

To All Members of the Accessible Public Transit Service Advisory Committee

Re: AODA Update – Information & Communication Standards

Recommendation

That the Accessible Public Transit Service Advisory Committee FORWARD the report to the Commission for their review and consideration.

Background

The Standard Development Committee's recommendations for the Information & Communications Standards included in Regulation 191 have been posted for public review consistent with the requirements in the Accessibility for Ontarians with Disabilities Act (AODA). The following provides an overview of the committee's recommendations.

The recommendations below are related either to the regulation in general or to Sections 9–11 of the regulation.

Recommendation 1: Feedback requirements

The feedback requirements in Sections 11 and 80.50 of the regulation should be combined and placed in the General Requirements section of the regulation, ensuring both the format requirements of Section 11 and the specific requirement for a process in Section 80.50 about goods, services and facilities remain. In addition, the committee recommends that clear definitions of the terms "feedback" and "communication" be included. **Timeline:** Immediate

The intent of this recommendation is to eliminate the confusion caused by having requirements for a feedback process dealt with in two different parts of the regulation. This change should not modify the obligations of organizations but simply make them clearer and easier to find and understand.

Recommendation 2: Usage of portable document format (PDF)

Government should not ban the use of PDFs for any obligated organization.

Timeline: N/A

Recommendation 3: Final review of regulatory language

Government use the technical expertise of the Digital Inclusion Technical Subcommittee as a resource, as needed, to clarify intent and technical accuracy during the regulatory drafting stage related to Section 14. **Timeline:** N/A

The intent of this recommendation is to avoid any possible confusion regarding the intent of the committee's recommendations and to ensure that the government can easily obtain clarification if confusion arises.

Recommendation 4: Products and product labels

The Government of Ontario should meet with the Government of Canada to look for solutions to the problem of accessible products and product labels. These solutions may include clarifying jurisdictional authority over different products. In addition, it is recommended that Ontario meet with various industries to explore non-regulatory solutions to this issue. **Timeline:** One year for Ontario and Canada to produce a report that sets a strategic direction on the recommendations above. If a report is not created by the governments of Ontario and Canada by this time, then the recommendation is that Ontario develop a strategy to address this, including creating an expert committee.

The committee recognizes that the exemption of products and product labels is an accessibility barrier, but also recognizes that a solution to this problem needs to involve all levels of government that have authority over this area. The committee also recognizes that technology offers the potential for organizations to develop innovative

solutions to this issue and would like the Government of Ontario to work with industries to encourage the development of non-regulatory solutions.

The following recommendations relate to Section 12 of the regulation, which requires organizations to provide accessible formats and communications supports for people with disabilities.

Recommendation 5: Determination of suitability

Change regulation 12.(2) to state: “The obligated organization shall consult with the person making the request and gain agreement in determining the suitability of an accessible format or communication support.” **Timeline:** Language to be changed immediately, and regulation to become effective six months after language change.

The intent of this recommendation is that the final decision on the suitability of an accessible format should not be left to the organization alone. Rather, both the organization and the person requesting an alternate format should work together to gain agreement on suitability. The committee recognizes that this may create an impasse, and this is partly what motivates Recommendation 7 (to follow). Despite the potential for an impasse, the committee feels this recommendation will result in improved accessibility. The committee recognizes that with this change, organizations may need time to adjust their processes, so it is proposed that it be effective six months after the amended regulation is in force.

Recommendation 6: Timely manner

Change the regulation to state that organizations must provide accessible formats in a mutually agreed upon timely manner which considers the circumstances of the requester, and the urgency of his or her request. **Timeline:** Language to be changed immediately, and regulation to become effective six months after language change.

The idea is similar to the intent of Recommendation 5, which is to ensure that important decisions that affect people with disabilities must be made with their participation. In this case, it would require that organizations and people with disabilities agree on what is meant by a timely manner. Again, the potential for disagreement is recognized, but the committee feels this recommendation will result in improved accessibility. As with Recommendation 6, the committee is proposing that this change become effective 6 months after the amended regulation is in force, to give organizations time to prepare and adjust.

Recommendation 7: Agreement between people with disabilities and organizations

The issue of a lack of mechanism to address disagreement between organizations and people with disabilities in any section of the regulation should be referred to the Accessibility Standards Advisory Council. **Timeline:** Referred to the council immediately following the submission of the Final Proposed Recommendations.

The intent of this recommendation is for the council to investigate the creation of a mechanism to support the satisfaction of both people with disabilities and organizations, in relation to requirements under the act and regulation. The council is best positioned to examine this issue.

Recommendation 8: Harmonization of Section 12

Requirements for alternate formats and communications supports should be combined and moved to one place, in the general requirements section of the regulation. There should be no material change in the requirements, except for any other recommendations made by the committee regarding Section 12. **Timeline:** Immediate

The intent of this recommendation is to clarify requirements and eliminate confusion by ensuring they are contained in one section of the regulation. The committee feels that moving the requirement for accessible formats into the general requirements section of the regulation would also make it clear that this requirement applies to all of the standards, and not just to Information and Communications. To be clear, the intent is not to weaken requirements in any way.

Recommendation 9: On-demand conversion ready formats

The Government of Ontario and Legislative Assembly should produce a conversion-ready digital format of all public-facing materials and provide those materials on-demand:

- 'on-demand' in this case would mean immediately, meaning that it should already have been created
- 'conversion-ready digital format' means a format which has the properties it needs to be readily converted into an accessible format

Timeline: January 1, 2021

The intent of this recommendation is to strengthen the idea that accessible formats should not be offered as an accommodation, to be provided only when requested and only after a delay. Accessible formats and communications supports are necessary from the start as part of an accessibility foundation. This would be a significant new requirement for government, but given current technology, it is possible.

Recommendation 10: On-demand ASL and LSQ translations

The Government of Ontario should convene a meeting of deaf and hard of hearing stakeholders to determine which materials should be provided by the Government of Ontario to the public in ASL and LSQ translation. The committee recommends that following the meeting, the materials identified start to be made available on-demand.

Timeline: One year for the meeting to occur, and January 1, 2021 for the requirement to be effective.

The committee's intent is that the Government of Ontario find a fair and reasonable answer to the question of which types of materials should be available in ASL and LSQ on demand.

The following recommendations relate to Section 13 of the regulation, which requires organizations to provide accessible formats of publicly posted emergency plans and procedures upon request.

Recommendation 11: Emergency requirements

The emergency requirements throughout the regulation should be brought together and moved into the general requirements with no material changes to what is being required.

Timeline: Immediate

The intent of this recommendation is to ensure that nothing is missed, and no requirements are overlooked when it comes to protecting the lives of people with disabilities and their families. These requirements should be consolidated and given a clear and prominent position in the general requirements of the regulation.

Recommendation 12: Unacceptable emergency outcomes and preparedness

Disability and accessibility should be front and centre in the upcoming review of the Emergency Management and Civil Protection Act. To that end, the Minister of Community Safety and Correctional Services, who has responsibility for emergency management, should involve people with disabilities in the review. The Minister should specifically include the Accessibility Standards Advisory Council. The same process should occur when the Fire Code is next reviewed. **Timeline:** Immediate

The intent of this recommendation is to address the lack of emergency planning focused on the needs of people with disabilities. It is unacceptable and must be dealt with urgently.

The following recommendations relate to Section 14 of the regulation, which sets out the accessibility requirements for websites and web content. In both stakeholder feedback and in the committee meetings, Section 14 received the most attention and led to the most significant level of feedback and discussion.

Recommendation 13: Mobile applications and new technologies

The definition of website should be aligned with the definition used by the US Access Board, the EU and the UN Convention on the Rights of Persons with Disabilities, among others, which include mobile applications, interfaces or other technologies as required.

Timeline: By 2021, which aligns with the existing requirement for all websites to be accessible.

The intent of this recommendation is for both mobile applications which run from a website, and those which run as a standalone device but rely on the internet for function, would be subject to accessibility requirements under Section 14. These requirements would apply to the government and legislative assembly, the broader public sector and large organizations. For the purposes of Section 14, small organizations are currently exempt from accessibility requirements.

Recommendation 14: Procurement

The Government of Ontario and designated public sector organizations shall incorporate accessibility design, criteria and features when procuring or buying goods, services or facilities. These criteria include:

- using qualified third-party evaluation certification services established through programs such as:
 - the U.S. Access Board Trusted Tester Program
 - inclusive design or accessibility certificate programs such as those offered by colleges or universities
 - professional certifications from organizations such as the International Association of Accessibility Professionals (IAAP)
 - other professional service vendors that may qualify for such activities
- both manual and automated verification of compliance to technical web and software criteria, not just automated testing
- functional testing of usability by persons with disabilities
- interoperability with alternative access systems (as defined in the glossary)
- sign language and other communication modalities
- the requirement to procure accessible authoring and development tools

This requirement would be in addition to the general accessible procurement requirements in the regulation. The reference criteria for authoring tools would be Authoring Tool Accessibility Guidelines (ATAG) 2.0 (A&B)

Timeline: January 1, 2021. Where an obligated organization has entered into a contract before January 1, 2021, it is not required to meet the requirements of this section.

The committee's intent with this recommendation is to ensure that digital procurement by the Government of Ontario and broader public sector organizations includes accessibility criteria, and that authoring and development tools that are procured are accessible.

The committee would also like non-digital procurement as required by the procurement requirement in the general requirements to be strengthened. Since this is beyond the scope of the committee's mandate, the committee would like this work to be referred to the Accessibility Standards Advisory Council and broader government bodies that manage procurement.

Recommendation 15: Differentiating organizations/high impact organizations

- Create a definition for 'high-impact' organizations. One such definition might be an organization that has one or more Ontario employees and meets either of the following criteria:
 - One million or more users in Ontario (free or paid)
 - \$10 million or more in yearly global revenues
- These newly defined high-impact organizations would have to comply with the Information and Communications Standards and report under the act, and be subject to the same requirements as large organizations
- For businesses under federal instead of Ontario jurisdiction, or with no employees in Ontario, the province should engage in consultation with businesses and the federal government to determine and harmonize mechanisms to regulate them

Timeline: One year with proactive outreach.

The committee's intent with this recommendation is to ensure that all organizations with many users in Ontario, and therefore having a large impact on the province, are

complying with Section 14 of the regulation. This approach could be used for other requirements in the future where appropriate.

Recommendation 16: Significant refresh

- Any content that is new or which an obligated organization changes, updates or adds to a website must meet the accessibility requirements of Section 14
- Furthermore, when content is added, changed or updated, it is recommended that organizations take the opportunity to make all content accessible
- The committee recommends that content should include all functions, interactions and ‘branding’ (look and feel) for a site. It is recommended that Section 14 include examples for the sake of clarity

Timeline: Regulation to be changed immediately, to be effective six months after the new regulation comes into force.

The intent of this recommendation is to bring the Section 14 requirement closer to its intended function, which is to ensure that over time, organizations develop greater accessible content for users with disabilities.

Recommendation 17: Practicability

Clearly define the term “not practicable,” bringing it in line with the term “undue hardship,” as set out by the Ontario Human Rights Code. A link to this terminology has been provided in [Appendix C](#). **Timeline:** Immediate

The intent of this recommendation is to reduce how easy it is for obligated organizations to use vague wording in the standards as an excuse to not fulfil their requirements. Aligning the language with that of the Ontario Human Rights Commission would bring significant clarity, as both the commission and the Human Rights Tribunal of Ontario have previously ruled on what undue hardship actually is.

Recommendation 18: Harmonization and application across requirements

It should be made clear that Section 14 applies to all sections of the regulation. This could be communicated as a reference to Section 14 wherever websites are directly referenced in the regulation. **Timeline:** Immediate

The committee’s intent with this recommendation is to make sure obligated organizations follow website accessibility requirements by reducing any confusion about what they are obligated to do.

The following recommendations identify a number of situations in which websites or web content do not need to comply with accessibility requirements. The committee does not believe that these exemptions are functioning as intended and recommends changes to these exemptions.

Recommendation 19: Extranet exemption

The exemption for public-facing websites with a log-in (previously referred to as extranets) should be removed and these types of websites should be required to comply with the regulation. **Timeframe:** New public-facing websites with a log-in must comply by January 1, 2021, and all public-facing websites with a log-in must comply by January 1, 2023.

The intent of this recommendation is to completely remove the exemption for extranet websites, ensuring not only that these be required to comply with Section 14, but also that other internet websites not be able to avoid the requirement simply because they use logins. The committee recommends a longer timeframe for implementation as this would be a new requirement.

Recommendation 20: Intranet exemption

The exemption for employee-facing websites and content (previously referred to as intranets) should be removed and, like all other websites, these types of websites should be required to comply with the regulation. **Timeline:** New employee-facing websites

must comply by January 1, 2021, and all employee-facing websites must comply by January 1, 2023.

For clarity, the committee recommends that all definitions related to a type of website be removed and that Section 14 simply apply to all websites, internet or intranet for all obligated organizations. Because this would be a new requirement, the lengthy timeline above is recommended.

Recommendation 21: Pre-2012 exemption

A category should be created for older archived content. A potential model for this would be the federal Treasury Board archived content policy. This would grant an exemption only to non-active documents. Active content, which is anything that requires input or, like forms, can be changed, will not be covered under this exemption. Pre-2012 images used for navigation in refreshed websites must be made accessible. **Timeframe:** Immediate

The intent of this recommendation is to ensure that no content which is intended for active use can be exempt, and that inactive, archived content which is for informational purposes only can remain exempt.

Recommendation 22: Live captioning and audio description

- By 2025, the exemptions to the WCAG 2.0 guidelines regarding live captioning and audio descriptions should be removed.
- Between now and 2025, obligated organizations should put in place the infrastructure to support live captioning and audio description. Organizations which are currently exempt and are required to prepare a multi-year plan should include progress toward this infrastructure in their plan.
- As it is possible that the next committee might want to accelerate this timeline, the current committee recommends that the government explore and monitor technologies and resources available for live captioning and audio descriptions to allow the next committee to make a well-informed decision. This should start six months after this recommendation is adopted.

Timeline: Exemptions removed by January 1, 2025, to be evaluated for acceleration by the next committee.

The intent of this recommendation is to have obligated organizations plan infrastructure, adopt training, and generally get ready to implement live captioning and audio descriptions by 2025, or sooner if the next committee should choose to accelerate the timeline. The committee's intention is to establish a high standard (equal to CRTC standards for live captioning) of quality in live captions.

Recommendation 23: Web hosting location

Section 14 should apply to obligated organizations no matter where their web servers are located. **Timeline:** One year

The intent of this recommendation is to clarify that the regulations apply to obligated organizations regardless of where their websites might be hosted.

The following recommendations relate sections which cover educational and training facilities, producers of educational and training materials, and libraries of educational and training institutions.

Recommendation 24: Purchase of accessible teaching/training materials

It is recommended that obligated organizations that are educational or training institutions be required to order text books or other printed curricula materials from producers who agree to provide accessible or conversion-ready versions, in the same time frame as print copies. These materials should meet or exceed the obligations of education providers as described in the Ontario Human Rights Commission's 'Policy on Accessible education for students with disabilities'. **Timeline:** Immediate

Recommendation 25: Definition of educational and training institutions

That the government consider including all organizations (public or private) that provide formal education and training in the requirements.

The committee would like to ask the public what types of organizations should fall under the definition of formal. **Timeline:** Immediate

Recommendation 26: Increasing captionist capacity

The Government of Ontario should explore, in partnership with post-secondary institutions, employers and apprenticeship bodies, establishing a post-secondary course to train captionists, possibly in partnership with a court stenographer's course.

Timeline: Immediate

Recommendation 27: Accessibility in education

The government should explore ways to make education and skills development about accessibility, including e-accessibility, part of early years, elementary, secondary and post-secondary curricula. **Timeline:** Immediate

The intent of this recommendation is to increase the amount of accessibility-related content in all levels of education in Ontario.

Recommendation 28: Accessibility in information and communications tools and systems

All obligated organizations which provide education or training on the design, production, innovation, maintenance or delivery of information and communication tools and systems shall include curricula that address the needs of people with disabilities, including deaf and hard of hearing people who use ASL and LSQ. **Timeline:** One calendar year from effective date.

The intent of this recommendation is to ensure that information and communications tools and systems are created with accessibility features built-in and are maintained by individuals who are familiar with accessibility features.

Recommendation 29: Accessibility in provincially regulated professions

Certification requirements of provincially regulated professions must include knowledge and application of accessibility (including accessible formats, language, communication and IT support) and the prevention of attitudinal barriers. These should be worked into instructional planning and course design for organizations which provide education or training. **Timeline:** One calendar year.

The intent of this recommendation is to integrate accessibility into the education and certification of regulated professionals in Ontario.

Recommendation 30: Education standards

If the government creates education standards with requirements that are equal to or greater than those requirements found in Sections 15–18 of the regulation, including the result of recommendations 24–29 made in this report, these sections can be moved to the Education Standards.

If any elements of Sections 15–18, including the result of recommendations 24–29 made in this report, are not reflected in newly created education standards for example, application of standards to private schools and colleges—these requirements must be retained in the Information and Communications Standards.

The committee's intent is to make recommendations 24–29 related to Sections 15–18, while allowing the government to house these requirements in the most logical place in the regulation.

In addition to the 30 recommendations set out above, the Committee also included a broader recommendation with respect to the overall approach to regulating the accessibility of information and communications in Ontario. The approach calls for a move away from the legislative approach currently ingrained in the AODA, to what the Committee refers to as an Accessibility Ecosystem. This new approach would initially

apply to the information and communications requirements set out in the Integrated Accessibility Standards. The rationale for this new approach is that, other than the five-year review, there is currently no mechanism for keeping the standards up to date. This is especially problematic when it comes to information technology systems and practices, which are changing at an accelerating rate and affecting more and more essential aspects of our lives. Barriers to accessibility emerge suddenly, and if they are not dealt with immediately they can spread and multiply. Opportunities for greater accessibility appear, but if they are not quickly seized they can disappear. In this fast-moving world, accessibility standards quickly fall out of date, and the system is not equipped to deal with that.

In addition, the Committee indicates that Ontario is home to many innovators, many of whom have turned their ingenuity to addressing accessibility challenges. Unfortunately, there is currently no easy way for these innovators, including obligated organizations or other stakeholders, to propose new and better strategies for addressing barriers. The relationship is strictly one way, with the act essentially telling organizations what to do. This removes an incentive to innovate in accessibility. Finally, there is currently no way of tracking progress toward accessibility goals. No progress indicators have been established, making it extremely difficult to determine how well accessibility standards are working.

The primary aim of the Accessibility Ecosystem is to encourage organizations to see the act less as an obligation than as something in which they participate for their own benefit, and the benefit of all Ontarians. The objectives of the Accessibility Ecosystem are as follows:

- keep up with changes in technology
- respond to new barriers
- respond to new opportunities
- respond to barriers not anticipated when the standards were written.
- encourage and support organizations and the larger community in finding innovative ways to address barriers
- discourage the 'us-them' attitude towards accessibility, where the interests of persons with disabilities are seen as counter to the interests of businesses
- encourage working together to make things more accessible to the benefit of everyone
- communicate that accessibility is a responsibility we all share
- show how accessibility and inclusive design are a good way to do business, and a good way to grow the economy and economic participation for Ontarians with disabilities
- reduce confusion about the regulations and make it easier to find tools and resources needed to comply with them
- provide clear, up-to-date, specific advice regarding how requirements can be met
- create the conditions and supports so that all Ontarians feel that they can participate in removing barriers

The proposed ecosystem has three interdependent parts. They support one another, and all play a role in telling organizations what they need to do to remove barriers and expand opportunities. The ecosystem as a whole provides the balance between legal compulsion and alignment with current technical practices. All three parts require funding and ongoing support. The three parts are the Laws, the Trusted Authority and the Community Platform, each of which is explained further below.

The Laws would establish requirements, but not specify how they must be met. The Trusted Authority would be an independent group that provides ongoing oversight and support to the system of accessibility standards, in order to ensure that the system is performing as it should and accomplishing what it is intended to accomplish. The Trusted Authority would include people with a wide range of expertise, including lived experience with disabilities. The Community Platform would be an online platform, open to everyone in Ontario, that provides a simple and clear way for community members to contribute their knowledge, expertise and constructive criticism about accessibility in this province.

The Committee believes this approach results in a more aspirational system, focusing as it does on what is important and good about accessibility, rather than simply emphasizing that it is an obligation. It is also a more inclusive system, not just inviting but actually relying on input from the public and from stakeholders, including those organizations obligated to meet accessibility requirements. Finally, it is designed to evolve and adapt as technology and attitudes change around it. Specifically, the new model will speed progress toward an accessible and inclusive Ontario because:

- the Trusted Authority will intervene when new barriers arise
- the Trusted Authority will integrate accessibility into the foundation before barriers are created
- the Trusted Authority will be able to represent accessibility and inclusive design at technical and policy planning tables, to integrate inclusive design considerations from the start
- efforts to produce services and resources that address accessibility, which are currently fragmented, will be coordinated and strategically channeled
- new and current contributors to the goal of accessibility will be provided with productive ways to participate
- the Trusted Authority will have the opportunity to provide a more comprehensive set of qualifying methods to address more of the barriers experienced by all persons with disabilities in Ontario
- innovative practices that improve accessibility for people with disabilities will be showcased, rewarded and even adopted as qualifying methods
- the Trusted Authority be able to maintain the momentum of accessibility efforts across political terms

The committee is seeking feedback from the public on how compliance would work in the Accessibility Ecosystem model.

The public review period for the Information and Communication Standards is open until September 27, 2019. Committee members are encouraged to respond to the online survey located at the following address: www.ontario.ca/page/consultation-initial-recommendations-improve-accessibility-standards-information-and-communications

Recommended by:

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