

**Accessibility for Ontarians
with Disabilities Act, 2004**

Bill 118

**Submission
to the
Standing Committee on Social
Policy**

**by the
Ontario Federation of Labour**

January 2005

Section I

Accessibility for Ontarians with Disabilities Act, 2004 Bill 118

The Ontario Federation of Labour

The OFL constitutes the largest provincial federation of labour in Canada. The 700,000 members of the Ontario Federation of Labour are drawn from more than 30 unions. Our members work in all economic sectors and live in communities across Ontario, from Kenora to Cornwall and from Moosonee to Windsor.

Since our founding in 1957, we have sought to improve the economic and social conditions of workers and their communities. The labour movement does this in two ways: through collective bargaining and by working for legislation that improves living and working conditions for all in our society. This is in the best interest of workers, employers and the wider community.

General Comments on Bill 118

According to Statistics Canada, there are approximately 1.5 million Ontarians with a disability – or about 13 percent of the population. By 2025, it is expected this number will increase to 20 percent of the population – or three million people. These figures serve to emphasize the huge number of Ontarians who are depending on strong legislation that has a real capacity to change the status quo.

Although we are pleased with the application of this Bill to both the public and private sectors, we are nevertheless concerned that, overall, it will not achieve its stated objectives if key changes are not made.

Our major concerns and recommendations are as follows:

- It is critical that there be a proactive and formal involvement of Unions at every stage of the process.
- We believe that a parallel process to the *Pay Equity Act* of 1987, passed by the David Peterson government, is key to the success of the legislation. Thousands of workplaces can become accessible and people with disabilities will have real employment opportunities if accessibility plans are bargained in all workplaces. Unions and employers should be compelled to begin this process immediately.

- There are several sections in the Bill that allow for exemptions. We do not believe there should be any exemptions from this anti-discrimination initiative.
- The proposed timelines are much too long. As it stands now, an infant born today would have to wait until they are 20-years-old to enjoy the rights of citizenship, including employment opportunities.
- The all-important purpose clause must reflect that the Accessibility for Ontarians with Disabilities Act (AODA) is anti-discrimination legislation.
- The generalities and vagaries of Bill 118 are alarming and must be clarified. As it stands now, it leaves too many significant issues up to Cabinet. The plans span two decades. There is therefore every possibility that key regulations will not be enacted either by the current government, or future provincial governments.

For example, the committee work is critical to this process, yet the Bill does not address the following:

- define what or who might be the “representatives of persons with disabilities”
- direct that there should be a variety of representatives from the community of persons with disabilities, or that it is necessary to have representation from a broad cross-disability perspective, thereby ensuring that all barriers are appropriately identified
- require a certain percentage of committee members to be persons with disabilities
- say how the Minister will first select and then “invite” members of the committees
- say how the community might participate in the selection of persons with disabilities or their representatives
- provide for the length of time that a member sits on a committee or how a member is replaced
- provide for payment of expenses or indicate if any remuneration is authorized. This is in stark contrast to the provisions for remuneration and expenses for members of the Accessibility Standards Advisory Council set out in s. 31(3)
- address the diversion of resources and costs that disability organizations will experience if their staff or members participate on various standards committees over lengthy periods of time

ARCH (A Legal Resource Centre for Persons with Disabilities) has identified many of these generalities. We agree with their preliminary analysis and recommendations, many of which we incorporate into Section II.

Our Interest and Long Record of Fighting to Achieve Full Accessibility

The OFL has a long history of fighting to end discrimination against persons with disabilities. As early as 1963, an OFL convention resolution called on the Ontario government to immediately enact legislation to deal with barriers to employment. In 1981, the OFL “Statement on Employment of the Disabled” called for equal access for disabled people to a full range of opportunities in employment, accommodation, education, transportation, recreation and community services. Over the years, union members and OFL officers have worked side by side with disability groups to fight for equal access and opportunities.

Unions bring unmatched expertise in workplace issues, as well as important insights and decades-long commitment to disability and accessibility issues. We have extensive experience in dealing with the issues of “return-to-work” and “modified work” and developing workplace accommodations that are often required by injured workers. And we are experienced in a range of human rights issues that affect members in the workplace.

For these reasons, the proposed legislation needs to be amended to allow for the proactive and formal involvement of unions at every stage of the process.

Recommendation #1:

Unions be formally incorporated and consulted at every stage of this process.

Adopting the Pay Equity Model to Ensure Disability Rights Become a Reality

We want to achieve a parallel to the *Pay Equity Act* of 1987, passed by the David Peterson government. Thousands of workplaces can become accessible and people with disabilities will have real employment opportunities if accessibility plans are bargained in all workplaces.

The following amendments would give us the legislative right to bargain plans with employers to identify changes needed in workplaces to make them more accessible. Unions and employers should be compelled to bargain together to identify issues and remedies. This is based on the model used in the bargaining of pay equity plans established in the 1987 *Pay Equity Act* passed by the David Peterson Liberal government.

The following amendments will ensure that thousands of workplaces will be made accessible by accommodating people with many types of disabilities. It would open the doors to those who are now denied jobs.

Recommendation #2:

The Pay Equity Model should be adopted to compel unions and employers to bargain together to identify issues and remedies.

We note elsewhere in our brief that the timelines of 2025 are too long. Notwithstanding the final decision as to timelines for implementation, the bargaining process should begin immediately in order to achieve important remedies as quickly as possible.

Recommendation #3:

The bargaining process should begin immediately.

The following three areas must be amended to ensure union involvement at every stage of the process:

Recommendations #4, 5 and 6

- (i) The first area is meant to ensure that unions and employers negotiate and implement accessibility standards in workplaces across Ontario. The following amendments are therefore needed:

Part III

Accessibility Standards

Section 7

- 7. *The Minister is responsible for establishing and overseeing a process to develop and implement all accessibility standards necessary to achieving the purposes of this Act.*

Add the following sections to Section 7. Move Section 8(1) to become new Section 7(1):

Section 7(1) As part of the process referred to in section 7, the Minister shall establish standards development committees to develop proposed accessibility standards which shall be considered for adoption by regulation under section 6.

7(2) As part of the process referred to in section 7, in an establishment in which any of the employees are represented by a bargaining agent, there shall be an accessibility plan for each bargaining unit and an accessibility plan for that part of the establishment that is not in any bargaining unit.

The employer and the bargaining agent for a bargaining agent shall negotiate in good faith and endeavour to agree on, the contents of an accessibility plan which shall be consistent with all standards and timelines developed by the appropriate standard development committee(s). The process will begin upon the proclamation of this bill into law and need not wait for the establishment of the appropriate standards development committee(s).

When an employer and a bargaining agent agree on an accessibility plan, they shall execute the agreement, and the employer shall post a copy of the plan in the workplace.

Where an employer and a bargaining agent fail to agree to an accessibility plan by an agreed upon date, the matter shall be appealed under the provisions of section 26 to the appropriate Tribunal.

- (ii) The second area is meant to ensure that unions are directly involved in the work of any standards development committees established under this legislation.

Composition of standards development committee

Section 8(3) (old section 4) – **Add the following amendment:**

- (4) Representatives of trade unions and professional associations who represent employees employed in the industry sector of the economy or classes of persons to which the accessibility standard is intended to apply.**

Section 12

The development of meaningful accessibility standards will require a large and continuing investment of time and energy from the disability community, the sectors affected, and the government.

Recommendation #7:

To assist union and community representatives and to ensure the participation of persons with disabilities on standards development and any other committees, financial support for individuals and the organizations participating in this process should be established in the text of Bill 118.

Section II

Amendments and Recommendations on other important aspects of Bill 118

1. Purpose Clause

The AODA was introduced for First Reading on October 12, 2004. Here is some of what the government had to say about it:

The bill is strong, effective, comprehensive legislation that would, if passed, help remove barriers faced by people with disabilities.¹

Removing and preventing barriers for the 1.5 million Ontarians with disabilities is vitally important to the strength of our communities and our economy, said Dr. Marie Bountrogianni.²

The sentiments and purpose expressed in government communications do not match the Purpose Clause of Bill 118:

46. The purpose of this Act is to benefit all Ontarians by,
- (a) developing, implementing and enforcing accessibility standards in order to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, occupancy of accommodation, employment, buildings, structures and premises on or before January 1, 2025; and
 - (b) providing for the involvement of persons with disabilities, of the Government of Ontario and of representatives of industries and of various sectors of the economy in the development of the accessibility standards.

A purpose clause in a statute is critical to its interpretation. We agree with ARCH that the AODA is a “rights” statute and must reflect this. It is being enacted to remedy the systemic exclusion and discrimination that persons with disabilities have experienced, and continue to experience in all aspects of Ontario life. Although this is its purpose, it makes no reference to historical or current discrimination. Rather, it states that the purpose is “to benefit all Ontarians”.

It will be important for the courts to recognize that the AODA is anti-discrimination legislation, and not a general statute for the “benefit of all Ontarians”.

¹ Oct. 12/04: Media Release “Real accessibility for Ontarians with Disabilities”

² Dec. 2/04: Media Release “McGuinty Government’s Accessibility Bill Moving Forward”

Recommendation #8

We recommend that Section 1 be revised to clearly state that the purpose of enacting the AODA is to remedy the systemic exclusion and discrimination that persons with disabilities have experienced, and continue to experience.

2. Time Frames

January 2025 is too long a time to wait for full implementation. It is unrealistic and will create great hardship. ARCH has recommended that accessibility standards be developed by 2020. We believe this process can and should be done in less time. Notwithstanding the final decision as to timelines for implementation, the bargaining process should begin immediately in order to achieve important remedies as quickly as possible.

Recommendation #9:

The timeframe of 2025 should be significantly shortened.

3. Complaints Process

Recommendation #10

An independent commission should be established with an independent review mechanism to permit persons with disabilities to complain about failures to comply. The commission would implement the AODA's mandate.

4. Accessibility

40(1) The Lieutenant Governor in Council may make regulations,
(q) defining the terms "accessibility" and "services" for the purposes of this Act and of the regulations;

Bill 118 reserves to Cabinet the right to define "accessibility" by regulation pursuant to section 40(1)(q). Accessibility is a fundamental concept of the statute.

Recommendations #11 & #12

We recommend that a definition of "accessibility" be added to section 2 at this time.

We also recommend that section 40(1)(q) be deleted.

5. Services

Bill 118 likewise reserves to Cabinet the right to define “services” by regulation pursuant to section 40(1)(q). It is essential that persons with disabilities understand immediately what will or will not be covered.

Recommendation #13

A definition of “services” should be added to section 2 at this time. Broad and all-inclusive language should be used in order to avoid loopholes. Again, we recommend that section 40(1)(q) be deleted.

6. Application

4. This Act applies to every person or organization in the public and private sectors of the Province of Ontario to which an accessibility standard applies.

Recommendation #14

The words “to which an accessibility standard applies” should be deleted.

7. Regulatory Power to Exempt from the Application of the Act

40. (1) The Lieutenant Governor in Council may make regulations,
(q) exempting any person or organization or class thereof or any building, structure or premises or class thereof from the application of any provision of this Act or the regulations

This regulatory power that reserves the ability to provide exemptions to the application of the AODA is unnecessary and unwarranted. It is essential that the AODA not provide this unfettered exemption power. There should not be exemptions from this anti-discrimination initiative. Section 40(1)(q) should be deleted.

8. Accessibility Standards must Reflect the Government’s Strongest Possible Commitment.

Use of the word “may” in Section 6 runs contrary to the purpose.

Recommendation #15

This section should be reviewed to ensure that it confirms the government’s strongest possible commitment to enacting the proposed or revised standards. The government should clarify for the public at this juncture why non-mandatory language was selected.

9. “To the Public” Section 6 (3)

It is difficult to define the public and private spheres of our society. By including these words, is it not clear whether the AODA applies to organizations that have membership criteria such as private schools, fitness centres, condominiums, etc., or to organizations involved in design, manufacture, and construction who do not provide their products directly to the public.

Recommendation #16

The words “to the public” should be deleted from section 6(3).

10. Standards Development Process

Recommendation #17

Members of committees should be appointed for a fixed term, and be remunerated for their time and expenses.

Recommendation #18

Each stage of the process be reduced from five years to three years.

Recommendation #19

The terms for those appointed to the committees should be the same length as the stages of development of the proposed standards.

11. Compliance with Standards and Review of Reports

16. A director may review an accessibility report filed under section 14 to determine whether it complies with the regulations and whether the person or organization who submitted the report has complied with all applicable accessibility standards.

Recommendation #20

There must be a mandatory requirement that reports be reviewed by either the director or a delegate.

12. Inspections

18. (1) The Minister may appoint inspectors for the purposes of this Act.

Recommendation #21

The provision should be changed to provide that the Minister shall appoint inspectors beginning at the time the initial accessibility standards are enacted.

13. Director's Orders

25. A director may, by order, vary or revoke an order made under section 21.

Bill 118 sets out a series of steps regarding notices and orders and the making of submissions in sections 21-24. It then says in section 25 that the order can be varied or revoked.

Recommendation #22

Applicable timelines for this power be clarified and the circumstances under which an order can be varied or revoked be set out in Bill 118.

14. Appeals to Tribunal

The adjudication framework set out in Part VI is highly problematic and needs significant revision. There are problems with the lack of a single specialized tribunal. There are minimal avenues for a hearing and there is no provision for public input.

Recommendation #23

Bill 118 should provide for the establishment and composition of a tribunal, and set the date by which it should be operating. Alternatively, Cabinet should be provided with the authority to specify the start date for the tribunal by regulation.

Recommendation #24

Bill 118 should establish one tribunal for all adjudicative purposes, and the tribunal should have disability and accessibility expertise.

15. Appeal Process

Recommendation #25

The appeal process should be available to a person or organization that is affected by an order, and not only to a person or organization that is the subject of an order.

Recommendation #26

Bill 118 should provide a mechanism to ensure that the public can effectively participate in the adjudicative process regarding substantive issues concerning the AODA.

16. Oral Hearings

Recommendation #27

The hearings should be oral and open to the public, unless a party convinces the tribunal that there is good reason to have a hearing in writing.

17. Parties to a Hearing 27. (5)

Recommendation #28

Language be clarified to state that an order by a non-director may also be appealed, and to specify who is the necessary party in such an appeal.

Recommendation #29

This section should provide for the participation of intervenors when the Tribunal considers that their perspective will assist its determination of the issues.

18. Mediation

Recommendation #30

The mediation provision should be expanded. It should establish a duty on both the Tribunal and the director to ensure that the mediation does not result in a solution that provides less benefit to the public than the accessibility standard or agreement under which the order was made.

19. Accessibility Standards Advisory Council - 31. (4)

- (4) At the direction of the Minister, the Council shall advise the Minister on,
- (a) the process for the development of accessibility standards and the progress made by standards development committees in the development of proposed accessibility standards and in achieving the purposes of this Act;
 - (b) accessibility reports prepared under this Act;
 - (c) programs of public information related to this Act; and
 - (d) all other matters related to the subject-matter of this Act that the Minister directs.

Recommendation #31

“At the direction of the Minister” should be removed from this provision.

20. Minister's Delegation of Powers - 34

This is a very broad delegation power that implies that any of the Minister's duties could be carried out by someone who is not in the public service.

Recommendation #32

This section should be modified to indicate in what circumstances such duties could be delegated to someone who is not in the public service.

21. Disclosure of Personal Information

The section allows for the disclosure of "personal information" as defined in the *Freedom of Information and Protection of Privacy Act*. Bill 118 is a statute that deals with systemic issues and barrier removal. There is no justification for disclosure of such information.

Recommendation #33

Section 36 should be deleted from Bill 118 barring a very clear indication of a compelling purpose for the section and proof that no other means exist to achieve the ends intended.

22. Service Animals

A significant omission from the AODA is coverage of service animals.

Recommendation #34

Bill 118 should provide for removal of all barriers with respect to service animals and that the provisions be added to the AODA within one year.

Respectfully submitted by

The Ontario Federation of Labour

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