

**ONTARIANS WITH DISABILITIES ACT COMMITTEE**

**APPENDICES TO THE ODA COMMITTEE BRIEF  
TO THE ONTARIO LEGISLATURE'S STANDING COMMITTEE  
ON FINANCE AND ECONOMIC AFFAIRS**

**NOVEMBER 29, 2001**

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## **APPENDIX 1 - ANALYSIS OF BILL 125**

### **A. GENERAL**

This appendix provides a detailed analysis of Bill 125 to see how it meets the needs of persons with disabilities. Our analysis of Bill 125 leads to the main conclusions that the bill, in its present form:

- (a) is not consistent with 10 of the 11 principles enunciated by the ODA Committee
- (b) does not achieve the barrier-free society for Ontario's 1.6 million people with disabilities, as proclaimed in the government's vision statement dated Nov. 1, 2001; and
- (c) is not a "strong and effective" law, as required by the Ontario Legislature's unanimous resolution adopted on November 23, 1999.
- (d) is vaguely drafted and confusing.

The bill will require substantial amendments to achieve the government's vision and goals, as well as the Government's statements on what it contains. This analysis provides the basis on which our proposed amendments are based.

This analysis assesses Bill 125 from five perspectives. First, it examines the bill from the perspective of the checklist for the ODA which we released several weeks before the bill was introduced. Second, it assesses the bill from the perspective of the eleven principles, one principle at a time. Third, it assesses the bill from the perspective of ascertaining what is new in the bill. Fourth, it assesses the bill from the perspective of what the bill contains that would not require legislation for the Government to have acted over the past six and a half years. Finally, it assesses the bill from the perspective of statements which the Government has made on what the bill contains. There is some inevitable overlap among these different approaches to the analysis of this bill.

### **B. ANALYSIS OF THE BILL FROM THE PERSPECTIVE OF THE ODA COMMITTEE'S CHECKLIST**

Prior to Bill 125's introduction, the Ontarians with Disabilities Act Committee released six questions to be used to measure the proposed legislation. This analysis is based on those questions.

*1. Does the proposed ODA include protection for all disabilities, physical, mental and sensory, be the disability visible or invisible?*

The bill uses a definition of disability similar to that in the Ontario Human Rights Code, with more appropriate, contemporary terminology. It appears to include all physical, mental and sensory disabilities including invisible as well as visible disabilities. However, a main thrust of the bill's provisions focuses on

barriers faced by persons with mobility disabilities.

For example, the only guidelines that are required to be developed under this bill relate to the design of newly-acquired or newly-leased government buildings, and government buildings which are significantly renovated in the future. The minimum standard is at least the existing standards in the Ontario Building Code. There is no requirement that those design guidelines meet the needs of persons with all types of disabilities that are not dealt with in the Building Code. There is no assurance, in any of the bill's consultation mechanisms, that the views and needs of persons with all types of disabilities will be taken into account.

2. *Does the proposed ODA cover the removal and prevention of barriers in all aspects of life in Ontario whether in the public or private sector, such as in employment and the enjoyment of goods, services and facilities e.g. transportation, health care, education and training, communication and access to information?*

No. The bill requires only the creation of annual plans for barrier identification, removal and prevention in the public sector, including the Ontario government itself, the broader public sector (including public transportation providers) and municipalities.

The bill permits the creation of guidelines, standards, protocols and regulations that may apply to the private sector if the minister and Ontario government later choose to do so. The government may also choose to turn these guidelines and standards into regulations that would cover specific organizations or sectors. However, there is no obligation on the Ontario government ever to create these guidelines or to turn them into regulations, nor to cover every area of the private sector, or even every area of the public sector (since the bill permits the government to unilaterally grant exemptions).

For the past twenty years, the Ontario Cabinet has had an authority under the Ontario Human Rights Code to create regulations on standards in this area. Even though the Commission has had detailed policy guidelines on accommodating the needs of persons with disabilities for over a decade, and recently revised them after extensive public consultations, the government has not chosen to make those guidelines into regulations. This is so despite the fact that the current Citizenship Minister Cam Jackson congratulated the Ontario Human Rights Commission for producing its new guidelines, and despite the fact that the Government has had several months since the new guidelines were released to enact them into regulations.

3. *Will the proposed ODA require that detailed standards be set for the removal and prevention of barriers through a consultative process with key stakeholders including people with disabilities, business, and others in the sectors affected?*

No. The bill permits a confusing and complicated range of different types of standards, guidelines and protocols to be developed and possibly (though not mandatorily) turned into regulations. There is no clear definition as to what a guideline, standard, code or protocol is, nor what the difference is between these types of documents.

The only guidelines that the government is required to make are design guidelines for government

buildings. These will apply only to newly-purchased or newly-leased government buildings, and to government buildings that are significantly renovated after this bill comes into effect. The guidelines would not apply to buildings currently used by the government unless the government plans to significantly renovate them.

The government must make guidelines regarding the preparation of accessibility plans and policies. There is also the optional power to make regulations governing the preparation and content of accessibility plans and policies. This suggests that the guidelines (which must be made) refer only to the process, not the content of the accessibility plans and policies. There is no requirement that any regulations ever be made regarding the preparation or content of these accessibility plans and policies. As for the narrow category of guidelines which the Ontario government must make, the bill imposes no time frame within which the government must make them.

For the most part, in the case of government acquiring new property or goods, e.g. for capital expenditures, the only obligations which the bill imposes on the provincial or municipal governments are merely to "have regard" to the issue of accessibility. To "have regard" can be seen as a loose, minimal obligation. There appear to be no standards or guidelines set in the bill against which the assessment can be made. There is no requirement for the government in question to document the process. There is no right for persons with disabilities to appeal from a decision. There is no public reporting on these decisions or any consequence if the government chooses to go ahead and make a major capital expenditure which creates new barriers, using taxpayers' dollars.

In terms of consulting with the disability community, the legislation is vague. It imposes very limited requirements on the Ontario government to consult with persons with disabilities, or even with its own new provincial Advisory Council.

The only mandatory consultations prior to any kind of standard-setting in this bill appears to be in the case of the guidelines regarding new government building accessibility, and limited consultation at the municipal level. The design guidelines must be created by the government of Ontario in consultation with "persons with disabilities and others." It does not specify what ministry is responsible for developing these guidelines, nor what type of consultation is required.

At the municipal government level, the municipal council must consult with the municipal accessibility advisory committee with respect to access to buildings owned or leased by the municipality (apparently again, only new building acquisitions or renovations). That advisory committee must include persons with disabilities (although not necessarily a majority). There is no requirement of broad consultation with persons with disabilities in the community.

In terms of other consultations, the bill permits the designated minister to direct the new Ontario government office, the Accessibility Directorate, to consult with stakeholders chosen by the minister to develop the codes, codes of conduct, formulae, standards, guidelines, protocols and procedures related to the subject-matter of the bill. After these are developed, the Cabinet has the option of making these into regulations if it wants. It can change them as it wishes, without any consultation. There is nothing in the section relating to the consultation by the Accessibility Directorate that requires the minister to direct the directorate to consult with persons with disabilities.

Similarly, the new provincial Accessibility Advisory Council, which is required to have a majority of persons with disabilities, is not required to consult with persons with disabilities in carrying out its mandate. The new provincial Advisory Council has a very limited role with no authority to initiate its own research or investigation except within the narrow confines of its mandate, unless directed to do so by the minister. It has only the power to advise. Its advice is not binding on anyone. The minister is not required to explain to the Council or the public why the minister or the Government does not follow the provincial council's advice. The Council is required to report on its activities to the minister. There is no requirement that the report or the advice provided by the Council be made public.

The minister's announcement of this bill and the Government's publicity about it speaks about putting persons with disabilities "in the driver's seat" to drive the changes in Ontario under this bill. It is difficult to reconcile that statement with the bill itself. The Advisory Council at the provincial level and the accessibility advisory committees at the municipal level, are put forward by the Ontario government as the key mechanism for achieving that goal. As discussed above, their own participation in the consultation process is very limited. Most of the consultation, where it exists, is done not through these advisory bodies but through the Accessibility Directorate. That directorate is a government office, apart of the Ministry of Citizenship. It is responsible and accountable solely to the minister. There is no requirement that the staff of that directorate include persons with disabilities.

Like the provincial Advisory Council, the bill's provisions regarding the municipal advisory committees have many serious limitations. They, too, can only "advise." The municipalities never have to listen to them, accept their advice, or even meet with them or answer them. These advisory bodies have no power to require disclosure of information from the government they advise, in order to know what is going on. If that government ignores or rejects their advice, it need give no explanation or reasons.

These advisory bodies are not selected by the disability community. The disability community has no say in who sits on them. The provincial Advisory Council is appointed by Cabinet. The bill does not specify how the municipal advisory councils are to be appointed. There is no requirement that different disability groups be represented on these advisory bodies.

4. *Does the proposed ODA provide a process for ensuring that barriers are removed and prevented in a timely manner?*

No. The bill does permit regulations to be passed setting time frames for meeting any obligations set out in the Act. However, there is no requirement to make any such regulations or to set a time limit.

There is nothing in the bill that actually requires barriers identified in the plan to be removed or prevented. It only requires the making of an annual plan by a range of public sector organizations. The bill also adopts or reaffirms certain existing obligations i.e. those under the Ontario Human Rights Code. A new bill is not needed to say that persons with disabilities have those existing rights.

The bill gives considerable authority to the government to unilaterally exempt government ministries, the broader public sector, agencies and the private sector from obligations under this bill. The bill imposes no limits or criteria on this broad exemption power, nor any accountability for the government when it is

exercised. There is no right of persons with disabilities to appeal from the government's granting an exemption. The government is not required to give any reasons or any rationale for granting an exemption. For example, the government could exempt all hospitals from complying with the bill without having to have a good reason or having to justify its decision.

5. *Does the proposed ODA establish an effective mechanism beyond individual complaints to enforce these new standards?*

No. The bill does not impose an enforcement mechanism. The language of some of the provisions sound as though there are mandatory requirements by stating that the government "shall," or the "municipality shall." However, there is no form of penalty or other consequence for failing to comply. There is no independent and impartial review of these actions. No independent body or agency is required to review or investigate the actions of organizations covered by the bill. There is no provision that states that failure to comply with the provisions of this bill is a violation of the Ontario Human Rights Code.

The only "enforcement" which the bill imposes is the requirement that plans be made public. However, the public is not granted ready access to information about the actual circumstances of governments, agencies or organizations that are supposed to be removing and preventing barriers. There are no clear guidelines, or requirements for government bodies to publicly justify their decisions for failing to remove and prevent barriers. As such, public review of these plans seems toothless.

The bill provides no avenue for a member of the public to make a complaint about non-compliance. An individual with a disability who faces a barrier must still resort to battling one barrier at a time, by filing a complaint under the Ontario Human Rights Code, and litigate against barriers one at a time.

The provincial Advisory Council, which may advise the minister generally on the implementation of the Act, has no authority to take any proceedings, compel access to any information, or obtain any remedy for anyone.

6. *Does the proposed ODA reduce existing rights of people with disabilities?*

Section 3(2) of the bill specifically states that the legislation does not limit the "operation of" the Ontario Human Rights Code. However, it does not provide that nothing in this Act reduces or limits the rights enjoyed by persons with disabilities under the Ontario Human Rights Code or under any other legislation or regulations. Absent such a clear, unequivocal clause, there is always the risk that some party might try to use this Act as a justification for limiting the rights of persons with disabilities enjoyed under the Code or other legislation. To avoid having to fight to prevent this kind of result, a clearer and more comprehensive provision is needed than that provided in s. 3(2) of the bill.

7. *The Companion Amendments*

These points supplement our responses to the six questions above. Bill 125 makes amendments to a series of other statutes. Those new provisions which amend other statutes to provide for other organizations or persons to make accessibility plans have the same limitations as described above concerning the bill's general provisions on government and public sector accessibility plans.

For example s. 27 of the bill provides for the Speaker of the Ontario Legislature to make an annual accessibility plan regarding the operations of the Legislature. However, it does not require that the Legislature ever become barrier-free, nor does it set any deadlines for progress. For years, the ODA Committee has pointed out that only a handful of persons using wheelchairs can sit in the galleries of the Ontario Legislature, to watch debates on topics such as the need for a strong ODA.

Sections 23 and 29 of the bill amend the provincial and municipal elections laws. However, they do not impose the most basic, rudimentary requirements for a barrier-free democratic electoral process, such as an assurance of barrier-free ballots for vision impaired and dyslexic voters, assured provision of American sign language interpreters for deaf voters, and assured physically accessible polling stations for voters with mobility disabilities. The ODA Committee highlighted the continued presence of these kinds of barriers before, during and after the last provincial election. Despite this, barriers were again confronted during the by-elections held in Ontario since the 1999 election.

Section 28(1) of the bill creates a new power which allows a municipality that requires a business to get a license to operate in that municipality to include in the license a condition "requiring the premises of the business, or a part of the premises, to be accessible to persons with disabilities." This appears to be a new power.

However, this provision has three significant limitations. First, it appears to deal only with barriers to physical access, and not other kinds of barriers in the business. Second, nothing in the bill requires any municipality to ever use this power. If a municipality does not, the bill provides persons with disabilities with no recourse. Third, this provision does not establish a province-wide standard or a province-wide enforcement process. Persons with disabilities will have to go through a lengthy process of lobbying hundreds of municipalities to achieve, one municipality at a time, what the bill could have directly and single-handedly implemented across Ontario.

## **C. BILL 125 COMPARED WITH THE 11 PRINCIPLES**

### **(i) THE GOVERNMENT'S COMMITMENT THAT BILL 125 CONTAINS THE 11 PRINCIPLES**

Citizenship Minister Cam Jackson has stated that the 11 principles for the ODA were considered and followed very carefully in drafting Bill 125, that Bill 125 addresses those principles and, indeed, that it contains them. He said the following in the Legislature:

(a) "I want to reassure the House that the 11 principles were followed very carefully in the drafting of this legislation." (Hansard Question Period November 7, 2001)

(b) "We firmly believe these 11 principles have been addressed in this bill." (Hansard Second Reading Debate, November 8, 2001)



(c) "In fairness, I will be here the balance of the afternoon to hear the debate and the discussions from the Liberal Party as to what they are offering the disabilities community and what promises they are prepared to make, but we have not heard any. We've not heard any commitment, other than the 11 principles that we know are contained in this bill." (Hansard Second Reading Debate November 8, 2001)

In contrast, in the days leading up to Bill 125's introduction, the Citizenship Minister had only said that the Government had "looked at" the 11 principles. In answer to a question in Question Period on whether the bill would comply with these principles, the Citizenship Minister signalled some potential reluctance regarding one of those principles as follows: "We have looked at these principles, and that's exactly what they are. One of the principles makes reference to an Ontarians with Disabilities Act having primacy over all other acts in the province of Ontario. There has been some concern expressed from municipal leaders all across Ontario that they did not envisage the fact that legislation would have primacy over, for example, the Municipal Act, the Planning Act or the building code, which deals with a broad range of issues. So, although municipalities, well intended, have publicly stated they support persons with disabilities in our province, they have expressed concern to this government that legislation does not usurp or undermine the authority and the time-honoured role that municipalities have in Ontario. That was also part of my discussions with Mayor Mike Hurst, whom I met with in Windsor on Friday, and it is the official position that AMO has taken as well." (Hansard Question Period October 25, 2001)

## **(ii) ANALYZING BILL 125 PRINCIPLE BY PRINCIPLE**

Bill 125 falls substantially short on 10 of the 11 principles for the ODA. Here is a principle-by-principle analysis of the bill. To some extent this analysis overlaps with the analysis of the bill provided in the previous section.

### ***PRINCIPLE 1***

Principle 1 states: "The purpose of the Ontarians with Disabilities Act should be to effectively ensure to persons with disabilities in Ontario the equal opportunity to fully and meaningfully participate in all aspects of life in Ontario based on their individual merit, by removing existing barriers confronting them and by preventing the creation of new barriers. It should seek to achieve a barrier-free Ontario for persons with disabilities within as short a time as is reasonably possible, with implementation to begin immediately upon proclamation."

Bill 125 does not comply with Principle 1. Bill 125's stated purpose is far narrower than is required by Principle 1. Section 1 of the bill sets its purpose as follows:

"The purpose of this Act is to improve opportunities for persons with disabilities and to provide for their involvement in the identification, removal and prevention of barriers to their full participation in the life of the province."

Merely to set out to "improve opportunities for persons with disabilities is far less than to seek to

achieve a barrier-free province in which persons with disabilities are fully included and can fully participate. If only two buildings in Ontario install ramps, it could be said that the opportunities for persons with disabilities have been improved. Yet we would still have a long way to go to achieve a barrier-free Ontario.

## ***PRINCIPLE 2***

Principle 2 states:

"The Ontarians with Disabilities Act's requirements should supersede all other legislation, regulations or policies which either conflict with it, or which provide lesser protections and entitlements to persons with disabilities."

Bill 125 does not fulfil Principle 2, because:

(a) Nothing in Bill 125 states that it supersedes or prevails over other legislation, regulations or policies that conflict with the ODA or that provide lesser protection for the rights of persons with disabilities.

(b) At most, all Bill 125 provides in s. 3(2) is as follows: "Nothing in this Act limits the operation of the Human Rights Code." It does not clearly and explicitly ensure that nothing in this bill reduces rights which persons with disabilities enjoy under the Code.

## ***PRINCIPLE 3***

Principle 3 states:

"The Ontarians with Disabilities Act should require government entities, public premises, companies and organizations to be made fully accessible to all persons with disabilities through the removal of existing barriers and the prevention of the creation of new barriers, within strict time frames to be prescribed in the legislation or regulations."

Bill 125 does not comply with this principle because:

(a) The bill itself imposes no obligations regarding barrier-removal and prevention on the private sector. It appears to permit the making of regulations regarding the private sector, and requires certain transit-providers to make accessibility plans. Yet there is no assurance that any regulations over the private sector will ever be made, and if made, that they will meet the requirements of Principle 3 and will be enforceable.

(b) Bill 125 does not require the removal of any existing barriers in any non-renovated public sector buildings, no matter how easy it may be to do.

(c) Bill 125 requires the Ontario Government to make "guidelines" regarding accessibility of newly acquired and newly renovated government buildings. These guidelines' standards may but need not exceed current Building Code standards. The legal force, if any, of these guidelines is not specified,

except that they are not regulations. The name "guidelines" may imply that they are not mandatory and binding.

(d) Bill 125 permits municipalities to impose licensing conditions on businesses receiving a municipal license addressing physical accessibility. However, there is no duty on any municipality to ever exercise this power. If a municipality exercises this power, there is no duty to use it to ensure that all such barriers are eventually rectified.

(e) Section 12(2) of the bill requires municipal councils in municipalities having a population of over 10,000 to get advice from their municipal disability accessibility advisory committee regarding barriers in newly acquired or newly renovated municipal government buildings. It does not require the municipality to implement that advice, or to give reasons if it declines to do so. This part of the bill does not provide for getting advice from the advisory committee concerning existing municipal buildings which are not being renovated.

(f) Bill 125 gives the Ontario Government sweeping, unaccountable power to grant exemptions from its minimal provisions, without having to justify or explain why it granted such exemptions.

#### ***PRINCIPLE 4***

Principle 4 states:

"The Ontarians with Disabilities Act should require the providers of goods, services and facilities to the public to ensure that their goods, services and facilities are fully usable by persons with disabilities, and that they are designed to reasonably accommodate the needs of persons with disabilities. Included among services, goods and facilities, among other things, are all aspects of education including primary, secondary and post-secondary education, as well as providers of transportation and communication facilities (to the extent that Ontario can regulate these) and public sector providers of information to the public e.g. governments. Providers of these goods, services and facilities should be required to devise and implement detailed plans to remove existing barriers within legislated timetables."

Bill 125 does not comply with Principle 4 because:

(a) The bill imposes no specific requirements on private sector providers of goods, services facilities to remove and prevent barriers. Many if not most of the goods, services and facilities needed by members of the public (including persons with disabilities) are provided by the private sector. We don't buy our food, clothing, school books or medicine at City Hall or in provincial government offices. As stated above, the bill requires transit providers to make (but not to implement) accessibility plans and permits Cabinet to make regulations setting standards for the private sector, but it does not require that these regulations ever be made.

(b) Bill 125 does not impose an obligation on public sector providers of goods, services and facilities to ensure that they are barrier-free. Beyond the provisions regarding new government building design, referred to under Principle 3 above, Bill 125 requires only certain public sector organizations and

private sector transit providers to make annual plans. These plans need not be comprehensive or effective. They need never be implemented.

### ***PRINCIPLE 5***

Principle 5 provides:

"The Ontarians with Disabilities Act should require public and private sector employers to take proactive steps to achieve barrier-free workplaces within prescribed time limits. Among other things, employers should be required to identify existing barriers which impede persons with disabilities, and then to devise and implement plans for the removal of these barriers, and for the prevention of new barriers in the workplace;"

Bill 125 does not comply with Principle 5 because:

- (a) The bill itself imposes no clear requirement to remove and prevent workplace barriers.
- (b) There appears to be a power to make regulations which might apply to employment barriers, though this is not clear. There is no requirement that any regulations ever be made under the bill regarding public or private sector employers.
- (c) Primarily, Bill 125 merely re-affirms the Government's existing obligations to Ontario public servants as employees under the Ontario Human Rights Code. Its main provision on point, s. 8(1), states: 8(1) The Government of Ontario shall accommodate the accessibility needs of its employees in accordance with the Human Rights Code to the extent that the needs relate to their employment." It similarly provides for accommodation of applicants for Ontario Government jobs.
- (d) In addition to the limitations on the effectiveness of the public sector organizations' accessibility plans referred to above, the bill does not specifically and clearly require that those plans identify and plan for the removal and prevention of barriers to employment in the workplaces of those organizations.
- (e) The bill provides for educating managers in the Ontario public service on job accommodation of employees with disabilities and operation of a provincial fund to cover Ministry accommodation costs of Ontario public servants with disabilities. No standards or time lines are set to ensure that these are effectively operated. The bill provides for no internal appeal for those who are improperly refused job accommodation funding under this provision.
- (f) As above, the bill gives the Government sweeping power to exempt itself or others from any of the provisions in the bill.

### ***PRINCIPLE 6***

Principle 6 provides:

"The Ontarians with Disabilities Act should provide for a prompt and effective process for enforcement.

It should not simply incorporate the existing procedures for filing discrimination complaints with the Ontario Human Rights Commission, as these are too slow and cumbersome, and yield inadequate remedies."

Bill 125 does not comply with Principle 6 because:

(a) It provides no new provincial enforcement mechanism and no remedies, with only one exception. That is for only one barrier, namely the widely publicized raising of the fine for misuse by persons without disabilities of designated disability parking spots. The Ontario Government has agreed that Bill 125 includes no new enforcement mechanism. Its "Framework for Change" document states: "That is why the Framework for Change calls for existing enforcement mechanisms to be strengthened, rather than new ones to be created."

(b) None of the new bodies created under the bill, such as the provincial advisory council, the municipal advisory committees or the provincial directorate, have power to take any proceedings to enforce any provisions of the Act. They can only research, consult, and advise.

(c) Under this bill, if a person with a disability encounters a barrier in Ontario, they can only do what they had to do before this bill. They must file a human rights complaint, one barrier at a time, and possibly litigate for years.

(d) Citizenship Minister Jackson disagreed with the essence of Principle 6 when he held out individual barrier-by-barrier human rights complaint litigation as an effective means of enforcement. He stated in the Legislature: "I have said all along that the Ontario Human Rights Commission provides an effective means of enforcing the rights of persons with disabilities, which is principle number 6." (Hansard Second Reading Debates, November 8, 2001).

## ***PRINCIPLE 7***

Principle 7 provides:

"As part of its enforcement process, the Ontarians with Disabilities Act should provide for a process of regulation-making to define with clarity the steps required for compliance with the Ontarians with Disabilities Act. It should be open for such regulations to be made on an industry-by-industry basis, or sector-by-sector basis. This should include a requirement that input be obtained from affected groups such as persons with disabilities before such regulations are enacted. It should also provide persons with disabilities with the opportunity to apply to have regulations made in specific sectors of the economy."

Bill 125 complies with part of this principle. This is because it purports to provide a power to make regulations setting standards, which may be available on a sector-by-sector basis. However, Bill 125 nevertheless falls substantially short of Principle 7 because:

(a) The wording of the regulation-making power in s. 22 of the bill is vague and possibly deficient. As now worded, there is a risk that if it is used to set such a standard, and to make the standard enforceable, a party objecting to enforcement of the standard might attack the legality of the regulation

on the grounds that the bill did not give Cabinet clear authority to make such regulations enforceable.

(b) The bill itself does not establish any process for enforcing standards that are set by regulations, nor does the bill establish any penalty or other remedy for breach of standards which are set by regulations.

(c) The bill provides the disability community at large, as well as the new provincial advisory council, with no right to have input into proposed regulations to be made under the bill, including regulations which set standards.

(d) The bill does not give the disability community at large, or the provincial advisory council, any right to propose regulations, nor does it impose on the Government a duty to consider regulations that the disability community might propose.

### ***PRINCIPLE 8***

Principle 8 provides:

"The Ontarians with Disabilities Act should also mandate the Government of Ontario to provide education and other information resources to companies, individuals and groups who seek to comply with the requirements of the Ontarians with Disabilities Act."

This is the only one of the 11 principles with which Bill 125 complies. Educating the public is of course helpful. However Principle 8 is ancillary, and only has real and substantial value if it is accompanied by legislation which is strong, effective and mandatory, and which incorporates the other 10 principles.

### ***PRINCIPLE 9***

Principle 9 provides:

"The Ontarians with Disabilities Act should also require the Government of Ontario to take affirmative steps to promote the development and distribution in Ontario of new adaptive technologies and services for persons with disabilities."

Bill 125 falls substantially short on Principle 9 because:

(a) Nothing in Bill 125 requires the Ontario Government to take on this task, or assigns any specific department with responsibility for planning or carrying out activities regarding it.

(b) During second reading debate, Minister Jackson stated that this principle is covered in the bill for the following reason: "The legislation also addresses accessibility compliance as a condition of funding and purchasing goods and services. It's specifically a principle. It's specifically in the bill." (Hansard November 8, 2001)

The bill in fact provides that disability accessibility is to be considered when certain provincial and municipal government purchasing decisions are made. This limited "duty to consider accessibility" does

not require that any accessible products ever be purchased.

### ***PRINCIPLE 10***

Principle 10 provides:

"The Ontarians with Disabilities Act should require the provincial and municipal governments to make it a strict condition of funding any program, or of purchasing any services, goods or facilities, that they be designed to be fully accessible to and usable by persons with disabilities. Any grant or contract which does not so provide is void and unenforceable by the grant- recipient or contractor with the government in question."

Bill 125 falls substantially short on Principle 10 because:

- (a) It does not make full accessibility a "strict condition" of any government purchases or grants.
- (b) As stated under Principle 9, the bill makes certain government purchases or grants subject to an unenforceable provision that disability accessibility merely be considered or taken into account. A government purchaser need do nothing more than think about it. They need not act on it.
- (c) Nothing in the bill makes a purchase or grant invalid or void for non-compliance with full accessibility.

### ***PRINCIPLE 11***

Principle 11 states:

"The Ontarians with Disabilities Act must be more than mere window dressing. It should contribute meaningfully to the improvement of the position of persons with disabilities in Ontario. It must have real force and effect."

Bill 125 does not comply with this principle for all the reasons set out above.

## **D. WHAT IS NEW IN BILL 125?**

The Ontario Government has described Bill 125 as leading-edge legislation, unprecedented in Canada or in North America with important new elements to make it effective. It is therefore worthwhile to examine Bill 125 to ascertain the extent to which its contents are new. Our analysis of this bill indicates that significant parts of the bill are not new. For example:

1. The bill merely "reaffirms" existing duties of the Ontario Government to persons with disabilities under the Ontario Human Rights Code. This adds nothing new.
2. The proposed provincial accessibility advisory council is not a new innovation. Ontario had a

provincial advisory council on disability issues from 1975 to 1995. The current Ontario Government eliminated it in September, 1995, weeks after taking office. This was four months after Premier Harris made his May 24, 1995 election promise to enact the Ontarians with Disabilities Act in his first term. Therefore, the Premier must have intended by his May 24, 1995 election promise to give us something more effective than a provincial advisory council. There is nothing substantially different about the mandate of the proposed new advisory council, as compared to the one which this Government eliminated six years ago. (See the draft strategic plan for the since abolished Ontario Advisory Council on Disability Issues in Appendix 3)

Five other provinces now have such councils, namely Alberta, Saskatchewan, New Brunswick, Manitoba and Nova Scotia. Some of these are enshrined in legislation.

3. The bill's new Ontario Government disability access directorate is in substance nothing new. The Ontario Government has since the 1980s had one or more offices or branches with comparable responsibilities. In the 1980's this included a separate secretariat for Disabled Persons, which reported to its own minister. In the 1990's, these various offices have been downsized, merged or eliminated.

4. The idea of a minister responsible for disability issues is also not new. In the 1980s, a cabinet minister was separately designated with responsibility for persons with disabilities. Under this bill that responsibility will rest with the Citizenship Minister, along with his or her several other duties. The current Government is the first government since the 1980s not to have had until now a minister with a designation of responsibility for persons with disabilities, even along with other assignments in his or her title.

5. The power to make regulations setting standards for accommodating the needs of persons with disabilities is not new. It has existed under the Ontario Human Rights Code since 1982.

6. According to the Ontario Government's own documents, what the bill provides regarding access by persons with disabilities to government information in an accessible format is, in substance, not new. The Ontario Government's July 13, 1998 Discussion Paper on the Ontarians with Disabilities Act stated: "Ontario encourages government offices to provide information and publications in alternate formats -- for example, large print, Braille, audio cassette, computer disk and TTY phone lines."

7. What the bill provides regarding the treatment of Ontario public servants with disabilities is not new. Section 8(1) merely reaffirms the existing rights of these employees under the Ontario Human Rights Code. Section 6(5) provides for an employment accommodation fund which has in fact existed in the Ontario public service for years. Section 8((3) provides for training Ontario public service managers on disability workplace accommodation for employees with disabilities. This kind of program existed in the Ontario public service under the previous two Governments. The current Government eliminated that program and largely laid off the expert professional staff who had been implementing it.

## **E. MEASURES IN BILL 125 NOT REQUIRING LEGISLATION**

The Government has stated that it needs to adopt its short timetable for the Legislature to consider this



bill, because it needs to get this Bill passed before the end of this year, so it can begin implementing its measures. Our analysis shows that significant elements of Bill 125 concern measures which the Ontario Government could now take, or could have taken throughout its six and a half years in office. The Ontario Government need not have awaited the enactment of this or any new legislation to take those steps.

These include:

1. It has always been open to the Ontario Government to require each of its ministries to develop annual barrier-free plans, to consult with persons with disabilities on them, and to release them to the public. The Government's failed three-page bill, Bill 83, tabled in the Legislature in 1998, provided for these. The Ontario Government does not claim to have made any such plans in its time in office, including in the three years since it signalled a need for them in Bill 83.
2. The Ontario Government has always had the capacity to make non-binding "guidelines" regarding accessibility for newly-acquired and newly-renovated government buildings, and to consult on them with persons with disabilities.
3. It was open to the Ontario Government at any time to re-establish the provincial advisory council on disability issues that it eliminated in 1995, and to seek its advice.
4. During its various cabinet shuffles and re-organizations of the provincial government, the Government could have at any time re-established a minister explicitly responsible for disability issues, and could have expanded the offices that dealt with these issues.
5. The Government could have directed itself to apply a "disability lens" to all provincial legislation and programs, and assigned a ministry responsibility for this task.
6. At any time the Government could have made it a condition of any purchases of new goods or services, or of making the billions of dollars of capital grants, that these funds be used to acquire or create accessible goods, services, properties or facilities. The previous NDP Government had a provincial funding policy requiring new municipal buses bought with any provincial tax dollars to be accessible. The current government eliminated that policy.
7. At any time the Ontario Government could have directed its various ministries and branches to make sure that all of its websites are accessible to and usable by persons with disabilities.
8. The Ontario Government at any time could have undertaken consultations and developed guidelines on standards for accessibility to be used in the Ontario Government itself.
9. The Ontario Government at any time could have brought together persons with disabilities and business representatives to develop voluntary guidelines or protocols or standards to be available to the private sector.
10. The Government at any time could have required managers in the Ontario Public Service to

receive training on meeting the workplace needs of employees with disabilities.

## **F. DOES THE BILL DO WHAT THE GOVERNMENT SAYS IT DOES?**

It is important to see whether the provisions of the bill do what the Government says they do. Our analysis shows that there are some very large and important gaps between the Government's statements, and the bill's actual contents. We seek amendments which, among other things, will ensure that the bill does what the Government statements say it will do.

Overarching all of the following examples is the important matter, covered earlier in this appendix, regarding the bill and the 11 principles for the ODA. Earlier in this brief we show that the Government has stated that this bill contains the 11 principles, but that in fact it falls substantially short on 10 of them.

### ***PURPOSE OF BILL***

The Government has said that the bill's purpose is the achievement of a barrier-free Ontario. This is clearly set out in the Government's November 1, 2001 "Vision Statement." Also, during Second Reading Debate, Citizenship Minister Jackson stated during the Second Reading debate: "When I talked to these individuals and listened to what they wanted to see happen in our province, it occurred to me that we really share the same vision and the same goals, and we know we can get to the same outcomes. Simply put, they wanted legislation that would do two things: create no new barriers in our province and have a plan whereby we would be able to systematically go back and remove all the existing barriers in our province. Those very simply were the two things they said we needed to have in this legislation." (Hansard November 8, 2001)

In fact, and as indicated earlier, the bill's actual purpose is much narrower. Its purpose is merely to "improve opportunities" for persons with disabilities, and to include them in the barrier removal and prevention planning process.

### ***DISABILITY COMMUNITY PUT IN THE "DRIVER'S SEAT" E.G. FOR REGULATION AND STANDARD-SETTING***

The Government has stated that the disability community and the new provincial advisory council will have input into the regulations made under this bill, including input into the regulations and the standards that are set. The Government has emphasized that by this bill, the Government has put the disability community in the driver's seat to drive change.

Government statements on this point include:

"And more importantly, Andy, for the first time anywhere in North America, the disability community will be working directly on those regulations." (Citizenship Minister Jackson interview on CBC Radio "Metro Morning" programme, November 6, 2001)

"We're creating a council with disabled persons who will drive the work on the enforcement mechanisms whether it's the regulations, setting the guidelines, monitoring compliance, reporting publicly on who's compliant and who's not, and they will develop with us the necessary enforcement mechanisms to ensure compliance." (Citizenship Minister Jackson interview on CBC Radio "Metro Morning" programme, November 6, 2001)

"...and so we have said we will build a council of disabled persons who will help us determine the exact time frames sector by sector." (Citizenship Minister Jackson interview on CBC Radio "Metro Morning" programme, November 6, 2001)

"It gives full force and effect, something never before done in Canada, to the disabilities community so they have a voice and a say as we develop the regulations on an access council for Ontario." (Citizenship Minister Jackson, Hansard Question Period November 7, 2001)

"The first thing that has to happen is those standards have to be created. They will be created by the disabilities community of this province because this government's made an unprecedented commitment to them that they will help us make those regulations." (Citizenship Minister Jackson, Hansard Question Period November 7, 2001)

"The record of this government's consultation with the disabilities community is well documented. They understand fully that what previous governments have failed to do in this province is to acknowledge that it's not the able-bodied people who should be deciding and determining what the standards are; it should be the disabled individuals themselves. For the first time in Canadian history, this legislation empowers them to assist in making the regulations and the guidelines, guidelines that didn't exist in this province for the five years of the Liberals, guidelines and standards that didn't exist in the five and a half years that you were the government, but guidelines and standards that will exist in Ontario thanks to the government of Mike Harris." (Citizenship Minister Jackson, Hansard Question Period November 7, 2001)

"We need the flexibility to set those standards. For the first time, we need to entrench in law that the disability community will be pivotal in creating those new standards and assisting in developing the new regulations." (Citizenship Minister Jackson, Hansard Second Reading Debate, November 8, 2001)

"...he said it doesn't include the private sector, and yet he knows that it includes private sector transit operators. He knows it gives the government regulatory authority through the access council, something that will be predominated by persons with disabilities, something that even the ADA doesn't do and no other jurisdiction in North America does. This opportunity is rather unique in Ontario, for the disabilities community to set the regulations for the private sector." (Hansard Second Reading Debate, November 20, 2001)

"We have indicated very clearly that this bill creates some unprecedented opportunities in Ontario. Particularly, nowhere in North America can we find any legislation which specifically empowers the disabilities community to set regulations. The member opposite alluded to that, and I appreciate his bringing that to our attention. He has expressed legitimate concerns about whether or not the legislation

is clear enough about the authority that the disabilities community has. I commend the member for Glengarry-Prescott-Russell because he understands -- and he's been one of the first members to acknowledge that in fact this legislation does empower them to do that. We will welcome any friendly amendments that help clarify that point if it gives additional comfort and satisfaction to those people. But the fundamental principle is that this legislation contains the opportunity for the disabilities community to make those decisions." (Citizenship Minister Jackson, Hansard Second Reading Debate, November 20, 2001)

"It is my firm belief that any policy or law will work much better when the very people it affects are directly involved and are working with it on a daily basis. Persons with disabilities understand the barriers that they are struggling with and confront on a daily basis. Their knowledge and their experience is the single most important contribution to our understanding of these necessary reforms. They become the province of Ontario's disability lens and they become the agents for change, helping to set the guidelines, the mandatory terms of reference and time frames for completion of accessibility plans to be implemented in a broad spectrum across our province." (Citizenship Minister Jackson, Hansard, Debate on Time Allocation Motion, November 21, 2001)

"The bill gives persons with disabilities an unparalleled opportunity to shape and mould change. For the first time in Ontario's history, we're putting the disability community into the framework of the legislation and asking them to be our partner in driving it." (Conservative MPP Julia Munro, Hansard Second Reading Debate, November 20, 2001)

According to our analysis of the bill, this is not the case. There is no required consultation with persons with disabilities or the Advisory Council except for consultation on the accessibility of newly acquired or newly renovated government buildings. Neither the disability community nor the advisory council have any right to input into any regulations. At most, the minister is given discretion to ask for their input if he or she wishes. That has always been the case and is nothing new.

***BILL EMPOWERS DISABILITY ADVISORY COUNCIL TO DETERMINE REASONABLE TIME LINES FOR PUBLIC AND PRIVATE SECTOR TO BECOME BARRIER-FREE***

The Government has stated that under this bill, it will be persons with disabilities, sitting on the provincial Advisory Council, who decide when it is "reasonable" for organizations in the public and private sectors to become barrier-free. Government statements on point include:

"Our legislation will work toward a barrier-free Ontario as soon as reasonably possible, which were the exact words in principle number 1 -- as soon as reasonably possible. That's what this legislation says. And do you know who is going to decide whether it's reasonable? The disabilities community, who sit on the access advisory council of Ontario working on the regulations and meeting with the private sector to say, "You tell us how you're going to become compliant with this legislation." If that isn't reasonable, then what is reasonable in our province?" (Citizenship Minister Jackson, Hansard Second Reading Debate, November 8, 2001)

"Our legislation will work toward a barrier-free Ontario as soon as reasonably possible. That's what this

legislation says. Do you know who is going to decide whether it's reasonable? The disabilities community who would sit on the Accessibility Advisory Council of Ontario working on the regulations and meeting with the private sector to say, "You tell us how you're going to become compliant with this legislation." That's power." (Conservative MPP Julia Munro, Hansard Second Reading Debate, November 20, 2001)

In fact, the bill does not provide that persons with disabilities, sitting on the provincial advisory council will decide on the time lines for achieving a barrier-free province, either in the public or private sectors. As stated above, neither the disability community nor the government-selected advisory council is guaranteed any right under this bill to work on the regulations.

### ***MUNICIPAL ADVISORY COMMITTEES ENTITLED TO ADVISE ON DEVELOPMENT AND IMPLEMENTATION OF MUNICIPALITY'S ACCESSIBILITY PLAN***

The Government has stated that municipal advisory committees in communities over 10,000 would advise the municipality on the development and implementation of the municipality's accessibility plan. The Government has stated:

"It would also require municipalities of 10,000 or more residents to establish accessibility advisory committees, which of course would include representation from the disability community. These committees would report to municipal councils, advising on the development and implementation of accessibility plans." (Conservative MPP Frank Mazzilli, Hansard Second Reading Debate, November 19, 2001)

In fact, s. 12 of the bill does not entitle the advisory committee to do this. Unless regulations are enacted extending their mandate, these advisory committees' duties are limited to advising the municipality on accessibility of newly acquired or newly renovated municipal buildings.

### ***REGULATIONS WILL IMPOSE MANDATORY REQUIREMENTS PER THE 11 PRINCIPLES***

The Government has stated that: "Mandatory provisions will be prescribed in regulations as set out in the 11 principles." (Citizenship Minister Jackson, Hansard Question Period November 7, 2001)

In fact, as indicated above, Bill 125 does not require that any regulations ever be made or set out any time lines within which they must be made. There is nothing in the bill that requires or assures that the regulations will live up to the 11 principles.

### ***REGULATIONS WILL COVER THE PRIVATE SECTOR***

The Government has suggested that regulations will be made under this bill which will cover the private sector. The citizenship Minister said in the Legislature: "Finally, I want to share with the member opposite that the private sector is specifically named in this legislation, and the regulations we will create together will cover each and every sector of this province. That is a promise made by the Mike Harris government, and we'll keep that promise." (Citizenship Minister Jackson, Hansard Question Period

November 7, 2001)

Our analysis of the bill shows that nothing in it requires the Government ever to make any regulations covering the private sector.

***BILL PRESCRIBES TIME FRAME FOR MAKING REGULATIONS REGARDING BARRIER REMOVAL IN THE PRIVATE SECTOR IF PRIVATE SECTOR NOT MOVING FAST ENOUGH***

The Government has suggested that under this bill, there is a time frame for the private sector to act, and that if not achieved, regulations are to be made over the private sector. The Citizenship Minister stated: "there is regulation-making authority in this legislation to ensure that existing barriers are identified and removed and that no new ones are created. That is not a threat; it is a part of our action plan to remove private sector barriers. These regulations will be developed and implemented within the prescribed time frame if, in the opinion of the government and the Accessibility Advisory Council, compliance is not happening fast enough in our province." (Citizenship Minister Jackson, Hansard Second Reading Debate, November 8, 2001)

In fact, the bill includes no prescribed time frame for the private sector either to act, or else face regulations. It does not empower the advisory council to determine or have input into a decision on this.

***BILL REQUIRES CAPITAL GRANT PROJECTS TO BE ACCESSIBLE***

The Government has suggested that this bill requires accessibility standards to be met in the case of new capital projects funded by the government.

Government statements about this include:

"This government, with taxpayers' dollars, has committed about \$1.8 billion in infrastructure, transit, new hospital construction and new university and college construction. This legislation says those projects must be accessible to the higher standard in this province. We believe that's an important element of this bill. We believe it fulfils our promise that we will not create new barriers with taxpayers' money, something that the disability community has said makes no sense -- using their own tax dollars to create environments that create barriers for them. We clearly can do a better job, and it should be the law that we cannot create those barriers in public spaces." (Citizenship Minister Jackson, Hansard Second Reading Debate November 8, 2001)

"Principle 10 imposes this requirement on the government and the municipalities, and also mandates accessibility as a requirement for all capital funding. It's mandated in the legislation." (Citizenship Minister Jackson, Hansard Second Reading Debate, November 8, 2001)

In fact, the bill generally requires at most that the government have regard to accessibility when spending or making capital grants. It does not make accessibility a strict condition of funding, nor does it void agreements which fail to comply.

### ***DUTY TO COMPLY WITH ACCESSIBILITY PLANS***

The Government has said that at least in so far as transit providers are concerned, they will be required not only to make accessibility plans, but also to comply with them. The Citizenship Minister said: "Private sector transit services and all transit systems in this province will mandatorily have to file and comply with their accessibility plans." (Citizenship Minister Jackson, Hansard Second Reading Debate, November 19, 2001)

In fact, the bill imposes no duty on any organization to comply with their accessibility plans.

### ***GOVERNMENT WILL FORCE COMPLIANCE WITH GUIDELINES AND ACCESSIBILITY PLANS***

The Citizenship Minister, speaking for the Government, has stated: "We are going to force compliance based on the guidelines and the accessibility plans that will be made public for each and every sector in Ontario." (Citizenship Minister Jackson interview on CBC Radio's "Metro Morning" programme November 6, 2001)

In fact, the government has no power under this bill to force this compliance. Moreover, accessibility plans are not required by the bill for every sector. Specifically they are not required for the private sector, except for certain private sector transit providers.

### ***GOVERNMENT WILL ENFORCE TIME FRAMES***

The Citizenship Minister stated: "This point was made by David Lepofsky, Chair of the Ontarians with Disabilities Act Committee, when he said this week on Studio 2 on TVO, "We would like to have the barriers that we face identified and eliminated over time. People need to have the time to do it." That's exactly what this legislation does. It gives municipalities, universities, schools, hospitals and the private sector time to identify these barriers and to plan to remove them within the reasonable time frames that will be set out in regulations and which will be enforced by the government, but those time frames will involve the disabilities community sitting down with each of their institutions and their communities." (Citizenship Minister Jackson, Hansard Second Reading Debate November 8, 2001)

In fact the bill does not give the provincial Government any power to enforce any time lines for barrier-removal and prevention that may be set out in future regulations.

### ***BILL REQUIRES MUNICIPALITIES TO CONSIDER ACCESSIBILITY WHEN ISSUING LICENSES***

The Government has stated that under this bill, among other things, municipalities would be required to take accessibility into account when issuing licenses. The Citizenship Minister stated: "Municipalities would have to take accessibility into consideration when approving, for example, subdivision plans and

upon issuing licences." (Citizenship Minister Jackson, Hansard Second Reading Debate, November 8, 2001)

In fact the bill does not require municipalities to consider accessibility when issuing licenses. It only permits them to do so if they wish. However they never need do so. Moreover, the only accessibility they are empowered by this bill to consider relates to physical barriers, not all kinds of barriers.



## **APPENDIX 2 - GOVERNMENT STATEMENTS WHICH PROVE THE NEED FOR A MANDATORY, INDEPENDENTLY ENFORCEABLE, AND COMPREHENSIVE ODA**

The Ontario Government has made a number of public statements about the circumstances confronting Ontarians with disabilities. Their statements serve to demonstrate that Ontario needs a strong and effective ODA containing the key ingredients which the ODA Committee has proposed. As our analysis in Appendix 1 shows, Bill 125 does not meet this need. The amendments proposed in this brief would bring the legislation in line with the Government's statements. This appendix sets out these recent Government statements.

The Government has made statements which agree with our message that Ontarians with disabilities now face many barriers in their daily lives. The government's "Framework for Change" document states: "There are still many obstacles to true independence and opportunity in Ontario for persons with disabilities ...". Regarding the Ontario public service, that document states: "The OPS is the province's largest employer with more than 60,000 employees. ... From access to information, to obtaining a birth certificate or driver's licence, to simply having access to the province's seat of government, persons with disabilities still face many barriers."

Speaking for the Government during Second Reading Debate, Conservative MPP Toby Barrett stated: "However, there are 1.6 million people in our province for whom barriers are a fact of life. It's a constant frustration, preventing these people from experiencing the same fullness of opportunity, of experience, of participation that we take for granted. Something as simple as going into a store, as I mentioned, or something as simple as crossing the street for someone who is visually impaired, or reading a newspaper, obviously is an arduous task for more than 15% of the people in our province.

Who are these 1.6 million people? They are teachers, lawyers, someone's employer, a secretary, an athlete, a coach, children and parents. They're no different than anybody else in this province. They're no different than the 85% of us who may be more able. They're hard-working, contributing members of our society and they deserve better than to have doors closed to them because no one has had the forethought or the wherewithal to make buildings and services more accessible." (Hansard November 8, 2001)

We have pointed out that the problem is not merely the historic fact that barriers were created in the past. We also face the cruel reality that barriers against persons with disabilities continue to be created now. On this point, Citizenship Minister Cam Jackson said during Second Reading debate on Bill 125: "Unfortunately we as a society continue to construct these barriers in the way of disabled persons." (Hansard November 8, 2001)

The Government's statements agree with us that Ontario's goal should be a barrier-free province, and that this is an achievable goal. The Government's Framework for Change document states: "...by working together we can achieve our vision of an Ontario where no new barriers are created and

existing ones are removed." The government's November 1, 2001 "Vision Statement" states: "We will move steadily towards a province in which no new barriers to persons with disabilities are created and existing ones are removed." The Government's Framework for Change states: "We envision an Ontario where persons with disabilities can experience the same fullness of opportunity as all Ontarians. We envision an Ontario where persons with disabilities can get into and around their community safely; attend and participate in a town council meeting; get to a job that nurtures their skills; and live as independently as possible." For the ODA Committee's part, we would speak of living independently, not merely living "as independently as possible."

Along the same lines, Citizenship Minister Jackson stated during the Second Reading debate: "When I talked to these individuals and listened to what they wanted to see happen in our province, it occurred to me that we really share the same vision and the same goals, and we know we can get to the same outcomes. Simply put, they wanted legislation that would do two things: create no new barriers in our province and have a plan whereby we would be able to systematically go back and remove all the existing barriers in our province. Those very simply were the two things they said we needed to have in this legislation." (Hansard November 8, 2001)

Similarly, on the third day of Second Reading Debate, Conservative MPP Julia Munro stated: "No one can quarrel with the goal: an Ontario in which no new barriers to persons with disabilities are created, and where existing ones are removed. That's where we're headed." (Hansard November 20, 2001)

The Government's statements recognize that in Ontario, persons with disabilities are not truly treated as full citizens due to the barriers they face. Citizenship Minister Jackson stated during Second Reading Debate on Bill 125: "It was from these individuals that I understood for the first time the concept of full citizenship, something the disability community has only aspired to but been unable to achieve in our province because of the existence of barriers." (Hansard November 8, 2001)

As well, the Government's statements have echoed our message that a barrier-free Ontario in which we can fully participate is not a privilege, but a right. During debate on his time allocation motion, the Citizenship Minister stated: "What individuals in Ontario are looking for is not some privilege, but the simple right to enjoy the same kind of life that others in our society enjoy in terms of access to housing and transportation, particularly in terms of access to good jobs that might be available within our society, certainly within our province, and in terms of access to education and physical access to buildings and to our society as a whole."

Government statements have adopted our position that persons with disabilities are a substantial and growing part of the province's population, and that the barriers that hurt persons with disabilities end up hurting all Ontarians. The Government's Framework for Change document states: "Persons with disabilities represent a significant and growing part of our population. Today, according to Statistics Canada, more than 1.6 million Ontarians have disabilities. As our population ages, the proportion of persons with disabilities increases. Two decades from now, it's estimated that nearly 20 percent of the population will have a disability. That's one in every five people. But that's just persons with disabilities. Accessibility challenges also affect the millions of parents, grandparents, families, friends, neighbours, co-workers and professionals who are involved with disabled persons on a daily basis. When you look at these figures, it becomes clear that enhancing the ability of persons with disabilities to have equal access to opportunity, to live an independent life and to make a contribution to their community would

have a significant, positive impact on the province's future prosperity. It has been estimated, for example, that the potential spending power of Canadians with disabilities is as much as \$20-\$25 billion. Measures that improve accessibility and opportunity are consequently bound to generate significant economic benefits for all Ontarians."

Speaking for the Government during Second Reading Debate, Conservative MPP Toby Barrett stated: "Persons with disabilities represent a significant and also a growing part of our population. As I mentioned, 1.6 million people in Ontario have disabilities. Of course as people in Ontario age, the proportion with disabilities will increase. Two decades from now it's estimated that nearly 20% of the population will have a disability. That would be one in five persons.

That's just the people with disabilities. Accessibility challenges also affect millions of parents, grandparents, children, friends, neighbours and co-workers who are involved with disabled people on a daily basis. I think we all realize that disabilities affect all of us and affect all aspects of our society.

I think we are cognizant of the challenge before us, but no more difficult a challenge than is being faced by our disabled population as they strive to make their way in a limited access world." (Hansard November 8, 2001)

The Government's statements have acknowledged, as we have urged, that responsibility to take action to achieve our shared goal of a barrier-free province rests with everyone. No organization or sector can claim that this is not their responsibility.

The government's November 1, 2001 "Vision Statement" states: "We have a responsibility to ensure that persons with disabilities share the same rights, freedoms and obligations as every Ontarian. This is a responsibility which rests with every government, every region, every institution, every association, every sector and every person in Ontario." Its Framework for Change states: "REMOVING BARRIERS IS EVERYONE'S BUSINESS." The Government's 1998 ODA Discussion Paper states: "Everyone has a role in preventing and removing barriers."

We have said that a barrier free Ontario benefits all. The Ontario Government's statements have agreed.

The Government states in its "Vision Statement: "Achieving this vision makes good sense for us all. Persons with disabilities make significant contributions to the well-being of their neighbours, communities and province. And we all benefit when we maximize the potential that lies within every person." The Government's framework for Change document also states: "We are building a legacy for our children and grandchildren as a fair and inclusive society. To do this requires tapping the talents, experience and expertise of every person who calls Ontario home; encouraging every person to contribute to their community; and making sure we remove the many and varied barriers that prevent people from experiencing full citizenship." It also states: "Sharing opportunity and prosperity is good for us all."

Similarly, during Second Reading Debate, Citizenship Minister Jackson stated: "Ontarians want to do what is right. Municipalities want to do what is right for the disabilities community in this province, but they need to be directed on their journey." (Hansard November 8, 2001)

We have reiterated that a strong, mandatory ODA is good for Ontario's business community. In the Framework for Change the Ontario Government makes a statement which recognizes that removing and preventing barriers is good for business. It says: "In the future, the most sustainable companies will be those that create environments in which all individuals are able to contribute their skills, energies and experience towards success. They will be companies with the capacity to employ persons with disabilities, serve customers with disabilities and compete in an increasingly diverse market. The government believes there is a strong moral, legal and financial motivation for the private sector to improve the accessibility of persons with disabilities to its goods, services, workplaces and business establishments. Under the Ontario Human Rights Code, Ontario businesses are already required by law not to discriminate against persons with disabilities. A number of private sector organizations already have accessibility programs because they recognize that accessibility is good for business. Many others have partnered with government in ground-breaking and award-winning accessibility projects. The corporate will to change things for the better is growing. The Ministry of Citizenship, through its Enabling Change Partnership Program has facilitated the creation of leading edge information and resources such as those resulting from "Mental Health Works." This project is a private/government/community sector partnership which will help employers to respond to workplace mental health issues, currently costing Ontarians huge losses in productivity."

It also states: "Ontario's business and tourist operators compete in a North American market which is already extremely sensitive and responsive to the needs of persons with disabilities. Increasing accessibility is critical if Ontario's urban centres and tourist attractions are to keep their competitive edge." The Framework for Change document quotes one business leader as follows: "We all recognize that providing quality customer service to persons with disabilities is the right thing to do. It also makes good business sense." (Rod Seiling, President, Greater Toronto Hotel Association)

Similarly, the Government's 1998 ODA Discussion Paper stated: "More businesses today recognize it makes good sense to have their products and services accessible to the widest range of consumers and clients. More employers realize their workplaces benefit from the skills and talents of a diverse workforce. More people understand the barriers faced by people with disabilities.

Attitudes are changing. Action is beginning to reflect these new attitudes. But many believe change is slow and that creative approaches are needed.

The government agrees. It believes that every person in Ontario should have equal opportunity to participate in the life of the province."

The Citizenship Minister stated during Second Reading debate on Bill 125 that our disability community has been seeking new tools to require change, the emphasis being on the mandatory element. He stated: "What they (i.e. the disability community) were adamant about was that they did not have the tools to force the kinds of changes that were needed in our province." (Hansard November 8, 2001)

Government statements have now agreed with our view that a strong ODA must be the centrepiece of our efforts to achieve our shared goal of a barrier-free Ontario. In releasing its "Vision Statement", Citizenship Minister Cam Jackson stated in an accompanying open letter on November 1, 2001: "The centrepiece of our Framework for Change for Ontarians with disabilities will be the Introduction, in the

Fall session of the Legislature, of the Ontarians with Disabilities Act." In its Framework for Change, the Government stated: "Our plan to make Ontario the most inclusive province in Canada calls for strong legislation with the support of all sectors and levels of government, non-legislative initiatives and a multi-year plan to realize our goal."

Government statements have said that the clear message from the disability community is that there is a real need to enact and implement strong new legislation. The governments Framework for Change states: "Throughout the consultation process, the disability community said that strong legislation with mandatory measures is necessary, but that it is not the complete solution."

It has been the view of the ODA Committee from its interaction with the business community and other sectors that those who now have barriers would be prepared to take an open-minded look at the benefits of a strong, mandatory ODA. Government statements acknowledge that those who have barriers, and who will have to remove them, can be expected to be receptive in this regard. The Government's framework for Change document states that the Government has "... a host of supportive stakeholders in municipal government, the disability community, the broader public sector and private sectors ready and willing to make it (i.e. a barrier-free Ontario) happen." It also states: "The private sector wants to do the right thing but says it needs more access to information and advice on how to do it."

Similarly, during second reading debate, speaking for the Government, Conservative MPP Carl DeFaria said "We know that the private sector is ready and willing to partner with us to make Ontario accessible..." (Hansard November 8, 2001)

The ODA Committee has emphasized that no matter how dedicated is the Ontario Human Rights Commission at removing and preventing barriers facing persons with disabilities, we need much more. The Commission and the Code are not enough. In its Framework for Change, the Ontario Government made statements to this effect. There it states: "The Ontario Human Rights Code and the Ontario Human Rights Commission have an impressive record in protecting the rights of all of Ontario's residents, including persons with disabilities. Yet more can be done."

Government statements acknowledge that this was the view held by many. It stated in its 1998 ODA Discussion Paper: "The protections of the Code are generally achieved by individuals filing complaints after discrimination has occurred. While individual complaints can remove barriers, many feel this is not the best way of achieving broad, lasting change."

Along the same lines, the ODA Committee has not suggested that the Human Rights Code or the Canadian Charter of rights contain weak rights. Rather, no matter how strong they are, 15 to 20 years of their operations have not gotten persons with disabilities where they need to go.

A government statement appears to echo this. On the third day of Second Reading, Debate, Conservative MPP Tina Molinari said: "Our foundation of legislation and services for persons with disabilities, including the federal Charter of Rights and Freedoms and the Ontario Human Rights Code, is considered the strongest in North America. But barriers do remain. We must finish the job."(Hansard, November 20, 2001)

Government statements recognize that mandatory measures are required in the ODA. The ODA Committee has always insisted that we cannot rely on voluntary measures to achieve our shared goal. The Government's Framework for Change document states: "Mandatory measures will ensure the government and its partners improve accessibility over time." As well, the Framework for Change states at least that mandatory requirements must also be imposed on municipal governments, and not only the provincial government. It states: "Perhaps no government has a more direct impact on our daily lives than the municipal level... That's why the mandatory participation of municipalities is key to realizing fully the government's vision for persons with disabilities."

Government's statements appear to echo the ODA Committee's emphasis that both the public sector and the business sector will benefit if standards for accessibility are set. Regarding the provincial government, the Government's Framework for Change document states: "The provincial government has a responsibility to set a high standard and to demonstrate leadership." Regarding the private sector, the Framework for Change states "The experience of working with the Greater Toronto Hotel Association; the Ontario Restaurant, Hotel and Motel Association; and Tourism Toronto, among others, has shown the government that private sector organizations recognize the sound business reasons for improved accessibility and can contribute significantly to the independence of persons with disabilities. These sectors and the Canadian Standards Association recognize that standards for customer service are key components to improving accessibility and are working with the government to ensure excellence in client service for persons with disabilities."

We have said that many of the barriers in the private sector are easy to fix. Ontario Government has now made statements that recognize an important, compelling example of this - an example which we ourselves have often used to point out the need for a strong ODA. The Framework for Change document states: "More than 20,000 retail businesses in Ontario can, for a modest cost, remove a front step - a barrier that persons with disabilities, mothers with strollers and seniors encounter every day. This small measure, along with other simple changes, could have an immense impact on the ease and independence of persons with mobility disabilities."

During Second Reading Debate, Conservative MPP Toby Barrett, speaking for the Government, stated "Minister Jackson this afternoon used the expression "barrier-free Ontario." At first blush I would think, is this possible or is this truly an insurmountable task? I think we all agree that a gap exists between where we are now and where we should be. I don't see this as one gigantic challenge, something we can bite off in one chunk. It will take time. I see it as a series of very small challenges.

I think of the example of the step in front of so many stores and commercial establishments. In the first place, usually, through design, a step like that need not be built. By and large, it's fairly simple to take out a concrete step and redesign the doorway. You have an accessible commercial establishment and the proprietors of that store have access to a new cadre of customers." (Hansard November 8, 2001)

The ODA Committee's message has included the need for standards to be set for the removal and prevention of barriers, and the need for these standards to be enshrined in regulations. Citizenship Minister Cam Jackson has made statements which adopt this message, both regarding the public and private sector, although he also refers to "guidelines" as well as regulations. On the third day of Second

Reading Debate, he stated: "What we need in this province are regulations and guidelines that will guide the rules of conduct for public and private businesses across this province, something that's been sadly lacking in this province, something that the federal government refuses to provide. As I've said on many occasions, you can win a case with the human rights tribunal only to lose it because there are no guidelines in this province or this country that can be upheld in a court of law." (Hansard November 20, 2001)

The ODA Committee has urged that under effective legislation, time lines must be imposed which vary with the time needed to remove the barriers in issue. A Government statement effectively echoed the essence of this when it stated in its 1998 ODA Discussion Paper: "Time frames for implementing approaches should be realistic. Approaches should recognize that time frames for implementation will vary depending on the sector and available resources."

We have encouraged the Government to listen to us and to the broad disability community, as we are the best resource available from whom the Government can learn how to address our issues most effectively. Government statements now acknowledge that this is true. During Second Reading Debate on Bill 125, he stated: "The most valuable lesson I learned was how powerful change could occur if the disabilities community was front and centre, was listened to, was asked for their input and it was acknowledged and acted upon. It sounds simple, but you'd be amazed how many communities don't even consider doing it." (Hansard November 8, 2001)

Along the same lines, Conservative MPP Frank Mazzilli said this on the second day of Second Reading Debate: "There are always issues when there's new construction, something that's overlooked, and I've got to tell you when something is overlooked it's embarrassing. It's embarrassing for the designers and it's embarrassing for the municipal and provincial governments that may have provided the funding to build those structures that something in the design stage was overlooked. Why was it overlooked? It was overlooked exactly because the disability community was not at the table overseeing the original design; something that they would have noticed right away and said, "This doesn't work." This second-floor issue, this elevator, the height of these buttons, all of those issues that became embarrassing to people were things that, had the input been there right from the start, would not have occurred.

The other thing is that having the disability community at the table overlooking everything at first will actually be cost-effective, because, as I've said, on some embarrassing issues it's not an issue of money; they've obviously been overlooked. You end up going back and redoing things. We all know that in construction when you have to go back and redo something that was done two weeks ago, that is brand new, you're effectively being inefficient and wasting taxpayers' money. The disabled community being at the table making those recommendations right from the start will in fact save taxpayers' money." (Hansard November 19, 2001)

Similarly, the Citizenship Minister said during the debate over his time allocation motion: "It is my firm belief that any policy or law will work much better when the very people it affects are directly involved and are working with it on a daily basis. Persons with disabilities understand the barriers that they are struggling with and confront on a daily basis. Their knowledge and their experience is the single most important contribution to our understanding of these necessary reforms." (Hansard November 21, 2001) During that same debate, Conservative MPP Diane Cunningham stated: "Disabled people want

to be involved in decisions regarding themselves. ...Giving persons with disabilities a role to play in decision-making that affects them is extremely important. It's a powerful tool, it's a tool for change and it's long overdue. ... People should be at the table with regard to actions that regard them." (Hansard, November 21, 2001)

We have also put emphasis on the extraordinary amount of public money which is spent on purchases and infra-structure. This spending power could dramatically influence the acquisition of accessible goods, services and facilities. The Government acknowledges how much it spends. During Second Reading Debate, Citizenship Minister Jackson stated: "This government, with taxpayers' dollars, has committed about \$1.8 billion in infrastructure, transit, new hospital construction and new university and college construction." (Hansard November 8, 2001) Conservative MPP Carl DeFaria stated in the Second Reading Debate: "The province alone spends billions of dollars on procurement each year." (November 8, 2001)

The Government acknowledges that it had promised Ontarians with disabilities that it would not create any new barriers with tax money. During Second Reading Debate on Bill 125, Citizenship Minister Jackson stated: "We believe it fulfils our promise that we will not create new barriers with taxpayers' money, something that the disability community has said makes no sense -- using their own tax dollars to create environments that create barriers for them. We clearly can do a better job, and it should be the law that we cannot create those barriers in public spaces."

In affording the disability community input into standards to be set, the ODA Committee believes that there must be a real and meaningful avenue for all to have their say, not just a chosen few. On this theme, Citizenship Minister Jackson made a statement echoing this during Second reading debate: "The disabilities community has many members who deserve a voice. There are many people in the disabilities community who deserve a voice on these issues. One person alone cannot represent the entire disabilities community. There are many voices, many needs and many unique challenges facing a broad range of citizens of all ages who are challenged by their disabilities." (Hansard November 8, 2001)

We have said that persons with disabilities must be afforded the opportunity to participate in identifying the barriers they face and the standards that must be enforced. For that reason, we have held many public forums across Ontario over these years, at which persons with disabilities did just that. Regrettably, in the vast majority of these cases, the Government's MPPs declined our numerous invitations to attend. We also regret that the Premier declined every invitation to attend.

Citizenship Minister Jackson has made statements which acknowledge the validity of our message. He stated during Second Reading Debate: "We need the disabilities community to come to the table and say, "These are the standards. These are the barriers we face every day." I don't face them. Why would I, as minister, sit there and say, "That sounds reasonable to me. A 36-inch-wide door? I guess that sounds fine." What's the difference between that and a 32-inch door? Don't say four inches. The difference is that you won't be able to manoeuvre a wheelchair or a mobile scooter or whatever." (November 8, 2001)

Finally, Government statements appear to agree with our view that to achieve a barrier-free Province,



among other barriers, it will be necessary for existing government buildings to be retrofitted. During the second day of Second Reading Debate, Conservative MPP Frank Mazzilli stated: "We have to have a starting point. It's pretty hard for governments of all sorts to go out and say, "We want a community to do something that we're not doing," if government buildings, say, are not accessible and yet we expect someone else to do that. So we have to have a starting point. If it's the provincial government that needs to lead by example, then we have to retrofit our buildings, the ones that are not currently retrofitted." (Hansard November 19, 2001)

In referring to this, we must emphasize that we do not believe that we need to wait for Ontario Government to tackle the retrofit of their own buildings before others address similar barriers.

In summary, these Government statements echo much of what the ODA Committee has been saying over the past 7 years about the need for strong, comprehensive mandatory legislation akin to that proposed in the ODA Committee's 1998 ODA Blueprint. We urge adoption of our proposed amendments in this brief to make Bill 125 live up to these Government statements.

## **APPENDIX 3 - DRAFT STRATEGIC PLAN FOR PREVIOUS ONTARIO ADVISORY COUNCIL ON DISABILITY ISSUES**

### **ONTARIO ADVISORY COUNCIL FOR DISABLED PERSONS STRATEGIC PLAN 1990 - 1995 (Draft)**

#### ***COUNCIL'S CHARTER AND MISSION***

The Ontario Advisory Council for Disabled Persons was established by the Lieutenant Governor of Ontario in 1975. In 1987, Council was given a three-year mandate as well as revisions to its Terms of Reference. Council's mandate was broadened to advise the government of matters that affect all disabled persons. To reflect these revisions, Council's name was changed from the Ontario Advisory Council on the Physically Handicapped to the Ontario Advisory Council for Disabled Persons. In March, 1990, Council's mandate was renewed until March, 1995.

COUNCIL'S MISSION, summarized from the Order-in-Council, is:

To advise the Government of Ontario through the Minister Responsible for Disabled Persons on matters pertaining to the well-being of disabled persons;

To promote the development and creation of opportunity for self-help for disabled persons;

To review current policies which have a bearing on disability;

To report annually to the Minister on the Advisory Council's recommendations and progress.

Council engages in three primary activities:

It identifies and addresses major issues;

It responds to emerging issues brought to the attention of Council by government, the community or individuals -- all of whom may request advice or comment on specific matters; and

It monitors policies and programs related to disability issues both within government and the community. It also monitors responses to recommendations contained in the reports it prepares on issues such as Transportation (1987), Independent Living (1988), and Employment (1990).

Council may also be asked to provide representation on a number of external committees (governmental or non-governmental) related to disability issues. It may also be invited to make submissions to other Agencies, Boards and Commissions.

Council holds six or seven two-day meetings every year. One or more of these meetings may be public consultations, held in various locations throughout the province. Recommendations arising from council's deliberations, once approved by full Council, are forwarded to the Minister for consideration

by the government.

Minutes of Council meetings, once approved by Council, are circulated to some 80 organizations, individuals and government ministries.

Council reports are printed in French and English and are presented to the Minister. They are made available to the public through distribution to government, the media, and interested individuals and organizations in the public, private or voluntary sectors in Ontario, across Canada or internationally. Reports are also available through the Ontario Government Bookstore.

Council's Annual Report is tabled in the Ontario Legislature by the Minister. Council is not a funding body. It does not undertake case management and is not involved in the delivery of programs. The provision of funding, primary research and program development and delivery is the responsibility of the government of Ontario.

### ***CURRENT ENVIRONMENT***

Since Council's inception in 1975, it has played a major role in advising the provincial government on the needs and issues of persons with disabilities. While not a primary function of Council, its work has also helped increase public awareness of, and positively change attitudes towards, persons with disabilities.

The work accomplished by Council and by many other groups, organizations and individuals concerned with disability issues, has resulted in an increased profile and a more public climate for such issues over the past 10 years.

Disability issues are entering a period of transition. Improved human rights legislation, which has fostered the integration of people with disabilities into mainstream Canadian life, needs to be enforced more stringently. Recent years have seen a commitment to change on the part of government, the private sector and the public - but the momentum must be maintained.

Although there have been considerable improvements in the quantity and quality of services, programs and policies for persons with disabilities, the delivery remains uneven and inconsistent. In addition, while many excellent programs for persons with disabilities have been developed, they still tend to be seen as "special" services and are not provided as integrated, "essential" services. Consequently, the challenge for Council, and the disabled community as a whole, will be to ensure the removal of all barriers to the full and complete integration of disabled persons into Canadian society.

### ***WHO DO WE SERVE?***

Council's primary responsibility is to the Government of Ontario, to which it reports through the Minister Responsible for Disabled Persons.

Ultimately, Council serves the 14 percent of Ontario citizens (1.3 million persons) estimated to have a disability.

## ***GUIDING PHILOSOPHY***

Council has based its work on the Ontario Human Rights Code, 1981 (revised 1986) and the Canadian Charter of Rights and Freedoms, which guarantees equal treatment with respect to services, goods and facilities without discrimination due to handicap.

Council has therefore decided that all its future work will continue to be based on the principles of equity in access to services, goods and facilities in accordance with human rights legislation. Council will pay particular attention to the equitable provision of quality services for persons with disabilities across the province.

## ***CURRENT ISSUES***

Having completed in-depth studies on transportation, independent living assistance and employment, Council has identified a number of important issues it feels are of concern and interest to disabled persons. It has determined that three issues, in particular, should become a priority during 1990-1995.

### *1. Children's Issues*

#### *Rationale:*

Services and supports must be available to children with disabilities and their parents to ensure that they are able to maximize their participation in society. Members therefore intend to address issues affecting children with disabilities. Goal:

To identify and make recommendations regarding issues that affect children with disabilities, their families and the systems that support them, in order to enhance their lifelong integration into the community.

#### *Objectives:*

Council will achieve this goal by:

Educating itself on the issues; Identifying current resources and existing literature; Scanning government and non-profit programs and services; Consulting with consumers, parents, professionals, and interest groups and organizations; Identifying service gaps; and Developing a comprehensive report containing appropriate recommendations to address identified issues.

### *2. Community Support for Persons with Psychiatric and/or Developmental Disabilities*

#### *Rationale:*

Over the past 20 years, there has been a major shift towards deinstitutionalization and placing persons with psychiatric and/or developmental disabilities in community settings. Council's mandate is to advise

the government on matters affecting all disabled persons. Members therefore intend to examine issues affecting persons with psychiatric and/or developmental disabilities in greater detail.

*Goal:*

To identify and recommend the services and supports needed by people with psychiatric and/or developmental disabilities to promote community living and enhance their quality of life.

*Objectives:*

Council will achieve this goal by:

Identifying and educating itself on the issues; Researching government legislation, programs and policies, and service agency programs; Consulting with consumers, support groups, the voluntary sector and service providers; and Making recommendations to address identified issues.

*3. Education of Professionals and Decision-Makers*

*Rationale:*

Council members agree that ways must be found to sensitize decision-makers so that the needs of disabled persons are considered and that barriers to integration are avoided.

*Goal:*

To seek ways to sensitize professionals and other decision makers, through their education, to the needs of person with disabilities in order to ensure that decisions made enhance the quality of life of disabled persons and promote their full integration into the community.

*Objectives:*

Council will achieve this goal by:

Identifying the professionals and decision-makers to be targeted and their professional affiliations;  
Identifying current educational gaps;  
Consulting with professionals and decision-makers to identify needs and concerns; and  
Developing recommendations to remedy identified problems in co-operation with professionals and decision-makers and their professional affiliations/organizations.

***OTHER ACTIVITIES***

As already stated, Council engages in three primary activities: it addresses major identified issues such as those identified above. It monitors response to its recommendations, particularly those made in its reports; and it responds to emerging issues.

### *Monitoring Function*

In addition to addressing the issues identified above, Council has also agreed to monitor the following:

Implementation of legislation affecting persons with disabilities;  
Long-term care reform;  
Revisions to and updating of the Ontario Building Code;  
Implementation of recommendations made in Council's reports on:  
Independent Living  
Transportation

Employment Council will also be considering the following issues during 1990-1995:

Abuse - Persons with Disabilities as the victims of crime  
AIDS  
Attitudinal Change Among Persons With Disabilities  
Education  
Learning Disabilities  
Literacy  
Native Issues  
Recreation  
Substance and alcohol abuse among persons with disabilities.

### *Response Function*

To the extent its resources will permit, Council will continue to respond to emergent issues raised by government, the community or individuals.

## APPENDIX 4 - THE RECORD OF ONTARIO GOVERNMENT COMMITMENTS ON THE ODA

The following is the record of the current Ontario government on its commitments on the Ontarians with Disabilities Act:

*Commitment:* On May 24, 1995, Mike Harris committed in writing to the Ontarians with Disabilities Act Committee that a Harris government would enact the Ontarians with Disabilities Act in its first term.

*Record:* The Ontarians with Disabilities Act was not enacted in the Harris government's first term, or in the first two-thirds of the Harris government's second term.

*Commitment:* On May 24, 1995, Mike Harris also promised in writing to the Ontarians with Disabilities Act Committee that he would work with the ODA Committee to develop this legislation.

*Record:* Since 1995, Premier Harris has declined each and every one of the twenty-seven separate written requests which the Ontarians with Disabilities Act Committee has made to meet with him. His four successive Citizenship ministers have had some meetings with the Ontarians with Disabilities Act Committee. However, the ODA Committee has maintained its request to meet with the Premier throughout this period, given his leadership role in Government and his written commitment.

*Commitment:* All members of the Ontario government in the Legislature unanimously supported passage of the all-party resolution of the Ontario Legislature proposed by MPP Dwight Duncan ((Liberal), passed on October 29, 1998, requiring that the Ontarians with Disabilities Act comply with the eleven principles which the ODA Committee had put forward.

*Record:* Neither Bill 83, a previous bill proposed by the current government, nor Bill 125, the bill currently before the Legislature, complies with the eleven principles. Bill 83 complied with none of those principles. As documented in this Brief, Bill 125 fulfils only one of those principles and falls substantially short on the others.

*Commitment:* In the October 22, 1999 Throne Speech, the Ontario government committed to bring forward an "action plan" on the development of the Ontarians with Disabilities Act within that session of the Legislature.

*Record:* No action plan on the development of the Ontarians with Disabilities Act was brought forward either in that session(which continued for some fifteen months) or afterwards.

*Commitment:* On November 23, 1999, the Ontario Legislature unanimously passed an all-party resolution proposed by MPP Steve Peters (Liberal) requiring that a strong and effective Ontarians with Disabilities Act be passed into law no later than November 23, 2001.

*Record:* As of November 23, 2001, no Ontarians with Disabilities Act was passed into law. Bill 125, now before the Legislature, was not passed by that date and is not strong and effective.

*Commitment:* According to current Citizenship minister Cam Jackson, the Ontario government had promised that no new tax money would be spent in creating new barriers against persons with disabilities, in a statement in the Legislature during second-reading debate (November 8, 2001). "We believe it fulfils our promise that we will not create new barriers with taxpayers' money, something that the disability community has said makes no sense -- using their own tax dollars to create environments that create barriers for them."

*Record:* Over its six and a half years in office leading up to the introduction of Bill 125, the Ontario government announced no initiative requiring that no new barriers be created with Ontario tax funds. The Ontario government eliminated a provincial policy, instituted in the early 1990s, which required that all new municipal buses whose purchase involved provincial tax funds be accessible. As well, ODA Committee members and supporters have experienced a range of barriers which have been created over the past six and a half years with Ontario tax dollars.



**APPENDIX 5 - THE 11 PRINCIPLES FOR THE ODA RESOLUTION  
UNANIMOUSLY PASSED BY THE ONTARIO LEGISLATURE  
OCTOBER 29, 1998**

In the opinion of this House, since persons with disabilities in Ontario face systemic barriers in access to employment, services, goods, facilities and accommodation; and since, all Ontarians will benefit from the removal of these barriers, thereby enabling these persons to enjoy equal opportunity and full participation in the life of the province; and since Premier Harris promised in writing during the last election in the letter from Michael D. Harris to the Ontarians with Disabilities Act Committee dated May 24, 1995 to:

a) enact an Ontarians with Disabilities Act within its current term of office; and

b) work together with members of the Ontarians with Disabilities Act Committee, amongst others, in the development of such legislation;

and since this House unanimously passed a resolution on May 16, 1996 calling on the Ontario Government to keep this promise;

Therefore this House resolves that the Ontarians with Disabilities Act should embody the following principles:

1. The purpose of the Ontarians with Disabilities Act should be to effectively ensure to persons with disabilities in Ontario the equal opportunity to fully and meaningfully participate in all aspects of life in Ontario based on their individual merit, by removing existing barriers confronting them and by preventing the creation of new barriers. It should seek to achieve a barrier-free Ontario for persons with disabilities within as short a time as is reasonably possible, with implementation to begin immediately upon proclamation.

2. The Ontarians with Disabilities Act's requirements should supersede all other legislation, regulations or policies which either conflict with it, or which provide lesser protections and entitlements to persons with disabilities;

3. The Ontarians with Disabilities Act should require government entities, public premises, companies and organizations to be made fully accessible to all persons with disabilities through the removal of existing barriers and the prevention of the creation of new barriers, within strict time frames to be prescribed in the legislation or regulations;

4. The Ontarians with Disabilities Act should require the providers of goods, services and facilities to the public to ensure that their goods, services and facilities are fully usable by persons with disabilities, and that they are designed to reasonably accommodate the needs of persons with disabilities. Included among services, goods and facilities, among other things, are all aspects of education including primary,

secondary and post-secondary education, as well as providers of transportation and communication facilities (to the extent that Ontario can regulate these) and public sector providers of information to the public e.g. governments. Providers of these goods, services and facilities should be required to devise and implement detailed plans to remove existing barriers within legislated timetables;

5. The Ontarians with Disabilities Act should require public and private sector employers to take proactive steps to achieve barrier-free workplaces within prescribed time limits. Among other things, employers should be required to identify existing barriers which impede persons with disabilities, and then to devise and implement plans for the removal of these barriers, and for the prevention of new barriers in the workplace;

6. The Ontarians with Disabilities Act should provide for a prompt and effective process for enforcement. It should not simply incorporate the existing procedures for filing discrimination complaints with the Ontario Human Rights Commission, as these are too slow and cumbersome, and yield inadequate remedies;

7. As part of its enforcement process, the Ontarians with Disabilities Act should provide for a process of regulation-making to define with clarity the steps required for compliance with the Ontarians with Disabilities Act. It should be open for such regulations to be made on an industry-by-industry basis, or sector-by-sector basis. This should include a requirement that input be obtained from affected groups such as persons with disabilities before such regulations are enacted. It should also provide persons with disabilities with the opportunity to apply to have regulations made in specific sectors of the economy;

8. The Ontarians with Disabilities Act should also mandate the Government of Ontario to provide education and other information resources to companies, individuals and groups who seek to comply with the requirements of the Ontarians with Disabilities Act;

9. The Ontarians with Disabilities Act should also require the Government of Ontario to take affirmative steps to promote the development and distribution in Ontario of new adaptive technologies and services for persons with disabilities;

10. The Ontarians with Disabilities Act should require the provincial and municipal governments to make it a strict condition of funding any program, or of purchasing any services, goods or facilities, that they be designed to be fully accessible to and usable by persons with disabilities. Any grant or contract which does not so provide is void and unenforceable by the grant-recipient or contractor with the government in question;

11. The Ontarians with Disabilities Act must be more than mere window dressing. It should contribute meaningfully to the improvement of the position of persons with disabilities in Ontario. It must have real force and effect.

## **APPENDIX 6 - ODA COMMITTEE'S BLUEPRINT FOR THE ODA**

### ***MAKING ONTARIO OPEN FOR PEOPLE WITH DISABILITIES: A BLUEPRINT FOR A STRONG AND EFFECTIVE ONTARIANS WITH DISABILITIES ACT***

*A Brief Submitted to the Ontario Legislature by the Ontarians with Disabilities Act Committee, April 22, 1998*

#### **CHAPTER 2**

##### ***THE CONTENTS OF THE ONTARIANS WITH DISABILITIES ACT***

This chapter sets out the specific principles that should be reflected in the Ontarians with Disabilities Act. It is based on the general principles and needs set out in Chapter 1 of this Brief. This is not intended to provide exhaustive, technical legal details of how the Ontarians with Disabilities Act should be written. Instead, it describes basic concepts and ingredients the Ontarians with Disabilities Act should include in order to be strong, meaningful and effective. The ODA Committee remains flexible and open to creative ideas, from our members and others interested in this area, on how to design an effective and meaningful Ontarians with Disabilities Act that is also practical and realistic.

*What is the Aim of the Ontarians with Disabilities Act?*

The Ontarians with Disabilities Act's objective is to achieve a barrier free society in Ontario for people with disabilities, a society whose workplaces, goods, services, and facilities will be designed and operated for all its citizens, including those with disabilities. Ontario will be a society in which people with disabilities can fully participate - a society where existing barriers have been identified and removed, and where new barriers are prevented before they arise.

*Who Should be Expected to Comply with the Ontarians with Disabilities Act?*

To achieve a barrier free society the Ontarians with Disabilities Act must apply to all provincial and municipal governments, as well as private and public sector organizations subject to the laws of Ontario. These organizations created the barriers that obstruct people with disabilities, often unintentionally. They must share responsibility for removing them. Most importantly, everyone must be involved in preventing the creation of new barriers. This means the law should apply to the Ontario Legislature and Government, the Ontario Public Service, all municipal, regional and local governments including all their committees and commissions, the broader public sector such as schools, school boards and hospitals, as well as all businesses and other organizations operating in Ontario.

Governments have special obligations to ensure all citizens have a full and equal chance to participate in society. The government cannot avoid its obligations under the Ontarians with Disabilities Act by downloading its responsibilities to other levels of government, or to the private sector by privatization. Even though the Government may decide not to deliver a program itself, where the government is providing the funding and setting the standards, it is obliged to ensure that barriers are removed and no

new barriers are created.

It is also important that institutions which symbolize the government and people should be accessible. This includes the Ontario Legislature, as well as MPPs' offices. Everyone, including people with disabilities, must be able to watch and participate in government.

#### *What Should the Ontarians with Disabilities Act Cover?*

Since the goal of the Ontarians with Disabilities Act is to ensure full participation in society by people with disabilities, it must cover the full range of activities, products, facilities, services and other opportunities used or enjoyed by the citizens of Ontario. In some cases the Ontarians with Disabilities Act would refer to specific activities, products, facilities and services. It must also be flexible enough to include any new developments. For example, ten years ago the internet barely existed. Today it is an increasingly important tool for communication, research and learning. The Ontarians with Disabilities Act must apply to new developments, such as the internet, to ensure that when changes occur, new barriers are not created. In our Fall 1997 survey our members told us that some of the most important areas the Ontarians with Disabilities Act must cover are:

- employment
- public transportation
- education and training at all levels (e.g. public schools, high schools, post-secondary institutions and job training programs)
- health and social services including health promotion
- communications and telecommunications
- recreational programs and facilities
- information provided to the public
- housing
- consumer products
- police and law enforcement
- tourism and entertainment

#### *What Kinds of Barriers Should the Ontarians with Disabilities Act Cover?*

The Ontarians with Disabilities Act should cover all types of barriers keeping people with disabilities from participating fully in society. For example, it should include: physical barriers, such as high curbs without curb cuts; communication barriers, like those faced by people who are Deaf and require sign language interpretation to communicate effectively; barriers faced by people who cannot read printed material and who require Braille, large print, tape or other alternative formats.

Other barriers to be covered include: discrimination in employment faced by many people with disabilities, including mental illness, developmental disabilities and learning disabilities.

#### *What Disabilities Would the Ontarians with Disabilities Act Cover?*

The Ontarians with Disabilities Act must be inclusive so all people with disabilities of all ages will benefit

from it. The definition of disability used in the Ontarians with Disabilities Act should include a broad range of disabilities including: communication disorders and speech impairments, learning disabilities, mobility disabilities, AIDS, kidney disease and other invisible disabilities, multiple sclerosis, Deafness and hearing loss, blindness and visual impairment, neurological disorders, traumatic brain injury, psychiatric and mental illness and diabetes. The definition of disability must be clear that the list of disabilities is not exhaustive, and that it can be expanded by regulation or by the courts in accordance with the principles set out in the Ontarians with Disabilities Act. No disability may be explicitly excluded from the Ontarians with Disabilities Act's definition of disability.

### *What Will the Ontarians with Disabilities Act Require?*

The Ontarians with Disabilities Act must clearly guarantee persons with disabilities the right to participate fully in a barrier free society. This includes a right to have existing barriers identified and removed. It also includes a right to have new barriers prevented.

It must state that no statute or regulation of Ontario, nor any municipal bylaw, can be passed or implemented if it conflicts with the requirements of the Ontarians with Disabilities Act. The Ontarians with Disabilities Act will apply fully and equally in all areas of the province, including cities, towns and rural areas.

Organizations, including businesses, that must comply with the Ontarians with Disabilities Act will be required to:

- identify barriers now existing within their organizations, keeping persons with disabilities from participating fully in their workplace and from participating fully in and benefiting from the goods, services and facilities which they provide;
- develop a plan for removing the barriers. The plan should set out stages in which barriers will be removed, and set a final date when they will be completely eliminated. It should also include steps to ensure new barriers are not created in future;
- carry out their barrier free plans.

Governments will have the same obligations as other organizations. Governments will have additional responsibilities such as:

Within a specified period of time, developing and carrying out a barrier free plan for each provincial ministry or department, applying to services that they deliver or have responsibility for delivering, and for the sector of society for which they are responsible. For example, some of the areas in which the government must act to remove existing barriers and prevent new barriers are:

- the education system (Minister of Education & Training)
- the Ontario system of colleges and universities (Minister of Education & Training)
- the health and long term care system (Minister of Health)
- the social services system (Minister of Community & Social Services)
- child care services (Minister of Community & Social Services)
- the justice system (Attorney General)
- policing services (Solicitor General)

- provincial and municipal public transportation (Minister of Transportation)
- the Ontario housing system (Minister of Municipal Affairs & Housing)
- Building Codes at the provincial and local levels (Minister of Municipal Affairs & Housing)
- labour issues including occupational health and safety (Minister of Labour)
- recreation and tourism (Minister of Citizenship, Culture & Recreation)
- making the Ontario Public Service a barrier free workplace (Chair of Management Board)
- making the Legislature and the electoral process accessible (Speaker of the House/Attorney General)
- taking steps to ensure that wherever possible government would purchase or rent only barrier free products, facilities and services. This would provide an incentive for companies providing services, facilities or products to remove existing barriers and prevent new ones from arising;
- reviewing existing legislation, regulations and policies, and new ones to be proposed in future, to ensure they are barrier free and, if necessary, making changes to eliminate barriers;
- making sure when a government program is delivered, whether by government, an agency or any other organization chosen by government, it is done in a way that is barrier free;
- working with people with disabilities to develop expertise in designing barrier free programs, goods and services, and using this expertise to help the private sector comply with the Ontarians with Disabilities Act.

The Ontarians with Disabilities Act must also give the provincial government authority and duty to develop, implement and enforce barrier free standards to apply across the entire province. Barriers are created in part because municipalities may each have a set of different standards, creating confusion and inconsistency. These new province-wide standards would apply to areas like transportation, zoning, or parking rules for people with disabilities.

Barriers must be removed and prevented in every area and region of the province. People with disabilities should have the ability to travel and live in any area of the province without having to face new barriers in each location.

The Ontarians with Disabilities Act must also do nothing to diminish rights that people with disabilities have under the Human Rights Code and the Building Code.

#### *How Should the Ontarians with Disabilities Act be Enforced?*

The Ontarians with Disabilities Act should provide prompt and effective ways to enforce the rights it guarantees. Although people should still be able to file individual complaints when they run into a barrier, there should be other ways of enforcing the ODA that do not depend on individuals filing complaints each time they face a barrier.

Self-enforcement by governments, businesses and other organizations covered by the Ontarians with Disabilities Act will be an important part of the enforcement process, by developing and implementing barrier free plans described above.

Funding must also be made available to organizations of people with disabilities that are involved in promoting a barrier free society and providing education, information and support for people with disabilities as well as business.

The Ontarians with Disabilities Act should establish an accountable and effective public agency responsible for enforcement of this law. Adequate funding must be available for this new responsibility. The ODA Committee cannot now take a position on whether the Ontario Human Rights Commission should be that agency. In 1995 the Premier made an election promise that his Government would increase funding for the Human Rights Commission. That promise was made in connection with the Commission's current responsibility of enforcing the Ontario Human Rights Code. Instead of keeping that election promise, the Government announced cuts to the Ontario Human Rights Commission's budget. Until the government restores the funding it said it would cut and keeps its election promise to increase the Commission's funding, the ODA Committee cannot consider the option of giving the Human Rights Commission even more responsibilities than it has today.

The enforcement agency should:

- report annually to the legislature on the progress made towards the goal of achieving a barrier free society. It should also identify where additional work is still needed;
- have expertise in the area of disability;
- receive complaints from both individuals and groups, and have power to bring a claim to enforce the ODA;
- have authority to look at systemic problems and come up with systemic remedies;
- have the power and obligation to make regulations to help enforce the Ontarians with Disabilities Act, including regulations setting standards in specific areas. In some areas, steps required to remove all barriers and prevent the creation of new ones may be clearly identified in the Ontarians with Disabilities Act. In some cases, change can happen quickly. For example, there is no cost or significant change needed for public transit services to require that operators announce each stop. In other areas, change may take somewhat longer. The Ontarians with Disabilities Act should require that regulations be passed by a specific date in specific areas of activity to set out these reasonable time lines;
- be required to consult with people with disabilities, business and other stakeholders before regulations are finalized. All activities of the enforcement agency, including the regulation making power, must take into account the diversity of the province, including regional concerns;
- be required to consider requests from persons with disabilities that specific regulations be developed to cover an area or sector.

The agency would also be required to consult with all stakeholders (people with disabilities, businesses, etc.) before deciding whether to enact proposed regulations;

- receive barrier free plans governments and other organizations will prepare and file with the agency (which should be available to the public), and take steps to enforce the Ontarians with Disabilities Act's requirements regarding these plans.

A Minister of the Ontario Government should be designated who will be responsible for achieving a barrier free society for persons with disabilities. The Minister should be responsible for:

- monitoring Ontario Government programs and laws to ensure that they are designed and operated in a barrier free manner;

- reviewing proposals brought to cabinet to ensure that they are barrier free and that they take into account the needs of persons with disabilities.

Municipal councils, school boards, government committees and commissions and other public agencies should adopt similar procedures for their activities.

All Ontario regulatory agencies, boards and tribunals must be required to consider the impact of any decision they make on barrier removal or prevention, and the achievement of a barrier free society for persons with disabilities. For example, the Health Services Restructuring Commission should be required to ensure that any restructuring of Ontario's health system is done in a way which both removes existing barriers, and which prevents new ones from being created as a result of the restructuring.

*What Remedies Should be Available for Breaches of the Ontarians with Disabilities Act?*

Remedies should be meaningful and effective. They must ensure that existing barriers are removed and new ones prevented. Remedies should include such things as systemic remedies, injunctions and damages. Class actions which could be brought by groups of people with disabilities should also be available.

The enforcement agency must have the power to enforce the Ontarians with Disabilities Act without waiting for a complaint from an individual.

*What Support Services Should be Available to Assist Organizations to Comply with the Ontarians with Disabilities Act?*

The Ontarians with Disabilities Act should require the Government of Ontario to provide education and other information resources to companies, individuals and groups to assist them in complying with the requirements of the Ontarians with Disabilities Act. People with disabilities must be involved in developing the education and providing technical assistance.

Organizations of people with disabilities should play a key role in assisting business, government and others with the implementation of barrier free plans.

*What Resources Should be Available to Help Finance the Cost of Achieving a Barrier Free Society?*

The Ontarians with Disabilities Act should provide, where feasible, financial resources to assist organizations, including businesses, to achieve a barrier free society. These could include subsidy programs and/or accelerated tax credits or deductions for expenditures specifically tied to compliance with the Ontarians with Disabilities Act.

People with disabilities and their organizations should be provided the necessary technical expertise and funding so they can participate effectively in the processes created by the Ontarians with Disabilities Act, such as the regulation-making process. This includes funding for travel and communications so that people living in all areas of the province have a full opportunity to participate.



*How Will the Ontarians with Disabilities Act Operate Together With other Important Legal Protections for People with Disabilities, Including the Ontario Human Rights Code, the Ontario Building Code and the Canadian Charter of Rights and Freedoms?*

The Ontarians with Disabilities Act must strengthen and complement the protections that now exist for people with disabilities under the Ontario Human Rights Code, the Charter of Rights and Freedoms, and the Ontario Building Code. Nothing in the Ontarians with Disabilities Act should reduce the protections for persons with disabilities in those laws. As well, the fact that an organization complies with another law does not mean that they do not have to follow the Ontarians with Disabilities Act.

**APPENDIX 7 - COLUMN ON ODA BY  
RETIRED SUPREME COURT JUSTICE  
PETER CORY**

*Toronto Star*  
*Tuesday, November 7, 2000*  
*Page A29*

*Disabilities legislation long overdue*  
*by Peter Cory*

Like others I would like to see enacted a strong Ontarians with Disabilities Act.

Two years ago, Former Supreme Court Chief Justice Brian Dickson called for legislation to tear down the barriers that impede Ontario's 1.5 million people with disabilities. Based on almost 25 years of judicial experience, I, too, believe that this legislation is long overdue.

Our society has far too many barriers that prevent Ontarians with disabilities from participating fully in community life. Two stairs to get into a restaurant, the lack of sign language interpreters for deaf persons who go to vote at a polling station, or posting job ads on a website that is not designed to be accessible to the wonderful new technology enabling blind and dyslexic people to surf the Internet are examples of how we unthinkingly continue to exclude people with disabilities.

A strong, effective Disabilities Act would benefit us all. It would ensure that those with a disability would finally be included in the rich and rewarding life of other residents of Ontario. Those who now have no disability may well incur a disability as they get older, and they too would be spared these barriers.

Business will profit from both the spending power of consumers with disabilities and talented employees with disabilities who have so much to offer. The taxpayer will benefit from the increased economic activity and from the removal of barriers that prevent more persons with disabilities from moving from social assistance to gainful employment.

I believe that Ontarians care about ensuring that people with disabilities are able to live in a barrier-free province and would support strong legislation removing those barriers. Many already know about the great barriers we have permitted to remain and are aware of the human, social and financial toll that these barriers have inflicted.

Others would benefit from learning from people with disabilities what is in store for all of us if we do not act as a society now. The impressive number of municipal councils - more than 20 - that have passed resolutions calling for this legislation, shows that Ontarians would welcome and support an effective Disabilities Act.

From my experience, I can say that this is a matter requiring mandatory legislation. We applaud those

who have taken it upon themselves to voluntarily try to remove barriers. However experience in Canada and abroad shows that without clear, mandatory legislation, things will not change in a timely manner.

It is the Legislature's role to set standards for all of us. We know how important this is in areas like the environment, criminal law, and public health. It is no less important for making our society barrier-free for all who have a disability.

A law cannot be "voluntary." It must be mandatory.

I am troubled by any thought that our existing laws, like the Charter of Rights and the Human Rights Code, are enough to solve this problem. Those very important laws should never be cut back. However, it is ineffective, inefficient and inhumane to leave it to vulnerable members of our society, who often cannot pay lawyers for protracted litigation, to bring legal proceedings against each barrier they face, one at a time.

One example suffices. I was a member of the Supreme Court when the unanimous decision was rendered in *Eldridge v. B.C.* It held that the Charter of Rights requires governments to ensure that sign language interpreters are provided for deaf patients in hospitals, where needed to effectively communicate with their doctor.

In Ontario, it took over two years for provincial funds to be appropriated to comply with our ruling. People with disabilities should not have to suffer years of gruelling litigation, only to find that the requisite government funding was long delayed. A strong Ontarians with Disabilities Act would provide a more sensible, less costly way of addressing the existing problems and preventing new ones.

We can learn from other societies that have made more progress than we have in this area. Most importantly, we should learn how to resolve this problem from those who know most about it -- people with disabilities. We can learn from their ingenuity in adapting to our society, which has so often failed to recognize and respect their desire to be fully participating and contributing citizens.

Let's accept their offer of help in designing and enacting the strong Ontarians with Disabilities Act which they so urgently need and deserve.

Peter Cory served as a judge on the Supreme Court of Canada from 1989 to 1999, on the Ontario Court of Appeal from 1981 to 1988 and on the Supreme Court of Ontario from 1974 to 1981.

**APPENDIX 8 - COLUMN ON THE ODA  
BY THE LATE CHIEF JUSTICE OF CANADA,  
BRIAN DICKSON**

*Toronto Star*  
*Wednesday, October 7, 1998*  
*Page A28*

*Disabilities Act must have teeth*  
*By Brian Dickson*

I urge that the Ontario government proceed with the sweeping barrier removal legislation it has promised.

Full participation of members of the disabled community will benefit and enrich Canadian society as a whole. In the legal sphere an Ontarians with Disabilities Act would maximize access to justice by minimizing the need for costly litigation. One clear beneficiary of such a law would be the courts.

The courts of Canada have been called upon, through the enactment of federal and provincial human rights legislation and the equality clause in the Canadian Charter of Rights and Freedoms, to identify and remove discriminatory barriers faced by persons with disabilities.

This was a task the courts did not seek. It required that we consider a number of interpretive aids with which many of us were not previously familiar. While it may not have been a role we sought, I am proud to say it was a responsibility which we did not shirk.

For years the courts have grappled with the meaning of equality in the context of disability. The Supreme Court of Canada, in a series of decisions written after my retirement, has provided clear guidance.

The court held in unanimous decisions in these cases that integrated education should be the norm of general application for students with disabilities, that each child should be accommodated in the manner which best meets the child's needs; and that while an employer may be under no obligation to offer its employees a long-term disability plan, having done so, the plan must not single out members of particular disability groups for discriminatory treatment. Most recently, the court held that the province must provide deaf patients with sign interpreters so they can communicate effectively with their health-care providers.

One might infer from these decisions that the disabled community's problems have now been solved. It need only identify a barrier, secure the assistance of qualified counsel and wait for the Supreme Court of Canada to find in its favour.

Please let me explain why I draw the opposite conclusion.

In Canada, courts and legislatures do not exist in isolation from each other. The courts must exercise their constitutional authority in a manner which enhances rather than detracts from democracy. At the same time, the legislatures must act in a manner which is consistent with the rule of law.

Thus, when the courts have spoken, as they so clearly have, it brings justice into disrepute to disregard what they are saying.

It may be in the short-term financial interests of a government to require people with disabilities to litigate the removal of every barrier. As a group, they are generally poor. Legal aid resources are in scarce supply. But such an approach would not only place an impossible strain on these resources, it would also put a strain on the moral authority of the courts. When the Supreme Court of Canada has spoken it should not have to repeat itself.

Compliance with the court's decisions can be viewed quite narrowly. For example, I understand the Ontario Ministry of Health is still considering whether it will take action as a result of the Eldridge decision. British Columbia has established a sign interpreter service within the time frame fixed by the court. Having been given evidence that deaf patients in Ontario do not have access to sign interpreters, and that in some areas access has actually worsened as a result of hospital restructuring, I would have thought the province's responsibility was quite clear.

In my opinion, compliance should extend further to include the spirit as well as the letter of the court's decision. While the Eldridge decision directly applied to health care, the right to effective communication could just as easily arise in a range of analogous circumstances.

Take post-secondary education as an example. Apparently, deaf students are simultaneously losing access to specialized schools in the United States and having their funding for interpreters at Ontario colleges and universities reduced. I am concerned that in these areas the compliance gap would appear to be widening.

By enacting a strong Ontarians with Disabilities Act, the government of Ontario would be demonstrating respect for the courts, as well as concern for the equality rights of the province's disabled citizens.

The courts function best when called upon to ensure the consistent application of commonly held principles. They struggle when compelled to devise broad policy responses to meet particular needs. Legislatures with their mechanisms for consulting those who will be affected, and the public service to provide it with technical advice, are in the best position to carry forward the barrier removal process with due regard to the guidance provided in the cases to which I have referred.

If the Ontario government's consultation process is accessible to persons with disabilities, I am confident people with a broad range of disabilities will be heard about the barriers they face. Some of these barriers have existed for generations. Others have been created. Some will require a resolute if incremental approach; others the reversal of decisions made without an awareness of the impact they would have on persons with disabilities.

The former minister promised the disabled community an ODA with teeth. By this, I assume she meant a act worthy of comparison with the Americans with Disabilities Act (ADA).

We can benefit from the American experience. Coming from a country not noted for leadership in government intervention or social programs, the American Disabilities Act demonstrates a sincere American commitment to the goal of creating a barrier-free society.

I understand it has opened the prospect of a post-secondary education to many who would otherwise have been denied one. Americans with disabilities enjoy equal access to public transportation. Major software manufacturers now take account of their blind customers and television networks accommodate their deaf viewers.

I understand the representations by disability groups have now concluded. I look forward to reviewing the bill the Hon. Isabel Bassett has indicated will be placed before the Ontario Legislature this fall.

I hope the legislation is powerful and helps those in the disabled community who are in need of help.

Brian Dickson, former Chief Justice of the Supreme Court of Canada.