

Accessibility and Accommodation

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Administrative tribunals and Ontario courts are moving ahead with new plans for accessibility and accommodation by people with disabilities. The OBA's Equal Opportunity Committee has taken a role in developing the ideas, as they pertain to the needs of lawyers and their clients for accessible hearings.

One in six people in Ontario have disabilities, according to the 2006 official census; yet, only some will have disabilities that are relevant to participation in the legal process. The challenge facing tribunals is to identify and address these particular needs. This article looks at how adjudicators and mediators fit into these plans.

In January, 2008, the Government of Ontario put in force "customer service" regulations to the *Accessibility for Ontarians with Disabilities Act, 2005*. The customer service regulations have come in advance of regulations about accessible facilities. Changing customer service can be less costly than altering the "built environment". Regulations concerning accessible facilities, employment, transportation and technology are expected in the future. Once they are passed, the legislation will have stronger impact.

Tribunals named in the new regulation must have accessible customer service by 2010. Among the many named are the Financial Services Tribunals, the Consent and Capacity Board, the Social Benefits Tribunal, the Human Rights Tribunal of Ontario and Legal Aid Ontario. Those tribunals unnamed in the regulations have an additional two years to comply with the regulations. A detailed guide to the new requirements can be found at this link: <http://209.167.40.96/page.asp?unit=cust-serv-reg&doc=guide&lang=en>

While Ontario courts can pool their resources and look to the Ministry of the Attorney General for policy, procedure and funding, for the most part the tribunals bear individual responsibility. An exception would be work by The Society of Ontario Adjudicators and Regulators, in establishing equitable standards for people with diverse needs, whether geographic, physical or sensory.

Legislation about accessible hearings has existed in the United States longer than in Ontario. One set of guidelines, developed between 1998 and 2000, for mediators under the Americans with Disabilities Act, can be found at this link: <http://www.directionservice.org/cadre/pfriendly.cfm?id=739&name=http://www.dhttp://www.directionservice.org:80/cadre/pfriendly.cfm?id=739&name=http://www.d>

Service providers for people with disabilities generally try to ensure equal access, participation and benefit for all users. Administrative tribunals may not have the volume of cases that would justify appointing one person to handle this job alone. At a tribunal, the point of contact could be the Registrar, or someone else trained about accessibility issues. When people plan to go to a hearing, they can identify themselves in advance to this administrator, who will set plans in motion.

Since not everyone will self-identify before or during the hearing, the

adjudicator or mediator may have to make inquiries as a case develops. The challenge is to find ways that open up the hearing for everyone to participate, and to do so in a respectful and sensitive manner.

The client may have a disability that the tribunal has to know about in order to provide the proper assistance. As an example, a tribunal would need to know a client has difficult hearing, before it appointed a sign language interpreter. In many other instances, being helpful may not require the adjudicator or mediator to know the details of a person's disability. An inappropriate or insensitively worded inquiry could in itself constitute a human rights infringement.

Rather the adjudicator or mediator would discover whether anything prevents participation and then remove the obstacles. For example, people with a whole range of disabilities may tire easily. Holding the proceedings in shorter pieces with more breaks is a way of removing that barrier. While knowledge and flexibility are required of the mediator and adjudicator, they do not have to handle the situation alone. They can also bring in support people and experts on disability.

On a more macrocosmic scale, the tribunals will have to develop management systems that ensure action and accountability. The Accessibility Directorate of Ontario assists organizations with their plans by setting policies and making education materials available. It is also a forum to which people dissatisfied about accessibility arrangements can bring their concerns. So far, there are no compliance regulations or forums focused solely on deciding cases under the *Accessibility for Ontarians with Disabilities Act, 2005*.

In contrast, American jurisdictions have a tribunal for mediating and adjudicating cases that arise out of disputes as to whether accessibility standards have been met. Hearings like these put the spotlight on issues faced tribunal dealing with accessibility. One description of the issues that arise can be found at this link: <http://www.directionservice.org/cadre/pfriendly.cfm?id=723&name=http://www.d>

The absence of such a tribunal in Ontario disappoints some people who need accessibility services. At present, the Human Rights Tribunal of Ontario would decide cases of this nature, among others in which discrimination is alleged. This tribunal itself recently circulated a draft policy on accessibility for people with disabilities. The policy anticipates a role for adjudicators and mediators in providing accessibility, as cases develop in the Human Rights Tribunal forum. By engaging and consulting stakeholders, the Human Rights Tribunal of Ontario took an important step, which other administrative law bodies could follow.

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