

ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT ALLIANCE

**DRAFT BRIEF TO THE ONTARIO ACCESSIBILITY STANDARDS ADVISORY
COUNCIL ON ITS MARCH 3, 2014 INITIAL PROPOSAL FOR REVISIONS TO THE
CUSTOMER SERVICE ACCESSIBILITY STANDARD**

MARCH 18, 2014

NOTE: This is only a draft and does not constitute the actual position of the AODA Alliance until it is finalized and submitted.

Appendix A to ACPD Report 14-002

CONTENTS

I. INTRODUCTION	3
1. Accessible Customer Service in Ontario - Too Often Still a Future Dream	3
2. Importance of ASAC's Review of the Customer Service Accessibility Standard	4
3. Who Are We?	6
4. Summary of the AODA Alliance's Position in this Brief	6
II. THE 2007 CUSTOMER SERVICE ACCESSIBILITY STANDARD IS FAR TOO WEAK	9
1. Standard is Too Weak and Lacks Needed Specifics	9
2. Wrongly Mandates the Creation of a Barrier against Customers with Disabilities, Which an Accessibility Standard Cannot Do	12
3. No Requirement for Sufficient Accountable Action to Ensure an Organization Delivers Accessible Customer Service	14
4. Training Requirements are Insufficient	14
5. Insufficient Requirements for Customers with Disabilities to Give Feedback to the Organization	15
6. Insufficient Requirement for Notifying the Public of the Availability of Accessible Customer Service	16
7. Insufficient Requirements Regarding Accessible Public Notification of Service Disruption	17
8. Ontario's Human Rights Legal Support Centre Not Required to Comply with the Standard	18
9. Lessons Learned from Experience with the Implementation of the Customer Service Accessibility Standard	18
III. OUR RESPONSE TO ASAC'S SPECIFIC PROPOSED REVISIONS TO THE CUSTOMER SERVICE ACCESSIBILITY STANDARD	22
1. Definitions and Class Structures	22
2. Creating a New Exemption from Obligations under the Standard if Not "Reasonable" or "Practicable"	26
3. Customer Service Accessibility Policies, Practices and Procedures	27
4. Service Animals	27
5. Support Persons	28
6. Training	29
7. Feedback Process for Providers of Goods or Services	30
8. Notice of Availability and Format of Documents	32

**Appendix A to
ACPD Report 14-002**

IV. OUR ADDITIONAL RECOMMENDATIONS FOR REVISIONS TO THE CUSTOMER SERVICE ACCESSIBILITY STANDARD	32
1. Strengthen Purpose of the Standard	32
2. Redefine Classes of Organizations under the Standard	33
3. Include in the Standard Comprehensive Provisions Targeted at Specific Recurring Barriers and Specific Required Corrective Action	35
4. Revise the Standard to Effectively Address Accessibility Barriers in the Built Environment that Impede Accessible Customer Service	35
5. Ensure that Signage is Accessible and Doesn't Create Barriers	37
6. Ensure Timely Snow Removal to Ensure Physical Accessibility	38
7. Expand Duty to Provide Accessible Point-of-Sale Devices and Self-Service Kiosks	38
8. Prohibit any Surcharge for Accessible Customer Service	39
9. Require Organizations to Review their Goods, Services and Facilities for Barriers	39
10. Work Toward Providing Goods, Services and Facilities that Are Disability-Accessible	40
11. Require Organizations to Post and File with the Government Their Service Accessibility Policies	40
12. Require Regularly Publicizing for Customers the Availability of Accessibility Supports and Opportunities for Giving Feedback to the Organization	41
13. Provide One-Stop Staff Person to Be Available When Needed for Customer Service Accommodation and Accessibility Support	42
14. Improved Customer Service Training	42
15. Require Organization's Senior Management to Periodically Review Feedback Received on Accessible Customer Service	44
16. Make it Easier for People with Disabilities to Provide Documentation that they are Accompanied by a Qualified Service Animal	44
17. Remove Exemption for Accommodating People Using Service Animals if Otherwise Excluded by Law	44
18. Repeal Power to Require a Person with a Disability to Bring a Support Person and Power to Charge an Additional Admission Fee	45
APPENDIX 1 - RECOMMENDATIONS	47

I. INTRODUCTION

1. Accessible Customer Service in Ontario - Too Often Still a Future Dream

According to an article in the April 20, 2013 on-line edition of the Toronto Star, Spring Rolls, a Toronto restaurant, part of a chain, restricted a customer from bringing his Hearing Ear dog with him wherever he wished to sit into the restaurant. This occurred fully eight years after the Accessibility for Ontarians with Disabilities Act (AODA) was enacted. That law requires the Ontario Government to lead Ontario to becoming fully accessible to persons with disabilities by 2025. It was also a full six years after the Government enacted the Customer Service Accessibility Standard under the AODA, to ensure fully accessible customer service in Ontario. Media reports on this incident made it appear manifestly doubtful that that restaurant had an effective accessible customer service policy, and had sufficient accessible customer service training for its staff, as the Customer Service Accessibility Standard required.

Days later, according to an article in the May 3, 2013 on-line edition of the Windsor Star, a store in Windsor restricted access to the store to a patron using a motorized wheelchair. This was reportedly not an issue of stairs blocking physical access. According to the article, the store's staff did not want people in motorized wheelchairs in the store out of fear that they could damage products for sale.

Just a short month after that, one day in June, the AODA Alliance chair, David Lepofsky went to a major downtown Toronto Service Ontario office, to get a new health card. He had his white cane with him. He lined up. A Service Ontario representative handed him a number, written on a piece of paper, and told him to watch the monitors for his number, and hence his turn.

No one at Service Ontario was audibly announcing the numbers as they came up on the monitors. This would be an easy and obvious accessibility accommodation, which would cost nothing to do. Fortunately, he was accompanied by a sighted friend. However, it should have been obvious that this presented a clear customer service barrier to a blind person. On further investigation, it turns out that this was not just a fluke, or a one-off, exceptional incident. Rather, it is a deliberate and regular practice or policy of Service Ontario.

Service Ontario is part of the Ontario Government. It daily deals directly with delivering services to large numbers of people from the general public. It is part of the very Ontario Government ministry, the Ministry of Government Services, that is supposed to lead the Ontario Government's efforts to get its own accessibility house in order by delivering accessible customer service to the public.

Under the 2007 Customer Service Accessibility Standard, the Government was the first organization to be required to implement that standard. The Government has proudly announced that it has fully implemented that standard, established policies on accessible customer service and trained all its employees on accessible customer service. It has also proudly proclaimed that

Appendix A to ACPD Report 14-002

it aims to go beyond the requirements of the AODA and its accessibility standards, to be a role model when it comes to providing accessibility.

What makes this third incident especially shocking is that among the many people who use Service Ontario are Ontario Government employees at all levels, from front line staff to deputy ministers. All those public officials are said to have received effective training on accessible customer service. Yet it seems that no one either noticed this obvious barrier, or acted effectively to correct it, even fully six years after the Government enacted the Customer Service Accessibility Standard.

The fully accessible Ontario which the AODA promises must include fully accessible customer service. The 2007 Customer Service Accessibility Standard has not brought Ontario to that goal, nor is Ontario on schedule for achieving that goal by 2025. We have not made the amount of progress that should have been achieved by now. Next year, Ontario will be halfway through the 20 years that the AODA allowed for Ontario to become fully accessible.

Fully accessible customer service is vital for persons with disabilities. It is also a necessity for any business that wants to make a profit, or any non-profit organization that wants to fulfil its mandate and purpose for existing. Fully constitutional customer service is a win-win. Right now, despite some progress, inaccessible customer service in Ontario is a lose-lose for all.

It is high time for Ontario's weak, inadequate 2007 Customer Service Accessibility Standard to be substantially strengthened. This brief explains what needs to be done to achieve this.

2. Importance of ASAC's Review of the Customer Service Accessibility Standard

This is the Accessibility for Ontarians with Disabilities Act Alliance's brief to Ontario's Accessibility Standards Advisory Council (ASAC) on ASAC's March 3, 2014 initial proposal for revisions to the 2007 Customer Service Accessibility Standard.

On Monday, March 3, 2014, the Ontario Government posted for public comment the Accessibility Standards Advisory Council's (ASAC) initial proposal for revisions to the Customer Service Accessibility Standard. The Customer Service Accessibility Standard was enacted under the Accessibility for Ontarians with Disabilities Act in 2007. The AODA requires that it be reviewed no later than five years after it was enacted.

ASAC has invited the public to submit feedback, in writing, no later than April 16, 2014. Once ASAC receives this public feedback, it will review it, and then formulate its final proposals for the Government. The Government will then make ASAC's final proposal public for comment, and, after receiving public feedback, will then decide what, if any, revisions it will make to the 2007 Customer Service Accessibility Standard.

Appendix A to ACPD Report 14-002

We commend ASAC for seeking public input, as the AODA requires. We appreciate their effort in studying the Customer Service Accessibility Standard, and are eager to do what we can to assist them.

ASAC's review of the Customer Service Accessibility Standard is important for several reasons. First and foremost, as explained further below, that standard is weak and deficient. It needs to be substantially strengthened. This review provides Ontario with a good chance to improve it. Our brief provides a detailed roadmap on how to strengthen it.

This review is especially important now, since Ontario only has 11 years left to achieve full accessibility by 2025. For improvements to this Standard to make a decisive difference, they must be implemented now. The next mandatory review of this standard will not take place for another five years. By that time, 2025 will loom very near.

Second, this is the first time that any accessibility standard enacted under the AODA will be reviewed. This puts to the test the effectiveness of this part of the checks and balances built into the AODA.

Third, this is the first time ASAC gets to take direct part in the process of developing accessibility standards under the AODA. Last year, the Ontario Government announced that it would for the first time put ASAC in charge of developing and reviewing all accessibility standards. This was a result of recommendations in the 2010 final report of the Charles Beer Independent Review of the AODA. The Charles Beer 2010 Independent Review concluded that Ontario needed to strengthen and improve its process for developing accessibility standards. This review of the Customer Service Accessibility Standard serves as the first chance to see whether the Government's plans for improving the process for developing accessibility standards, implemented as a result of the Charles Beer recommendations, will be successful, or whether the system will need further improvements.

Finally, its importance derives from the fact that the original Customer Service Accessibility Standard was developed *before* the Ontario Government took important steps at our recommendation in 2007 to make the standards development process more sensitive to the needs of persons with disabilities. There were serious problems with the way that first accessibility standard was developed. There was no equal representation of persons with disabilities at the table on the Customer Service Standards Development committee. The Government had not then promised that the Standards Development committee could bring in persons with disabilities and others for consultations as it did its work. The disability sector was not promised dedicated staff support at the Standards Development committee to help with its research and preparation for discussion. The Standards Development committee was not required to vote on proposals clause-by-clause, to enable members to support parts of a proposal and oppose other parts.

It was because of these serious problems with the work of Standards Development committees in the early years after the AODA was enacted in 2005 that we asked the political parties to promise reforms to the work of Standards Development committees, during the 2007 Ontario

Appendix A to ACPD Report 14-002

election campaign. We won commitments from the Liberal Government, among others, on all these fronts for any and all work on development of accessibility standards after that election. However, that promised reform came too late for the 2007 Customer Service Accessibility Standard. It had already been completed and enacted by the 2007 election.

Therefore, this current review of the Customer Service Accessibility Standard is the first time the area of accessibility of customer service will be tackled in Ontario by a standard development process that is promised to incorporate all the safeguards for persons with disabilities that we won in the 2007 election. This provides a very important chance to substantially strengthen this accessibility standard, rectifying the serious deficiencies in the way standards were being developed in the AODA's earliest years.

The text of the Customer Service Accessibility Standard is available at:

www.mcsc.gov.on.ca/mcss/english/pillars/accessibilityOntario/accesson/business/customer/

The text of ASAC's March 3, 2014 initial proposal for revisions to the 2007 Customer Service Accessibility Standard is available at <http://www.aodaalliance.org/strong-effective-aoda/03142014.asp>

3. Who Are We?

The AODA Alliance is a voluntary non-partisan coalition of individuals and organizations. Its mission is:

"To contribute to the achievement of a barrier-free Ontario for all persons with disabilities, by promoting and supporting the timely, effective, and comprehensive implementation of the Accessibility for Ontarians with Disabilities Act."

To learn about us, visit: <http://www.aodaalliance.org>.

Our coalition is the successor to the Ontarians with Disabilities Act Committee. The ODA Committee led the province-wide, decade-long campaign advocating for the enactment of strong, effective disability accessibility legislation. Our coalition builds on the ODA Committee's work. We draw our membership from the ODA Committee's broad, grassroots base. To learn about the ODA Committee's history, visit: <http://www.odacommittee.net>.

To learn more about our activities, and about accessibility issues around the world, you can follow us on Twitter. We aim to be a leading source of news and information about accessibility efforts in Ontario and around the world. Our Twitter handle is @aodaalliance

4. Summary of the AODA Alliance's Position in this Brief

Appendix A to ACPD Report 14-002

In this brief, we provide a detailed critical analysis of the 2007 Customer Service Accessibility Standard. We then discuss and offer recommendations regarding ASAC's proposed revisions to the Customer Service Accessibility Standard. After that, we offer our own recommendations for needed revisions to that Standard. Appendix 1 at the end of this brief lists all our recommendations in one place.

The Customer Service Accessibility Standard is far too weak. It needs to be substantially strengthened. At present, even if fully complied with, it will not ensure that customer service in Ontario becomes fully accessible by 2025, or indeed, ever. This is because:

- a) It only covers providers of goods and services, not facilities.
- b) It lacks needed clarity and specificity. It doesn't include the key requirements of an AODA accessibility standard, because it doesn't identify the barriers that need to be removed and/or prevented, and doesn't set out time lines for completing these tasks. It largely delegates to service providers far too much unaccountable and unreviewable discretion to choose what barriers to remove and prevent, and to choose the time lines for removing and preventing them.
- c) What little the standard does require a service provider to do is subject to time lines that are too long.
- d) It weakly requires a service provider to "use reasonable efforts to ensure that its policies, practices and procedures fulfill a series of broad principles." This doesn't ensure that the policies and practices that a service provider establishes will be strong and effective. This limited obligation is potentially difficult to enforce.
- e) In one area, this standard inexcusably authorizes the creation of a new barrier. The AODA doesn't allow an accessibility standard to do this.
- f) It doesn't require service providers, and particularly larger organizations, to put in place an effective means for accountably delivering accessible customer services.
- g) In the important area of enforcing human rights, the standard applies to the Human Rights Tribunal and the weakened Ontario Human Rights Commission. However, it unjustifiably doesn't apply to the Ontario Government's new Human Rights Legal Support Centre, on whom persons with disabilities must depend to investigate and enforce their human rights cases.
- h) Its provision requiring training of a service provider's staff and volunteers on disability needs is deficient; e.g. it doesn't say it requires any training on the fundamental requirements of the Ontario Human Rights Code, including the duty to accommodate persons with disabilities in customer service.
- i) Although it is good that the standard requires service providers to have a system in place to get feedback from patrons with disabilities, it doesn't require persons in position of authority such as

Appendix A to ACPD Report 14-002

senior management to be notified of any of the feedback received, nor does it provide for any accountability whatsoever for action taken on such feedback.

j) Its provisions for notifying the public about the availability of accessible services are seriously inadequate, and don't ensure that that notification will be fully accessible to persons with disabilities.

k) The standard permits a barrier-ridden process regarding notification of patrons about service disruptions.

l) The final version of this standard is even weaker than the weak one which the Ontario government's Customer Service Standards Development Committee proposed as its final recommendation on February 27, 2007.

ASAC's initial proposals for revision to the 2007 Customer Service Accessibility Standard are substantially inadequate. They for the most part do not address the major problems with the Standard that we have demonstrated, and that we made public over six years ago, on September 12, 2007. Some of ASAC's proposals would make things worse, by further weakening this Standard. While some acceptable improvements are proposed, these fall very far short of what is needed. Unless substantially more is done to strengthen the Standard, it will not ensure that customer service in Ontario becomes accessible by 2025, or ever.

We propose that the Customer Service Accessibility Standard should also be revised to:

1. strengthen purpose of the Standard
2. redefine classes of organizations under the Standard
3. include in the standard comprehensive provisions targeted at specific recurring barriers and specific required corrective action
4. revise the standard to effectively address accessibility barriers in the built environment that impede accessible customer service
5. ensure that signage is accessible and doesn't create barriers
6. ensure timely snow removal to ensure physical accessibility
7. expand duty to provide accessible point-of-sale devices and self-service kiosks
8. prohibit any surcharge for accessible customer service
9. require organizations to review their goods, services and facilities for barriers

Appendix A to ACPD Report 14-002

10. work towards providing goods, services and facilities that are disability-accessible
11. require organizations to post and file with the government an their service accessibility policies
12. require regularly publicizing for customers the availability of accessibility supports and opportunities for giving feedback to the organization
13. provide one-stop staff person to be available when needed for customer service accommodation and accessibility support
14. improve customer service training
15. require organization's senior management to periodically review feedback received on accessible customer service
16. make it easier for people with disabilities to provide documentation that they are accompanied by a qualified service animal
17. remove the exemption for accommodating people using service animals if otherwise excluded by law
18. repeal the power to require a person with a disability to bring a support person and power to charge an additional admission fee

II. THE 2007 CUSTOMER SERVICE ACCESSIBILITY STANDARD IS FAR TOO WEAK

The proper starting point for any review of the 2007 Customer Service Accessibility Standard is a careful analysis of the content of the Standard itself, to reflect on whether it is ensuring that Ontario is on schedule for achieving fully accessible customer service no later than 2025.

In summary, it is our conclusion that the 2007 Customer Service Accessibility Standard is very weak and limited. It is therefore no surprise that it has not brought Ontario on schedule for full accessibility by 2025.

We made public a review and analysis of the Standard on September 12, 2007, two months after it was enacted. We draw on that analysis here. Our 2007 findings remain fully valid today.

In 2007, we concluded that this accessibility standard is very weak, limited and ineffective. It will not bring Ontario to a position of having fully accessible customer services by the AODA's legal requirement of January 1, 2025, even if it is fully implemented. Our September 12, 2007 analysis of the Customer service Accessibility Standard is available at

<http://www.aodaalliance.org/strong-effective-aoda/09122007.asp>

1. Standard is Too Weak and Lacks Needed Specifics

The Customer Service Accessibility Standard only covers the providers of goods and services. It doesn't cover the providers of facilities. This is a significant omission. Section 1 of the *Human Rights Code* guarantees the right to equal treatment with respect to goods, services and facilities.

This standard is seriously lacking in the specificity we need. It doesn't do what the AODA was passed to do – identify a full range of specific barriers that have to be removed, and name the dates by which they have to be removed. It only explicitly addresses a few named barriers, e.g. problems persons with disabilities face getting customer service if they are accompanied by a service animal or support person.

The standard is very, very short - a mere eight pages, including its introductory materials. If the list of organizations that it governs is removed, it becomes even shorter. In sharp contrast, well before the Government finalized and enacted this Standard, the Canadian Standards Association had developed a much longer and more detailed customer service standard.

Section 3 of the standard is its weak and excessively vague central provision. It provides:

“3.(1) Every provider of goods or services shall establish policies, practices and procedures governing the provision of its goods or services to persons with disabilities.

(2) The provider shall use reasonable efforts to ensure that its policies, practices and procedures are consistent with the following principles:

1. The goods or services must be provided in a manner that respects the dignity and independence of persons with disabilities.

2. The provision of goods or services to persons with disabilities and others must be integrated unless an alternate measure is necessary, whether temporarily or on a permanent basis, to enable a person with a disability to obtain, use or benefit from the goods or services.

3. Persons with disabilities must be given an opportunity equal to that given to others to obtain, use and benefit from the goods or services.

(3) Without limiting subsections (1) and (2), the policies must deal with the use of assistive devices by persons with disabilities to obtain, use or benefit from the provider's goods or services or the availability, if any, of other measures which enable them to do so.

(4) When communicating with a person with a disability, a provider shall do so in a manner that takes into account the person's disability.

(5) Every designated public sector organization and every other provider of goods or services that has at least 20 employees in Ontario shall prepare one or more documents describing its policies, practices and procedures and, upon request, shall give a copy of a document to any person.”

This weak provision doesn't require organizations' customer service policies to actually address

Appendix A to ACPD Report 14-002

all of the listed principles, much less to address them effectively. It doesn't require service providers to achieve barrier-free customer services. It just requires an organization to use reasonable efforts to ensure that its stated policies, practices and procedures are consistent with the listed vague general principles there.

This didn't ensure that the policies that an organization establishes will be strong and effective. It also doesn't require the organization to actually obey its own policy. It is grossly insufficient for an organization to simply write a nice policy, and to hand it out on request.

This central provision delegates to service providers far too much discretion to choose what barriers to remove and prevent, and to choose the time lines for removing and preventing them. The AODA requires the enactment of standards that would themselves set these detailed requirements, not simply leave to service providers a large preponderance of the choices over them.

This provision also presents real problems for enforcement. How does one show that "reasonable efforts" weren't used? The measure of success should be the removal and prevention of barriers to customer service, not the standard's vague requirement of mere reasonable efforts to try to make a policy cover a list of "principles."

The time lines in this standard were far too long, especially given the weak, limited range of actions it requires organizations to take. It gave public service organizations from the 2007 summer to up to January 1, 2010 (or almost 2.5 years) to start complying. It gave private sector organizations up to January 1, 2012 (or 4.5 years) to comply. This is 4.5 years and 6.5 years respectively after the passage of the AODA in 2005. The experience of which we have learned shows that compliance with the Standard's limited provisions would take a matter of weeks or at worst, months, not years, to complete, for an organization that took it seriously, with the possible exception of a huge organization like the Ontario Government, which had thousands of employees to train. People with disabilities shouldn't have been forced to wait so long, for organizations providing customer service to do so little.

The final version of this standard was even weaker than the weak one which the Ontario government's Customer Service Standards Development Committee proposed as its final recommendation dated February 27, 2007.

For example, that Committee's final proposal would have required organizations delivering customer service to actually take certain concrete steps, all be it in terms that are not sufficiently detailed or specific to live up to the AODA's aims. The final proposed standard (not the one LATER passed into law) provided in part:

"6.1 Accessible and Alternative Customer Service Policy, Procedure and Practice

Persons and organizations in classes I and II shall establish and implement practices to deliver accessible customer service consistent with this standard.

Appendix A to ACPD Report 14-002

Persons and organizations in classes III, IV and V shall establish, implement, maintain and document policies and procedures to deliver accessible customer service consistent with this standard.

All customer service policies and practices shall include the following elements:

- a) Commitment to identifying, removing and preventing barriers;
- b) Provision of alternative services;
- c) Presence of accessibility support persons, service animals and assistive devices;
- d) Information on service disruptions;
- e) Employee and volunteer training;
- f) Customer feedback.

In establishing and maintaining policies, procedures or practices, all classes shall identify, remove and prevent barriers to accessible customer service.

6.2 Alternative Service

Persons and organizations shall provide alternative customer service until barriers are removed.”

In sharp contrast, as noted above, the Standard which the Government passed merely requires that services providers “...shall use reasonable efforts to ensure that its policies, practices and procedures are consistent with the following principles...”.

2. Wrongly Mandates the Creation of a Barrier against Customers with Disabilities, Which an Accessibility Standard Cannot Do

Especially troubling is the fact that section 4(5) of the standard authorizes some organizations to create new barriers to impede access to persons with disabilities. Standards made under the AODA cannot do this. It states:

“4(5) The provider of goods or services may require a person with a disability to be accompanied by a support person when on the premises, but only if a support person is necessary to protect the health or safety of the person with a disability or the health or safety of others on the premises.”

Section 4, which includes this provision, applies “if goods or services are provided to members

Appendix A to ACPD Report 14-002

of the public or other third parties at premises owned or operated by the provider of the goods or services and if the public or third parties have access to the premises.”

Under this provision, an organization can force a person with a disability in some situations to bring a support person with them (presumably at the expense of the person with a disability). If the person with a disability doesn't comply, the organization can refuse to admit the person with a disability.

The vague standard governing this is “only if a support person is necessary to protect the health or safety of the person with a disability.” There is a real and serious risk that an organization with an uninformed stereotype-induced perception of disabilities will wrongly conclude that some person with a disability poses a health and safety risk to themselves. This provision also doesn't require the risk to health and safety to be serious or substantial or imminent, or preventable by reasonable means short of forcing the person with a disability to be accompanied by a support person.

This standard lets an organization create this barrier against persons with disabilities even if a person with a disability, with far superior understanding of their disability, knows he or she poses no such risk, or concludes that the risk is one they are prepared to bear. This violates the fundamental dignity of persons with disabilities to decide what risks they wish to undertake for themselves.

Making this even worse, the standard goes on to potentially let the organization charge the patron with a disability an added admission fee for the support person. Section 4(6) of the standard states:

“4(6) If an amount is payable by a person for admission to the premises or in connection with a person's presence at the premises, the provider of goods or services shall ensure that notice is given in advance about the amount, if any, payable in respect of the support person.”

A published law journal article co-authored by AODA Alliance chair David Lepofsky and Prof. Randal Graham, entitled "Universal Design In Legislative Drafting – How To Ensure Legislation Is Barrier-Free For People With Disabilities" (2009), 27 National Journal of Constitutional Law pages 129-157, states the following about this provision:

"It is important to be especially vigilant about and quickly red-flag legislation that purports to impose added burdens on persons with disabilities, whether all persons with disabilities or persons designated as having a certain kind of disability. Strong constitutional justification will be required to defend any such legislation under section 1 of the Charter as a reasonable limit, demonstrably justified in a free and democratic society.

An illustration of this can be found in a regulation that the Ontario Government enacted in 2007 under the Accessibility for Ontarians with Disabilities Act 2005. Addressed

Appendix A to ACPD Report 14-002

earlier in this article, that statute requires the Ontario Government to develop, enact and enforce accessibility standards to make Ontario fully disability-accessible by 2025.

The first accessibility standard the Ontario Government enacted under it aims to make customer services in Ontario disability-accessible. Yet the Customer Service Accessibility Standard includes a provision that creates or mandates the creation of barriers against persons with disabilities. It lets a provider of goods or services require a customer with a disability to bring a support person with them (presumably at the expense of the person with a disability) if they are to be admitted to the premises, and potentially to charge an added admission fee for that support person, if a support person is necessary to protect the health or safety of the person with a disability or the health or safety of others on the premises. An enactment that is supposed to eliminate barriers against persons with disabilities in accessing goods and services should not give goods and service providers added power to exclude customers with disabilities, potentially relying on stereotypes that underestimate the abilities of persons with disabilities and that exaggerate the risk they pose to themselves or others." (Footnotes omitted)

3. No Requirement for Sufficient Accountable Action to Ensure an Organization Delivers Accessible Customer Service

The standard doesn't require service providers, and particularly larger organizations, to put in place an effective means for accountably delivering accessible customer services. For example, it doesn't require any large organizations to designate an official from within their existing staff to be responsible for leading the organization's removal and prevention of barriers to access.

4. Training requirements are Insufficient

In principle, it is good that the standard requires training of persons who deliver customer service on disability issues. However, the training requirements are deficient in several important ways. Section 6 of the standard provides:

“Training for staff, etc.

6. (1) Every provider of goods or services shall ensure that the following persons receive training about the provision of its goods or services to persons with disabilities:

1. Every person who deals with members of the public or other third parties on behalf of the provider, whether the person does so as an employee, agent, volunteer or otherwise.
2. Every person who participates in developing the provider's policies, practices and procedures governing the provision of goods or services to members of the public or other third

Appendix A to ACPD Report 14-002

parties.

(2) The training must include a review of the purposes of the Act and the requirements of this Regulation and instruction about the following matters:

1. How to interact and communicate with persons with various types of disability.
2. How to interact with persons with disabilities who use an assistive device or require the assistance of a guide dog or other service animal or the assistance of a support person.
3. How to use equipment or devices available on the provider's premises or otherwise provided by the provider that may help with the provision of goods or services to a person with a disability.
4. What to do if a person with a particular type of disability is having difficulty accessing the provider's goods or services.

(3) The training must be provided to each person as soon as practicable after he or she is assigned the applicable duties.

(4) Training must also be provided on an ongoing basis in connection with changes to the policies, practices and procedures governing the provision of goods or services to persons with disabilities.

(5) Every designated public sector organization and every other provider of goods or services that has at least 20 employees in Ontario shall prepare a document describing its training policy, and the document must include a summary of the contents of the training and details of when the training is to be provided.

(6) Every designated public sector organization and every other provider of goods or services that has at least 20 employees in Ontario shall keep records of the training provided under this section, including the dates on which the training is provided and the number of individuals to whom it is provided.”

This provision's inadequacies include:

a) It doesn't say it requires any training on the fundamental requirements of the Ontario Human Rights Code, including the duty to accommodate persons with disabilities in customer service. The Human Rights Code is the bedrock law on which the Accessibility for Ontarians with Disabilities Act is founded, and which the AODA seeks to implement. In contrast, training required under the 2011 Integrated Accessibility Standard Regulation includes training on the Ontario Human Rights Code.

b) The standard doesn't explicitly require training on the organization's policies that are made under the standard, nor does it require training on the barriers persons with disabilities face when attempting to get equal access to goods, services and facilities. It addresses at most only some of these topics, and in some cases, only indirectly.

c) This standard doesn't require any of the training to be in person. If the training is done via detached, impersonal on-line materials alone, which we understand to often be the case, it will be far less effective. People taking on-line training do not have a chance to ask questions, or to learn directly from people with disabilities in a face-to-face setting. The organization has no way of knowing if the training is actually making a difference, or if the participant is simply clicking

buttons and links to get through it.

d) The standard doesn't require any assessment of the training's effectiveness. This is especially troubling given the lack of teeth throughout the bulk of this short standard.

5. Insufficient Requirements for Customers with Disabilities to Give Feedback to the Organization

It is good that the standard requires organizations to have in place a system for persons with disabilities to give the organization feedback on disability-related customer service. However, this standard doesn't require persons in position of authority such as senior management to be notified of any of the feedback received, nor does it provide for any accountability whatsoever for action taken on such feedback. Under this standard, persons with disabilities in large numbers could repeatedly raise serious accessibility problems with the organization, while the persons in a position to change the organization's direction need never know about that feedback.

Moreover, under this standard, larger organizations must give persons with disabilities a document describing the feedback process if asked. However it doesn't require any organization to let their patrons know proactively about the availability of a feedback process if they don't ask. Section 7 provides:

“7.(1) Every provider of goods or services shall establish a process for receiving and responding to feedback about the manner in which it provides goods or services to persons with disabilities and shall make information about the process readily available to the public.

(2) The feedback process must permit persons to provide their feedback in person, by telephone, in writing, or by delivering an electronic text by email or on diskette or otherwise.

(3) The feedback process must specify the actions that the provider of goods or services is required to take if a complaint is received.

(4) Every designated public sector organization and every other provider of goods or services that has at least 20 employees in Ontario shall prepare a document describing its feedback process and, upon request, shall give a copy of the document to any person.”

6. Insufficient Requirement for Notifying the Public of the Availability of Accessible Customer Service

For accessible customer service to make a difference, customers with disabilities must be informed that it is available. The standard's provisions for notifying the public about the availability of accessible services are seriously inadequate. They require some service providers in some situations to prepare a document that persons with disabilities can get on request that sets out some accommodations that the service provider will make for their disability. Commendably, this document must be available in alternative formats for persons with disabilities who cannot read print.

Appendix A to ACPD Report 14-002

However, the standard doesn't require the service provider to provide persons with disabilities with barrier-free notification that an accessible document is available. Instead, sections 8 and 9 of the standard let the service provider merely post a sign on their premises or a notification on their web site about the availability of the document.

Posting a sign in a public place will not accommodate the needs of a person who cannot read print due to blindness, low vision, or dyslexia. Posting on the internet is only effective for persons with disabilities who can and do use the internet. Even then, it only assists persons with disabilities if the service provider has ensured that their website complies with international standards for website disability accessibility. This standard, however, doesn't require service providers to ensure that their websites are disability accessible. Fortunately, the 2011 Integrated Accessibility Standard regulation imposes a number of important website accessibility requirements. However that regulation does not impose those on all organizations. Moreover, it sets excessively long time lines for compliance.

In the interim, the customer service standard doesn't ensure that a notification described above on a website will be accessible to all persons with disabilities who use the internet, even if the organization can readily and easily achieve this now.

Section 4(7) of the standard states:

“(7) Every designated public sector organization and every other provider of goods or services that has at least 20 employees in Ontario shall prepare one or more documents describing its policies, practices and procedures with respect to the matters governed by this section and, upon request, shall give a copy of a document to any person.”

Similarly, section 5(4) states:

“(4) Every designated public sector organization and every other provider of goods or services that has at least 20 employees in Ontario shall prepare a document that sets out the steps to be taken in connection with a temporary disruption and, upon request, shall give a copy of the document to any person.”

Sections 8 and 9 address how these documents are to be made available and how the public is to be notified about them:

“8.(1) Every designated public sector organization and every other provider of goods or services that has at least 20 employees in Ontario shall notify persons to whom it provides goods or services that the documents required by this Regulation are available upon request.

(2) The notice may be given by posting the information at a conspicuous place on premises owned or operated by the provider, by posting it on the provider's website, if any, or by such other method as is reasonable in the circumstances.

9.(1) If a provider of goods or services is required by this Regulation to give a copy of a

document to a person with a disability, the provider shall give the person the document, or the information contained in the document, in a format that takes into account the person's disability.

(2) The provider of goods or services and the person with a disability may agree upon the format to be used for the document or information."

7. Insufficient Requirements Regarding Accessible Public Notification of Service Disruption

The standard permits a barrier-ridden process regarding notification of patrons about service disruptions. Section 5 provides in material part:

"5. (1) If, in order to obtain, use or benefit from a provider's goods or services, persons with disabilities usually use particular facilities or services of the provider and if there is a temporary disruption in those facilities or services in whole or in part, the provider shall give notice of the disruption to the public.

(2) Notice of the disruption must include information about the reason for the disruption, its anticipated duration and a description of alternative facilities or services, if any, that are available.

(3) Notice may be given by posting the information at a conspicuous place on premises owned or operated by the provider of goods or services, by posting it on the provider's website, if any, or by such other method as is reasonable in the circumstances."

This provision suffers from the same problems as are described above regarding the insufficient accessibility of posting printed material on a public sign or a website.

8. Ontario's Human Rights Legal Support Centre not Required to Comply with the Standard

The standard doesn't require organizations, and particularly larger organizations, to put in place an effective means for accountably delivering accessible customer services. For example, it doesn't require any large organizations to designate an official from within their existing staff to be responsible for leading the organization's removal and prevention of barriers to access.

The standard lists a range of public agencies that must obey the standard, including, among others, the Ontario Human Rights Commission and the Human Rights Tribunal of Ontario. Remarkably, it didn't include the Government's new Human Rights Legal Support Centre, established under the Ontario Government's widely-criticized Bill 107.

By the time the Human Rights Commission was required to start complying with this standard,

Appendix A to ACPD Report 14-002

discrimination victims like persons with disabilities were no longer able to file their human rights complaints with the Human Rights Commission. This is because Bill 107 privatized human rights enforcement, and took away from discrimination victims the right to have the Human Rights Commission investigate and (where appropriate) prosecute their discrimination cases. Instead, Bill 107 forces discrimination victims like persons with disabilities to find their own lawyer to investigate and present their discrimination case.

The Government's Bill 107 created a new Human Rights Legal Support Centre to provide legal help to discrimination victims. However, that under-funded Centre only got a fraction of the Human Rights Commission's pre-Bill 107 under-funded budget level. To learn more about Bill 107, visit: www.aodaalliance.org/reform/default.asp

In December 2006, when Bill 107 was before the Legislature, the opposition Conservatives proposed an amendment to Bill 107 to require the Human Rights Legal Support Centre to have a disability accessibility policy. The NDP supported this, too. The governing Liberals used their majority to defeat that amendment.

9. Lessons Learned from Experience with the Implementation of the Customer Service Accessibility Standard

From our ongoing contact with persons with disabilities, with disability organizations around Ontario, and with obligated organizations, it is clear that the actual experience with the Customer Service Accessibility Standard does not weaken any of the foregoing concerns. It is commendable that a number of organizations have acted to implement the standard. From reports in the media and elsewhere, it is also evident that some organizations have commendably gone further than the Standard's requirements. However it is also clear from our collective experience that too many organizations, particularly in the private sector, did nothing to implement the Customer Service Accessibility Standard for several years after it was enacted. Indeed, as discussed later in this brief, as of November 2013, fully ten months after the final deadline for filing compliance self-reports, over 70% of private sector organizations with at least twenty employees were in clear violation of the Standard. Making matters worse, the Government's publicity of this Standard and other accessibility standards under the AODA has been palpably inadequate and low profile. Moreover, the Government did not send a clear message that it would keep its promise to effectively enforce the AODA, until we made public the embarrassing fact of the massive non-compliance with the AODA, and the Government's failure to effectively enforce it.

In retrospect, the time lines in this Standard should have been years shorter. Nine of the twenty years for achieving a fully accessible Ontario have now passed. Only eleven remain. Yet Ontario is in our experience nowhere near the halfway mark to fully accessible customer service.

The fact that the Government enacted detailed provisions on the accessibility of information and communication in the 2011 Integrated Accessibility Standard Regulation is further proof that the 2007 Customer Service Accessibility Standard was substantially inadequate. Providing effective

Appendix A to ACPD Report 14-002

and accessible information and communication is a key part of effective customer service. Yet the 2007 Customer Service Accessibility Standard did not include the good range of accessible information and communication requirements that were later to be established in the Integrated Accessibility Standard Regulation. The Integrated Accessibility Standard Regulation in effect was needed to help fill a huge gap that the Customer Service Accessibility Standard unjustifiably left.

The Government has done three things to make this situation even worse. First, the Government has clearly and seriously broken its oft-repeated promise to effectively enforce the AODA, and has taken active steps to withhold that information from us and the public.

In the 2003 and 2011 elections, and at various points in between, the Ontario Liberals promised to effectively enforce the Disabilities Act. We have been trying for years to get this promise kept.

After the October 2011 Ontario election, we wrote the new cabinet minister responsible for implementing and enforcing the AODA, John Milloy, on November 1, 2011, to alert him to priorities in his new post. Among these, we highlighted the need to effectively enforce the Disabilities Act. We wrote:

"Among the top priorities that we encourage you and your Ministry to consider first are these:...

...

2. Implementing measures for the effective enforcement of accessibility standards enacted under the AODA. There are already two standards on the books, but the full range of enforcement has not yet been fully implemented. In his August 19, 2011 letter to us, Premier McGuinty promised effective enforcement of the AODA. This echoes his 2003 election promise that the AODA would have effective enforcement. In addition to having appropriate staff in your Ministry tasked with enforcement, we urge you to consider designating Ontario Government inspectors under other legislation to include enforcement of the AODA in their activities, where feasible."

Around six months later, the Accessibility Directorate of Ontario, the Ontario Government office with the mandate to implement and enforce the AODA, prepared a briefing note on enforcement of the AODA. That briefing note described a detailed plan for enforcing the AODA. This was prepared in anticipation of the fact that the private sector would be obliged to comply with the 2007 Customer Service Accessibility Standard, starting in 2012.

The Government did not then make this plan public. Moreover, from more recent events, it is clear that the plan was not implemented. We have been given no reason for the Government to have sat on that plan. We just recently learned about this plan through our ongoing review of the pile of documents that the Government was forced to give us over the past weeks, as a result of AODA Alliance Chair David Lepofsky's Freedom of Information application last year.

Appendix A to ACPD Report 14-002

On January 22, 2013, we wrote Minister Milloy to ask for the Government's plans for enforcing the AODA. For months, and despite our repeated requests, the Government did not answer. It is only reasonable to conclude that the Government did not want to make public the troubling and embarrassing information that it knew about, and that we were later able to bring to the public's attention.

After Kathleen Wynne became Ontario's Premier in February 2014, she appointed Dr. Eric Hoskins as the new Cabinet Minister responsible for implementing and enforcing the AODA. On February 27, 2013, we wrote Dr. Hoskins to alert him to the top priorities he needed to address regarding the AODA. Among other things, we wrote:

"Ontario now confronts both a real challenge and an important opportunity. We are now behind schedule for achieving full accessibility by 2025. Only 12 years remain to reach that mandatory destination. We need decisive new action now. In this letter, we offer practical ways to get Ontario on schedule: ...

...

2. Promptly Announcing and Implementing Measures to Effectively Enforce Accessibility Standards enacted under the AODA.

There are already two enforceable accessibility standards on the books under the AODA, the Integrated Accessibility Standard (which addresses barriers in transportation, employment and information and communication) and the Customer Service Accessibility Standard. In the 2003 and 2011 elections, former Premier McGuinty promised that your Government's Disabilities Act would be effectively enforced. However, the Government has not yet effectively deployed the enforcement powers it enshrined in the AODA. Obligated organizations cannot be expected to take this law seriously if it is not effectively enforced.

We wrote your predecessor, Minister John Milloy, on January 22, 2013, to ask for specific information about your Government's past actions and future plans for enforcing this important legislation, and to urge prompt action. We have received no response to that inquiry.

Responsibility for that inquiry now rests with you and your Ministry. We would appreciate a response to, and effective action on our letter to Minister Milloy. **The AODA Alliance's January 22, 2013 letter to Minister Milloy about enforcement of the Accessibility for Ontarians with Disabilities Act** is available at <http://www.aodaalliance.org/strong-effective-aoda/01242013.asp>

In addition to having appropriate staff in your Ministry tasked with enforcement, we urge you to designate Ontario Government inspectors under other legislation to include

Appendix A to ACPD Report 14-002

enforcement of the AODA in their activities, where feasible. We also urge you to make it clear to the public that this legislation will be effectively enforced."

After unsuccessfully trying for seven months to get the Government to reveal how many organizations were not complying with the AODA, and to make public the Government's enforcement plans, AODA Alliance chair David Lepofsky filed a Freedom of Information application on August 15, 2013. Weeks later, the Government initially demanded \$2,325 to disclose that information. The Government was slammed for this proposed fee in Question Period in the Ontario Legislature on October 29, 2013, and in a Toronto Star editorial on October 31, 2013. That fee was yet another obstacle in the way of our securing the effective enforcement of the AODA.

After that adverse publicity, the Government decided to provide the requested documents without that hefty fee. On November 18, 2013, we revealed to the public that the Government knew that some 70% of Ontario private sector organizations with 20 or more employees had not filed mandatory self-reports on their compliance with the AODA Customer Service Accessibility Standard, that the Government knew this, that the Government was not using its full range of enforcement powers to address this, and that the Government had ample unused budget on hand for enforcement.

Minister Hoskins publicly said he wasn't happy with the levels of AODA violations. He pledged to enforce the law (for which he is responsible) until there is full compliance. We still await that plan. Yet our discovery of the May 24, 2012 briefing note proves that the Government has been sitting on a detailed enforcement plan for the AODA for almost two years.

Making this bad situation even worse, it appears that whatever limited efforts the Government has taken to enforce the AODA since we revealed these facts to the public has only focused on the Customer Service Accessibility Standard, has only focused on compliance by a limited number of private sector organizations with at least 20 employees, and only in relation to the duty to file an accessibility self-report (not to actually provide accessible customer service).

Second, the Government has done a grossly-inadequate job of publicizing the Customer Service Accessibility Standard and other accessibility standards enacted under the AODA. We fear that many organizations do not even know about these new legal accessibility standard requirements.

Third, despite providing some helpful policy and training materials on the Customer Service Accessibility Standard, the Government has unfairly devoted effort to inaccurately downplay the obligations of organizations to provide accessible customer service. Its web page that presents the Government's guide to compliance with the Customer Service Accessibility Standard, states under the heading "Becoming Accessible":

"Accessible customer service is not about ramps or automatic door openers. It's about understanding that people with disabilities may have different needs."

Appendix A to ACPD Report 14-002

As of March 16, 2014, this statement remains on the Government's website at http://www.mcass.gov.on.ca/en/mcass/programs/accessibility/customerservice/under_20_get_start.aspx

This is quite wrong and very counterproductive. An organization cannot provide accessible customer service if their public premises have insurmountable physical barriers. Under the Ontario Human Rights Code, providing accessible customer service includes a duty to provide physical access to public premises, such as the public areas of a retail store. By propagating this statement, the Ontario Government is seriously misinforming and misleading organizations that provide goods, services and facilities to the public. This must be stopped, and this misleading impression must be corrected in the case of any organizations which have, to date, relied on it.

If, for example, there are one or two steps to get into the establishment's public location for providing goods, services or facilities, it is typically not difficult to fix that barrier. Yet that simple action can significantly improve accessibility.

It is therefore necessary to dramatically revise the Customer Service Accessibility Standard to substantially strengthen it. In the rest of this brief, we analyze and comment on the revisions that ASAC has proposed. We then offer our own supplemental recommendations, which we urge ASAC to adopt.

III. OUR RESPONSE TO ASAC'S SPECIFIC PROPOSED REVISIONS TO THE CUSTOMER SERVICE ACCESSIBILITY STANDARD

We here analyze each of ASAC's specific recommendations for revising the Customer Service Accessibility Standard. In general, we respectfully conclude that ASAC's initial proposals are manifestly inadequate. They do not address and fix the serious problems with the Standard that we identify here, and that we first made public on September 12, 2007. Moreover, a number of ASAC's core proposals would counterproductively cut back on the Standard, contrary to Government commitments not to cut back on any gains we had made to date. Those proposals would make things worse for persons with disabilities.

ASAC offers a few minor improvements to the Standard. While we agree with those minor improvements, they are certainly not sufficient. Even if they were added to the Standard, the Standard will not ensure accessible customer service in Ontario by 2025, or indeed ever.

1. Definitions and Class Structures

We begin by noting that ASAC's initial proposal does not provide a clear explanation of this proposal, and of its impact. We appreciate that ASAC tried to provide explanations of its various recommended revisions. Despite this, we are concerned that many may not fully understand what is being proposed. We have a great deal of experience with the AODA, and yet found it challenging to unpack and understand.

Appendix A to ACPD Report 14-002

ASAC recommends that the definition of public sector organizations, to be covered by the Standard, should be made to be the same as are set out in other accessibility standards enacted later under the AODA. ASAC does not explain what difference this would make for persons with disabilities. Will it include more public sector organizations? The same public sector organizations? Fewer public sector organizations? We cannot find the answer to this in ASAC's initial proposal. It states:

"It is proposed that the following definitions in the Customer Service Standard be matched with the definitions in the other accessibility standards, as follows:

- "Designated public sector organization" means every municipality and every person or organization listed in Column 1 of Table 1 of Ontario Regulation 146/10 (Public Bodies and Commission Public Bodies — Definitions) made under the Public Service of Ontario Act, 2006 or described in Schedule 1 to this Regulation; ("organisation désignée du secteur public").
- "Government of Ontario" includes the executive of the government and operational branches, including every ministry of the Government of Ontario and the Office of the Premier; ("gouvernement de l'Ontario").
- "Legislative Assembly" includes the Office of the Assembly, the offices of members of the Assembly, including their constituency offices and the offices of persons appointed on the address of the Assembly; ("Assemblée législative")

If this is meant to reduce the number of public sector organizations that the Standard addresses, then we would oppose it. If this means dividing public sector organizations into two classes, those with 50 or more employees, and those with under 50 employees, with a reduction of any existing obligations on public sector organizations with under 50 employees, then we would also oppose that.

We therefore recommend that:

#1. No changes should be made to the definition of public sector organizations covered by the Standard, that would reduce either the number of public sector organizations covered by the Standard, or the obligations of any public sector organizations under the Standard.

The other change ASAC proposes regarding class structure is clear, and is a serious concern. ASAC recommends that private sector organizations be divided into two classes, the same classes as are used in later accessibility standards, namely large private sector organizations (those with 50 or more employees) and small private sector organization (those with under 50 employees). Right now, the Customer Service Accessibility Standard in effect divides private sector organizations into two different classes, those with under 20 employees on the one hand, and those with over 20 employees on the other.

The harmful effect of ASAC's proposal would be to reduce the accessibility obligations of private sector organizations with 20 to 49 employees. ASAC's proposal states:

Appendix A to ACPD Report 14-002

"This proposed change would match the class structure of the Customer Service Standard with the class structure of the other four accessibility standards (employment; information and communications; transportation; and the design of public spaces). The proposed change will result in a consistent definition of private and not-for-profit organizations, simplify requirements, and reduce inconsistencies across all accessibility standards.

For example, with this proposed change, organizations with 20-49 employees would continue to be required to establish policies, practices and procedures governing the provision of goods or services to people with disabilities (as required under Section 3 of the Customer Service Standard). However, these organizations would no longer be required to prepare one or more documents describing their policies, practices and procedures or to provide these documents upon request (as currently required under Section 3.5)."

We strongly disagree with this proposal. ASAC gives no further explanation of why the accessibility obligations of private sector organizations with 20 to 49 employees should be reduced. ASAC does not demonstrate that those organizations are now doing such a good job of delivering accessible customer service that there is no need for these requirements. ASAC does not demonstrate that the obligations which it would remove from those organizations cause undue hardship to those organizations, or do not advance the goal of accessible customer service. ASAC does not, and indeed could not, conclude that Ontario has already achieved such a high level of accessible customer service for persons with disabilities that effective regulation in this area is no longer needed. Any such conclusions would in any event be wrong.

As demonstrated earlier in this brief, there is a pressing need to strengthen the Customer Service Accessibility Standard, not weaken it. Any proposal to weaken it is simply counterproductive.

Moreover, any proposal to weaken it would directly violate an important 2011 election commitment that the Government made to Ontarians with disabilities, at our request. In his August 19, 2011 letter to us, during the 2011 general election campaign, premier Dalton McGuinty pledged that his Government would not reduce any protections that we won in or under the AODA. The Government cannot accept ASAC's proposal without violating that essential election commitment. In Dalton McGuinty's August 19, 2011 letter to the AODA Alliance, he pledged:

"• We will ensure that we maintain and/or strengthen the current provisions and protections in the AODA or any regulations enacted under the legislation."

Moreover, ASAC's proposal is especially unacceptable in light of the fact, described earlier, that a massive proportion of organizations within the very class of private sector organizations whose obligations would be reduced, are now in clear and direct violation of the AODA. Last fall, we made public Government documents that prove that as of then, over 70% of private sector organizations with at least 20 employees, had not electronically filed the mandatory accessibility

Appendix A to ACPD Report 14-002

self-reports with the Government. These were due over ten months earlier, by January 1, 2013. The private sector had had some five years to comply with the requirements of the Customer Service Accessibility Standard, and to file a self-report with the Government to confirm that they were in compliance.

ASAC's proposal would in effect reward such massive non-compliance, by reducing their obligations. Moreover, it would make it clearly harder to effectively enforce the Standard. One key way the Government can enforce is through audits and inspections. Inspecting and auditing records that an organization must keep under the Standard is a quick and potentially helpful first line of investigation. If an organization no longer needs to prepare these documentary records, enforcement can thereby be frustrated.

This is even more troubling because, as described earlier, we have documented that the Government has done far too little to keep its promise to effectively enforce the AODA.

As well, ASAC's proposal would make it harder for members of the public, including the disability community, to themselves document whether an organization within this class has complied with the AODA. Under the Customer Service Accessibility Standard as it now stands, these organizations must provide documentation of their customer service accessibility policy to a member of the public on request. Thus, even if the Government doesn't undertake an audit or inspection of an organization, a concerned member of the public can take it on themselves to ask for this policy.

This provides an avenue for crowd-sourcing grassroots AODA enforcement to supplement the Government's enforcement activities. Under ASAC's proposal, a large part of the private sector, organizations with 20-49 employees, would no longer have to comply with such a request. With substantially inadequate Government enforcement, we and the disability community need to be able to use such grassroots means to shed public light in a case where there is non-compliance.

ASAC makes no suggestion or evidence-based showing that private sector organizations with 20-49 employees have to date been unduly burdened and inundated by requests by the public for their accessibility policy. We have heard no such complaints to date.

It is a frustrating irony that ASAC proposes to change the definition of classes under the Customer Service Accessibility Standard to bring them in line with the class structure in the later Integrated Accessibility Standard Regulation. The Integrated Accessibility Standard Regulation was enacted in June 2011, four years after the Customer Service Accessibility Standard, to address barriers in transportation, employment and information and communication. As the Integrated Accessibility Standard Regulation was being developed, we recommended to the Government that for at least some standards, organization classes should not be solely defined based on numbers of employees.

The Government rejected our proposal. We were told at that time that it could not then change the way it defined classes of organizations, because this had already been set in the 2007

Appendix A to ACPD Report 14-002

Customer Service Accessibility Standard. Now we are told that the Customer Service Accessibility Standard system for defining classes of organizations can and indeed should be changed, to bring it in line with the 2011 Integrated Accessibility Standard Regulation.

We therefore recommend that:

#2. ASAC should withdraw any proposal that would reduce existing obligations for any organizations, including, e.g. private sector organizations with 20-49 employees.

2. Creating a New Exemption from Obligations under the Standard if Not "Reasonable" or "Practicable"

ASAC proposes that the Standard be amended to include some sort of general provision that would further limit obligations of an obligated organization under the Standard. Any obligation under the Standard would evidently be subject to a new exemption or limitation based on reasonableness or practicability. ASAC does not explain what exactly this would do, how it would operate, or how far it would reduce an organization's obligations from the current Standard.

The ASAC initial proposal states:

"In addition, it is proposed that a general provision be added regarding the application of "reasonability" / "practicability" in the context of meeting requirements of the Standard.

Explanation:

...

The proposed change to add a general provision referencing reasonability/practicability is intended to clarify to obligated organizations and people with disabilities that both parties need to work together to take into account an individual's needs, and the organization's capacity to meet those needs."

We respectfully disagree with this proposal. It can only serve to weaken the Standard, which, as indicated above, is already too weak. ASAC does not demonstrate that, after up to seven years' experience with this Standard, its limited obligations have been so excessive for obligated organizations as to require that they be cut back in any way. It has not specified which obligation under the Standard should be cut back in this way. It instead makes a proposal that would cut back right across the entire Standard. ASAC has not offered a single example of an obligation that needs to be reduced in this way, nor has it specified how much this new limitation would reduce any existing obligations.

In addition, ASAC's proposal flies in the face of the Ontario Human Rights Code. The duty under the Code to provide accessibility and disability accommodation is subject only to a limit where an organization can show that it is impossible to provide accommodation or accessibility

Appendix A to ACPD Report 14-002

for persons with disabilities without undue hardship to that organization. The "undue hardship" standard is a high one. It is higher than mere "reasonableness" or "practicability". The obligated organization has the burden to prove this defence.

We therefore recommend that:

#3. Contrary to ASAC's initial proposal, no new "reasonableness" or "practicability" exemption or limitation should be added to the Standard that would cut back on an obligated organization's existing obligations under that Standard.

3. Customer Service Accessibility Policies, Practices and Procedures

ASAC recommends that the term "policies, practices and procedures" in the 2007 Customer Service Accessibility Standard be changed to align with the term "policy" in the 2011 Integrated Accessibility Standard Regulation. However, ASAC does not explain what real impact this will have on obligated organizations. Will they have to do more to comply? Will they have to do less? Is this just a cosmetic change or one with real impact? ASAC's initial proposal states:

"It is proposed that references to "policies, practices and procedures" throughout the Customer Service Standard be changed to match the term "policies" in the other accessibility standards.

Proposed changes would be reflected in the following sections of the Customer Service Standard:

- Service Animals
- Support Persons
- Training

Explanation:

The proposed change would align language and terminology across all accessibility standards, reduce inconsistencies, and simplify requirements."

If this involves any potential reduction in what organizations must do to comply, we would not agree with it.

We therefore recommend that:

#4. ASAC should explain its proposal for defining "'policies, practices and procedures" in the Customer Service Accessibility Standard to be the same as in the Integrated Accessibility Standard Regulation. If this would involve any reduction in the obligations of obligated organizations, then this proposal should be withdrawn.

4. Service Animals

Appendix A to ACPD Report 14-002

We agree with ASAC's recommendation to strengthen the Standard's provisions on accommodating persons with disabilities accompanied by service animals. ASAC's initial proposal states:

"It is proposed that the definition of service animal to be changed. An animal would be defined as a service animal if:

- It has been trained to provide assistance to a person with a disability that relates to that person's disability; and
- It is "readily identifiable" that the animal is used by the person for reasons relating to his or her disability; or
- If the person provides a letter from a regulated health professional confirming that that person requires the animal for reasons relating to the disability.

Explanation:

The addition of the training provision clarifies that a service animal is not a pet and is individually trained to do work or perform tasks for an individual with a disability that is specific to that individual's disability.

The term "readily identifiable" is proposed to replace "readily apparent" to make it more clear to organizations that a service animal may be recognized through indicators or visual cues such as a vest or harness, without staff having to ask for a letter from a health professional.

Expanding the range of people who can provide a letter confirming a person's requirement for a service animal to "regulated health professionals" from the more specific "physician or nurse" was seen by the committee as more inclusive of the range of health care professionals that may be used by people with different types of disabilities."

As discussed in the next part of this brief, we would propose additional improvements. To qualify for accommodation, it should be sufficient if the individual presents documentation from the Ontario Government or from an organization that trains service animals. It need not come from a health professional.

We therefore recommend that:

#5. The Standard should be amended in accordance with ASAC's initial proposal regarding service animals.

5. Support Persons

The Standard now provides that an organization can refuse to admit a person with a disability from their premises unless that person comes with a support person. The organization can do so "if a support person is necessary to protect the health or safety of the person with a disability or

Appendix A to ACPD Report 14-002

the health or safety of others on the premises." The Standard also in effect provides that the organization is also free to insist that a separate admission fee be paid to the organization for the support person to enter.

ASAC proposes that this provision be tightened to narrow the circumstances when an organization can refuse to admit a person with a disability unless they bring a support person. ASAC's initial proposal states:

"Additional language is proposed to clarify when an organization may require a support person to accompany a person with a disability for reasons of health and safety as follows:

- This would only occur where, after consultation with the person with a disability, requiring a support person is the only means to allow the person to be on the premises and at the same time fulfill the provider's obligation to protect the health and safety of the person with a disability and that of others (i.e., the health and safety risk cannot be eliminated or reduced by other means); and
- Any considerations on protecting health and safety must be based on specific evidence and not on assumptions.

Explanation:

The additional requirements clarify for organizations that there are limited circumstances whereby an organization could require that a person with a disability be accompanied by a support person and that certain conditions should be met including:

- Consultation with the person with a disability;
- Determination that there is no other solution or means to allow the person to be on the premises and at the same time fulfill the provider's obligation to protect the health and safety of the person with a disability and that of others; and
- The decision is evidence based."

As discussed earlier in this brief, it is our view that the Customer Service Accessibility Standard provisions letting an organization force persons with disabilities to bring a support person, and to pay a separate admission for them, are illegal and bad policy. In the next part of this brief, we recommend that they be repealed.

We therefore recommend that:

#6. ASAC's insufficient revisions should not be adopted to fix the improper provisions in the Standard regarding persons with disabilities and support persons.

6. Training

ASAC appears to propose an expansion of who must receive accessible customer service training. The ASAC initial proposal states:

Appendix A to ACPD Report 14-002

"It is proposed that the requirements on who must be trained and when training must be provided be replaced with the following language:

- Training must be provided to:
- All employees, and volunteers;
- All people who participate in developing the organization's policies; and
- All other people who provide goods, services or facilities on behalf of the organization.
- Every person must be trained as soon as practicable.
- Organizations must provide training on any changes to its accessibility policies on an ongoing basis.

Explanation:

These proposed changes would match the broader language in the other accessibility standards, simplify requirements, and reduce inconsistencies across all accessibility standards."

ASAC summarizes the list of who must receive training under the Standard at present as follows:

"Every provider of goods or services is required to ensure that the following people receive training about the provision of its goods or services to people with disabilities:

Every person who deals with members of the public or other third parties on behalf of the provider, whether they do so as an employee, agent, volunteer or otherwise.

Every person who participates in developing the provider's policies, practices and procedures about providing goods or services to members of the public or other third parties."

If this is a broadening of whom must receive training on accessibility, then we agree.

We therefore recommend that:

#7. ASAC's proposal on who should receive accessible customer service training should be adopted, if it will expand the range of persons who should receive that training.

7. Feedback Process for Providers of Goods or Services

The Standard now requires organizations to provide an accessible way for persons with disabilities to give feedback on accessibility issues. ASAC proposes some changes that would strengthen the Standard and some that would weaken the Standard. ASAC's initial proposal summarizes its recommendations as follows:

Appendix A to ACPD Report 14-002

"It is proposed that the title of the section be changed to "Feedback Process on the Accessibility to Provision of Goods or Services."

It is also proposed that the language on the channels and formats of an organization's feedback process under the Customer Service Standard be matched with the language in the Information and Communications Standard which specifies that:

- Obligated organizations ensure that their feedback process is accessible to persons with disabilities by providing or arranging for the provision of accessible formats and communication supports upon request.

It is further proposed that language be added to the feedback section that is similar to the language in the policies, practices and procedures section of the Customer Service Standard which states that when communicating with a person with a disability, a provider shall do so in a manner that takes into account the person's disability.

Explanation:

The proposed new title of the section is intended to clarify that the requirements relate to receiving feedback on the accessibility of "access to" goods and services rather than the accessibility of the goods and services themselves.

Changing how feedback is accepted to require organizations to provide accessible formats and communication supports (rather than accepting feedback through certain communication channels such as in person, by telephone, in writing, on diskette) matches similar requirements under the Information and Communications Standard.

The proposed change may enhance accessibility for people with disabilities since they can request the accessible format or communication support that works best for them and their needs when providing feedback rather than choosing from the possible methods for providing feedback that are determined by the organization (e.g. by telephone or in writing).

Reiterating the requirement for organizations to communicate with a person in a manner that takes into account their disability in the feedback provision similar to the requirement in the policies, practices and procedures section of the Customer Service Standard reinforces the importance of this principle."

To the extent that ASAC's proposals would narrow or weaken the existing standard, we disagree. For example, we disagree with the change in the provision's title, and with ASAC's reason for it. ASAC states:

"The proposed new title of the section is intended to clarify that the requirements relate to receiving feedback on the accessibility of "access to" goods and services rather than the accessibility of the goods and services themselves."

Appendix A to ACPD Report 14-002

Persons with disabilities need both access to goods, services and facilities, as well as the opportunity to enjoy goods, services and facilities that are themselves accessible.

To the extent that this proposal seeks to incorporate the full information and communication requirements of the Integrated Accessibility Standard Regulation, that can be helpful. However, it likely accomplishes nothing, since even with no change to the Customer Service Accessibility Standard, the Integrated Accessibility Standard Regulation's information and communication accessibility requirements would apply to the customer feedback requirements in the existing Customer Service Accessibility Standard.

We therefore recommend that:

#8. ASAC's proposals regarding feedback from customers should not be implemented, to the extent that they would weaken the existing Customer Service Accessibility Standard. For example, the title of the Standard's feedback provision should not be changed in the way ASAC proposes.

#9. ASAC's proposals that would strengthen the customer feedback provisions of the Standard should be adopted.

8. Notice of Availability and Format of Documents

ASAC recommends some changes to the Customer Service Accessibility Standard to replicate what is in the 2011 Integrated Accessibility Standard Regulation. We have no objection to this. However, it accomplishes nothing, since the Integrated Accessibility Standard Regulation's information and communication requirements apply in any event.

We therefore recommend that:

#10. ASAC's proposals to echo information and communication provisions of the Integrated Accessibility Standard Regulation in the Customer Service Accessibility Standard may be adopted, but this has no practical impact, is no improvement and as such, is no priority.

IV. OUR ADDITIONAL RECOMMENDATIONS FOR REVISIONS TO THE CUSTOMER SERVICE ACCESSIBILITY STANDARD

We here recommend a series of revisions to the AODA beyond those in ASAC's initial proposal. We urge ASAC to include these in its final proposed revisions to the Customer Service Accessibility Standard. These are needed to ensure that the Customer Service Accessibility Standard will ensure that customer service in Ontario will be fully accessible to persons with

disabilities by or before 2025.

1. Strengthen Purpose of the Standard

Section 1(1) of the Standard provides too limited a statement of its purposes. It provides:

"1. (1) This Regulation establishes accessibility standards for customer service and it applies to every designated public sector organization and to every other person or organization that provides goods or services to members of the public or other third parties and that has at least one employee in Ontario."

This suffers from two deficiencies. First, it only addresses organizations that provide goods or services. It does not cover organizations that provide facilities. Section 1 of the Ontario Human Rights Code guarantees equal treatment without discrimination on grounds like disability in the areas of goods, services and facilities.

Second, it does not fully and effectively define the Standard's goal. The AODA's overall goal is to ensure that Ontario becomes fully accessible to persons with disabilities by 2025. The purpose of this standard is to ensure that customer service becomes fully accessible by 2025.

We therefore recommend that:

#11. Section 1(1) of the Standard should be amended to

- a) ensure that it addresses customer service in the provision of facilities, and not just goods and services, and
- b) to clearly state that the purpose of the Standard is to ensure that customer service in the provision of goods, services and facilities becomes accessible to persons with disabilities on or before 2025.

2. Redefine Classes of Organizations under the Standard

In the previous part of this brief, we set out concerns about ASAC's proposals for redefining classes of obligated organizations in the Standard. There is, however, a need to redefine the classes of organizations in the Standard, though not as ASAC urges. We propose that classes of organizations should not be defined simply by numbers of employees.

We have always agreed that small business should be subject to a different set of requirements, and should get more time for taking action under an AODA accessibility standard. We support the view that there should not be a "one size fits all" approach to any standard under the AODA.

That said, we are very concerned about the definition of "small business" that this standard uses, governed solely by the number of an organization's employees. For purposes of this accessibility

Appendix A to ACPD Report 14-002

standard, the number of employees, standing alone, may not be a proper way to find out if the business is small or large. A business might have only a few employees, but may be a franchisee of a huge, well-resourced chain, with ample information and communication infrastructure and supports available. A business with only a few employees may have substantial assets, substantial revenues, and substantial profits. It may have a larger number of workers with whom it has contracted as independent contractors, rather than as employees (like many taxi companies). It may only have a small staff, but a huge presence on the web.

It would be better to use a definition of small business which takes into account these variables, but which is also clear and easy to follow. For an AODA standard, a business should be able to know at a glance whether it falls within the small business category.

We therefore recommend that:

#12. the classes of private sector organizations should be re-defined in the Standard to take into account not only the number of employees, but as well, the organization's total assets and revenues, and in the case of a for-profit organization, its profit position in past five years.

If that recommendation is not to be followed, then, as an alternative, we propose that an added class of private sector organizations be created, with greater accessibility requirements. In our March 11, 2011 brief to the Ontario Government on its final proposed Integrated Accessibility Standard Regulation, we wrote:

"As compared with earlier proposals, the IAR commendably creates a new class of public sector organizations, namely those with 50 or more employees. There is a pressing need to also create a class of very large private sector organizations, those with over 200 employees.

Statistics Canada reports that as of December 2009, there are about 380,000 businesses in Ontario. The vast majority of them, 94.8 % (or about 360,000) have 1 to 49 employees. Of the remaining organizations, (50 or more employees) 1% (about 4,000 businesses) have over 200 employees.

When it comes to delivering accessibility of their workplaces, and of their goods, services and facilities, very large private sector organizations like IBM, Canadian Tire and the like, are not the same as a very modest organization with over 50 employees, such as a law firm with 20 lawyers and 30 support staff. To hold very large organizations to the longer time lines that might be justified for an organization of 50-199 employees would unjustifiably slow down efforts at accessibility of the very large organizations."

We therefore recommend that:

#13. If the previous recommendations are not accepted, then as an alternative:

Appendix A to ACPD Report 14-002

a) The Standard should be amended to add to the definition of “obligated organization” the term “very large organization,” defined as a private sector organization with over 200 employees.

b) time lines and requirements for very large private sector organizations should be incorporated wherever time lines are set, which are more prompt than those for private sector organizations with 50-200 employees.

c) The Standard should be amended to provide that when calculating an organization’s number of employees for purposes of classifying that organization, the number of employees includes the number of employees in that organization as well as any related, jointly operated or co-managed organizations.

We are also concerned that as now worded, a sole proprietorship that offers goods, services or facilities to the public might be led to think that it has no obligations under the Standard. This is because the Standard states that it applies to any organization that has at least one employee. A sole proprietor might think that he or she is not an employee, and hence, need not meet any accessible customer service requirements.

Any organization must comply with the Human Rights Code's accessibility requirements, even if it is a sole proprietorship.

We therefore recommend that:

#14. The Standard should be amended to make it clear that sole proprietorships that offer goods, services or facilities must comply with the Standard.

3. Include in the Standard Comprehensive Provisions Targeted at Specific Recurring Barriers and Specific Required Corrective Action

ASAC should now consult the disability community and the obligated sectors to learn what barriers to accessible customer service continue to recur,. ASAC should also consult the disability community and the obligated sectors on suggestions for strategies to fix these barriers and to prevent new ones from being created in the future.

ASAC should then develop specific proposals to be included in its final recommendations to the Government to address any such recurring barriers that the current Customer Service Accessibility Standard does not specifically address.

ASAC can find good illustrations of these kinds of specifics in the information and communication and transportation and public spaces portions of the Integrated Accessibility Standard Regulation. This stands in sharp contrast to the lack of such in the Customer Service Accessibility Standard, and in ASAC's initial proposed revisions to that Standard. We provide some examples below. However, our list is not meant to be comprehensive.

Appendix A to ACPD Report 14-002

We would be happy to assist ASAC in conducting a process of gathering information on this from the disability community, using our network. However, ASAC can be greatly helped by the Ontario Government's far greater resources, as well as by directly canvassing the public, including all Municipal Accessibility Advisory Committees across Ontario. ASAC should convene a focused meeting of key stakeholders to crystalize proposals after that information has been gathered.

We therefore recommend that:

#15. ASAC should consult the disability community and obligated sectors to identify recurring barriers to accessible customer service, and strategies for removing and preventing barriers. ASAC should then include in its final proposal to the Government, specific and detailed requirements for removing and preventing such recurring barriers to accessible customer service to ensure that customer service becomes fully accessible by no later than 2025.

4. Revise the Standard to Effectively Address Accessibility Barriers in the Built Environment that Impede Accessible Customer Service

Organizations that provide goods, services or facilities in Ontario too often have physical barriers that impede access by people with mobility disabilities. These can include, for example, steps to get into the premises, steps within the establishment's public areas, aisles of product displays that are too narrow, products on shelves that are too high, and the lack of accessibility in other important public amenities.

The AODA requires full accessibility by 2025, including full accessibility of the built environment. To date, the Government has only enacted very limited measures to address barriers in the built environment. Those include amendments to the Ontario Building Code (which are not the promised Built Environment Accessibility Standard enacted under the AODA) to address accessibility in new construction and major renovations. Those also include the 2012 "Public Spaces" provisions in the Integrated Accessibility Standard Regulation, to address accessibility in new and redeveloped public trails, sidewalks, parking etc.

None of these deal with built environment barriers in existing establishments that are undergoing no renovation. None of these deal with the built environment in an establishment's barriers that the Ontario Building Code does not regulate e.g. the height of product displays. Thus, even the most readily-removable built environment barriers can often remain in place forever.

The Government committed in July 2009 to address barriers in existing buildings through the standards development process after it completes the first round of development of the Built Environment Accessibility Standard. The Ontario Government commitment on the future development of accessibility standards to address retrofits of existing buildings is available at <http://www.aodaalliance.org/strong-effective-aoda/07242009.asp>

The Government has announced no steps over the past 4.5 years to keep that commitment,

Appendix A to ACPD Report 14-002

despite our repeated requests. ASAC's current review of the Customer Service Accessibility Standard provides an excellent opportunity to launch that overdue process, in so far as it concerns organizations that provide goods, services or facilities.

It is our understanding that obligated organizations want to know what they have to do to ensure the accessibility of the built environment in their establishments. Detailed provisions in the Customer Service Accessibility Standard could meet this need for them, as well as for Ontarians with disabilities. It could fulfil the AODA's aim of avoiding having to fight human rights cases, one barrier at a time, to address such recurring barriers.

It is also vital to now correct the extremely inaccurate and misleading information that the Ontario Government's website has for months been disseminating about accessible customer service, referred to earlier in this brief, to the effect that accessible customer service "is not about ramps or automatic door openers." There is room for ASAC to employ real and constructive creativity in this area. ASAC should get the Accessibility Directorate of Ontario to compile standards and best practices from other jurisdictions that have addressed this. As well, ASAC could build on the good work completed by 2010 by the Built Environment Standards Development committee, whose final recommendations have only been partially addressed to date.

We therefore recommend that:

#16. ASAC should consult with the disability community and obligated organizations on, and develop specific proposals for

- a) removing and preventing accessibility barriers to the public premises where organizations offer or provide goods, services or facilities, including barriers which are not now addressed by the Ontario Building Code or the Integrated Accessibility Standard Regulation.
- b) setting requirements for built environment accessibility when an organization moves any part of its existing public facilities for offering or providing goods, services or facilities to a new location, so that accessibility is a priority in choosing any new location.
- c) Specifying priorities for retrofitting in the case of old buildings with substantial barriers.
- d) Providing for ways, as a short term solution, that neighbouring or nearby establishments can share accessible facilities e.g. accessible washrooms, where some do not have such accessible amenities.

5. Ensure that Signage is Accessible and Doesn't Create Barriers

To date, AODA standards deal in a sparse, spotty, incomplete and insufficient way with the accessibility of signage. This is especially important for organizations that provide goods, services or facilities in a public establishment like a store or public office building.

Appendix A to ACPD Report 14-002

There are generally three accessibility needs. First, the sign needs to use lettering, fonts, font size, and colour contrast, and be sufficiently lit to ensure that it is clearly readable by people with low vision. Second, the sign needs to be positioned in a way that does not constitute a barrier or danger for people with disabilities such as people with mobility disabilities or people with vision loss. Third, where possible, the information on the sign should be made readily available to customers who cannot read print, such as those with vision loss or dyslexia. This might include audible announcements where workable and unobtrusive.

Neither the Customer Service Accessibility Standard nor other accessibility standards enacted under the AODA to date effectively and comprehensively addresses this.

We therefore recommend that:

#17. the Standard should be amended to provide in connection with organizations that provide goods, services or facilities:

- a) accessibility requirements for the font, letter size and colour contrast of new signage, and for the retrofit of existing signage on their premises;
- b) accessibility requirements for the placement of signage in a public establishment such as a store or public office, to ensure that it is not a barrier or hazard for people with mobility disabilities, vision loss or other disabilities;
- c) accessibility requirements to provide ready access to the same information as is contained on public signage for customers with disabilities who cannot read the signage.

6. Ensure Timely Snow Removal to Ensure Physical Accessibility

Persons with disabilities too often now face piles of snow as a barrier to access on an otherwise accessible route to an establishment that provides goods, services or facilities. Snow can pile up in a way that blocks the physical accessibility of an establishment that offers goods, services or facilities. Moreover, when snow is shoveled, it can make this worse, by being relocated on a ramp or other route needed for access to the establishment.

Needed accessibility measures are good for any organization. They help ensure that they can serve as broad a market as possible. It also helps reduce the risk of slip and fall injuries, and the related liability that that can cause.

We therefore recommend that:

#18. The Standard should be amended to require organizations that provide goods, services or facilities in an establishment that is open to the public, to ensure that snow is kept cleared on accessible routes to and from the establishment on the property they own, rent or otherwise

control.

7. Expand Duty to Provide Accessible Point-of-Sale Devices and Self-Service Kiosks

Increasingly, stores and service providers are implementing point-of-sale devices, self-service kiosks and the like. These must be accessible for there to be truly accessible customer service. Too often, they are not.

Moreover, an organization that deploys these needs to offer an easily-available alternative for those who, due to disability, cannot use them e.g. a human being at a check-out or service counter.

The 2011 Integrated Accessibility Standard Regulation provides for this in part. However, its provisions are lack needed detail to guide organizations on what to do. The time lines are also far too long. The Integrated Accessibility Standard Regulation provides:

"Self-service kiosks

6. (1) Without limiting the generality of section 5, the Government of Ontario, Legislative Assembly and designated public sector organizations shall incorporate accessibility features when designing, procuring or acquiring self-service kiosks.

(2) Large organizations and small organizations shall have regard to the accessibility for persons with disabilities when designing, procuring or acquiring self-service kiosks. O. Reg. 191/11, s. 6 (2).

(3) The Government of Ontario, Legislative Assembly and designated public sector organizations shall meet the requirements of this section in accordance with the schedule set out in subsection 5 (3).

(4) Large organizations shall meet the requirements under subsection (2) as of January 1, 2014 and small organizations shall meet the requirements as of January 1, 2015.

(5) In this section,

“kiosk” means an interactive electronic terminal, including a point-of-sale device, intended for public use that allows users to access one or more services or products or both. O. Reg. 191/11, s. 6 (5)."

Made much more detailed recommendations.

We therefore recommend that:

#19. ASAC should review the Information and Communications Standards Development

committee's detailed recommendations on electronic kiosks and point-of-sale devices, and should canvass persons with disabilities and the obligated sectors, to develop more detailed accessibility requirements to enhance those now in the Integrated Accessibility Standard Regulation.

8. Prohibit any Surcharge for Accessible Customer Service

Some organizations charge an added fee if their services are ordered over a call-in line, rather than on their website. For some persons with disabilities, they need to place their order by phoning the organization, e.g. due to accessibility issues with their website, or because they don't have an accessible way to use a computer. For them, this surcharge amounts to an unfair disability accessibility surcharge.

The Integrated Accessibility Standard Regulation commendably prohibits a higher public transit fare for para-transit than for conventional transit. It also bans taxis from charging higher fares to passengers with disabilities.

We therefore recommend that:

#20. The Standard should be amended to prohibit any added fee or surcharge for customers with disabilities when they seek to order goods, or services e.g. due to ordering these over the phone, rather than on the web.

9. Require Organizations to Review their Goods, Services and Facilities for Barriers

At present the Standard does not require an organization to review its goods, services and facilities for accessibility barriers. Even if it is aware of such barriers, it does not specifically require the organization to ever remove or prevent them, even if this is readily achievable. Such activity may be a by-product of the Standard's activities, by coincidence or good fortune, for some organizations. However, this is not been made a specific and universal requirement. The specifics of the requirement can be varied depending on the organization's size and resources.

We therefore recommend that:

#21. the Standard should be amended to require an organization that provides goods, services or facilities to

a) Undertake a review to identify any disability barriers in any goods, services or facilities that the organization provides, and any barriers in the way the organization makes them available to the public, and:

b) develop and implement a plan to remove those barriers, and to prevent new ones from being created, except where doing so is impossible without undue hardship to that organization, with the goal of achieving fully accessible customer service no later than 2025.

10. Work Toward Providing Goods, Services and Facilities that Are Disability-Accessible

Section 1 of the Ontario Human Rights Code requires that goods, services and facilities themselves be accessible to persons with disabilities. It is important for an organization that provides goods, services or facilities to try to ensure that they are accessible. Often, stores do not create or manufacture the goods they sell. However, there are steps a store or other organization can nevertheless take to try to ensure the accessibility of their goods, services or facilities.

For example, they can take accessibility into account, when selecting what goods, services or facilities to provide, and try to select ones which have accessibility features, or incorporate principles of universal design. They can also let customers know what accessibility features are available. These are both good for the bottom line, as well as for persons with disabilities.

We therefore recommend that:

#22. the Standard should be amended to require organizations that provide goods, services or facilities to

- a) consider accessibility features when deciding which goods, service or facilities to provide, and
- b) Make public and readily available on their website, if they have one, or through other accessible means, information on the accessibility features of any goods, services or facilities that they provide.

11. Require Organizations to Post and File with the Government Their Service Accessibility Policies

Under the current Customer Service Accessibility Standard, an organization that provides goods, services or facilities must develop an accessible customer service policy. Public sector organizations, and private sector organizations with at least 20 employees, must make it available on request. However, these organizations do not have to make that policy publicly available on their website, if they have a website. They don't have to file that policy with the Government.

Some organizations have commendably taken the positive step of posting their customer service accessibility policy on their website. This costs nothing and helps spread the word. It also helps encourage an organization to ensure that they have a good policy, worthy of public display.

It is easy to set up a system for organizations to electronically file their customer service accessibility policy with the Government. When an organization knows its policy is to be filed with the Government, it has a greater incentive to ensure that the policy is a good one that fully complies with the law.

Appendix A to ACPD Report 14-002

It would make it easier for the Government to enforce the Standard if these are required to be filed. The Government will have them immediately on hand.

Moreover, the government could and should make this data base publicly accessible, since these are public documents. This would enable the public, including the disability community, to be able to easily review these policies. It would help monitor how effect the AODA is at achieving full accessibility by 2025.

Such measures are especially important given the demonstrated rampant violations of the Customer Service Accessibility Standard known to have taken place by private sector organizations with at least 20 employees. There is no downside to any of these steps.

We therefore recommend that:

#23. The Standard should be amended to require

a) any organization that must make a written accessible customer service policy, to post it in an accessible format on its website, if it has one.

b) any organization that must have a written accessible customer service policy to electronically file it with the Ontario Government, with the data base of those policies to be made accessible to the public.

12. Require Regularly Publicizing for Customers the Availability of Accessibility Supports and Opportunities for Giving Feedback to the Organization

Many customers won't know that there are accessibility supports or assistance available in an organization. Yet if one visits a particular drug store chain in the U.S. one can hear periodic announcements that if a customer needs their prescription instructions printed in large print, just ask the pharmacist. One A U.S. bank branch in Buffalo New York had a sign in its open customer service space, announcing which counter to approach if a customer needs disability-related assistance. At least one Canadian credit card company has announced the availability of Braille and large print statements over its customer service phone line, for customers on hold.

Such strategies are extremely inexpensive. They can easily reach customers when they need the information most. It is not sufficient to simply have a general accessible customer service policy available on request. Many if most won't know to ask for this. Moreover the policy may speak in very general terms, and not specifically list the accessibility supports that can be requested.

We therefore recommend that:

#24. The Standard should be amended to require that organizations that provide goods, services

Appendix A to ACPD Report 14-002

or facilities make readily available information in an accessible format to inform customers of the specific accessibility supports that are offered, e.g. by posting signs, making audible announcements (where the organization has a public address system or pipes music into their public spaces), by posting on their website and announcing over any automated customer service phone lines.

13. Provide One-Stop Staff Person to Be Available When Needed for Customer Service Accommodation and Accessibility Support

A very efficient and helpful way to increase an organization's ability to ensure accessible customer service is to designate one person from among their existing staff with lead responsibility for accessible customer service. That person can be the "go to" person when other staff have questions about accessible customer service. As well, if customers with disabilities need help that cannot be quickly provided, that person can be the "go to" person for customers with disabilities as well.

We therefore recommend that:

#25. the Standard be amended to provide that any organization that provides goods, services or facilities and that has at least 10 employees should

- a) designate an employee with lead responsibility for ensuring accessible customer service, and
- b) make public the name and contact information for that employee, both on the organization's website, if it has one, and through postings and audible announcements, where feasible, at the organization's public establishments.

14. Improved Customer Service Training

Ontario now has experience with the accessible customer service training that has been conducted as a result of the 2007 Customer Service Accessibility Standard. We anticipate that many organizations have used the free on-line training that the Ontario Government commendably developed.

We would expand on ASAC's proposals regarding the Standard's training requirements. At present, the Standard requires training on the AODA and the Standard's requirements. However, it does not require training on the Ontario Human Rights Code. The ASAC initial proposal summarizes the Standard's current training requirements as follows:

"The training must include a review of the purposes of the AODA and the requirements of the Customer Service Standard and instruction about the following matters:

- How to interact and communicate with people with various types of disability;
- How to interact with people with disabilities who use an assistive device or require the assistance of a guide dog or other service animal or the assistance of a support

Appendix A to ACPD Report 14-002

person;

- How to use equipment or devices available on the provider's premises or otherwise provided by the provider that may help with providing goods or services to a person with a disability; and
- What to do if a person with a particular type of disability is having difficulty accessing the provider's goods or services."

ASAC appears to want to bring the Standard up to the level of training requirements in the Integrated Accessibility Standard Regulation. The Integrated Accessibility Standard Regulation requires training on both that standard and on the Ontario Human Rights Code. Section 7 of the Integrated Accessibility Standard Regulation provides in material part:

"7. (1) Every obligated organization shall ensure that training is provided on the requirements of the accessibility standards referred to in this Regulation and on the Human Rights Code as it pertains to persons with disabilities ..."

It is very important that any such training include both the requirements of the AODA and the Standard, as well as the Ontario Human Rights Code. Often the Ontario Human Rights Code has greater accessibility obligations than AODA standards. It is extremely counterproductive for an organization's employees and volunteers to receive training that leaves out the Ontario Human Rights Code that thereby can leave the incorrect impression that the only thing they need to do regarding accessibility is to fulfil the AODA standard.

We therefore recommend that:

#26. the training requirements in the Standard should be amended to also require training on the accessibility requirements in the Ontario Human Rights Code.

It would also be worthwhile, as organizations refresh their accessible customer service training, to deploy training that is targeted at specific sectors. Restaurant staff need training that focuses on specific accessibility measures that are suited for restaurants. Hotel staff need training focusing on the barriers that can be experienced in hotels. The same goes for many other sectors.

The Integrated Accessibility Standard Regulation provides specific added training requirements for educators and for employees of transportation providers. It is now time to expand this to other key sectors.

The cost to each organization can be reduced to little or nothing, if the Ontario Government makes more free training resources available targeted at specific sectors of the economy. The Government should be able to readily and easily do this as a result of the good projects it has funded each year under its Enabling Change Program.

We therefore recommend that:

#27. the Standards' general training requirements should be amended to require specific focused training on the specific barriers that recur in that organization's specific sector of the economy e.g. specialized training for restaurants, retail store staff, etc.

15. Require Organization's Senior Management to Periodically Review Feedback Received on Accessible Customer Service

As noted earlier, the Standard does not now require an organization's senior management to ever review the feedback that the organization receives on its accessible customer service through the feedback mechanism that the Standard requires the organization to establish. Giving feedback is pointless if there is no assurance that it will be taken seriously and used.

We therefore recommend that:

#28. The Standard should be amended to require an organization's senior management to review periodically, and at least once every six months, the feedback the organization received through its accessible customer service feedback mechanism.

16. Make it Easier for People with Disabilities to Provide Documentation that they are Accompanied by a Qualified Service Animal

For a person with a disability accompanied by a service animal, to qualify for accommodation, it should be sufficient if the individual presents documentation from the Ontario Government or from an organization that trains service animals. It need not come from a health professional.

We therefore recommend that:

#29. The Standard should be amended to provide that it is sufficient if an individual with a service animal produces a letter or certification from the Government of Ontario or from an organization that trains service animals.

17. Remove Exemption for Accommodating People Using Service Animals if Otherwise Excluded by Law

Section 5(2) of the Standard unjustifiably exempts an organization from admitting a person with a disability accompanied by a service animal if otherwise excluded by law. Section 4 of The Standard provides:

"4. (1) This section applies if goods or services are provided to members of the public or other third parties at premises owned or operated by the provider of the goods or services and if the public or third parties have access to the premises.

(2) If a person with a disability is accompanied by a guide dog or other service animal, the provider of goods or services shall ensure that the person is permitted to enter

Appendix A to ACPD Report 14-002

the premises with the animal and to keep the animal with him or her unless the animal is otherwise excluded by law from the premises.

(3) If a service animal is excluded by law from the premises, the provider of goods or services shall ensure that other measures are available to enable the person with a disability to obtain, use or benefit from the provider's goods or services..."

This leaves an obligated organization with the incorrect idea that if another law excludes the animal, that other law always and automatically prevails. The animal can automatically be excluded. Yet the duty to accommodate persons with disabilities, accompanied by a service animal, is enshrined in the Ontario Human Rights Code, and in the case of the public sector, section 15 of the Charter of Rights as well. These prevail over all other laws that would exclude the service animal, except if the organization can prove that accommodating the person with the service animal is impossible without an undue hardship.

Some, indeed many do not look to the Charter of Rights and the Ontario Human Rights Code to find out what they must do. They only look to the AODA accessibility standard. It is essential that the AODA standard not be misleading.

We therefore recommend that:

#30. Section 4 of the Standard should be amended to remove the wording that suggests that there is no duty to admit a person with a disability accompanied by a service animal, whenever the animal is excluded by another law. It should be revised to state that the organization can exclude the animal only where the organization can prove that it is impossible to accommodate the person with a disability and the service animal without undue hardship.

18. Repeal Power to Require a Person with a Disability to Bring a Support Person and Power to Charge an Additional Admission Fee

As demonstrated earlier in this brief, section 4 of the Standard is both illegal and counterproductive where it allows an organization that provides goods, services or facilities to require a person with a disability to bring a support person with them, and lets that organization charge a second admission fee. It has no business being set out in an accessibility standard enacted under the AODA.

This provision creates an unjustified customer service barrier against certain persons with disabilities. An AODA standard may not itself create or authorize barriers. Our concerns in this regard were made public two months after the 2007 Customer Service Accessibility Standard was enacted, in our publicly-posted September 12, 2007 analysis of that Standard.

We therefore recommend that:

#31. Section 4(5) and (6) of the Standard should be totally repealed, where they purport to empower an obligated organization to force a person with a disability to bring a support person

**Appendix A to
ACPD Report 14-002**

with them, and potentially to pay an admission fee for that support person, as a condition of admitting the person with a disability to the organization's premises.

APPENDIX 1 - RECOMMENDATIONS

- #1. No changes should be made to the definition of public sector organizations, covered by the Standard, that would reduce either the number of public sector organizations covered by the Standard, or the obligations of any public sector organizations under the Standard.
- #2. ASAC should withdraw any proposal that would reduce existing obligations for any organizations, including, e.g. private sector organizations with 20-49 employees.
- #3. Contrary to ASAC's initial proposal, no new "reasonableness" or "practicability" exemption or limitation should be added to the Standard that would cut back on an obligated organization's existing obligations under that Standard.
- #4. ASAC should explain its proposal for defining "policies, practices and procedures" in the Customer Service Accessibility Standard to be the same as in the Integrated Accessibility Standard Regulation. If this would involve any reduction in the obligations of obligated organizations, then this proposal should be withdrawn.
- #5. The Standard should be amended in accordance with ASAC's initial proposal regarding service animals.
- #6. ASAC's insufficient revisions should not be adopted to fix the improper provisions in the Standard regarding persons with disabilities and support persons.
- #7. ASAC's proposal on who should receive accessible customer service training should be adopted, if it will expand the range of persons who should receive that training.
- #8. ASAC's proposals regarding feedback from customers should not be implemented, to the extent that they would weaken the existing Customer Service Accessibility Standard. For example, the title of the Standard's feedback provision should not be changed in the way ASAC proposes.
- #9. ASAC's proposals that would strengthen the customer feedback provisions of the Standard should be adopted.
- #10. ASAC's proposals to echo information and communication provisions of the Integrated Accessibility Standard Regulation in the Customer Service Accessibility Standard may be adopted, but this has no practical impact, is no improvement and as such, is no priority.
- #11. Section 1(1) of the Standard should be amended to
- a) ensure that it addresses customer service in the provision of facilities, and not just goods and services, and
 - b) to clearly state that the purpose of the Standard is to ensure that customer service in the

Appendix A to ACPD Report 14-002

provision of goods, services and facilities becomes accessible to persons with disabilities on or before 2025.

#12. The classes of private sector organizations should be re-defined in the Standard to take into account not only the number of employees, but as well, the organization's total assets and revenues, and in the case of a for-profit organization, its profit position in past five years.

#13. If the previous recommendations are not accepted, then as an alternative:

- a) The Standard should be amended to add to the definition of “obligated organization” the term “very large organization,” defined as a private sector organization with over 200 employees.
- b) time lines and requirements for very large private sector organizations should be incorporated wherever time lines are set, which are more prompt than those for private sector organizations with 50-200 employees.
- c) The Standard should be amended to provide that when calculating an organization’s number of employees for purposes of classifying that organization, the number of employees includes the number of employees in that organization as well as any related, jointly operated or co-managed organizations.

#14. The Standard should be amended to make it clear that sole proprietorships that offer goods, services or facilities must comply with the Standard.

#15. ASAC should consult the disability community and obligated sectors to identify recurring barriers to accessible customer service, and strategies for removing and preventing barriers. ASAC should then include in its final proposal to the Government, specific and detailed requirements for removing and preventing such recurring barriers to accessible customer service to ensure that customer service becomes fully accessible by no later than 2025.

#16. ASAC should consult with the disability community and obligated organizations on, and develop specific proposals for

- a) removing and preventing accessibility barriers to the public premises where organizations offer or provide goods, services or facilities, including barriers which are not now addressed by the Ontario Building Code or the Integrated Accessibility Standard Regulation.
- b) setting requirements for built environment accessibility when an organization moves any part of its existing public facilities for offering or providing goods, services or facilities to a new location, so that accessibility is a priority in choosing any new location.
- c) Specifying priorities for retrofitting in the case of old buildings with substantial barriers.
- d) Providing for ways, as a short term solution, that neighbouring or nearby establishments can share accessible facilities e.g. accessible washrooms, where some do not have such accessible amenities.

#17. The Standard should be amended to provide in connection with organizations that provide goods, services or facilities:

- a) accessibility requirements for the font, letter size and colour contrast of new signage, and for the retrofit of existing signage on their premises;

Appendix A to ACPD Report 14-002

- b) accessibility requirements for the placement of signage in a public establishment such as a store or public office, to ensure that it is not a barrier or hazard for people with mobility disabilities, vision loss or other disabilities;
- c) accessibility requirements to provide ready access to the same information as is contained on public signage for customers with disabilities who cannot read the signage.

#18. The Standard should be amended to require organizations that provide goods, services or facilities in an establishment that is open to the public, to ensure that snow is kept cleared on accessible routes to and from the establishment on the property they own, rent or otherwise control.

#19. ASAC should review the Information and Communications Standards Development committee's detailed recommendations on electronic kiosks and point-of-sale devices, and should canvass persons with disabilities and the obligated sectors, to develop more detailed accessibility requirements to enhance those now in the Integrated Accessibility Standard Regulation.

#20. The Standard should be amended to prohibit any added fee or surcharge for customers with disabilities when they seek to order goods, or services e.g. due to ordering these over the phone, rather than on the web.

#21. The Standard should be amended to require an organization that provides goods, services or facilities to

- a) undertake a review to identify any disability barriers in any goods, services or facilities that the organization provides, and any barriers in the way the organization makes them available to the public, and;
- b) develop and implement a plan to remove those barriers, and to prevent new ones from being created, except where doing so is impossible without undue hardship to that organization, with the goal of achieving fully accessible customer service no later than 2025.

#22. The Standard should be amended to require organizations that provide goods, services or facilities to

- a) consider accessibility features when deciding which goods, service or facilities to provide, and
- b) make public and readily available on their website, if they have one, or through other accessible means, information on the accessibility features of any goods, services or facilities that they provide.

#23. The Standard should be amended to require

- a) any organization that must make a written accessible customer service policy, to post it in an accessible format on its website, if it has one.
- b) any organization that must have a written accessible customer service policy to electronically file it with the Ontario Government, with the data base of those policies to be made accessible to the public.

Appendix A to ACPD Report 14-002

#24. The Standard should be amended to require that organizations that provide goods, services or facilities make readily available information in an accessible format to inform customers of the specific accessibility supports that are offered, e.g. by posting signs, making audible announcements (where the organization has a public address system or pipes music into their public spaces), by posting on their website and announcing over any automated customer service phone lines.

#25. The Standard be amended to provide that any organization that provides goods, services or facilities and that has at least 10 employees should

a) designate an employee with lead responsibility for ensuring accessible customer service, and
b) make public the name and contact information for that employee, both on the organization's website, if it has one, and through postings and audible announcements, where feasible, at the organization's public establishments.

#26. The training requirements in the Standard should be amended to also require training on the accessibility requirements in the Ontario Human Rights Code.

#27. The Standards' general training requirements should be amended to require specific focused training on the specific barriers that recur in that organization's specific sector of the economy e.g. specialized training for restaurants, retail store staff, etc.

#28. The Standard should be amended to require an organization's senior management to review periodically, and at least once every six months, the feedback the organization received through its accessible customer service feedback mechanism.

#29. The Standard should be amended to provide that it is sufficient if an individual with a service animal produces a letter or certification from the Government of Ontario or from an organization that trains service animals.

#30. Section 4 of the Standard should be amended to remove the wording that suggests that there is no duty to admit a person with a disability accompanied by a service animal, whenever the animal is excluded by another law. It should be revised to state that the organization can exclude the animal only where the organization can prove that it is impossible to accommodate the person with a disability and the service animal without undue hardship.

#31. Section 4(5) and (6) of the Standard should be totally repealed, where they purport to empower an obligated organization to force a person with a disability to bring a support person with them, and potentially to pay an admission fee for that support person, as a condition of admitting the person with a disability to the organization's premises.