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Accessible & Inclusive Legislation

Re-visiting the Accessibility for Ontarians with Disabilities Act (AODA)

Canadian disability advocacy groups have consistently lobbied towards formidable and explicit legislation to govern the living environment of persons with disabilities. Increasingly, as rates of age-related chronic illness and disability climb, access and inclusion issues impact the quality-of-life of a significant population within our communities. Legislation is an integral piece, a tool that will not only encourage change, but enforce it. There have been several different levels of legislation for persons with disabilities within Canada, all as an attempt to induce change.

On a federal scale, the *Canadian Charter of Rights and Freedoms* dictates the parameters by which persons with disabilities should be included within their communities. In section 15, the *Charter* refers to the equality under and before the law, including equal protection and benefit of the law regardless of their ability.¹ On a provincial and territorial level, provinces have their own *Human Rights Code* which sets out the standards for the treatment of persons with disabilities. Beyond this rights-based legislation, there is only one further piece of provincial legislation for persons with disabilities in Canada. Recently, Ontario established the *Ontarians with Disabilities Act (ODA)* in 2001, following it up with *Accessibility for Ontarians with Disabilities Act (AODA)* in 2005.

This article will examine the importance of the Ontario legislation, both for its impact as regional legislation and its social policy implications for future legislation in the rest of Canada. First, the paper will examine the precedent set by the *ODA* and *AODA* and then explore several of the critiques which have emerged since their enactment. A particular focus of this exploration will be the expediency of the acts. Furthermore, it will explore ideas around a comprehensive legislation for the inclusion of persons with disabilities within communities, and to what extent it has demonstrated a localized approach to legislation. Overall, the paper aims to identify the role of legislation in improving accessibility and inclusion for persons with disabilities, and whether it can make these issues a higher priority within a local agenda.

The Case of Ontario

The *Accessibility for Ontarians with Disabilities Act* was established as a response to feedback over the inefficiency of the *ODA*. In turn, these acts had been a response to enduring lobbying efforts by the Accessibility for Ontarians with Disabilities Alliance since the early 1990s.² The goal of the updated *AODA* is to “benefit all Ontarians by developing, implementing, and enforcing accessibility standards in order to achieve accessibility for Ontarians with disabilities in respect to goods, services, facilities, accommodation, employment, buildings, structures, and premises on or before January 1, 2025”.³ The *AODA* organized this goal into five essential sections of accessibility standards: transport, customer service, employment, built environment, and information and communications. Since its inception, the *AODA* has been heralded as the most significant accessibility and inclusion legislation in the country.⁴ The act establishes an unparalleled specificity in its accessibility requirements. For example, the access standards for customer service section not only sets guidelines for the delivery of goods and services, but also the treatment of service animals; temporary disruptions in service; training for staff; feedback processes; and the format and availability of organizational documentation.⁵ In addition, the *AODA* establishes a system for monitoring compliance and penalties for non-compliance. Even its critics have suggested that the most significant past progress towards the full participation of persons with disabilities has been this type of legislation rather than voluntary actions.⁶

Furthermore, the *AODA* was a legislated response to the corresponding needs of the community. As previously noted, even the original *ODA* was initiated by the lobbying efforts of the Accessibility for Ontarians with Disabilities Alliance. The disability community in Ontario spent the last three decades lobbying and utilizing their considerable economic influence to persuade the government to create a province that opens opportunities to persons of all abilities.⁷ Their input has shaped not only the content of legislation,

In Brief... Canadian disability advocacy groups have consistently lobbied towards formidable and explicit legislation to support the quality of life of persons with disabilities, a significant population within our communities. The most comprehensive Canadian legislation was recently introduced in Ontario, established as the Accessibility for Ontarians with Disabilities Act. This paper will examine the importance of the Ontario legislation, both for its impact as regional legislation and its social policy implications for future legislation in the rest of Canada.

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but its importance to current and future governance in the province. Unlike many pieces of legislation, the increasing breadth and weight of the *AODA* can be directly and consistently linked to the input given by the community.

While Ontario policy makers have received accolades for their progress, they have also witnessed unease over the shortcomings of their work. The greatest concern is that the legislation will not fulfill its promise of a barrier-free Ontario by 2025. While critics agree that Ontario could achieve full accessibility by 2025, they do not believe it is possible according to the proposed standards' deadlines (for employment, customer service, transport, built environment, and information and communications respectively).⁸ For instance, the first implemented standard, accessible customer service, has an established compliance deadline of January 1, 2010, for public organizations and January 1, 2012, for private and non-profit organizations.⁹ However, most public organizations only started working toward accessible customer service standards in early 2009, including the government itself.¹⁰ So why is there such slow progress? Two key factors have been outlined as influencing the poor implementation of *AODA*.

The most prominently cited reason is a lack of funding for the necessary improvements. The Ontario government has been scolded for creating the legislation with a "you-pay-for-it" approach.¹¹ For example, public transportation organizations are already citing that compliance with the accessible transportation standards (now in its final draft) will cost them millions over the next few years.¹² The government is offering no financial assistance for transportation upgrades, or any of the other widespread improvement endeavours. Furthermore, the government is directing those seeking financial assistance to charitable organizations or federal grants.¹³ \

Even if the resources were available, organizations would still struggle to direct them to the most appropriate improvements. While aiming to be comprehensive in its nature, the legislation is so vast that its standards are fairly ambiguous.¹⁴ The blurred guidelines of the standards are only further complicated by their authority in contrast to current human rights legislation. There are several inconsistencies between the level of responsibility for inclusion and accessibility as dictated by the *Human Rights Code of Ontario* in contrast to the *AODA*. There is confusion over the superior legislation¹⁵ as well as inconsistencies within the penalties for each respective act of non-compliance. While infractions against the Human Rights Code must be reversed within weeks, but the *AODA* legislation can give offenders several years to reach compliance.¹⁶ These discrepancies mean that organizations may encounter confusion or conflict when attempting to comply with both pieces of legislation, or may seek refuge from complaints by declaring allegiance to an undefined superior statute.

Overall, these problems create the second major problem within the *AODA* framework, its enforcement. For instance, if there is a conflict with the *Human Rights Code of Ontario*, which law will organizations be compelled to comply with? Will organizations continue to refer to the Code if the *AODA* does not establish clearer standards? Can the government legislate expensive infrastructural change (and stretch the resources of organizations) without guaranteeing it will fulfill the legal requirement? These questions cannot even be addressed until a clear idea of enforcement is introduced. Currently the Ontario government has not defined what penalties will be imposed when the first deadlines are reached in 2010 and compliance is then law. This has many questioning the intent of the government and whether or not enforcement will take place in a timely manner, or at all.¹⁷

Federal Policy Implications

Recently it has been suggested that the *ODA* was meant to emphasize the importance of accessibility and inclusion legislation while localizing its scope of responsibility (and thus removing the onus from the provincial government).¹⁸ It appears this idea remains intact within the *AODA*. The localization process should enhance commitment to issues of accessibility and inclusion, but instead it relinquishes liability by diversifying who is accountable. *The Accessibility for Ontarians with Disabilities Act*, when displayed as show-piece legislation in Canada, has raised serious questions about its ability to create more inclusive and accessible communities.

However, legislation has been shown to be an integral and essential part of instituting greater inclusion and accessibility within our communities, and it cannot be discounted as a part of the process. It has been suggested that one of the key issues to judging the success of the *AODA*, beyond the practical issues such as finances and enforcement, is attitude.¹⁹ There appear to be definite issues surrounding attitudes towards who is responsible for ensuring our communities are more inclusive and accessible – whether it be governments, community organizers, private enterprises, or individuals. It could be argued that this attitude influences the interpretation of the *AODA* far more than anything else. It is certainly an area for further discussion, with few in-depth critiques of the *AODA* in existence. The *AODA* has always been a response to public feedback, and the Ontario government could build towards a barrier-free 2025 if it carefully considers the praise and criticism around its legislation. There must be more enquiry into the social implications of the *AODA*, as this legislative approach stands as template for other regions and for the future of a more accessible and inclusive Canada.

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Timeline: The enactment of the *AODA*²¹:

1982 - United Disabled Consumers group formed in Ontario following staged activities for the International Year of the Disabled Person. The group is successful in lobbying for regional changes to their physical environment.

1994 – Ontarians with Disabilities Act Committee formed as activists in Toronto lobbied for comprehensive accessibility legislation for Ontarians with disabilities.

1998 – *Ontarians with Disabilities Act* (Bill 83) submitted to legislation, only to be subsequently withdrawn due to its focus on ministerial responsibilities and disregard for private organizations' responsibilities.

2001 – *Ontarians with Disabilities Act* (Bill 125) passed into legislation. However, the bill was criticized for its focus on physical accessibility rather than comprehensive accessibility and inclusion within the public domain.

2005 – Accessibility for Ontarians with Disabilities Act (Bill 118) passed into legislation. The bill included provisions for employment, transportation, customer service, information and communications; and buildings and environment.

2005 – As it continues its lobbying efforts for comprehensive and effective accessibility legislation in Ontario, the Ontarians with Disabilities Act Committee changes into the Accessibility for Ontarians with Disabilities Act Alliance.

January 1, 2008 – Customer Service Standard becomes law.

October 31, 2008 – Transportation standard submitted for law. (Compliance dates: immediately to 18 years*).

Summer 2009 – Information and Communications Standard submitted for law. (Compliance dates: 1 – 15 years*).

July 2009 - Employment standard under review before being submitted for law. (Compliance Dates: 1 – 5 years*).

July 14, 2009 – Built environment standard is released until October 2009 for public consultation until final review in October 2009. (Compliance dates: 1 – 13 years*).

Timeline: The future of the *AODA*²²:

January 1, 2010 – Deadline for compliance with the Customer Service Standard for designated public sector organizations.

January 2010 – Charles Beer will submit his independent review of the *AODA*.

January 1, 2012 – Deadline for compliance with the Customer Service Standard for other providers of goods and services.

Questions for the Future

1. Can legislation improve inclusion and accessibility for persons with disabilities by making it a higher priority on the local agenda?
2. Why is the implementation of the *AODA* moving so slowly?
3. If there is a situation of conflict over the jurisdiction of the *AODA* versus the *Human Rights Code of Ontario*, which law will organizations comply with?
4. Will organizations continue to refer to the *Code* if the *AODA* does not establish clearer standards?
5. Can the government legislate expensive infrastructural change without providing any financial support?
6. Can the government demand such change without guaranteeing it will fulfill the legal standard?
7. Who is responsible for ensuring our communities become more inclusive and accessible?
8. What role does attitude play in influencing the implementation of the *AODA*?

Appendices:

Definitions within the *AODA*²⁰ :

Disability:

- a) any degree of physical disability, infirmity, malformation, or disfigurement that is caused by bodily injury, birth defect or illness and, without limited the generality of the foregoing, includes diabetes, mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental impairment or a developmental disability,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act, 1997*; (“handicap”)

Barrier: means anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice; (“obstacle”)

Accessibility Standard: means an accessibility standard made by regulation under section 6; (“norme d’accessibilité”)

Endnotes

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About SPARC BC

SPARC BC knows that communities benefit when people have equitable access to places, knowledge, services, livable incomes, community decision-making and planning processes. That is why we are passionate about working with communities on the issues of income security, accessibility, community development, and social planning; and on the connections between them.

As an independent, non-partisan, registered charity working with BC communities for over 42 years, we are a rich source of knowledge and expertise. We conduct socially focused, evidence-based research; do consulting work and workshops with communities; connect with the public and government through advocacy; and proudly operate the Parking Permit Program for People With Disabilities. We strongly believe in connecting people to knowledge for positive change so we support two province-wide knowledge networks, BC CAN and CSPN, and distribute our research and publications widely. SPARC BC is always looking for partners; see how you can work with us at www.sparc.bc.ca.

• *SPARC BC Research & Consulting*

- Accessibility plans
- Intercultural studies & facilitation
- Affordability Studies

• *Join a Network*

- BC CAN (BC Community Accessibility Network)
- CSPN (Community Social Planning Network)

• *Participate in our annual campaign*

- Access Awareness Day

• *Access our Resources & Publications*

- The Accessible Community Bylaws
- Tools for Action: A Resource Guide for Designing a Community Indicator Project
- Still Left Behind: A Comparison of Living Costs and Income Assistance in BC

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