MARCH OF DIMES CANADA

Sue Uteck <suteck@marchofdimes.ca>

The AODA Alliance's Preliminary Look at Nova Scotia's bill 59, the Proposed "Accessibility Act"

1. Overview

The Nova Scotia Government should be commended for bringing forward a proposed new accessibility law for the province. This bill has a number of important features. It aims to advance the goal of accessibility for people with disabilities by creating and enforcing accessibility standards to tear down and prevent recurring accessibility barriers that people with disabilities too often face. It also includes enforcement powers. Effective enforcement is essential to any such law. It is also helpful that this bill mandates independent reviews of this law's implementation and enforcement.

However, as now written, this bill is far too weak. It is substantially weaker than Ontario's Accessibility for Ontarians with Disabilities Act (AODA). It is weaker than Manitoba's Accessibility for Manitobans Act. If enacted as is, it would be the weakest such law in effect in any province that has enacted a comprehensive disability accessibility law.

For more detail and more specifics, we encourage the Nova Scotia Legislature to also look at the Discussion Paper on what to include in the promised Canadians with Disabilities Act, written by AODA Alliance chair David Lepofsky, available at http://www.aodaalliance.org/strong-effective-aoda/august-19-2016-discussion-paper-on-a-Canadians-with-Disabilities-Act-by-David-Lepofsky.docx Although it speaks about national accessibility legislation, to be passed by Canada's Parliament, that Discussion Paper's ideas can be used for provincial accessibility legislation as well. For example, it includes a far better definition of "disability" than does Nova Scotia's Bill 59, as described further below.

2. Importance of Public Legislative Hearings After Time to Study this Law

The bill commendably recognizes the importance of consultation with people with disabilities on accessibility issues. As such, it will be important for the Nova Scotia

Government to act on this, by ensuring full public hearings on this bill, as the Ontario Government commendably did in 2004-05 when the Accessibility for Ontarians with Disabilities Act was introduced in the Ontario Legislature.

From extensive experience in this area, this should include ensuring that the public, including people with disabilities, have sufficient time in advance to study this bill, prepare proposals for amendments, and come forward to present at legislative public hearings. This cannot be rushed.

3. Need to Strengthen the Purpose of the Act

The Act's purpose clause, s. 2, refers to efforts to "improve accessibility." This is far too weak a goal. As in the Accessibility for Ontarians with Disabilities Act AODA), the purpose must be to actually achieve accessibility. A Government can "improve accessibility" by merely installing one ramp in the province, or getting one website's accessibility enhanced. People with disabilities need to achieve accessibility.

The purpose provision includes:

"(d) facilitate the implementation and monitoring of and compliance with accessibility standards."

This does not set a deadline for achieving a fully accessible province. The AODA set 20 years. This is an absolutely essential part of the AODA. Without it, we would not have made the progress in Ontario that we have made, nor would we have been as able to point out as effectively where improvements are needed.

Barrier-Free Canada is calling on the Federal Government to set a deadline in the promised Canadians with Disabilities Act. The Nova Scotia bill should also do so. The Government can consult with people with disabilities and obligated organizations to ascertain a deadline that can find support.

The bill should therefore be amended to set a deadline for reaching accessibility, and should not set the very weak goal of merely improving accessibility.

The bill's purpose clause should also be amended to include "effective enforcement." Experience with accessibility legislation in Canada and around the world shows that effective enforcement is fundamental to a law's success or failure.

4. Need to Expand Definition of Disability

The definition of "disability" in s. 3 of the bill is too narrow. It must be broad enough to ensure that all people with disabilities are effectively covered by the bill. Section 3(1) provides:

"(h) "disability" means a physical, mental, intellectual or sensory impairment that, in the interaction with a barrier, hinders an individual's full and effective participation in society;"

This does not make it explicit that disability includes mental health conditions, learning disabilities, neurological disabilities (such as autism spectrum disorder) or a communication disability, just to name a few. It should be amended to ensure that all disabilities are included. The discussion of the definition of disability in the Discussion Paper on the Promised Canadians with Disabilities Act is helpful in this area.

5. Need to Require Effective Enforcement

Section 7 sets out the minister's duties, to ensure that this law is effectively implemented. It does not say that the minister is responsible for the law's enforcement, much less its effective enforcement. Similarly, s. 12 sets out the duties of the Accessibility Directorate. It includes no enforcement powers or duties.

The bill should be amended to ensure that the law is required to be effectively enforced. and to designate whom is ultimately responsible for its enforcement. Below are recommendations on who this should be.

6. The Accessibility Advisory Board Must Meet Far More Often than Four Times Per Year

The bill gives much of the key duties on accessibility to the proposed Accessibility Advisory Board, but only requires it to meet four times per year. If so much of the bill's leadership rests with that Board, it should be required to meet far more regularly, and be resourced to make this happen.

Regardless of how good the people are who are appointed to such a Board, ample experience shows that such boards are often unable to carry the heavy load allocated to them, and that governments far too infrequently follow their advice. As such, it is recommended that no matter how good are the people who are appointed to such a board, there should be no expectation that the board will be able to carry a significant part of the bill's implementation.

7. The Duty to Set Up Standards Development Committees

Section 18 of the bill is very weak. It allows the minister to set up Standards Development Committees to make recommendations for the contents of accessibility standards. It does not require the minister to ever do so. The bill provides:

"18 The Minister may, in consultation with the Board,

(a) establish standard development committees to assist the Board with making recommendations to the Minister on the content and implementation of accessibility standards;"

Ontario's AODA requires the minister to set up Standards Development Committees. The bill should be amended to require this in Nova Scotia as well.

8. Undue Barriers in the Standards Development Process

Section 22 imposes an undue burden on the standards development process. Section 22 (2) provides in material part:

"(2) An accessibility standard must include

(a) an economic impact assessment for the standard;

(b) an assessment of how the standard will increase accessibility in the Province; and"

An economic impact assessment and projection of the accessibility gains under the standard can be helpful. However, it unduly burdens the process, and drags it out, to require these.

Moreover, an individualized economic assessment for each standard will burden the Government with the costs of repeating the same effort over and over. The actual economic impact and benefits of a specific accessibility standard may not easily be predicted in advance. The AODA Alliance has seen costing studies like this earlier in the implementation of the AODA which exaggerated the costs associated with them.

Section 22(2) of the bill should therefore be amended to provide that an accessibility standard may include an economic impact analysis and a projection of the accessibility gains under it, but this should not be a mandatory requirement.

9. Compensating Members of a Standards Development Committee

It is very good that the bill provides for compensating members of a Standards Development Committee who does not work for the Government. Ontario has not done so. It is unfair to expect such a major public function to be discharged by volunteers. It is especially unfair to the disability sector. Business and broader public sector representatives on a Standards Development Committee typically do this work as part of their job, so they suffer no personal hardships from taking part in the Standards Development Committee.

Section 21 of the bill provides in material part:

"20 (1) Committee members not employed in the public service of the Province shall be paid such remuneration as is determined by the Minister.

(2) Committee members shall be reimbursed for their reasonable expenses incurred in the performance of their duties."

10. Who Will Make Accessibility Standards?

The bill seems to be implementing an idea first raised in Ontario in the 2010 Charles Beer AODA Independent Review, namely that accessibility standards should be de developed by one body that makes recommendations, rather than handled by different Standards Development Committees for each area to be regulated. The Ontario Government decided to consolidate this under the oversight of the Ontario Accessibility Standards Advisory Council, the counterpart to the bills' Accessibility Advisory Board.

Ontario has tried this approach. It has been a dismal failure. Nova Scotia should not repeat this mistake.

Instead an arms-length independent body should be established to make these recommendations. That is what Barrier-Free Canada has recommended for the promised Canadians with Disabilities Act. It is actually what the 2010 Charles Beer AODA Independent Review recommended for Ontario. Ontario regrettably did not try to make this process independent of the Government.

By Nova Scotia having this process under the minister's and the Government's direct control, it will lead to all the problems experienced in the past years in Ontario. Nova Scotia should learn from Ontario's mistakes.

11. Recommendations to the minister on accessibility standards should Immediately be made public for public comment.

The bill allows the board or a Standards Development Committee to submit a recommendation for the contents of an accessibility standard to the Government, and lets the Government act on it. It does not require the Government to make the recommendation public or to seek public input on it. Ontario imposes both such requirements. They are an important part of the process. The standards development process should be open, accountable and transparent throughout.

The bill should be amended to require a recommendation from the board or a Standards Development Committee to be immediately made public for public comment.

It is possible that the Government meant to achieve this by s. 33. Section 33 of the bill provides:

"33 The Minister shall make a proposed accessibility standard and the recommendations publicly available."

This is written in a confusing way. If the Government means to achieve what is suggested here, the bill should be revised to clarify this. The bill's latter provision, addressed below, on making such recommendations public, further reinforces a sense that the Government did not mean for these to immediately and automatically be made public to all.

12. The Law's Reach Should Be Expanded

Section 29 of the bill allows accessibility standards to address organizations that provide employment, accommodation or goods or services, among other things. It should also cover organizations that provide facilities, not just goods or services. Section 29(1)(d) provides that an accessibility standard can apply to organizations that:

"(d) provide goods, services or information to the public; or"

Section 29(1)(d) should be amended to also include those who provide facilities, not just goods or services.

13. No Need for the Government to Have Power to Revoke the Board's Mandate to Work on an Accessibility Standard

Section 36 of the bill lets the Government shut down work on an accessibility standard in the middle of the process. Section 36 of the bill provides:

"36 The Minister may, by giving written notice to the Board, withdraw the terms of reference for an accessibility standard that has been given to the Board and, where the Minister does so, the Board shall cease its activities in respect of that standard."

There is no need for this. If we have had any problem in Ontario, it has been the Government not getting to work on an accessibility standard. There has never been any risk of a topic being assigned to a Standards Development Committee which turns out to be utterly unnecessary. This unnecessary provision in this bill may reflect a preoccupation with maintaining Government control over every step of the process. Ontario experience shows that that has worked against making good progress on accessibility.

14. The Bill Lacks Any Mandatory Process for Accessibility Standards to Be Reviewed and Strengthened Over Time

It is important for such a bill to ensure that any accessibility standard that is enacted will be independently reviewed for its sufficiency over time, and strengthened if needed. Unlike the AODA, this bill does not do this.

The bill should therefore be amended to ensure that every four years, an accessibility standard is reviewed by a Standards Development Committee for its effectiveness. The Government should be required to consider recommendations for strengthening it.

15. Inspectors Should Work for An Independent Enforcement Agency, Not the Government

Sections 45 and afterward provides for inspectors and compliance/enforcement powers. This is helpful. However, they are all operated directly under the Government and the minister responsible for the bill. This has been an utter failure in Ontario.

Enforcement powers should be assigned to an arms-length independent agency. This is what Barrier-Free Canada has recommended for the promised Canadians with Disabilities Act, that the Federal Government is now developing.

The Government should not have the job of enforcing this bill against itself. That is an overwhelming conflict of interest and a formula for failure. Similarly, if the bill is to be taken seriously, its enforcement should be placed out of the reach of the Government and of political influence.

The bill should therefore be amended to empower an arms-length agency to enforce it.

16. Compliance Orders Should not Be Made Appealable to a Minister

There is nothing wrong with letting an obligated organization bring an administrative appeal from an inspector's compliance order under the bill. However, the bill unwisely makes this an appeal to the minister. Section 51 of the bill provides in part:

"52 (1) An individual or organization named in an order made under Section 51 may request the Minister to review the order.

(2) A request must be made in writing and must include the individual's or organization's name and address, the reasons for requesting the review and any additional information that the individual or organization wants to be considered by the Minister.

(3) The Minister is not required to hold a hearing when a request for review is made.

(4) A request for review operates as a stay of the inspector's order pending the outcome of the review by the Minister."

Ministers don't typically decide administrative appeals. There is no assurance that an elected politician with a jammed ministerial agenda will have the time or the expertise for such appeals. An inspector's compliance order is not a political issue, and should not be made into one.

The bill should be amended to provide for an internal appeal to a supervisory official.

17. Minister Given Power to Decide if a Monetary Penalty will be Imposed

The bill requires the minister to decide if a monetary penalty will be imposed. Section 53 of the bill provides in part:

"53 (1) Subject to Section 54, where the Minister is of the opinion that an individual or organization has failed to comply with an inspector's order within the period specified in the order, the Minister may issue a written notice requiring the individual or organization to pay an administrative penalty in the amount prescribed.

(2) Notice of an administrative penalty may only be issued after the period for appealing an order has expired or, where an appeal has been filed, after a decision has been made on the appeal.

(3) The notice of administrative penalty must be served on the individual or organization required to pay the penalty."

Here again, this should be assigned to a lower-level official, not an elected minister. It too should be in the hands of an arms-length independent agency.

To require the minister's involvement again threatens to politicizes the law's enforcement. Law enforcement in individual cases should not be politicized. Imposition of such a penalty should not be delayed until a minister can review and sign off on it.

18. Mandatory Public Reporting On the bill's Enforcement is Needed

The bill lets the Government report to the public on its enforcement, but does not require this. Section 62 of the bill provides:

"62 The Minister may issue public reports disclosing details of orders and decisions made and administrative penalties issued under this Act."

The bill should be amended to make periodic reporting on enforcement efforts mandatory. In Ontario it has been a major ordeal getting such information from the Ontario Government. It has required filing Freedom of Information applications twice. One is now under appeal, because the Government has been so resistant to being open an transparent. The final report of the Mayo Moran AODA Independent Review recommended, in the face of this, that the Ontario Government report quarterly on such information.

19. Need for Automatic Public Posting of Key Documents on the Bill's Implementation

The bill requires key documents on its implementation to be made public on request, but it does not require these to automatically be posted on line. Section 63 of the bill provides:

"63 The following documents must be provided in an accessible format and at no charge to a person within a reasonable period after the person requests it from the Minister or a public sector body:

(a) in the case of the Minister,

(i) the terms of reference for a proposed accessibility standard,

(ii) the recommendations of the Board,

(iii) a proposed accessibility standard,

(iv) a review conducted under Section 64,

(v) any educational and awareness tools made publicly available,

(vi) a summary report prepared by the Board,

(vii) an accessibility plan; and

(b) in the case of a public sector body, its accessibility plan."

In the interests of saving costs and of full openness, the bill should be amended to require all these documents to be automatically posted on line in a prompt time, and in an accessible format.

20. The Periodic Independent Review of the Bill's Implementation and Enforcement Should Be More Frequent than the Bill Requires

It is commendable that the bill requires the Government to appoint an Independent Review of the bill's implementation and enforcement. However the time lines are too long. Section 64(1) of the bill provides:

"64 (1) Within four years after the coming into force of this Act, and at least every five years thereafter, the Governor in Council shall appoint a person to undertake a comprehensive review of the effectiveness of the Act and report on the person's findings to the Minister."

Ontario's commendable time lines were four years after the law's implementation, and every three years after each successive report is released. Ontario's two Independent Reviews to date, in in 2009-10 and 2013-14, both blew the whistle on the need for more action. Had they been delayed akin to the bill's time lines, the Ontario public, including people with disabilities, would be seriously disadvantaged. Such delays as the bill proposes only serve to help insulate public officials, who implement the bill, from more timely independent scrutiny. That serves no public interest.

It must be remembered that additional time is injected to this time line, taken up by the time it takes the Independent Review to conduct its review and write its report.

If anytime, more prompt tine lines than Ontario's might be warranted, since Nova Scotia will have the benefit of many years of experience in Manitoba and Ontario, to enable it to get off the ground much more quickly.

It is therefore recommended that s. 64(1) be amended to require the first Independent Review to begin four years after the bill goes into effect, and then on three year intervals after each report.

21. Ensuring Public Money Is Never Used to Create or Perpetuate Accessibility Barriers

Nothing in Bill 59 ensures that public money in Nova Scotia is ever used to create or perpetuate accessibility barriers against people with disabilities. the Government needs a concerted legislated strategy to ensure this, especially when it spends money on procuring goods, services or facilities, when it invests in capital and infrastructure programs, or offers loans or grants to businesses or other obligated organizations. Ideas for this are set out in the Discussion Paper on the proposed Canadians with Disabilities Act, referred to in the introduction to this review.

It is therefore recommended that the bill be amended to institute a mandatory, enforced regime for ensuring that public money is never used to create or perpetuate disability accessibility barriers, in such areas as government procurement, capital or infrastructure spending, or loans or grants to businesses or other obligated organizations.

[Quoted text hidden]

A Critical Look At The Accessibility For Ontarians With Disabilities Act

Andria Spindel

President and CEO, March of Dimes Canada

Stuart Kamenetsky

Associate Chair, Department of Psychology, University of Toronto Mississauga

Ellen Waxman

Assistant Deputy Minister, Accessibility Directorate, Government of Ontario, (2007 – 2013)

AODA/Accessibility Consultant

Kinzanoor Danish

Undergraduate student, University of Toronto Mississauga

Introduction

Ontario, Canada's most populous province, passed historic legislation in 2005, the Accessibility for Ontarians with Disabilities Act (AODA), who's goal is to transition Ontario into a barrier free society by 2025. The AODA recently celebrated its 10th anniversary with events, awards and a significant compliance review. This paper presents the historical context and background for this legislation; the role that advocacy has played as well as the process of consultation that took place; the formal legislative review that occurred in 2014; and a recent voluntary online survey to determine how well Ontario is doing. This paper will conclude with a discussion of the factors that are necessary to ensure its success.

Ontario has thirteen and a half million people compromising nearly one third of the total Canadian population. The Canadian Survey of Disabilities (CSD) 2012, found that between 12.5 and 14.9% of the population has a disability. The CSD definition of disability includes anyone who reported being "sometimes", "often" or "always" limited in their daily activities due to a long-term condition or health problem, as well as anyone who reported being "rarely" limited if they were also unable to do certain tasks or could only do them with a lot of difficulty (Statistics Canada, 2013). Perhaps because of the already large number of people with disabilities in the Province of Ontario whose numbers will likely continue to grow given its aging population, the AODA could not have come too soon. Our neighbour to the South, the United States, enacted the Federal and highly influential "American's with Disabilities Act" in 1990. Surely, a progressive province like Ontario could develop its own law especially given the growing demographic need. Indeed, the AODA was approved by all political parties and proclaimed a year before the UN's Convention on the Rights of People with Disabilities, which was adopted December 2006, signed by Canada in March 2007, but only ratified by Canada in November 2011.

So from where did the commitment to significantly alter Ontario to become more accessible come from? It is historically accurate to state that like other Western countries,

Canada has evolved a "rights oriented" approach to providing accessibility for people with disabilities. To understand where this came from, the following section will provide historical context.

The current Western human rights approach is a far cry from that of classical antiquity in Europe where people with disabilities were viewed as people punished for being witches and sorcerers or for displeasing the gods, or as people posing a threat to society (Albrecht, Seelman & Bury, 2001). Shame was associated with having a child with a disability since this was considered as resulting from a sin by the parent or family (Disabilities, Opportunities, Internetworking and Technology, 2015). Some non-European societies saw this as punishment for a sin in an earlier life. Throughout history, people with disabilities experienced humiliation, degradation, isolation, and so called medical interventions that did not fall short of cruelty and dehumanization.

The current human rights orientation is also a far cry from more modern "charity model" approaches according to which people with disabilities are seen as tragic victims of unfortunate circumstances and as such are people who need help and charity to survive (Fleischer & Zames, 2001; Michigan Disability Rights Coalition, n.d.). While in fact shelters, services, and care began to emerge by European and North American religious organizations in the 1800s, the type and quality of care often left much to be desired, and the context was typically institutionalization and/or full exclusion from society.

Consistent with the charity model Canada opened in 1714 its first institution in Quebec dedicated to holding people with mental illness and intellectual disabilities (Braddock & Parish, 2002). This began a long-term trend of segregation of people with such disabilities from the rest of society, and made them dependent (WHO Press, 2011). It would be another hundred years until special schools for children with disabilities were established, though there were some for people with hearing impairments as early as the 16th century in Europe. Publicly funded schools and programs to provide industrial training for people with disabilities began to emerge in

Europe in the 1800s. In 1902 the US legislated benefits for people who became disabled on the job, and later on even provided rehabilitation to such workers (Braddock & Parish, 2002). There was no government or privately funded program, however, to hire persons with disabilities.

The ubiquitous norm of exclusion via institutions, asylums, prisons and workhouses was sometimes promoted by theories of eugenics which aim to "improve" the characteristics of the human race by selecting healthy parents, and by sterilizing people with disabilities under the ludicrous assumption that this prevents genetic and social deviance from spreading (Kyle, Sandys and Touw, 2014; Norman, 2010). Closed remote institutions facilitated eugenic practices far from public scrutiny and remained in place in parts of Canada well into the 1970s.

After World War II there was increasing pressure in the US and Canada to provide rehabilitation services to injured war veterans with permanent disabilities (Fleischer & Zames, 2001). Though services such as non-inclusive sheltered workshops, and new civilian support organizations, as well as medical/rehab programs emerged, people with disabilities continued to be marginalized, consistent with the prevailing view of disability based on the charity model. There were few if any significant accommodations, no accessible transportation services, and systemic discriminatory hiring practices (Disabilities, Opportunities, Internetworking and Technology, 2015; Kyle, Sandys and Touw, 2014). People with disabilities also had no legal recourse for grievances.

This untenable situation began to be addressed in 1968 when the US enacted the Architectural Barriers Act, which mandated that all new buildings or those being modified with federal funds would have to be physically accessible. In 1973, the US Congress passed the Rehabilitation Act, which stated that there could be no discrimination against people solely on the basis of disability in any federally funded programs (National Council on Disability, 1997). Interestingly it was in Vancouver, British Columbia, Canada in 1972, that the first Building By law was implemented to improve access for persons with disabilities, and this led to

modifications of sidewalks to remove curbs for access, addressed parking requirements, public access space within buildings and other modifications.

The 1960s American civil rights movement was primarily about race, but other marginalized groups including women and people with disabilities joined or piggy backed on the movement to claim full citizenship rights (Fleischer & Zames, 2001). While race was not a feature of the Canadian social, cultural or political scene to the extent that it was a major factor in US politics and social life, Canadians did demonstrate in support of African-American civil rights in the US. The rights and needs of Canada's marginalized group – the indigenous people or "First Nations" - received greater attention in the late 60s and early 70s resulting in the review and amendment of the "Indian Act". This 100+ year-old act has perpetuated many inequities for native people, but also enshrined their distinctiveness and protected their land. Activism in support of people with disabilities really came a decade or more later.

Perhaps the most important guarantee for the rights of people with disabilities is the 1990 landmark Americans with Disabilities Act (ADA). This is an all-encompassing piece of legislation modeled after the US Civil Rights Act, and the section of the Rehabilitation Act that introduced anti-discriminatory policies. The goal of the ADA is to prevent discrimination against people with disabilities and ensure they are given equal opportunities as all other citizens to enjoy the "American Dream". People who are protected include those with a physical or mental impairment that prohibits them from taking part in major life activities, those who have a record of such impairment and even those who have a perceived impairment (United States Department of Justice, n.d.). The definition of "major life activities" is broad and covers all general aspects of daily living. The Act was amended, updated, and broadened in 2004 and is perhaps the most important disability rights legislation anywhere. Areas protected and enforced include employment, public services, public transportation (other than aircraft), public accommodations, government services and telecommunication (Americans with Disabilities Act,

1990). Positive benefits in many aspects of life have clearly taken place in the US as a result of this act, which is now celebrating its silver jubilee (25th anniversary).

A National Disabilities Act did not follow in Canada, notwithstanding the lobbying and advocacy efforts of many organizations of and for people with disabilities acting in concert and independently. Canadian governments have responded somewhat differently to public needs because of differences in the way power and jurisdiction are shared between the federal government and state/ provincial governments in the US and Canada, as well as due to different national histories and consequently national priorities in these two countries. In Canada, while initially the central government dominated, provincial powers grew over time, whereas in the US the opposite took place – the states initially were more dominant but power gradually shifted towards a strong central government (Field, 1992). This difference may be one reason why a national disability act never developed in Canada. Furthermore, the rehabilitation of Vietnam war veterans with disabilities became a national priority in the US. Canada did not fight in the Vietnam war and as such disability, accessibility, inclusion all fit better under provincial responsibilities for health care and education which did not require a national strategy like that in the US. In the absence of a national strategy in Canada, provinces began to develop disability legislation on their own.

Indeed, disability rights have been no less important in Canada. The Canadian disability rights movement gained momentum in the 1980s after a national advocacy organization for people with disabilities was founded in the late 70s. Local and provincial organizations, which were the first for and by people with disabilities heralded in an era in which Canadians with disabilities began to take serious steps towards demanding equal rights, equal education and vocational opportunity, accessibility, greater inclusion, closing of segregated facilities and institutions, and active engagement in determining their own lives rather than continuing to be passive recipients of charity-model welfare oriented services. The language changed from patient and dependent, to that of client and consumer. These movements and organizations

learned to work to promote and protect the rights of people with disabilities within the Canadian legislative framework that initially developed broader human rights legislation protecting all disadvantaged groups rather than focusing on particular groups such as people with disabilities.

Ontario was the first province to introduce legislation to protect individual rights and prevent discrimination against all marginalized groups. The Ontario Human Rights Code of 1962 prohibits discrimination on the basis of race, ethnic origin and ancestry, place of origin, citizenship, creed, sexual orientation, gender identity, gender expression, marital status, age, family status, or disability. Human dignity and rights are to be respected and protected period. Areas of focus would include the provision of goods and services, facilities, housing, contracts, employment and membership in professional and trade associations. There is a provision in the Human Rights Code that addresses exemptions from complying on the grounds of undue financial hardship to a person or organization or if the accommodation would create a breach in health and safety requirements. Employees who have a disability are entitled to compensation if an employer's benefit plan excludes them, be it group health insurance, pension or other employee benefits. This is a complaint-based process where complaints are heard by the Human Rights Tribunal (Human Rights Code, 1990).

In the 1980s the Canadian federal government enacted the extremely powerful Canadian Charter of Rights and Freedoms, which enshrines equality rights in the Canadian Constitution, and is referred to as Section 15 of the Charter. While the Constitution Act and the Charter came into effect in 1982, it was only in 1985 that Section 15, which addresses equality rights, came into effect, after much public debate. The Charter sets out those rights and freedoms that Canadians believe are necessary in a free and democratic society. Some of the rights and freedoms contained in the Charter are (Constitution Act, 1982):

- freedom of expression
- the right to a democratic government

- the right to live and to seek employment anywhere in Canada
- legal rights of persons accused of crimes
- Aboriginal peoples' rights
- the right to equality, including the equality of men and women
- the right to use either of Canada's official languages
- the right of French and English linguistic minorities to an education in their language
- the protection of Canada's multicultural heritage.

While It is possible for provincial or municipal governments to pass laws that limit certain rights under the Charter, such laws enacted under the "notwithstanding clause" expire after five years and may also be appealed all the way up to the Supreme Court of Canada. As a result this clause is rarely used and human rights are protected (Constitution Act, 1982).

The Equality Rights section of the Charter protects all Canadians, regardless of age, sex, race, national or ethnic origin, religion, sexual orientation, physical or mental disability, from discrimination and ensures equal protection and equal benefit of the law (Constitution Act, 1982). It means the Canadian government cannot discriminate against people on any of the aforementioned grounds (Department of Canadian Heritage, 2003). While these protections clearly prohibit discrimination, they do not necessarily proactively promote inclusion and integration of marginalized groups into society. To provide this a Royal Commission on Equality in Employment was formed in 1983, the goal of which was to find ways by which at least employment equity for women, people with disabilities, Aboriginal people and visible minorities, could be achieved. The Commission's Report, which became known as the Abella Report named after Justice Rosalie Abella who conducted it, highlighted the alarming unemployment rate of 50% for people with disabilities. Barriers to employment for the target groups were identified as inadequate training and education, the inability of group representatives to influence the programs needed, insufficient information about programs for these groups and

restricted hiring practices of employers. Government departments and crown corporations confirmed that hiring practices were unlikely to change without legislation requiring them to do so. The Report concluded that voluntary measures were insufficient, and that employers needed to be obligated to make changes and improve the situation (Abella, 1984).

In 1986 the Canadian Employment Equity Act was passed, which initially only applied to federally regulated private sector and crown corporations. In 1995 the Act was expanded to include public sector corporations that hire one hundred or more employees (Employment Equity Act, 1995; Public Service Alliance of Canada, 2013). The Act requires that only inability to do the job may be grounds for not hiring. Employers are now required to remove barriers by making accommodations for people with disabilities, redesigning systems, or making systemic changes to eliminate discriminatory policies and practices. The measure of fulfillment becomes that of matching an employer's workforce to the labour market data, such that the workforce emulates the representation of the target groups in the Canadian labour pool. Employers are not expected to fund changes if there is undue financial hardship, such as renovating a building to provide access for a worker with a disability. Each employer is to develop an equity plan and implementation schedule and these could be subject to an audit for compliance by the Canadian Human Rights Commission. Annual plans are to be filed and implemented and the results to be made available to the Commission. Corrective measures for failure to comply include fines, which can be significant if there are recurring violations (Employment Equity Act, 1995).

The enactment of this federal act and subsequently of provincial Employment Equity legislation, as well as the non-discriminatory Human Rights Acts or codes at both senior levels of government, have not resulted in significantly reducing the high rates of unemployment among people with disabilities. The gap remains as significant as ever. More inclusive practices resulting in higher accessibility are clearly evident in public education, health care, and living arrangements. Indeed the last few decades have brought an end to institutionalization of people with disabilities. Individuals with disabilities are no strangers to university campuses nor

to governmental organizations or even political parties. And the paradigm is slowly shifting towards hiring people with disabilities as a good business practice rather than as just the right thing to do - providing some hope that the unemployment gap will decrease over the years to come. However, attitudinal obstacles to integration, acceptance, and full inclusion remain and inclusive attitudes cannot be legislated or mandated. Like most forms of societal change, such inclusive attitudes are slow to develop. The more people with disabilities are seen in the public arena, the more they are likely to be considered integral members of society. But they will only find their place in the public arena if society opens the door more widely.

The above Ontario and Federal laws laid the foundation for developing a disability act in Ontario that would finally focus on what needs to be done to reduce barriers to full participation now that the rights of people with disabilities to fully participate have been guaranteed by human rights legislation in Ontario congruent with the federal Canadian Charter of Rights and Freedoms. The transition towards more specific disability legislation mirrored that which took place in the US leading up to the development of the ADA in the sense that the push from disability rights advocacy groups was similar and was based on the same concerns. The first initiative was the Ontarians with Disabilities Act (ODA) in 2001, and later the much broadened and improved AODA in 2005. Since 2014, other provinces are in various stages of creating their own disability specific laws.

The support for the ODA was the result of basic demands for inclusion not being met by society. Legislation by government has the potential of forcing behavioural change, with the hope that attitudinal change will follow. Organizations of people with disabilities and their supporters, actively advocated to bring about this legislation. The ODA movement united people with all types of disabilities into a single cause led by David Lepofsky, a lawyer who's visual impairment gave him first hand experience in discrimination (Lepofsky, 2014a). Mr. Lepofsky founded and headed the ODA Alliance, which was a voluntary non-partisan coalition of individuals and organizations. The Alliance was the successor to the Ontarians with Disabilities

Act Committee. The ODA Committee led the province-wide, decade-long campaign advocating for the enactment of strong, effective and broad accessibility legislation. The Alliance drew its membership from a broad, grassroots base of individuals with disabilities and organizations. With support from sector leaders involved in grassroots efforts to spread knowledge about the legislation and gain support for its passing in the provincial parliament, the ODA Alliance succeeded (Gordon, Beatty & Holder, 2002; Lepofsky, 2004; Lepofsky, 2014a). It is very unlikely that the ODA would have ever been passed without the tremendous part Non Governmental Organizations (NGOs) played in pushing this forward.

The ODA specifically focuses on barrier removal in the public sector, a barrier being defined as, "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, a policy or practice" (Ontarians with Disabilities Act, 2001). The Act outlines the duties of the Government of Ontario, the duties of municipalities and the duties of other public organizations, agencies and persons. The Act requires each ministry of Government to make an accessibility plan available that identifies its barriers, their removal and even prevention. Each department, government agency or municipality is expected to ensure equal access for people with disabilities (Ontarians with Disabilities Act, 2001). The key limitation of the ODA is that it applies only to government and as such does not place any requirements on the private sector to provide barrier free facilities (Lepofksy, 2014a). It also focuses on "barrier removal and disability" rather than on the more proactive conceptual approach of creating accessibility and inclusion for the broadest public. At points leading up to its approval by all parties in the legislature, some advocates were not in favour of its premise and were certainly against its key limitation. Suffice it to say that a new paradigm arose in the preparation of the Accessibility for Ontarians with Disabilities Act, (AODA) which developed under a new Liberal government only a few years later. This is the focus of our story.

Developing the AODA

Above all, the story about the development and implementation of the Accessibility for Ontarians with Disabilities Act (AODA) is a story about engagement. The AODA was born out of the efforts of the advocacy community, and the legislation mandates a process that requires meaningful engagement of all stakeholders throughout a prescribed standards development process. The story of the AODA is characterized by both hope and progress as well as by pitfalls and shortcomings along the way.

Following on the heels of the ODA, passed into law in 2002, advocates began lobbying the then leader of the opposition, Dalton McGuinty, for a more effective law that would cover the private sector, that would ensure that the voice of people with disabilities was heard, and that would have teeth through enforcement and monetary sanctions. The ODA Alliance became the AODA Alliance, still lead by David Lepofsky, and it has been a vocal advocate, holding the government to account on accessibility standards, compliance, and enforcement (Lepofsky, 2014b). Its mission statement 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" (Accessibility for Ontarians with Disabilities Act Alliance, 2015). When the government changed and Dalton McGuinty became Premier (the Head of the Government of Ontario), he followed through on his commitment, and a process began involving people with disabilities and representatives of the public and private sectors with the goal of reaching consensus for a new and meaningful piece of legislation.

Led by a strong and committed Cabinet Minister, Dr. Marie Bountrogianni, who worked tirelessly to reach consensus, the vision that emerged was that of creating an accessible Ontario by 2025. When the AODA was introduced in the legislature, it met with all party support and was also supported by the business community. That would not have been possible without the underlying philosophy that the AODA was a consensus building initiative where

everyone had to show some flexibility to meet the ultimate goal of a more accessible society. Over time, that flexibility has proven to be both a driver to move the agenda forward and a barrier to achieving results. But there is no doubt that it was necessary to bring in legislation where all stakeholders felt that they had a voice. Because, unlike other pieces of legislation in Canada, the U.S, or elsewhere the AODA put the onus on organizations to report compliance rather than on individuals to file complaints, it has been described as landmark legislation that represented a monumental step forward for people with disabilities.

There are several factors related to the ground-breaking nature of the AODA. It impacts every organization in the Province of Ontario with one or more employees. It starts with mandatory customer service training for all employees in the Province in recognition that attitudes are the main barrier to accessibility and without awareness, change will not happen. And, above all, it mandates engagement ensuring that the voices of people with disabilities are heard. When introduced in the legislature on 10 May 2005, Dr. Bountrogianni, stated:

> *Today is a very important day for the people with disabilities who have worked relentlessly for a decade to make this legislation a reality. This bill is their bill. It is strong legislation that will allow every Ontarian to live work and play without facing barriers. To have a better life for themselves and for their kids. I'm proud of the role our government has played in crafting this legislation. We want to make a difference to the lives of people with disabilities. With this legislation we are making a difference.*
>
> *This legislation is about empowerment and inclusion. It is about allowing all Ontarians to reach for their dreams. And thanks to the collaboration among all our partners it will be a success. They worked together to develop the legislation and will keep on working together to implement it.*
>
> *I was very pleased with the willingness and active participation of business leaders. They wanted to figure out the best ways to build a more inclusive society. Business people in Ontario understand that they are helping to build a province where*

people want to live and invest -- A province that will be the leader in Canada on accessibility.

The legislation and the development of standards

Engagement is enshrined in the legislation. The legislation requires that standards be developed through formal standards development committees (SDCs) made up of people with disabilities, businesses and organizations affected by the standards and government representatives. It also mandates that once an SDC has reached consensus and has a standard to recommend, a comprehensive public consultation process take place to obtain input, the standard then be revised based on that input and then submitted to the government for consideration. The government would then have the right to accept in part or in whole, modify or reject the proposed standard (Accessibility for Ontarians with Disabilities Act, 2005).

The Institute for Public Administration in Canada (IPAC) has stated in an unpublished study that the AODA represents "unprecedented stakeholder participation signifying new directions in developing legislation" (Institute for Public Administration in Canada, n.d.). Over the past several years, IPAC has been using the AODA case study as an example of unique public engagement with public sector managers (Institute for Public Administration in Canada, n.d.). The law also requires that each standard be reviewed every five years allowing for evaluation of progress and changes or enhancements to be made. And finally, the law requires that the AODA be regularly reviewed by an independent third party (Accessibility for Ontarians with Disabilities Act, 2005; Guide to AODA, 2008). To date, two legislative reviews have taken place, one by Charles Beer, a former Liberal Cabinet Minister, and the most recent by Professor Mayo Moran, then Dean of the Faculty of Law at the University of Toronto. The conclusions of Mayo Moran are provided later in this paper.

In 2005, when the legislation was passed, a decision was made that five initial standards would be developed impacting all major aspects of life (Lepofsky, 2014b):

1. Customer service

2. Transportation
3. Employment
4. Information and Communications
5. The Built Environment

In theory, the expectation was that Standards Development Committees would come together and through a consensus-building model, people with disabilities, impacted sectors, and government representatives would agree on a recommended standard. That model was effective in developing the legislation. However, while each SDC completed its task, the journey was frequently fraught with governance challenges, conflict and roadblocks. It proved to be easier to have the private and public sectors, municipalities and people with disabilities come to consensus on the legislation than it was to have them agree on standards. Partly because the government did not provide any funds for implementation, the obligated organizations wanted a go-slow, incremental approach and many disability representatives felt they needed to push for as much progress as possible.

Standards Development Committee's (SDC's) make-up

Five separate SDCs were established, each with their own membership, chair and terms of reference. Initially each had equal representation from each constituency group – people with disabilities, obligated organizations, and government. A recruitment process looked for members who were knowledgeable and who could work collaboratively in a committee setting. Members would represent a variety of disabilities, of sectors, of large and small organizations, of geography and technical expertise.

The Accessibility Directorate of Ontario (ADO), responsible for the legislation, was not a member of the SDC but, rather, a resource, together with The Canadian Standards Association which had been hired to manage the SDC process. From the outset, disability representatives on the committees felt outnumbered. There was a perception that government members did one of two things – either they did not participate or, when they did, they "sided" with the

obligated organizations. The expectation, with respect to government representatives was that they would embrace the AODA. The reality, in many cases, was a lack of buy-in. In some SDCs an "us versus them" environment developed. Progress was slow and in many instances bogged down. In 2007, the AODA Alliance lobbied for a change to the composition of the committees:

> *Ensuring the disability community has equal representation on each standards development committee, and isn't outnumbered by other sectors' representatives, by making sure that at least half of each committee's members are persons self-identified with a disability and who are active in the disabilities community. Now the disability community isn't ensured this equal opportunity. (Hampton, 2007)*

The response from Premier Dalton McGuinty, the leader of the Liberal Party in Ontario, was to agree to this request. The numbers of people with disabilities on the SDCs was changed to reflect 50% of the members and a staff person was appointed "to help bring the disability community's voice to the table" (Accessibility for Ontarians with Disabilities Act Alliance, 2007). At the same time, ministry representatives no longer had a vote or official role on the committees. While increasing the number of disability representatives was a positive move and welcomed by the community and advocates, there were also negative impacts to this change in policy. Ministry representatives, who could have offered their expertise and assistance, felt disempowered and checked out of the conversation. In reality, they sat back waiting for the SDCs to complete their work and then raised their issues and concerns behind closed doors within the context of an internal government process. Many of the representatives from the municipal and private sectors felt they had been high-jacked – that they had bought into and agreed to a process that changed mid-stream. In its haste to bring on new disability representatives, there was a lot less rigour in the recruitment process sometimes resulting in challenges in committee discussions due to a lack of skill level. In the end, while the

composition changed, the "us vs them" environment remained and consensus was often not achieved.

A case example was in the function, or dysfunction of the Transportation SDC. Many of the disability representatives on the committee were strong and vocal advocates who had a very clear vision of what they wanted to see in an accessible transportation system. They also felt a sense of urgency – time was of the essence and there was no guarantee there would ever be an opportunity again to have a significant impact in government policy making. The transit providers were a strong and well-prepared caucus who spoke with one voice. Achieving an accessible transportation system is complex with significant policy and cost implications. The Transportation SDC was often marked by conflict and, in many instances, was unable to achieve agreement. Rather than seeking consensus the discussion was often at the level of "what can we live with" and there was a lack of trust between the parties. In the end, the document sent to the Minister outlined some areas of agreement but also focused on areas where consensus could not be reached leaving it to the Accessibility Directorate to come up with solutions to recommend to the Minister. In that sense, while the Transportation SDC did as well as it could, a lot was left to a different process outside of the SDC to come to solutions. The cost was that it took another 18 months to develop the standard.

Levelling the playing field

As stated, a key driver of the AODA process was engagement and ensuring that people with disabilities had a strong voice. The requirement that people with disabilities be on all committees helped to fulfill that vision. However, being an advocate is not enough. And having 50% representation doesn't guarantee an effective voice. It takes experience and skill to negotiate through complex issues and come to agreement with people who have had years of experience negotiating and lobbying in their field. In some cases, the playing field was not level. Midway through the process, the Accessibility Directorate hired a staff person to assist the disability representatives to develop a greater level of understanding of their role, committee

work and how decision-making happens in a government context. A better approach would have been to develop a training plan at the outset to ensure that everyone was well-equipped to maximize the results of the SDC deliberations. Equally important would have been to have briefings on complex technical issues. This is not to say that the sectoral representatives were all highly sophisticated. In some instances they behaved completely out of self-interest and would not compromise. Future committees should have an onboarding plan in place to ensure that all members are trained before deliberations begin and understand both their role and the scope of the committee.

Scope of the standards

The legislation requires that each SDC have a Terms of Reference outlining its mandate. This was helpful in setting the scope of the discussion. However, the terms of reference were often vague leading to misunderstandings and conflict. At times, the chairs of committees were ineffective in keeping deliberations to the scope outlined in the Terms of reference. The Built Environment SDC is a case in point. At the outset, the government was clear that the scope of the SDC was to recommend a standard on a go-forward basis. Several committee members felt that the vision of an "accessible Ontario by 2025" could not be achieved unless retrofit of old buildings was mandated. Largely due to expense and the fact that the government was not investing funds to implement the standards, the Minister made a public statement that there would be no requirement for retrofit in the standard being developed. This resulted in some disability representatives leaving the process and feeling betrayed. It became increasingly important that Terms of Reference be clear and prospective members agree to the terms and scope of the work they were being asked to do.

There were also misperceptions regarding what would happen with the proposed standards once the committees had completed its work. SDCs worked 2-3 years on developing standards. In some cases, they reached consensus; in others, they outlined where they could not agree. Where there was agreement there was an expectation that government would

accept all of the recommendations. When there were areas that were not agreed to, committee members experienced much frustration.

Second Legislative Review of the Accessibility for Ontarians with Disabilities Act

As per legislation, AODA progress was to be reviewed every three years. The "Moran report" was completed in November, 2014 and made available to the public in 2015. According to this official review, although AODA and the accessibility standards have made some improvements in the lives of people with disabilities in Ontario, the progress towards a fully accessible Ontario has significantly slowed down since the law was enacted and it looks like Ontario will not meet the 2025 deadline. For instance, in the area of customer service many organizations do not make customer service feedback processes easily available to people with disabilities despite the fact that the Customer Service Standard requires it. Due to this, the organization will not receive feedback and as such will not be able to improve and make changes to increase accessibility (Moran, 2014). Additionally, new barriers have been created based on the Customer Service standard. One such barrier is that an organization can determine whether a person with a disability who enters a facility on his/her own poses a danger to themselves or to others, and may require that person to bring a support person (Lepofsky, 2014c). On the employment front there has been the least progress. There is still significant "ableism" in the workplace and job market. Even if this "just" includes microaggressions, such as subtle discrimination and stigma – its there and constitutes an employment barrier. Employers tend to overestimate how much they would have to spend to accommodate people with disabilities and as a result decide that they are unable to hire such individuals (Moran, 2014). Another problem, which both the Transportation and Built Environment Standards share, is that, because the AODA standards are on a go-forward basis, the accessibility standards in these areas do not require existing barriers to be removed, for example, by retrofitting existing facilities or equipment. This can be a serious problem because existing inaccessible buildings may not need to undergo any significant renovations for a while, and inaccessible public transit

vehicles are likely to be repaired rather than be replaced by more accessible vehicles for a lengthy period of time. Hence people with disabilities may have to wait many years before they can start to benefit from more accessible buildings (Moran, 2014; Lepofsky, 2014c).

Why do these problems still exist 10 years after the AODA came into law and with just 10 more years until the 2025 deadline? As the creator and enforcer of the AODA and its regulations, the Ontario Government is supposed to be leading individuals and organizations in both the private and public sectors towards a fully accessible Ontario. However, according to Moran the Government has not been sufficiently exercising the enforcement mechanisms in the AODA, which sends mixed messages to organizations and the public about the weight of the legislation (Beer, 2010; Lepofsky, 2014b; Moran, 2014). This results in slower change, particularly in the private sector which is more reluctant to take on the financial burden associated with change to their establishments. In 2013, of the 51,000 private sector organizations that have 20 or more employees, only 30 percent had filed compliance reports, even though they were all required to do so by law and were well aware (Moran, 2014; Lepofsky, 2014c). Many of the private sector organizations are not making changes until they see evidence of the law being enforced by the Government. Overall, enforcement activities by the government have been weak. The tolerance of such disobedience in regards to the law is incongruent with the way the Government has implemented and monitored compliance for other laws, such as environmental protection measures (Moran, 2014). One may argue that governments must prioritize their many responsibilities and allocate scarce resources to areas that are perceived to be in greatest need. Such utilitarian practices with limited resources are both common practice and defensible. As it turns out, however, the problem is not that the Government does not have the resources or the budget to enforce the AODA. In fact, the Accessibility Directorate of Ontario (ADO), responsible for the administration of the AODA, has had surplus budgets every year since 2005 (Lepofsky, 2014c; Guide to the AODA, 2008)! Moran (2014) recommended that the Government produce and release to the public the

enforcement plans that detail the results of AODA enforcement activities. She suggested that these enforcement plans will encourage more organizations to comply with the AODA and the accessibility standards, as well as allow consumers to take their business to organizations that support accessibility. Additionally, organizations will be provided with evidence of the enforcement of the AODA and will be more likely to comply. The enforcement plans need to be transparent and they need to be released in a timely manner in order to achieve these goals (Moran, 2014).

Moran also suggests that organizations should be commended for going above and beyond what is required of them by the AODA. Such recognition will encourage more action by the organizations (Moran, 2014). The annual David C. Onley Award for Leadership in Accessibility, launched by the Government in 2014, is one way to recognize four persons or organizations which have demonstrated leadership in accessibility for people with disabilities (Forgione & Marleau, 2015). The Ontario Chamber of Commerce also administers an awards program. Moran also recommended that the government provide tax incentives to encourage compliance, especially in the area of the Built Environment. The United States offers a tax deduction of up to $15,000 to all businesses that remove barriers in their facilities or vehicles. This has fostered much progress towards greater accessibility in these areas (Moran, 2014).

Many persons and organizations have brought up the issue of the cost of increasing accessibility at the workplace. They asked the Government to provide the funding in order for them to implement AODA accessibility standards. Many small businesses and non-for-profit organizations are worried that while expenses may not be prohibitive for larger organizations, they may create significant financial hardship for smaller organizations. However, people with disabilities suggest that a balanced cost/benefit analysis is needed to determine whether these concerns are credible. The economic benefits of greater accessibility to employment include increased involvement in the labour force as well as increased consumer spending by people with disabilities which can potentially offset these costs (Beer, 2010; Conference Board of

Canada, 2014; Donovan, 2014; Lepofsky, 2014c). There is no doubt that more people working and spending and fewer people receiving disability welfare payments make economic sense.

Organizations in both the public and private sectors complain that the accessibility standards do not make it clear or are not specific enough about what the organizations need to do in order to comply. The standards do not provide reference points for general obligations such as meeting the Communication Standard by providing accessible formats of materials, such as in Braille or audio format, which may make organizations rely on guesswork, reinvent the wheel or hire lawyers to determine what has to be done in order to comply (Moran, 2014; Lepofsky, 2014c). The Government did not want to be too specific with standard guidelines because they worried that the organizations may complain (Lepofsky, 2014c). In addition, because the AODA standards apply to large and small organizations, public and private, an effort was made to allow some flexibility. It should be noted, however, that some of the standards are extremely prescriptive. For example, websites need to conform to an international standard known as WCAG or Web Consortium Accessibility Guidelines. Requirements for accessible parking are precise, and all requirements under the Transportation standard are extremely detailed. On the other hand, the requirements for employment are vague and only look at outcomes to be achieved rather than provide a roadmap for achieving them. Now that implementation is underway, many organizations would prefer the standards to be more specific to ensure that they are complying with the law. Access to government resources that provide more detailed policy guidelines and interpretation of provisions can surely aid compliance. As well, 5 year mandated reviews of standards should allow for evaluation of effectiveness. Where flexibility is not obtaining results, revised standards should be more prescriptive.

Through its EnAbling Change Program, the ADO has spent millions of dollars and funded various free guides and tools to help organizations comply with the AODA. Detailed guides are available for each of the five standards. These efforts have received much positive feedback (Moran, 2014). In addition to generic resources, particular attention has been paid to

per cent in December 2014 (Forione & Marleau, 2015). Moran suggests that the upcoming Pan Am/Parapan Am Games are an opportunity to bring disability and accessibility issues into public discourse. It is an opportunity to change people's attitudes about disability, and organizations and businesses should be encouraged to prepare for the games by improving accessibility (Moran, 2014).

Survey

In order to gauge current (April, 2015) satisfaction with the AODA, we decided to conduct an informal survey on the recognition and satisfaction quotient by sampling those who are the intended beneficiaries of the AODA. Six questions were sent to several lists of March of Dimes Canada consumers who have previously provided consent to contact them for research purposes. The survey was also posted on the agency's website. This survey generated 34 responses. Of those 68% indicated they were moderately to extremely familiar with the legislation while 24% were only slightly familiar and almost 9% were not familiar at all. If the intent of this legislation was to achieve full accessibility for people with disabilities by 2025, regardless of type, nature, severity or longevity of the disability, then one would hope that total awareness of the legislation among those who have a disability would be paramount. Only 45% of respondents felt that the goals were moderately or extremely likely to be achieved while 41% indicated that this was only slightly likely, and 14% indicated that the goals were not at all likely to be achieved.

Looking to the future

Clearly, the Moran report identified significant implementation difficulties and the brief survey reported above suggests that many people with disabilities either know little about the AODA and/or are concerned about whether 2025 targets will be met. While some may see this as a failure of the AODA, a more optimistic outlook may construe the difficulties as growing pains associated with powerful legislation that forces societal and behavioural change – change that puts the responsibility to include people with disabilities on the shoulders of society rather

than on the individuals with disabilities themselves. In essence this is a clear shift towards a social construction model of disability approach rather than charity or medical model solutions. Even human rights legislation puts the onus on people with disabilities to initiate a complex and often expensive complaint process. Any expectation that this shift towards greater responsibility by public and private organizations would be quick and smooth may be naïve.

The fact that AODA standards are actually the law in Ontario reflects this more optimistic and perhaps realistic view. Developing 5 standards over a 6 year period with over 200 participants on SDCs and rounds of public consultations is a significant accomplishment. If properly implemented and enforced, the AODA standards will go a long way to transforming how people with disabilities are treated as customers. Transportation systems will be largely accessible. People with a wide variety of disabilities will be able to access information through accessible websites meeting the highest international standards. Universal design principles will be incorporated into public spaces making inclusion a greater reality. Greater numbers of people with disabilities will be employed with appropriate accommodation. Is this enough and is it realistic? The 5 AODA standards are a beginning. While they represent progress, much remains to be done. Five-year mandated reviews of standards should make them stronger and more standards are needed in areas such as health care and education. Successful implementation of the AODA will require better education, advocacy and enforcement. The following sections will discuss each of these in turn.

Education

History has shown that social change often begins as a grassroots movement that changes attitudes enough to become mainstream prompting legislation to follow suit. We've certainly seen this in the process that brought about human rights legislation guaranteeing equality for women, and marginalized racial and religious groups. We are in the midst of the transition from changing social attitudes into laws concerning gay rights. As we write this paper, Ireland, traditionally dominated by the Catholic Church, voted overwhelmingly in favour of gay

marriage in an unprecedented referendum. The AODA would not have been possible without two decades of educating successive cohorts of Ontarians about the Canadian Charter of Rights and Freedoms, let alone human rights activism and legislation that preceded the Charter. Young Canadians take the values enshrined in the Charter for granted and consider them non-negotiable.

In a recent study, Kamenetsky, Dimakos, Aslemand, Saleh & Ali-Mohammed (2015) showed undergraduate students pictures of people with disabilities and asked them a variety of questions on each. Students provided ratings of approximately 6.5 out of 7 when asked whether the individuals depicted had the same human rights as everyone else. But when asked about the capabilities of the depicted individuals and whether or not they would hire, or be friends with them – ratings were much lower. The lowest ratings by far were to questions concerning identification with the persons depicted. Shockingly, ratings were primarily 1 out of 7. The survey showed clearly that the young educated generation knows and understands that human rights in Canada are legally not determined by demographic factors; they feel that in general, however, people with disabilities are less able, and that personally, they are only moderately interested in including them. For the most part – the dichotomy of "us" vs. "them" is still very much alive. The authors used the "Not in My Back Yard" phenomena to explain this. While we don't know exactly what may have motivated this response pattern, a likely thought may have been: "sure – THEY are human beings that deserve to have a life just like WE do. But let "the government" take care of them. That's what we pay taxes for". But "the government" took care of "them" in the past through exclusion and institutionalization and is currently doing so through a cumbersome complaint process. We now live in a different era, where the government decided that the public MUST make a greater effort and play a more central and visible role. But the public will need to first be educated and education is a slow boundless process. Whether its educating preschoolers that children with disabilities are not "the other" to educating the public that the AODA is not just a news item that pops up from time

to time but rather a new way of life in Ontario – progress will not be made without considerable effort in this area. And there can be no expectations that this will yield immediate results.

Advocacy

Advocacy, defined as "the act or process of supporting a cause or proposal", is not independent of education ("Advocacy", n.d.). One must be educated about a cause, a solution or policy that addresses an issue or cause, and of course, educate those whom you wish to have support your particular cause or policy. The above study implies that students are not likely to advocate for action on the AODA unless and until they are educated about it. However, its not sufficient to say the solution is simply education. As a society we know that we have laws such as driving speeds, antismoking by-laws, and anti-discrimination legislation because of public advocacy, AND they would be totally ineffective if not enforced.

The AODA came into being because of the AODA Alliance, the actions and interventions of NGOs, the support of individual parliamentarians, the support of some independent business people and companies as large as the major banks which by and large have had the best record of employing people with disabilities, and as the former Minister stated, "the stars were aligned". Advocacy cannot end with the adoption of a policy or law. Advocates must continue to monitor implementation, efficacy and even the contrary legal challenges in order to ensure momentum is not lost. This has traditionally been called keeping a "watching brief" on an issue, zooming in when there is need, applauding when there is success, and intervening when necessary. This is a strategy that goes hand in hand with enforcement, and in the case of the AODA, the enforcement has been very weak so greater advocacy is definitely necessary.

The AODA Alliance has kept a watching brief on this legislation and the actions of government, the public consultations, and the published reports. The Alliance has outlined the weaknesses around compliance, both the poor level of reporting and the incidents of significant failings, where people with disabilities have experienced discrimination, exclusion, and inaccessibility to public services, contrary to the Act. The Alliance has acted like the conscience

of government, pricking it regularly with every broad and minor failing. Something in the strategy has to change and, in consultation with the leadership and other NGOs, here is what we propose:

1. Define a strategic focus, such as demanding enforcement of the Act, and stick to this core issue. The Act is complex, and was achieved over many years, with hundreds of consultations, hundreds of contributors on standards committees, so now is the time to have a streamlined focus, addressing the key weakness, not denying that its great legislation, and that there were early government-funded education programs, and public engagement. Now, it's about "walking the talk," making the transition from concept to commitment. (speak of it when one goes out and when one comes in, when getting up and when going to sleep...)
2. Build capacity with the younger population in the disability community—the youth and young adults who have grown up under the protections of the Human Rights Code, Charter, Employment Equity and AODA, need to be taught broad-based policy advocacy. There is evidence that they are not engaged in advocacy as was the generation before them; the boomers however, must engage the millennials.
3. Create wider engagement through the AODA Alliance—develop a leadership group within the disability sector, including community agencies, health organizations, professional bodies, academic institutions, trade unions, faith groups and others. The Alliance needs to be a stronger brand, which it can be by having a strong identifiable leadership and wider membership. It worked before but it's faded from visibility partly because of the huge clutter of issues, images, messages, and media. An advocacy campaign needs to be built up with shared resources, multiple modality media, key messaging, and broad representation.

The former Minister of Citizenship and Immigration, Dr. Marie Bountrogianni, chose the model of legislation based on the American Environmental Protection Act, which has also

generated a huge amount of advocacy, without which the protections are not as likely to be in place. The concept of AODA enforcement generates controversy, but that is no reason not to advocate for full implementation. The Act moved from a "soft" ministry to one that impacts all businesses and all employers - the Ministry of Employment, Economic Development and Infrastructure. This provides a vehicle that is appropriate for showcasing how business succeeds when it complies and linking accessibility to return on investment. Dr. Bountrogianni said there was an alliance of activists, political will, and a mandate from the Premier, and she took to heart the need for a Bill with teeth. The stars were aligned ten years ago when the Act was adopted, so it's time to get them alignment again. This won't happen without strong advocacy and lobbying.

Enforcement

A point of view exists that now is the time for education and not enforcement. However, the two go hand-in-hand. The AODA has been in place for a decade and organizations are expected to follow the law. Governments expect companies to know the law either through their legal counsel or their umbrella organizations. Over the past ten years, the Government of Ontario has spent several million dollars providing grants to organizations like the Ontario Chamber of Commerce, the Retail Council of Canada, the Ontario Restaurant Hotel and Motel Association, the Human Resources Professional Association, the Ontario Tourism Association and many others to inform and train their members on the AODA and its requirements. In addition, mailings on compliance have been sent to the universe of obligated organizations together with tax information. Funding is not an issue. As stated earlier, since 2005, there has been underspending of $25 million from the budget of the Accessibility Directorate. These funds could have, and should have, been used for education and marketing activities leading up to compliance dates.

So, what needs to be done now? As a starting point, go back to first principles. When Dr. Marie Bountrogianni held a press conference on May 10, 2005 after the AODA was passed, she said:

> *Well, once a standard is a regulation, it will be immediately enforceable. Which means if it's not complied with, there will be fines. Having said that, we do believe in an education campaign, so that there are no surprises, that people are educated with respect to what's expected of them. That there will be spot audits very much like the environment in the United States uses these spot audits. We're talking about over three hundred thousand organizations, private and public, that will be affected. So can't have an inspector going in every one every day. So there'll be spot audits. Special technology will be used to track these audits, and where there will be inconsistencies, that is where the inspectors will go in. They will be given of course chances to remedy their situation. It's not about punishment. It's about doing the right thing. However if they do not comply, there is a fine -- fifty thousand dollars for individuals and a hundred thousand dollars for corporations. So we're serious. That was missing in the previous act. That was one of the things that was missing in the previous act. And without that enforcement compliance, when you just leave it to the good will of the people, it doesn't always get done. And so we know that we know that from the psychology of human nature. We know that from past research in other areas, like the environment, like seatbelts, like smoking. And so we acted on the research in those areas.*

The AODA envisions progressive enforcement. Once it is evident that an organization is non-compliant, either through how it has answered questions on its report or, more importantly, because it has not filed a report, a Director's order should be issued. Once that happens, an organization is offered assistance to help it get to compliance. It is in this phase that education is most important. After this phase, if an organization refuses to comply, fines and penalties can be levied. All of the research shows that risk-based regulatory approaches have the effect of

driving compliance. By targeting a few companies, levying large fines and making them public, compliance will increase. Education campaigns and enforcement need to be combined. Ten years after the passage of the law, there is no reason to stall and make them sequential. Nothing educates like an enforceable law!

Conclusion

As we conclude the writing of this paper, on June 3, 2015, the 10th Anniversary of the AODA, the Government of Ontario has announced a new Accessibility Action Plan that includes increased enforcement and a focus on employment opportunities for people with disabilities. This encouraging change is a direct result of the Moran review and the relentless lobbying through social media and elsewhere led by the AODA Alliance and other advocates.

This paper has demonstrated the historical context that brought about the AODA, the complex consultations and negotiations that took place to develop its standards, and the difficulties and disappointments associated with its implementation. It concludes with a sober and realistic realization that the unprecedented achievement of enacting a state of the art law such as the AODA cannot in itself end the battle for full citizenships rights for all residents of a fully accessible and barrier free province of Ontario. It will likely take many more years of education, advocacy, and enforcement to reach this goal.

References

Abella, R. S. (1984). *Equality in employment: A royal commission report*. Ottawa, ON: Minister of Supply and Services Canada

Accessibility for Ontarians With Disabilities Act, 2005, SO 2005, c 11

Accessibility for Ontarians with Disabilities Act Alliance. (2007). *Re-elected Ontario government makes important election commitments to Ontarians with disabilities*. Retrieved from http://www.aodaalliance.org/strong-effective-aoda/10102007.asp

Accessibility for Ontarians with Disabilities Act Alliance. (2015). Retrieved from http://www.aodaalliance.org/default.asp

Advocacy [Def. 1]. (n.d.). *Merriam-Webster Online,* Retrieved from http://www.merriam-webster.com/dictionary/advocacy

Albrecht, G. L., Seelman, K. D. & Bury, M. (2001). *Handbook of disability studies*. Thousand Oaks, CA: Sage Publications

Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990).

Beer, C. (2010). *Charting a path forward: Report of the independent review of the accessibility for Ontarians with disabilities act, 2005*. Retrieved from http://www.mcss.gov.on.ca/documents/en/mcss/accessibility/Charles%20Beer/Charles%20Beer.pdf

Braddock, D., & Parish, S. L. (2002). An institutional history of disability. In D. Braddock (Ed.), *Disability at the dawn of the 21st century and the state of the states* (pp. 1-61). Washington, D.C.: American Association on Mental Retardation.

Conference Board of Canada. (2014). *Business benefits of accessible workplaces*. Retrieved from http://www.senseability.ca/docs/default-source/articles/articles-en/business-benefits-of-accessible-workplaces-conf-board-of-canada.pdf?sfvrsn=4

Constitution Act, 1982- Part 1 Canadian Charter of Rights and Freedoms, c.11

Department of Canadian Heritage. (2003). *Your guide to the Canadian charter of rights and freedoms.* Hull, QC: Human Rights Program of the Department of Canadian Heritage

Disabilities, Opportunities, Internetworking and Technology. (2015). *History and current trends regarding people with disabilities.* Retrieved from https://www.washington.edu/doit/history-and-current-trends-regarding-people-disabilities

Donovan, R. (2014). *2014 annual report: Return on disability.* Retrieved from http://www.senseability.ca/docs/default-source/articles/articles-en/2014-annual-report---the-global-economics-of-disability.pdf?sfvrsn=8

Employment Equity Act, 1995, c.44

Field, M. A. The differing federalisms of Canada and the United States. *Law and Contemporary Problems*, *55*(1), 107-120. Retrieved from http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4124&context=lcp

Fleischer, D. Z., & Zames, F. (2001). *The disability rights movement: From charity to confrontation.* Philadelphia: Temple University Press.

Forgione, A., & Marleau, B. (2015). *Ontario committed to accessibility.* Retrieved from http://news.ontario.ca/medt/en/2015/02/ontario-committed-to-accessibility.html

Gordon, P., Beatty, H. & Holder, B. (2002). An analysis of the Ontarians with disabilities act, 2001. *Journal of Law and Social Policy*, *17*(15). Retrieved from http://www.legalaid.on.ca/fr/publications/downloads/journal_vol17/Beatty.pdf

Guide to the Accessibility for Ontarians with Disabilities Act. (2008). Retrieved from http://www.aoda.ca/guide-to-the-act/

Hampton, H. (2007). *AODA- What the new democratic party promises.* Retrieved from http://www.aodaalliance.org/election2007/ndp.asp

Human Rights Code, RSO 1990, c.19

Institute for Public Administration in Canada. (n.d.). *Making ontario accessible: The accessibility for ontarians with disabilities act, 2005 – a learning and teaching case in the ontario*

government's case study series. (Unpublished)

Kamenetsky, S., Dimakos, C., Aslemand, A., Saleh, A., & Ali, S. (2015). Eliciting help without pity: The effects of changing media images on perceptions of disability. *Journal of Social Work in Disability & Rehabilitation.* (Accepted)

Kyle, G., Sandys, J., & Touw, M. (2014). *From institutional to community: A history of developmental services in Ontario.* Retrieved from http://www.mcss.gov.on.ca/en/dshistory/

Lepofsky, D. (2004). The long, arduous road to a barrier-free Ontario for people with disabilities: The history of the Ontarians with disabilities act- The first chapter. *National Journal of Constitutional Law, 15,* 125-333. Retrieved from http://www.lsuc.on.ca/media/eighth_colloquium_barrier_free_on.pdf

Lepofsky, D. (Osgoode Hall Law School). (2014a). *Campaign to win accessibility for Ontarians with disabilties act* [Video file]. Retrieved from https://www.youtube.com/watch?v=VA1VSPgbzMg&index=3&list=PLDGgB77j2ZYrl_rtpe32nSjOXfrDAGvnn

Lepofsky, D. (Osgoode Hall Law School). (2014b). *What regulatory powers should a disability accessibility law include?* [Video file]. Retrieved from https://www.youtube.com/watch?v=_83CX9ffWvw&feature=share&list=PLDGgB77j2ZYrl_rtpe32nSjOXfrDAGvnn&index=3

Lepofsky, D. (Osgoode Hall Law School). (2014c). *Ontario progress toward accessibility for people with disabilities* [Video file]. Retrieved from https://www.youtube.com/watch?v=WNCCClfaXCA&list=PLDGgB77j2ZYrl_rtpe32nSjOXfrDAGvnn&feature=share&index=4

Michigan Disability Rights Coalition. (n.d.). *Tragedy/charity model of disability.* Retrieved from http://www.mymdrc.org/models-of-disability/178-tragedycharity-model-of-disability.html

Moran, M. (2014). *Second legislative review of the accessibility for Ontarians with disabilities act, 2005*. Retrieved from https://dr6j45jk9xcmk.cloudfront.net/documents/4019/final-report-second-legislative-review-of-aoda.pdf

National Council on Disability. (1997). *Equality of opportunity: The making of the Americans with disabilities act*. Washington, DC: Author

Norman, G. C. (2010). Reexamining models of disability and applying rationality, morality, and ethics to support disability rights in the context of genetics. *American University Health and Law Policty*. 20-34. Retrieved from http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1029&context=stusch_lawrev

Ontarians with Disabilities Act, 2001, SO 2001, c 32

Public Service Alliance of Canada. (2013). *A brief history of employment equity in Canada*. Retrieved from http://psacunion.ca/brief-history-employment-equity-canada

Statistics Canada. (2013*). Canadian survey on disability, 2012*. Retrieved from http://www.statcan.gc.ca/daily-quotidien/131203/dq131203a-eng.htm

United States Department of Justice. (n.d.). *Information and technical assistance on the americans with disabilities act*. Retrieved from http://www.ada.gov

World report on disability. (2011). Malta: WHO Press.