, employees with disabilities from being bumped from their job to another job if this will confront them with less accessibility or more workplace barriers.

#### **15. Time Lines**

Some of the timelines in the proposed Employment Accessibility Standard are excessive. These should all be reviewed, and shortened wherever possible. We only set out a number of salient examples here.

As a theme, we note that employers have had a duty to accommodate employees and job applicants with disabilities since 1982. The time lines should be designed on this premise, not on any assumption that what the Standard is doing is imposing some new unprecedented duty on employers in this regard. Another common theme here is that employers in each case should be able to more quickly implement some basic start-up action in each of these, areas, with a more involved initiative, if needed, coming on line later on. The Standard should in each case be designed to reflect this.

Section 4.1.1's requirement to let job applicants know of the availability of workplace accommodation in the job application process would await 3 to 5 years for differing classes of private sector organizations. This is a minimal routine duty of notification. It hardly needs more than a few weeks to implement. An organization can put in place a more involved system if needed over time. Some initial rudimentary process should be easy to quickly set up.

We therefore recommend that:

17. Section 4.1.1 be amended to allow no more than 6 months for implementation of job applicant notification of the availability of accommodation in the job application process.

Section 4.1.2 gives some organizations up to three years to adopt a policy on delivering accommodation to job applicants. Since this is now the law and has been for over 25 years, it would be reasonable to expect these to be in place considerably sooner, especially for organizations with over 50 employees.

We therefore recommend that:

18. Section 4.1.2 be amended to reduce the time lines for establishing a policy on accommodation of job applicants to 1 year.

Section 4.2 provides that on request, an employer shall advise a job applicant which duties of a job are "essential". To do this, an employer need not go through all job descriptions and classify these. At most, an employer need only identify the essential duties of a specific job if asked. This therefore should be something employers could do relatively quickly, on an ad hoc basis, once this Standard is established. There is no need to defer this for 3 years, as the draft Standard provides.

We therefore recommend that:

19. Section 4.2.1 be amended to provide that an employer shall provide a job applicant on request with a job's essential duties, starting within 6 months of the Standard going into effect, it being understood that an employer need not pre-classify all job duties for all jobs in advance, and that an employer would respond on a case-by-case basis when asked about a particular job's essential duties.

Section 4.3.2 gives private sector organizations up to 3 or 5 years to advertise the availability of workplace accommodation for job applicants in the application process. Providing such accommodations is now part of the duty to accommodate under human rights legislation. An employer shouldn't need 3 to 5 years to be able to tell job applicants via job ads that the employer makes this available.

We therefore recommend that:

20. Section 4.3.2 be amended to reduce the time lines for advertising the availability of accommodation to job applicants to 6 months after the Standard goes into effect.

Section 4.4 gives employers in classes covered by this section, 3 years to start telling job applicants that job assessment and selection materials and procedures, including the application form, job testing materials, and job interview, are available in accessible formats and methods. It also gives this amount of time before ensuring that accommodations allow for assessment against the essential duties of the job.

Yet again, this is required by law now.

We therefore recommend that:

21. Section 4.4 be amended to impose a six month time line for employers to begin providing job application materials in accessible formats;

22. Section 4.4 be amended to require that immediately on passage of the Standard, employers shall ensure that that accommodations allow for assessment against the essential duties of the job.

Section 4.5 would let organizations take up to three years before starting to tell people whom they offer jobs about the process for asking for workplace accommodation. This too is something that should be in place now. It is also not a major burden on employers. It can be as simple as saying that the employee should ask their supervisor if they need workplace accommodation.

As an organization's process for arranging workplace accommodation becomes more developed, the detail of what employees are told can expand.

We therefore recommend that:

23. Section 4.5 be amended to provide that immediately on the start-up of the Standard, employers shall advise persons, offered a job, of the process for seeking workplace accommodation.

Section 5.1 gives a wide range of employers up to 3 years to start delivering workplace accommodation. This too is something the Human rights Code now requires. While some of the administrative procedures referred to in s. 5.1 may take some time to establish for some organizations, it is important that an employer have some sort of process, even an informal one, in place immediately on the start-up of the Standard.

We therefore recommend that:

24. Section 5.1 be amended to provide that employers have 1 year to implement a full workplace accommodation process there mandated, and in the interim must have some sort of informal workplace accommodation process in place on the launch of the Employment Accessibility Standard.

A similarly excessive time line of 3 to 5 years (depending on the organization's class) applies for the simple task of advising new employees, during employment orientation, about the

availability of workplace accommodation. The Standard states:

“5.2.1 During new employee orientation, organizations shall provide:

- a) information regarding organizational policies and procedures that support employees with disabilities; and
- b) information on how to request an accommodation.”

We therefore recommend that:

25. Section 5.2.1 be amended to require employers within 6 months of the Standard’s launch to provide employees information about workplace accommodation during new employee orientation.

According to section 5.4, organizations that give employees career development and advancement information to employees, would have up to 3 or 5 years to ensure that this information is provided to employees with disabilities consistent with individual accommodation needs. We don’t see why this should take more than a short time. In identifying this issue we note that this is not as high a priority as other items addressed in this brief.

We therefore recommend that:

26. Section 5.4 be amended to give organizations 1 year to start providing information on career advancement and development is provided to employees with disabilities consistent with individual accommodation needs.

### **III IMPORTANT AREAS THE STANDARD DOES NOT EXPLICITLY ADDRESS**

The proposed Employment Accessibility Standard needs to be expanded to address a number of important areas. We highlight major ones here.

#### **1. Clarifying That The Employment Accessibility Standard Doesn’t Override Or Diminish The Duty To Accommodate Under The Human Rights Code.**

It is important that the Employment Accessibility Standard state in as strong and clear terms as possible that nothing in it reduces or diminishes an employer’s duty’s under the Human Rights Code, including the duty to accommodate the workplace needs of employees with disabilities. The preface now states: “The initial proposed Standard does not diminish an organization’s legal obligations imposed by any other applicable legislation, including the *Ontario Human Rights Code*. The *Ontario Human Rights Code* already requires individual accommodation for persons with disabilities to the point of undue hardship.”

To strengthen this, this should be spelled out in the terms of the Standard itself, not in the preface.

We therefore recommend that:

27. The Standard be amended to state in the terms of the Standard itself, not just in the preface, that nothing in the Standard diminishes an employer's duty to identify, remove and prevent workplace barriers against employees and job applicants with disabilities, or the duty to accommodate the workplace needs of employees and job applicants with disabilities, as guaranteed in the Ontario Human Rights Code.

## **2. Duty To Remove And Prevent Workplace Barriers**

While it is implicit in the proposed Employment Accessibility Standard, it would be helpful for this Standard to state explicitly that there is a duty to identify and remove existing workplace barriers, and not to create new workplace barriers. It would also be helpful to make it clear that this duty applies to everyone working for an employer. Removing and preventing barriers is everyone's business. The Standard should also make it clear that no one may do anything which prevents or impedes the identification, removal or prevention of workplace barriers against people with disabilities, or that impedes the provision of needed workplace accommodation to employees or job applicants with disabilities.

We therefore recommend that:

28. the Standard be expanded to set out:

- a) an explicit duty to identify, remove and prevent workplace barriers;
- b) a duty not to take any action that impedes the identification, removal or prevention of workplace barriers against people with disabilities, or that impedes the delivery of needed workplace accommodations to employees or job applicants with disabilities.

## **3. Pro-actively Working to Make the Future Workplace Barrier-Free**

The proposed Employment Accessibility Standard's core focus is on putting in place formal procedures in each organization for an employee with a disability to request and receive an individualized workplace accommodation. These measures are helpful. Individual workplace accommodations will always be an important part of achieving equality for people with disabilities in the workplace.

However, alone, this won't ensure that Ontario workplaces become fully barrier-free by 2025. The "duty to accommodate" approach tends to assume that employers will carry on business as usual, leaving existing barriers in place, and possibly creating new barriers. When an employee or job applicant with a disability encounters one of these workplace barriers, they have the burden to present this problem to their employer and seek an accommodation. When an employer responds to an employee's request for an accommodation of a disability-related need, the employer is typically involved in trying after-the-fact to alleviate or work around a barrier that has previously been created, and left in place.

In addition to responding to individual requests for workplace accommodation, it is necessary for employers to take pro-active steps to identify and remove existing barriers in the workplace that impede employees and job applicants with disabilities, and to prevent the future creation of new barriers, without awaiting accommodation requests. The workplaces of the future have not yet been built, or even designed. The workplaces that will exist five years from now will likely look quite different from those which exist today, just as the workplaces of today look quite different from those that existed five or 10 years ago. The employment accessibility Standard provides an excellent means to help ensure in advance that changes to the workplace that are implemented over the next years work towards the goal of full accessibility.

Put another way, in any work place, and particularly in any large workplace, there are recurring accessibility needs that can be reasonably expected in advance, and for which an employer can readily plan. To do so reduces the need for and the cost of individual accommodation, and improves the workplace's productivity.

Where workplaces address these recurring accessibility needs in advance, employees with disabilities may thereafter less frequently need to seek individualized workplace accommodations to overcome workplace barriers. To the extent that employers reduce, eliminate or prevent the creation of workplace barriers, the need for accommodation to get around those barriers can commensurately be reduced.

Barrier-free workplaces will not be achieved by 2025 where employers continue to design and operate their workplaces on an implicit assumption that their employees have no disabilities, thereby leaving it to an employee with a disability to come forward with individualized workplace accommodation requests, to counteract the consequences of that approach.

As the proposed employment accessibility Standard goes into effect, employers, and especially large employers, should examine their workplaces to identify existing barriers to workplace accessibility, including barriers to the delivery of effective recurring accommodation needs, so that they can plan for addressing these over time. As a general matter, as an employer comes up with major new plans for the workplace, it should take steps to make sure these new initiatives don't create new barriers against employees with disabilities, and that where feasible, they reduce or eliminate existing workplace barriers. It would be very helpful, at least for larger private sector employers as well as all public sector employers, to review their workplace and employment systems to ascertain what barriers now exist.

There are several examples of barriers that easily illustrate how easily and effectively an employer can make progress in this area. For example:

When an employer designs or re-organizes office workspace, it can plan to do so in a way that ensures that the office workspace is maximally accessible to people with disabilities. This can include, for example, designing aisles, seating areas, and workstations with the flexibility that enables ready accommodation. If these steps are taken when an office is being reorganized, or a new office is being set up, accessibility can be built into the design, usually at very little cost. If an office has an existing workplace it is not slated for a major renovation, it is possible for an employer to identify readily achievable measures that will improve accessibility in the short run.

Such measures should be addressed in the Employment Accessibility Standard, and should not be deferred to the Built Environment Accessibility Standard. We understand that the first Built Environment Accessibility Standard will only address new building construction and renovations, not existing structures that are not slated for renovation. We have no word that the Built Environment Accessibility Standard will cover layout in offices, e.g. aisle widths between desks.

A second example of a readily-preventable workplace barrier not addressed in the proposed Employment Accessibility Standard can arise when an employer holds an off-site event for some or all employees. (e.g. a staff meeting or retreat at another location, rented for that event). Especially when the employer is located in a major urban setting like Toronto, Ottawa or London, it usually has many options that are available for rent for venues to hold such events. To hold one in a venue that is disability-accessible doesn't require the employer to retrofit any of its existing properties. It only requires the employer to choose a property from among the many available to rent, which is accessible. This provides two benefits. For the employees, it ensures accessibility to all. For the longer term, it will provide a financial incentive to hotels and other venues, rented for such events, to make sure their facilities are fully accessible, in order to broaden the market for their properties.

A third example of workplace barriers concerns the office furniture and equipment that is purchased for use by employees. It is not necessary for every last piece of inaccessible furniture and office equipment now in use in employers' workplaces to be scrapped, and for them to be all replaced with furniture and equipment that is fully accessible. There are many readily-achievable steps that can be taken, that fall far short of this, and that will make substantial progress. This can include:

- a) Wherever new office furniture or equipment is acquired in future, where possible, obtaining accessible items.
- b) Identifying existing barriers in existing office furniture and equipment, and identifying priorities for redressing these over time e.g. via attrition;
- c) Arranging an employer's existing office furniture and equipment in a way that makes it easiest to provide accessible workstations for an employee with a disability, pending replacement of existing furniture and equipment.

It is not sufficient to leave this matter to be dressed in the Information and Communication Accessibility Standard. It is not yet clear what the final Information and Communication Accessibility Standard will cover. However, it is clear that that Standard will largely address information technology that is used by the general public. It may not necessarily also include all the information technology that will be used in any workplace.

For example, it is important that workplace intranets ensure that information posted on them, to be used by employees, is provided in a format that is accessible for people with disabilities. It is not yet clear whether the Information and Communication Accessibility Standard will cover all

workplace intranets, or whether it will simply cover accessibility of information on public Internet sites.

A fourth category of recurring workplace barriers concerns terms of employment, such as hours of work, and location of work. For persons with some kinds of disabilities, flexibility in working conditions are required, e.g. to enable them to attend regular medical treatments, or to address limits on their ability to work for extended consecutive hours. The option of flexible work arrangements can often assist, while maintaining and increasing productivity.

In all these examples, corrective actions are beneficial not only for employees and job applicants with disabilities, but also for existing employees who now have no disability, but who may get a disability later. As well, these measures will often assist in the accommodation of customers with disabilities. That too can increase a business's profitability. A law firm whose office aisles are too narrow for a wheelchair to navigate impedes not only lawyers and office staff with disabilities, but also prospective clients with disabilities.

We therefore recommend that:

29. The Standard be amended to include specific requirements for identification, removal and prevention of recurring workplace barriers over time, apart from fulfilling individual employee accommodation requests, e.g. barriers in office workspace, office equipment and technology and terms and conditions of work.

#### **4. Building Barrier Removal and Prevention into The Collective Bargaining Process**

Normally it is the employer who has the duty to accommodate, since the employer manages the workplace. However, if the terms of a collective agreement impede the effective accommodation of an employee with a disability, there are circumstances in a unionized workplace when the union must work together with the employer to ensure that the employee is effectively accommodated.

Human Rights cases make it clear that an employer cannot contract out of its duty to accommodate people with disabilities. They also make it clear that there are circumstances where a collective agreement between a union and employer can impede the effective accommodation of an employee in the workplace. This can result in a duty on the part of the union, and not just the employer, to help make sure that the employee is effectively accommodated.

The proposed Employment Accessibility Standard does not specifically address the situation. It should be expanded to do so. It is not necessary or desirable for the Employment Accessibility Standard to set out in detail the duties of trade unions and employers when these situations arise. However it would be helpful to expand the proposed Employment Accessibility Standard to put in place a process, consistent with the traditional collective bargaining relationship of employers and unions, to help make sure that when collective agreements are bargain in the future, they are designed not to impede the achievement of barrier free workplaces.

A useful way that this could be achieved would occur when a union and employer sit down to bargain a new collective agreement, either because the old one has expired, or because this is the

first contract to be negotiated. It would be helpful if during that collective bargaining process, the employer and union were to review any existing collective agreement, to identify if any barriers exist that would impede effective accommodation of employees or job applicants with disabilities, and if found, to negotiate provisions that address these barriers. It would also be helpful if during the collective bargaining process, the employer and union directed their attention to ensuring that no new barriers are created in the collective agreement that they eventually negotiate.

Similarly, in those very limited situations where a collective bargaining agreement is imposed through an arbitration process, rather than through negotiations, the arbitrator should be under a duty, in devising the collective agreement, to ensure that the contract doesn't perpetuate any old barriers, or create any new barriers against employees or job applicants with disabilities. As part of that process, the arbitrator could invite the union and employer to make submissions on the identification of existing barriers in the expired collective agreement, or the existence of possible new barriers in proposed terms which one or other party has put on the table, and on strategies for removing and preventing such barriers.

It is not unusual for unions and employers, involved in the collective bargaining process, to come up with contractual terms to address such issues. For example, several collective agreements now include "human rights" clauses. These repeat the guarantees of employment equality set out in the Human Rights Code. Under these clauses, unions can bring grievances against the employer under the collective agreement if the employer refuses to effectively accommodate an employee with a disability. Moreover, some collective agreements include terms that regulate which employees can work on which jobs at which times. Of these, some include exceptions to enable employees with disabilities to be able to move to job positions that they can do, even if they weren't otherwise entitled to make that job move under the collective agreement. Unions have experience with this need, especially in workplaces with significant numbers of workplace injuries.

Such additions to the proposed Employment Accessibility Standard would build on the existing relationship between the union and employer, and the traditional collective bargaining process. It would implement the duties that the employer and union already have under human rights law. These can be fortified if the employer and union had added obligation to consult with employees with disabilities to help identify possible barriers in the workplace that need to be addressed.

In proposing this, we do not propose reducing in any way the employer's primary obligation for achieving a fully accessible workplace, and delivering needed workplace accommodations. We also do not propose that the process of providing workplace accommodation should be subject to collective bargaining, or that it become a bargaining chip during disputes between management and a union over other issues. An employer cannot negotiate away its duty to accommodate, nor contractually tie its hands in a way that impedes the delivery of effective workplace accommodation where needed. We also don't propose any alteration in the balance between unions and employers in the workplace. We simply propose that the union and employer direct their minds, while undertaking collective bargaining, towards ensuring that the result of the collective bargaining process promotes a barrier free workplace, and doesn't impede effective workplace accommodation of employees and job applicants with disabilities. In recommending

this, we do not in any way propose to reduce the important duties of management and unions regarding workplace accommodation of employees with disabilities during the life of an existing collective agreement.

We therefore recommend that:

30. The Standard be expanded to address the process of removing and preventing barriers to effective workplace accommodation and accessibility in the collective bargaining process and in collective agreements, which could:

a) focus an employer and union, involved in the process of bargaining a collective agreement, on identifying and removing existing barriers in the collective agreement, and preventing the creation of new barriers;

b) require an arbitrator, undertaking binding arbitration of the collective agreement, to address identification removal of existing barriers, and prevention of new barriers in the collective agreement, including inviting submissions from the union and employer on this topic during the arbitration process;

c) engage the employer and union in getting input from employees with disabilities on workplace barriers that may arise from the collective agreement;

## **5. Planning For The Cost Of Workplace Accommodations**

Some who have responded to the proposals for accessibility Standards in the areas of public transit, customer service and information and communication have approached these on the incorrect assumption that providing accessibility is some new obligation that the AODA created. Some have demanded that the Government pay for the cost of providing that accessibility before anyone outside the government should be required to do anything to remove or prevent barriers impeding persons with disabilities.

These are not new cost burdens that the AODA has created in 2005. Since 1982, the Human Rights Code has required that barriers against persons with disabilities in accessing employment, goods, services and facilities be identified, removed and prevented.

Some workplace accommodations involve some up-front costs. Because they enable an employee with a disability to become more productive, these expenditures usually pay themselves off, typically with added benefits for the employer.

An organization's ability to deliver timely, effective accommodation can be increased if it has in place a system to smooth the process of paying for these accommodations. Larger organizations, such as government departments, develop and operate under detailed annual budgets. If these don't include specific allocations for workplace disability accommodations, there is the risk that the cost of accommodation will be treated as something "we don't have budget for."

The duty to accommodate is imposed on an employer as a corporate entity. It is no defence under

human rights legislation to simply say that an organization has not budgeted for accommodation. Moreover, an organization's duty to accommodate is not limited to undue hardship to a specific department's budget. It is limited by undue hardship to the organization as a whole.

In the 1980s, the Ontario Government commendably put in place a very helpful system to help each Government department and agency cover the cost of individual workplace accommodations. It established a central fund, called the Employment Accommodation Fund, for this purpose. An individual government office could apply to that fund to reimburse it for costs of specific disability workplace accommodations. Each individual government office still had the ultimate responsibility to provide needed workplace accommodations for employees with disabilities who needed them. An individual government office cannot refuse to provide a needed workplace accommodation, on the grounds that the employment accommodation fund would not reimburse the cost. Thus, the employment accommodation fund did not have the a veto over whether the worker would be accommodated. However, individual managers knew that they could have recourse to the employment accommodation fund. The Ontarians With Disabilities Act 2001 was enacted, which embedded this fund in legislation. [See our recommendations regarding this fund, below]. No legislation had been needed to establish or operate the fund for over a decade before then.

There need be no one-size-fits-all solution to addressing this issue. However, it would be helpful if the Employment Accessibility Standard established some basic requirements to achieve the objective of ensuring that an organization has in place an effective means for flowing funds to cover workplace accommodations that the Ontario Human Rights Code requires. By this, the Standard would not set the amount of money an organization should spend on workplace accommodation. That is a matter already governed by the Human Rights Code.

We would recommend that very large organizations such as large municipalities, hospitals, universities and school boards, be required to establish something comparable to the Ontario Government's employment accommodation fund. For other larger organizations, it may be sufficient for the employment accessibility Standard at this point to simply require that they put something in place to address this need, leaving them flexibility on how it will operate. If, after the Employment Accessibility Standard has been in operation for five years, it turns out that those minimum requirements are insufficient, it would then be open to the employment Standards Development Committee to revisit this issue, and consider expanding the Employment Accessibility Standard to include more detailed requirements. We don't propose that any measures be directed in this regard at small businesses at this time.

In proposing this, we emphasize that we are not suggesting that major bureaucratic burdens be imposed on organizations, requiring a lot of paperwork or the hiring of additional staff. We do not want funds diverted from the needed objective of providing actual workplace accommodations to employees with disabilities who need them, towards instead funding some new, excessive bureaucratic burden. Also, to help make this easily and effectively enforceable, it should be easy to establish whether an organization is doing what the Employment Accessibility Standard would require in this regard.

In proposing this, we proceed on the basis that the human rights code already requires employers

to spend a certain amount of money on workplace accommodations i.e. where needed, up to the point of undue hardship to the organization. We are not here proposing to raise the bar. We're simply proposing the establishment of a means within the organization to help best ensure that that money is available and accessed on a timely basis. We do not propose an organization set a ceiling in advance of how much it will spend on workplace accommodation. Those expenditures will have to be decided on a case-by-case basis.

We therefore recommend that:

31. the Standard be amended to require larger private sector organizations, and all public sector organizations, to establish, make public, and inform employees and job applicants about a process for making funds available within the organization, when needed for workplace accommodations, including:

a) In the case of public sector organizations, establishing a central fund to cover the cost of accommodations, so long as that Fund is not treated a ceiling of what the organization may expend on needed workplace accommodation;

b) Large private sector organizations would either establish such a Fund or a comparable process.

c) If an employee-requested workplace accommodation isn't provided by the organization, on account of concerns over the cost or for any other reason, the organization's chief executive officer will be informed of this decision and the reason for it.

We further address this in connection with the Ontario Public Service in the next section of this brief.

## **6. Additional Provisions Addressing The Ontario Government And Ontario Public Service**

The proposed Employment Accessibility Standard needs to be expanded to include additional provisions that specifically address the Ontario Government as an employer. These should aim at having the Ontario Public Service become a barrier-free workplaces for employees with disabilities.

The Ontario Government is recognized as Ontario's largest employer. Because of the many workplace barriers in the private sector, many persons with disabilities have historically turned to the Ontario Government as a place to find a first job, and to develop a positive work record that they can later present to prospective private sector employers. Its distinctive role as an employer should be addressed in the Standard.

The predecessor law to the AODA, the Ontarians with Disabilities Act 2001, includes specific provisions bearing directly or indirectly on removing and preventing employment barriers in the Ontario Public Service. According to the AODA, the Ontarians with Disabilities Act 2001 will eventually be repealed. It is the AODA Alliance's position that the Ontarians with Disabilities

Act 2001 should not be repealed until and unless all of its provisions are included in accessibility Standards enacted under the AODA.

To that end, the Employment Accessibility Standard should be expanded to incorporate all of the provisions in the Ontarians with Disabilities Act 2001 addressed to the Ontario Public Service as a workplace. Those provisions include requirements to:

- a) have regard to accessibility when the Government purchases goods or services through the procurement process for use by the Government, its employees or the public; (ODA 2001 s. 5);
- b) requiring the Ontario Government to take certain steps to accommodate the disability-related employment needs of Ontario public servants with disabilities including maintaining a central Employment Accommodation Fund for funding the workplace accommodations of Ontario public servants with disabilities (ODA 2001 s. 8);
- c) requiring certain steps for achieving accessibility of Ontario Government-funded infrastructure or capital projects (ODA 2001 s. 9).

When the Harris Government introduced the Ontarians with Disabilities Act 2001, many from the disability community, with the AODA Alliance's predecessor (the ODA Committee) in the lead, criticized that legislation as too weak. At the request of voices from the disability community, the Liberal Party, while in opposition, proposed several amendments to the proposed Ontarians with Disabilities Act 2001. The Harris Government voted almost all of these amendments down.

In the 2003 provincial election, Liberal leader Dalton McGuinty promised in writing that the AODA his Government would pass, and regulations made under it, would, at a minimum, implement the amendments to the Ontarians with Disabilities Act 2001 which the Liberal Party proposed while in opposition, and which were defeated by the Harris Government. Mr. McGuinty stated in his April 7, 2003 written election pledge to the Ontarians with Disabilities Act Committee regarding the Disabilities Act his Government would pass:

“The legislation and regulations will include timelines, Standards and a mechanism for effective enforcement, and, at a minimum, will reflect the substance of amendments to the Conservative bill offered by the Liberal party in the fall of 2001.”

We propose that wherever they fit, the Liberal Party's proposed amendments to the Ontarians with Disabilities Act 2001, where relevant, should be included in the Employment Accessibility Standard.

#### **a) Perpetuating and Strengthening the Ontario Public Service Employment Accommodation Fund**

Section 8 of the Ontarians with Disabilities Act 2001 provides in material part:

“Reimbursement of eligible expenses

(5) The Management Board Secretariat shall, out of the money appropriated annually to it for this purpose, authorize reimbursement to a ministry for eligible expenses that the ministry has incurred in fulfilling the ministry's obligations under subsections (1) and (2).

Amount of reimbursement

(6) The reimbursement shall be in the amount that the Management Board Secretariat determines and be made in accordance with the guidelines established by the Management Board Secretariat.”

As described earlier, the Ontario Government's Employment Accommodation Fund is an important measure that helps reduce impediments to effective workplace accommodation. Operating since the mid 1980s, its operations have ranged from a highly-effective, non-bureaucratic and supportive initiative in the early 1990s to a more bureaucratic, less supportive initiative nearer the end of the 1990s.

It would be helpful for the Government to make available to the Employment Standards Development Committee and the public information on the Funds' usage, including what its annual budget has been, whether it is annually asked to provide funding in excess of its budget, and if so, what the Fund has done to meet the needs of those employees whose requests don't fall within its budget.

It is important for the Fund to be available to all those who work for the Ontario Government. As described in the Ontarians with Disabilities Act 2001 section 8(5), the Fund only applies to those working in ministries. Many people who work for the Government do not work in a specific ministry. The Employment Accessibility Standard should make sure that all those who work for the Government have access to the Fund.

It is also important for a system to be in place to ensure that if the Fund's annual appropriation is insufficient, it will be replenished, rather than worthy applicants being turned away because others used up the Fund.

The Liberal Party's 2001 proposed amendments to the Ontarians with Disabilities Act 2001 concerning the Employment Accommodation Fund would have replaced the preceding provisions of the Ontarians with Disabilities Act 2001 with the following (the "barrier-free Directorate referred to in these amendments is the same as the Ontario Government's Accessibility Directorate):

“Reimbursement of eligible expenses

(11) The Management Board Secretariat shall, out of the money appropriated annually to it for this purpose, authorize prompt reimbursement to a ministry for eligible expenses that the ministry has incurred in fulfilling the ministry's obligations under this section.

Amount of appropriation

(12) The Government of Ontario shall take all steps within its control to ensure that the amount appropriated annually for the purpose of subsection (11) is not less than the amount appropriated for the purpose in the fiscal year in which this Act comes into force.

#### Amount of reimbursement

(13) The reimbursement shall be sufficient to meet the full range of the Government of Ontario's obligations to accommodate under this section, shall be in the amount that the Management Board Secretariat determines and be made in accordance with the Standards established by the Management Board Secretariat, in consultation conducted through the Barrier-Free Directorate of Ontario with employees with disabilities of the Government.

#### Same

(14) The Standards shall require reimbursement in an amount that is sufficient to cover the obligations of the Government of Ontario with respect to all persons with disabilities, whatever their type.

#### Request for reimbursement

(15) Within 14 days of receiving a request from a ministry for reimbursement under subsection (11), the Management Board Secretariat shall make a decision on the request and give notice in writing of the decision to the ministry, stating the detailed reasons for not granting the request in full, if that is the case.

#### Appeal

(16) The ministry whose request is refused in whole or in part may appeal the decision to the Barrier-Free Directorate of Ontario by filing a notice in writing with the Directorate within the time period specified in the regulations and the directorate shall hold a hearing on the appeal and render any decision that the Management Board Secretariat could have rendered, with reasons to be given in writing.”

We therefore recommend that:

32. The Standard be expanded to

a) enshrine the Employment Accommodation Fund for the Ontario Public Service as set out in s. 8 of the Ontarians with Disabilities Act 2001, and as enhanced by amendments to that provision which the Liberal Party proposed in 2001;

b) Access to the Employment Accommodation Fund be made available to any employee of the Ontario Government and any public official paid by the Ontario Government whether or not they are employed by a specific Ministry.

**b) Ontario Government's Implementation of its Duty to Accommodate Ontario Public Servants with Disabilities**

The Ontarians with Disabilities Act 2001 includes specific provisions implementing the Ontario Government's duty to accommodate Ontario public servants with disabilities, beyond those dealing specifically with the Employment Accommodation fund. Section 8 of the Ontarians with Disabilities Act 2001 provides in material part:

“8. (1) The Government of Ontario shall accommodate the accessibility needs of its employees in accordance with the Human Rights Code to the extent that the needs relate to their employment.

Applicants for employment

(2) The Government of Ontario shall accommodate the accessibility needs of persons with disabilities who apply for a position as a government employee and whom the Government invites to participate in the selection process for employment to the extent that the needs relate to the selection process.

Training

(3) The Government of Ontario shall ensure that its employees who have managerial or supervisory functions receive training in fulfilling the Government's obligations under this section.

Information

(4) The Government of Ontario shall inform its employees of the rights and obligations of the Government and its employees under this section. “

While in opposition, the Liberal Party proposed amendments to strengthen these provisions of the Ontarians with Disabilities Act 2001. These would have replaced the preceding provisions with the following:

“Government employees

8. (1) The Government of Ontario shall create and maintain a barrier-free employment environment for its employees and persons who apply for a position as a government employee.

Barrier-free employment environment

(2) The barrier-free employment environment shall include all aspects of employment, including recruitment, hiring, training, promotion and employment-related interaction.

## Responsibility in Ministries

(3) The Minister and Deputy Minister of each ministry are responsible for ensuring the Government of Ontario meets the obligation described in subsection (1) within their ministry and for ensuring that all employees responsible for implementing the obligation in their ministry receive ongoing training in fulfilling these obligations.

## Time for training

(4) The employees responsible for implementing the obligations provided for in this section in their ministry shall receive the initial training under subsection (3),

(a) within one year after this section comes into force, if they are deputy ministers or assistant deputy ministers;

(b) within two years after this section comes into force, if they are not deputy ministers or assistant deputy ministers.

## Information

(5) The Government of Ontario shall inform its employees of,

(a) the rights of persons with disabilities and the obligations of the Government under this section;

(b) the steps that the Government is taking to meet its obligations under this section; and

(c) the process for employees to obtain the accommodation in employment that the Government is required to provide under this section and under the Ontario Human Rights Code.

## Accommodation

(6) The Government of Ontario shall accommodate the accessibility needs of its employees and applicants for positions of its employees in a timely manner and in accordance with the Human Rights Code and shall designate a person or persons in each ministry who is or are responsible for ensuring that the ministry provides the accommodation upon the request of an applicant.

## No disclosure

(7) Each designated person shall not disclose to any person any information that he or she receives about a person's disability except with the consent of the persons with the disability or for audit purposes.

## Refusal to accommodate

(8) If the Government of Ontario decides not to accommodate a request for accommodation, the

Deputy Minister of the ministry involved shall approve the decision in writing and the designated person for the ministry shall advise the applicant in writing of the reasons for the decision.

#### Appeal

(9) The applicant may appeal the decision to the Barrier-Free Directorate of Ontario by filing a notice in writing with the Directorate within the time period specified in the regulations.

#### Decision of Directorate

(10) The Directorate shall consider the appeal in accordance with the duty of fairness and shall render a decision with written reasons within 30 days of receiving the notice of appeal.”

It would be helpful for the Ontario Government to make available to members of the Employment Standards Development Committee and the public information on when the training, required under the Ontarians with Disabilities Act 2001, was delivered, how it was delivered, and whether it has been repeated since then. Given the regular turnover of employees in any workplace, there is a need for such training to be periodically repeated.

If the training was delivered via on-line or e-learning programs, that model is woefully inadequate for such a large and diverse organization as the Ontario Public Service. Those with experience doing public education on disability accessibility and accommodation know that face-to-face learning is absolutely essential to have any hope of being effective in such an organization.

We therefore recommend that:

33. The Standard be expanded to

a) incorporate section 8 of the Ontarians with Disabilities Act 2001 governing accommodation of Ontario public servants with disabilities, as enhanced by the Liberal Party’s amendments to those provisions which it proposed in 2001;

b) require that training of management officials in the Ontario Public Service be face-to-face, not on-line training, and

c) require periodic training of co-workers in the Ontario Public Service on the duty to accommodate employees with disabilities, whether or not they have management responsibilities.

#### **c) Government Procurement of Goods and Services**

The Ontario Government is a huge purchaser of goods and services that are used in the workplace. To achieve a fully barrier-free workplace, it should only purchase goods and services that are barrier-free for employees with disabilities, absent some very compelling reason for not doing so. The proposed Employment Accessibility Standard doesn’t now require the Ontario Government or any other employer to do this.

The Ontarians with Disabilities Act 2001 goes a limited distance in this direction. It provides:

“Government goods and services

5. In deciding to purchase goods or services through the procurement process for the use of itself, its employees or the public, the Government of Ontario shall have regard to the accessibility for persons with disabilities to the goods or services.”

And

“Government-funded capital programs

9. (1) If a project relates to an existing or proposed building, structure or premises for which the Building Code Act, 1992 and the regulations made under it establish a level of accessibility for persons with disabilities, the project shall meet or exceed that level in order to be eligible to receive funding under a government-funded capital program.

Same, other projects

(2) If a project is not a project described in subsection (1) or if the projects in a class of projects are not projects described in that subsection, the Government of Ontario may include requirements to provide accessibility for persons with disabilities as part of the eligibility criteria for the project or the class of projects, as the case may be, to receive funding under a government-funded capital program.”

It is insufficient to simply require the Government to consider accessibility when purchasing goods and services. The Government could comply with this provision, by simply thinking about accessibility, but not doing anything about it. This provision has been insufficient to ensure that goods and services purchased for use in or by the Ontario Public Service are fully accessible to and usable by employees with disabilities.

When in Opposition, the Liberal Party proposed strengthening these provisions of the Ontarians with Disabilities Act 2001. Specifically it proposed replacing ss. 5 and 9 with the following:  
put forward an amendment as follows:

“Government goods and services

5. (1) The Government of Ontario shall not purchase goods or services for the use of itself, its employees or the public that create or maintain barriers for persons with disabilities or that contravene the Standards specified in the regulations made under subsection (3) unless it is not possible to do so because the goods or services are not available in a form that complies with this subsection and otherwise cannot reasonably be obtained in such form if so requested or ordered.

If goods or services not available

(2) If the goods or services cannot be obtained in a form that complies with subsection (1), the Government of Ontario shall ensure that the benefits of the goods and services are available to persons with disabilities at no extra cost or effort to persons with disabilities.

#### Standards

(3) In consultation with persons with disabilities and others including through the Barrier-Free Directorate of Ontario, the Lieutenant Governor may make regulations specifying the Standards mentioned in subsection (1) for goods and services which promote the purposes of this Act.”

And

“Government-funded capital programs

9. (1) Capital funding for projects under a government-funded capital program shall be made available only if there is a barrier-free plan incorporated into the project that meets the Standards specified in the regulations made under subsection (2).

#### Regulations

(2) Within six months after subsection (1) comes into force, the Lieutenant Governor in Council shall make regulations specifying the Standards mentioned in that subsection, which shall include a barrier-free plan for the benefit of all persons with disabilities.”

It is important that there be an effective process to monitor the Ontario Government’s compliance with these requirements, and to enforce non-compliance. Now, the Ontarians with Disabilities Act 2001 has no process for enforcing them. Moreover, it is very difficult if not practically impossible for the public to know if the Government is complying with these requirements.

We therefore recommend that:

34. The Standard be expanded to incorporate the requirements of ss. 5 and 9 of the Ontarians with Disabilities Act 2001 as enhanced by the amendments to those provisions which the Liberal Party proposed in 2001.

#### **IV MINISTRY’S PROCESS FOR DEVELOPING THE EMPLOYMENT ACCESSIBILITY STANDARD**

We commend the Ministry for extending the time for public input into the Employment Accessibility Standard to May 22, 2009. The initial time lines for public input earlier set were unreasonably short, in light of the other consultations under the AODA that have been in progress this winter and spring. The AODA Alliance approached the Minister of Community and Social Services to seek an extension of the original deadline for public input. We appreciate the Minister’s agreeing to our request.

In the future, we urge the Ministry to better recognize the amount of time needed for the public to develop and deliver its input. We have had to seek comparable extensions for public input during consultations on the proposed Transportation and Information and Communication Accessibility Standards.

As with the public consultation meetings on the earlier proposals for the Transportation and Information and Communication Standards, we found at the April 21, 2009 Toronto public meeting we attended on the proposed Employment Accessibility Standard that a substantial majority of attendees were from the employers' sector, with representation from the disability community being far smaller. This demonstrates a need for the Ministry to take substantially improved steps to ensure fuller participation from the disability community, lest the consultation process continue being so unfairly lopsided.

Finally, it was evident from the public consultation session in which we took part that there is substantial need for the Ministry to bring together representatives from the disability community and the employers' sector for a broader, informal process of dialogue, possibly under the auspices of the Employment Standards Development Committee, before that Standards Development Committee develops its final proposal for the Employment Accessibility Standard. It was clear to us that there is ample need for this dialogue. It would help produce a better Employment Accessibility Standard. It would help promote broader acceptance of that Standard, once developed. Representatives from the employers' sector seemed in a number of cases to have very limited understanding of the proposed Employment Accessibility Standard. Some stated that they came to the public consultation meeting seeking to understand it better, before they could provide their input.

Moreover, a number of the recommendations that we put forward in this brief can be improved and refined with input from and dialogue with the employers' sector. We are eager to take part in such a constructive process.

## **V      IMPLICATIONS OF THE MINISTRY'S COSTING STUDY**

As with the earlier proposed accessibility Standards under the AODA, the Ministry has commissioned a study on the projected costs of the proposed Employment Accessibility Standard. We have serious concerns with this study's cost calculations. We have previously alerted the Ministry to our concerns with the earlier studies done on the costs of compliance with the proposed accessibility Standards in transportation and Information and Communications. We regret that the Ministry does not appear to have fully heeded the concerns we previously raised.

This cost study estimates the overall cost of compliance with the proposed Employment Accessibility Standard at \$650,539,390.

The study concludes as follows:

“Put in context, the actual new costs that will be incurred by employers in Ontario is marginal. All cost estimates are related to existing compensation costs for human resources and other staff that are redirected to support compliance, rather than net new, incremental costs.”

This study admittedly did not offset against its cost calculations the real financial benefits of implementing the proposed Employment Accessibility Standard. It states:

“While there is no doubt that expanding the pool of available labour as well as diversifying the labour pool will result in numerous financial and broader social benefits, there is not a recognized methodology for costing those benefits and therefore they have not been included in this report.”

Accordingly, the study’s cost estimates are not net costs. No public policy decision should be made on this gross costing calculation, even if it were assumed that it was an accurate cost assessment.

This is made even clearer when the study commendably notes that accommodating employees with disabilities is a cost-effective activity. The study reported:

“Research shows that hiring people with disabilities is cost-efficient. Employers report equal or better safety records, job performance ratings, job assignment flexibility, and demonstrate lower turnover and absentee rates than their non-disabled peers. Additionally, the amount of supervision required for employees with disabilities is equal to their non-disabled peers. Employers have also stated that hiring people with disabilities contributes to improved morale and productivity throughout the company.

Contrary to the myths, providing disability accommodations is a relatively low cost investment when compared to other costs associated with employment.

According to research conducted in the United States, 67% of all disability accommodations cost less than \$500 and nearly one quarter cost nothing. Half of all employers who made accommodations reported that their organization experienced an average of \$5,000 in cost per hire savings.

Besides being inexpensive, most accommodations are very simple and can yield high returns for companies making the necessary adjustments. The ultimate savings or earning potential for the organization is seen to outweigh the costs of accommodation.”

For such a study to be meaningful, it would be important to contrast the asserted cost of compliance with the proposed Employment Accessibility Standard with the cost of not implementing that Standard. That would include, among other things, the higher litigation costs for defending more contraventions of the Human Rights Code. The Toronto Transit Commission spent fully \$450,000 defending two human rights complaints over its failure to fulfil the duty to accommodate transit passengers who are blind by calling out bus, streetcar and subway stops. As well, the cost to employers in losing out on the productivity of employees with disabilities should be factored into the calculation.

The study offered deeply troubling information on the extent to which employers in Ontario now take steps which the Human Rights Code has required for many years. Referring to the readiness of employers to comply with the proposed Employment Accessibility Standard, the study

referred both to actions which the law now requires as well as some which it does not, in giving this summary:

“In theory, it is reasonable to assume that employers, large and small, public and private, are well positioned to adopt the proposed Standard given the strong alignment of the Standard with the existing relevant legislative framework in Ontario.

However, the research, Readiness Assessment, and the follow up focus groups tell a different story about the current experience and practices related to accessibility and accommodation. For example:

- In general, over 50% of organizations reported not having a formal policy in place to ensure barrier-free recruitment and hiring (with the percentage for Class A and B being considerably higher).
- Organizations of all sizes are not proactive in reaching out to prospective job candidates with disabilities (most frequently reported as rarely or never - approximately 80% of respondents); the vast majority of respondents also indicated that they never include accommodation statements in their job advertisements (over 80%).
- Less than one-third of the participant organizations reported making job advertisements available in accessible formats, and 77% of organizations reported that they rarely or never ask potential candidates if accommodation is required for interviewing/testing.
- It is typically the case that larger organizations have better practices related to a broad range of human resource issues, and indeed, close to 80% of organizations in Class E reported having employee communications regarding accommodation; conversely Class B, Class C and Class D organizations reported at less than 50% (as low as 19%).
- According to the Readiness Assessment, the number of organizations that indicated that no one receives training on accessibility/ disability issues is 53% for Class A organizations, 81% for Class B, 41% for Class C and D and 27% for Class E organizations.
- When organizations were asked if they have policies/ guidelines/ practices that are communicated to all employees about accommodating the needs of employees with disabilities, 60% of Class A, 75% of Class B, 48% of Class C and D and 16% of Class E indicated that they do not currently have these policies/guidelines/practices in place.”

The cost study does not appear to take into account the opportunity to reduce these costs to organizations by developing ways to share the costs of compliance. For example, if a group of organizations get together and pool their resources, they can jointly develop procedures and practices that all can share, at a lower per-organization cost. The study consider this only in so far as the Ontario Government might make training materials and other practical materials available to the public. We would recommend that in developing the final proposal for the Employment Accessibility Standard, the Employment Standards Development Committee could consult with employers on methods to reduce the cost of actions that the Employment

Accessibility Standard addresses, while not diminishing the outcomes it seeks to achieve for employees with disabilities.

## APPENDIX - RECOMMENDATIONS

### We recommend that:

1. The Preface to the Standard be amended to also state that the Human Rights Code requires employers to identify and remove existing barriers and not to create new barriers to the full participation of persons with disabilities in the workplace;
2. Section 1 of the Standard be amended to include a provision that states that the purpose of the Standard is to ensure that workplaces in Ontario are barrier free and that people with disabilities have equal access to employment on or before 2025;
3. Section 2 be amended to make it clear that paid internships are covered by the Standard;
4. Section 2 be amended to provide that an organization's classification will be assessed by regard to the number of employees in that organization and any related, jointly operated or co-managed organizations;
5. Section 3.1's General Statement be amended to:
  - a) address all barriers, not just physical and attitudinal barriers; and
  - b) indicate that employers are obliged to identify, remove and prevent workplace barriers;
6. All employers be required to have an accessible employment policy statement, though the amount of detail to be required in an accessible employment policy statement can vary depending on the size of organization;
7. Section 3.4 be amended to also require training of all employees on:
  - a) the duty under the Human Rights Code to identify, remove, and prevent workplace barriers, and the duty to accommodate employees and job applicants with disabilities;
  - b) how employees and job applicants can seek and receive workplace accommodation;
  - c) the duties of co-workers to facilitate workplace accommodation;
  - d) the duty of all to provide a welcoming environment in which to seek and receive workplace accommodation; and
  - e) the benefits to employees and customers of workplace accommodation;
8. Section 4.1.1 be amended to provide that employers advise job applicants about the availability of workplace accommodations, whether or not the job applicant asks if these are available;

9. Section 4.2.2 be removed from the Standard, so that employers will not be obliged to pre-identify any vacant job's essential duties, unless asked by a job applicant;

10. The Employment Standards Development Committee develop alternative options, in consultation with employers and the disability community, to help avoid the risk of job applicants with disabilities being deterred from applying for jobs for which they may be qualified, because of job advertisements that set out non-essential qualifications;

11. Section 4.3.1 be amended to require the Ontario government to set up a one-click network to which employers can send job postings, which the Government would then distribute to organizations that serve persons with disabilities;

12. Section 4.3.2 be amended to provide that job advertisements offer workplace accommodation to job applicants, without limiting this offer to applicants who meet required qualifications;

13. Section 5.1's provisions regarding workplace accommodation plans be amended to ensure that:

a) the process of developing and providing workplace accommodation is flexible and non-bureaucratic;

b) It is clear to whom an employee makes an accommodation request;

c) there is a speedy process within the organization for resolving any dispute or disagreement over an accommodation request;

d) a public sector organization, and possibly a very large private sector organization, should designate an existing employee within their organization as the disability accessibility and accommodation coordinator to oversee workplace accommodation issues;

e) if an employer declines to provide workplace accommodation to an employee or job applicant, the employer shall give the employee or job applicant its reasons for not providing any accommodation, or if further accommodation is requested but declined, the further accommodation;

14. Section 5.2.2 be amended to make any record-keeping requirements regarding new worker orientation clear, straightforward and easy to do;

15. Section 5.5 be amended to specify key minimum requirements of any return to work policy, aimed at maximizing the opportunity for return to work. These minimum requirements can vary depending on the class of organization, with less extensive requirements for smaller organizations;

16. Section 5.5 be amended to specify minimum requirements for employees with disabilities involved in any redeployment process, which:

a) take into account and effectively address any accommodation needs of employees with disabilities being redeployed; and

b) protect, where feasible, employees with disabilities from being bumped from their job to another job if this will confront them with less accessibility or more workplace barriers;

17. Section 4.1.1 be amended to allow no more than 6 months for implementation of job applicant notification of the availability of accommodation in the job application process;

18. Section 4.1.2 be amended to reduce the time lines for establishing a policy on accommodation of job applicants to 1 year;

19. Section 4.2.1 be amended to provide that an employer shall provide a job applicant on request with a job's essential duties, starting within 6 months of the Standard going into effect, it being understood that an employer need not pre-classify all job duties for all jobs in advance, and that an employer would respond on a case-by-case basis when asked about a particular job's essential duties;

20. Section 4.3.2 be amended to reduce the time lines for advertising the availability of accommodation to job applicants to 6 months after the Standard goes into effect;

21. Section 4.4 be amended to impose a six month time line for employers to begin providing job application materials in accessible formats;

22. Section 4.4 be amended to require that immediately on passage of the Standard, employers shall ensure that that accommodations allow for assessment against the essential duties of the job;

23. Section 4.5 be amended to provide that immediately on the start-up of the Standard, employers shall advise persons, offered a job, of the process for seeking workplace accommodation;

24. Section 5.1 be amended to provide that employers have 1 year to implement a full workplace accommodation process there mandated, and in the interim must have some sort of informal workplace accommodation process in place on the launch of the Employment Accessibility Standard;

25. Section 5.2.1 be amended to require employers within 6 months of the Standard's launch to provide employees information about workplace accommodation during new employee orientation;

26. Section 5.4 be amended to give organizations 1 year to start providing information on career advancement and development is provided to employees with disabilities consistent with individual accommodation needs;

27. The Standard be amended to state in the terms of the Standard itself, not just in the

preface, that nothing in the Standard diminishes an employer's duty to identify, remove and prevent workplace barriers against employees and job applicants with disabilities, or the duty to accommodate the workplace needs of employees and job applicants with disabilities, as guaranteed in the Ontario Human Rights Code;

28. The Standard be expanded to set out:

- a) an explicit duty to identify, remove and prevent workplace barriers;
- b) a duty not to take any action that impedes the identification, removal or prevention of workplace barriers against people with disabilities, or that impedes the delivery of needed workplace accommodations to employees or job applicants with disabilities;

29. The Standard be amended to include specific requirements for identification, removal and prevention of recurring workplace barriers over time, apart from fulfilling individual employee accommodation requests, e.g. barriers in office workspace, office equipment and technology and terms and conditions of work;

30. The Standard be expanded to address the process of removing and preventing barriers to effective workplace accommodation and accessibility in the collective bargaining process and in collective agreements, which could:

- a) focus an employer and union, involved in the process of bargaining a collective agreement, on identifying and removing existing barriers in the collective agreement, and preventing the creation of new barriers;
- b) require an arbitrator, undertaking binding arbitration of the collective agreement, to address identification removal of existing barriers, and prevention of new barriers in the collective agreement, including inviting submissions from the union and employer on this topic during the arbitration process;
- c) engage the employer and union in getting input from employees with disabilities on workplace barriers that may arise from the collective agreement;

31. The Standard be amended to require larger private sector organizations, and all public sector organizations, to establish, make public, and inform employees and job applicants about a process for making funds available within the organization, when needed for workplace accommodations, including:

- a) in the case of public sector organizations, establishing a central fund to cover the cost of accommodations, so long as that Fund is not treated a ceiling of what the organization may expend on needed workplace accommodation;
- b) large private sector organizations would either establish such a Fund or a comparable process;
- c) if an employee-requested workplace accommodation isn't provided by the organization, on

account of concerns over the cost or for any other reason, the organization's chief executive officer will be informed of this decision and the reason for it;

32. The Standard be expanded to:

a) enshrine the Employment Accommodation Fund for the Ontario Public Service as set out in s. 8 of the Ontarians with Disabilities Act 2001, and as enhanced by amendments to that provision which the Liberal Party proposed in 2001;

b) allow access to the Employment Accommodation Fund to any employee of the Ontario Government and any public official paid by the Ontario Government whether or not they are employed by a specific Ministry;

33. The Standard be expanded to:

a) incorporate section 8 of the Ontarians with Disabilities Act 2001 governing accommodation of Ontario public servants with disabilities, as enhanced by the Liberal Party's amendments to those provisions which it proposed in 2001;

b) require that training of management officials in the Ontario Public Service be face-to-face, not on-line training; and

c) require periodic training of co-workers in the Ontario Public Service on the duty to accommodate employees with disabilities, whether or not they have management responsibilities;

34. The Standard be expanded to incorporate the requirements of ss. 5 and 9 of the Ontarians with Disabilities Act 2001 as enhanced by the amendments to those provisions which the Liberal Party proposed in 2001.