



**ONTARIO  
BAR ASSOCIATION**  
*A Branch of the CANADIAN BAR ASSOCIATION*

# **Public Review of the SDC's initial Proposed Accessibility Standard for Information and Communications**

Submitted on *Friday, February 6, 2009*

Submitted by:  
Jamie Trimble  
President  
Ontario Bar Association

Submitted to:  
Accessibility Directorate of Ontario

# Table of Contents

<b>1. EFFECTIVENESS.....</b>	<b>3</b>
<i>Will the SDC's Proposed Standard help to achieve purpose and intent of the AODA by improving accessibility for people with disabilities? .....</i>	<i>3</i>
<i>Please explain why or why not: .....</i>	<i>3</i>
<b>2. SUPPORT .....</b>	<b>4</b>
<i>What is your overall level of support for the SDC's Proposed Standard as written? (Please indicate a number from 1-10, with 10 reflecting the highest level of support and 1 reflecting the lowest level of support).....</i>	<i>4</i>
<i>A. Are there any sections in the Proposed Standard that you particularly support and why? .....</i>	<i>4</i>
<i>B. Are there any sections in the Proposed Standard that you particularly have concerns with and why. Please provide suggestions for improvement.....</i>	<i>5</i>
<i>C. Are there any missing elements that should be added to improve the Proposed Standard? Please provide suggestions .....</i>	<i>6</i>
<b>3. CLARITY .....</b>	<b>6</b>
<i>Is the SDC's Proposed Standard clear and understandable including intent, meaning of the clauses, requirements and proposed definitions?.....</i>	<i>6</i>
<i>If not, what specific suggestions would you make to improve clarity, support understanding and avoid uncertainty? .....</i>	<i>6</i>
<b>4. SCOPE &amp; APPLICATION.....</b>	<b>6</b>
<i>Section 1 of the SDC's Proposed Standard sets out the broad scope and application of the SDC's Proposed Standard. Do you support the scope and application of Section 1? .....</i>	<i>6</i>
<i>Is the grouping of organizations into small, medium, and large appropriate? Please explain why or why not, and include any suggestions for improvement.....</i>	<i>7</i>
<i>Is the proposed definition and categorization of information and communications appropriate? Please explain why or why not and include any suggestions for improvement.....</i>	<i>7</i>
<i>Are the timelines for implementation achievable? Please explain why or why not and include any suggestions to phase in requirements in order to achieve the vision of accessibility by 2025. ....</i>	<i>8</i>
<b>5. BENEFITS/COSTS .....</b>	<b>8</b>
<i>Please describe some of the potential positive effects of the SDC's Proposed Standard on you or your organization.....</i>	<i>8</i>
<i>Please describe some of the potential negative effects of the SDC's Proposed Standard on you or your organization.....</i>	<i>8</i>
<b>6. FEASIBILITY.....</b>	<b>9</b>
<i>Are the requirements of the SDC’s Proposed Standard appropriate in terms of the feasibility of implementation? .....</i>	<i>9</i>
<i>What suggestions, if any, do you have to make the requirements more practical for you or your organization? .....</i>	<i>10</i>
<b>7. ADDITIONAL COMMENTS .....</b>	<b>10</b>
<i>Do you have any additional comments or suggestions that have not already been covered in the preceding questions? .....</i>	<i>10</i>

## 1. Effectiveness

### ***Will the SDC's Proposed Standard help to achieve purpose and intent of the AODA by improving accessibility for people with disabilities?***

Yes, provided the organizations have the necessary resources to comply within the specified timelines.

#### ***Please explain why or why not:***

The Proposed Standard does, in spirit, help to achieve the purpose and intent of the AODA by improving accessibility for people with disabilities.

However, there are some problems with the Standard that we feel will prevent it from fully achieving the purpose and intent of the AODA. The problems include:

- Its breadth and scope – simply put, the Standard is too broad. It is our view that organizations will not know where to begin to implement the Standard and will not know when their obligations have come to an end because there are no outer limits on the measures that organizations have to implement. As a result, there is a risk that organizations will not bother to implement the Standard at all.
- The lack of enforcement mechanisms set out in the Standard. No organization or government body has been specifically tasked with ensuring or measuring compliance of the Proposed Standard.
- The cost of implementing the Standard will deter many organizations from complying. In addition, the Standard does not differentiate between small organizations with varying revenue streams. It is our view that the high cost of implementation will cause organizations not to comply with the Standard at all.
- Public Sector lawyers also identified the need to formalize a process for coordinating efforts across government to comply with the Proposed Standard.
- Given current economic circumstances, the timelines for compliance may be overly ambitious.

It should be noted that the Proposed Standard mirrors, to a great extent, the initiative already undertaken in the Customer Information Standard. Classes of organizations are the same as for the earlier standard, and compliance dates are staggered in accordance with those classes, beginning with the public sector and ending with small employers/businesses.

## 2. Support

***What is your overall level of support for the SDC's Proposed Standard as written? (Please indicate a number from 1-10, with 10 reflecting the highest level of support and 1 reflecting the lowest level of support)***

We would attribute a 10/10 to the goals of the Standard. It is difficult to argue against a more inclusive society.

However, when considered in relation to the concerns identified in question 1 the score falls between 6/10 and 8/10.

### ***A. Are there any sections in the Proposed Standard that you particularly support and why?***

There is particular support for the discrete aspects of the policy – for example: measures to ensure better access to electoral services or to ensure appropriate communications in emergency situations. These sections (i.e. Sections A, B, C.1 of the plain language version) garnered support because they were targeted to identifiable measurable goals.

In addition, we support:

- The proposal that there is no requirement for total retro-fitting of all information and communication.
- The suggestion that not all organizations be required to make available every format of accessible information or communication. For example, an institution may make its information available to a visually-impaired person in audio form, but not necessarily in Braille. However, we would note that a supervisory body should be established to determine what level of accessibility is acceptable, and what format is more universal. This may be the same body which monitors compliance.
- The expansion of the Standard to encompass organizations without employees. (e.g. a condominium corporation)
- Accessibility to information and communication that is equivalent to what able-bodied persons can avail themselves of, in terms of time to absorb the information; the quality of the information or communication; the availability of the information and communication; and that there be no additional economic onus on the person with the disability when accessing their customized format.

***B. Are there any sections in the Proposed Standard that you particularly have concerns with and why. Please provide suggestions for improvement.***

We are concerned with the manner in which the classes are identified. At the outset of the annotated policy they are described only as Class 1, 2 and 3. Later in the same document the term 'critical services' is used. If there are sub-categories of classes 1, 2 and 3 those should be set out at the outset of the policy.

The scope of the annotated standard primarily contains definitions. A statement of the purposes and goals of the Standard would help the reader to understand what s/he is reading. An explanation that the Standard is complementary to other legislation, but does not supersede it or grant greater rights, would assist to clarify the obligations under the Standard.

We are concerned that the classes do not take the financial viability of an organization into account or the present world economic crisis. While one can acknowledge that technology is becoming less expensive over time, institutions (notably the government and small businesses, but also, it appears, large organizations like the 'big-three' automakers) will be hard-pressed to meet the proposed deadlines or develop the required processes when their budgets are shrinking. In addition, creating a single timeline in which to implement the Standard based solely on a number of employees may have disproportionately adverse effects on some organizations.

We are concerned that the Standard is requiring organizations to put all of its communications into five alternate formats. This poses two hardships on organizations:

- While obviously important that persons with disabilities have access to the same information as persons without disabilities, it will be extremely costly to put all communications into all five formats.
- Criteria must be established for determining how extensive (and in how many types of format or technology) a particular form of accommodation is to be made available. (e.g. having Braille and audio version of certain communications in place in an organization but not all communications)

Section 5.7.1 concerning "pre-arranged appointments that have significant personal impact for an individual" refers to an organization being able to "negotiate" with the person with a disability. "Negotiation" is not referred to elsewhere in section 5. Permitting negotiation in other parts of section 5 might be useful to both the disabled person and the organization in determining what kind of accommodation is most appropriate and feasible in all the circumstances.

***C. Are there any missing elements that should be added to improve the Proposed Standard? Please provide suggestions***

Enforcement mechanisms should be built into the Proposed Standard.

At present, compliance is being left to the individual organization. We would recommend establishing a body, or assigning an existing body (e.g. the Ontario Human Rights Commission), with the responsibility for:

- Determining the most acceptable forms of compliance for specific kinds of information.
- Enforcing compliance with the Proposed Standard

### **3. Clarity**

***Is the SDC's Proposed Standard clear and understandable including intent, meaning of the clauses, requirements and proposed definitions?***

Some concerns with respect to clarity have been identified in earlier questions.

We would echo that the biggest issue that requires clarification is identifying who would be responsible for compliance and establishing acceptable formats of accessibility.

***If not, what specific suggestions would you make to improve clarity, support understanding and avoid uncertainty?***

Please see prior comments.

### **4. Scope & Application**

***Section 1 of the SDC's Proposed Standard sets out the broad scope and application of the SDC's Proposed Standard. Do you support the scope and application of Section 1?***

The scope and application of Section 1 would benefit for greater detail. The reader does not understand the purpose and aims of the Standard until they are well into the document.

***Is the grouping of organizations into small, medium, and large appropriate? Please explain why or why not, and include any suggestions for improvement.***

As noted in Section 2 above, we are concerned that the classes do not take the financial viability of an organization into account. A five person family run start-up does not have the same resources as a five person established company which may sell a high margin product. To create a single timeline in which to implement the Standard based solely on a number of employees may have disproportionately adverse effects on some organizations.

An alternative might be to consider the grouping of organizations that have already been “invented” for the Customer Service Standard.

***Is the proposed definition and categorization of information and communications appropriate? Please explain why or why not and include any suggestions for improvement.***

The four categories of information and communication seem appropriate, but it may be challenging sometimes to assign a specific communication to one of the categories. The last category—unpredictable communications—is in fact an open-ended one. It will be daunting to try to anticipate what is, by definition, unpredictable. Further clarity to the definitions would be helpful.

We felt that the terms “prepared” and “predictable” and their corresponding negatives were unclear and not user friendly. “Predictable” communications sounds like communications that someone is expecting to receive. It appears that the Standard is attempting to describe “pre-printed” as opposed to “spontaneous” communications.

We noted that section 5.3.1 of the annotated Standard and section G of the plain language standard set different standards of required communications (“shall” vs. “may”). If readers do not know whether the standard “shall” or “may” apply depending on the version of the Standard that they read, it may cause unnecessary confusion.

Adjudicative and regulatory bodies conduct hearings. These kinds of proceedings are comprised of “communication” between parties. Appropriate processes, accommodation and credibility may all come into play when determining categories of communication.

***Are the timelines for implementation achievable? Please explain why or why not and include any suggestions to phase in requirements in order to achieve the vision of accessibility by 2025.***

In times of economic constraint, it may be difficult for organizations with limited resources to achieve compliance within the proposed timelines. A broader consultative process may be required to address the current financial climate.

In addition, we did not understand why the timelines set out in the Standard run from 2011 to 2013 but the vision of accessibility is tasked for 2025.

## **5. Benefits/Costs**

***Please describe some of the potential positive effects of the SDC's Proposed Standard on you or your organization.***

The Proposed Standard will require complying organizations to consider fully the accessibility needs of their constituents, clients or stakeholders. The OBA has had some very real experience in addressing accessibility, with its efforts to make its premises wheelchair accessible. The hurdles include: dealing with a third party (the owner of the building); cost; municipal by-laws; discrepancies between design and reality. The positive upshot of these efforts has been to raise the awareness of the Association, its lessee, and all those individuals who lobbied or otherwise assisted in promoting this “avenue” of accessibility. As AODA Standards are developed and implemented, the OBA, its members, and Ontario citizenry in general will come to realize and accept that accessibility means equality, and that is a goal to which we should all aspire.

In addition, compliant organizations may experience an increase in public goodwill (in both societal and economic terms).

***Please describe some of the potential negative effects of the SDC's Proposed Standard on you or your organization.***

Potential negative effects include:

- uncertainty of terms and application will make implementation confusing and stressful for those who have to apply.
- the cost of implementation may be prohibitive.
- the availability of the resources required to implement the Standard may cause difficulties for some organizations. For example, smaller regional centres may not have access to the same resources as large urban centres. This may place a

disproportionate cost of implementation on organizations in smaller centres, where, ironically, there may be less need for such a broad policy.

- the Standard does not take into account that organizations will be required to prepare alternate formats of communications even if the organization cannot realistically offer services to the persons for whom the communications are being prepared. For example, the Standard as written would require a driving school to prepare alternate versions of its brochures and pamphlets but would not be able to offer driving lessons to blind persons.
- the Standard appears to set a higher burden on employers and service providers than the *Ontario Human Rights Code* currently does. This may result in an unfairness to employers and service providers who would otherwise be able to establish undue hardship.
- the interplay of different levels of government or regulatory bodies whose mandate is the oversight of design and implementation of accessibility formats.

## 6. Feasibility

### *Are the requirements of the SDC's Proposed Standard appropriate in terms of the feasibility of implementation?*

The requirements are feasible, provided the concerns we have noted are addressed.

Our concerns with respect to feasibility include:

The need to extend the timelines set out in the Proposed Standard.

Implementation costs remain a problem and we are left wondering whether the Government will provide funding to organizations that are required to implement the Standard?

The *Ontario Human Rights Code* contemplates cost as a component of undue hardship – the Standard appears not to, setting a higher obligation on employers than the *Code* currently does.

We question whether it is practical that organizations will have to create five alternate versions of its communications before a need for those alternate versions is identified.

It is not clear that, as written, organizations will understand their obligations and the limits (if any) on those obligations.

The level of training employers will have to provide their employees about the standard is unclear. And at what cost?

***What suggestions, if any, do you have to make the requirements more practical for you or your organization?***

Many of our recommended solutions are outlined in response to previous questions.

We believe the following suggestions would make the requirements more practical for all organizations:

- Coordination of the Standard with existing legislation (e.g. *Ontario Human Rights Code, Occupational Health and Safety Code, Fire Safety Act, Building Code*) to ensure that there are no inconsistencies between the Standard and existing legislation.
- The creation of an “arbiter” body to determine levels or formats of accessibility, so that individual organizations (or levels of government) do not make preparations in a vacuum or do not duplicate efforts.
- The establishment of a fund (or funded entity) to develop and make available the necessary tools to facilitate accessibility compliance to all categories of organizations.
- A second look at the proposed timelines for compliance.
- Clarification concerning whether all organizations are required to provide all formats of accessible information and communication. References to more opportunities for negotiation with disabled persons would be helpful in establishing the most appropriate accommodation in all the circumstances.
- Clarification of the categories of communication so that it is easier to determine which one a particular type of communication falls into.

## **7. Additional Comments**

***Do you have any additional comments or suggestions that have not already been covered in the preceding questions?***

We would take this opportunity to commend the Standards Development Committee for its tremendous work in authoring the Proposed Standard. It is evident from the Committee Comments that consensus was difficult to achieve. Nonetheless, the Committee succeeded in drafting an admirable, exemplary and, with few exceptions, eminently feasible blueprint for achieving equality for all persons in Ontario.