

ONTARIANS WITH DISABILITIES ACT COMMITTEE

**BRIEF
TO THE ONTARIO LEGISLATURE'S STANDING COMMITTEE
ON FINANCE AND ECONOMIC AFFAIRS
ON BILL 125,
THE PROPOSED ONTARIANS WITH DISABILITIES ACT**

NOVEMBER 29, 2001

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MAKE BILL 125 STRONG AND EFFECTIVE

WHO IS THE ODA COMMITTEE?

The ODA Committee is a grassroots, voluntary, non-partisan coalition of individuals and over 100 community organizations organized in 23 regions of Ontario. Founded in late 1994, we have united to achieve a barrier-free Ontario for all persons with disabilities through the prompt passage of a strong, effective ODA. We include over 100 organizational members and many individual members, both with and without disabilities. We have extensive experience and expertise with the wide range of disabilities.

Through our volunteer efforts we have brought our message to the Ontario Government, the opposition parties, the public and the media.

WHAT WE WANT THE ODA TO INCLUDE

Leading the province-wide movement for the ODA, we developed 11 principles that this legislation needs to contain. The Legislature and several municipal councils have adopted these. Over three years ago, we presented the Legislature with a detailed blueprint for the ODA based on those principles. (Our 11 principles and blueprint are the result of extensive consultations across Ontario. We have always been eager to discuss these with the Government and to work together on the details of legislation to ensure that these are reflected in the Ontarians with Disabilities Act.

According to our 11 principles, the ODA's purpose should be the achievement of a barrier-free Ontario for all people with disabilities. It should cover all disabilities, whether physical, mental or sensory. It should cover all barriers, and not just physical barriers.

All public and private sector providers of goods, facilities and services should be required to remove and prevent barriers. Time lines and standards should be decided upon through a consultation with all stakeholders. The legislation should set out the time lines for developing these standards and a process for consultation.

The same requirements should apply to all employers. There should be an effective and speedy way to enforce the law besides filing human rights complaints for each barrier in individual circumstances. People with disabilities should be able to propose regulations which the Government must consider adopting in order to set standards for barrier removal and prevention sector by sector and industry by industry. Regulations are laws which the ODA would permit the provincial Cabinet to make setting out the detailed standards for removing and preventing barriers.

OUR ASSESSMENT OF BILL 125

Our detailed analysis of Bill 125, included in the appendices accompanying this brief, shows that this bill is weak and ineffective. It is not novel, "leading edge", innovative legislation. It needs amending in key

areas to be strong and effective, and to fulfil the goals for the bill set by the ODA Committee and the government's November 1, 2001 "Vision Statement." We reiterate what Conservative MPP John O'Toole said of the bill during Second Reading Debate, i.e. it is "a very limited step." (Hansard November 20, 2001)

Nothing in the bill requires barriers to be removed or prevented within any specific time frame. Nothing requires that people with disabilities be consulted on the development of regulations and guidelines, except for the narrow area of guidelines regarding newly acquired or renovated government buildings.

There is no guarantee that effective regulations dealing with the private sector will ever be enacted or put into effect. The bill permits the Minister or the Government to exempt all or part of the public sector from the Act. The Minister or the Government does not have to give reasons for granting an exemption, or even have a good reason for doing so.

The bill allows the Government to create a wide range of regulations. This does not mean that any regulations will ever be made. The bill does not fix a time frame within which regulations to be made, or require that they be effective, i.e. that they make a difference for the people for whom they are intended. The bill commits no public funds to help with the cost of removing barriers in Ontario.

The bill establishes no consequences if one does not obey the law, except for the single barrier of improperly parking in a designated handicap parking spot. If one believes that an organization is not removing or preventing barriers when it could or should, there is nowhere to go to get the bill effectively enforced or to get a remedy. All one can do is what was always available, namely file an individual human rights complaint, one barrier at a time, and possibly litigate for years. Even if one wins their case, a ruling may only apply to that single barrier.

Our analysis shows that this bill does not include several important features that the Government says it contains. For example:

The Government says that this bill fulfils our 11 principles. In fact it only complies with one and falls substantially short on all others.

The Government says the bill's purpose is to achieve a barrier-free Ontario. In fact, its much narrower purpose is merely to "improve opportunities" for persons with disabilities and to provide for their "involvement" in barrier identification, removal and prevention.

The Government says the bill puts the disability community in the "driver's seat," driving change and having input into regulations and standards. In fact as stated above, the bill guarantees the disability community no right to input into regulations, standards or guidelines, except narrow guidelines on some government buildings. It does not guarantee the provincial disability advisory council any role in developing regulations or standards under the bill.

The Government says this bill includes two leading-edge innovations, a new provincial disability advisory council and a disability directorate. In fact, both have very limited mandates. Neither is new. Shortly after taking office, this Government abolished a similar provincial advisory council, that had 20 years

experience of advising provincial governments. Five other provinces now have such councils. As for the proposed Directorate, in the 1980s, the Ontario Government had a separate disability secretariat with its own minister. In the 1990s this was merged with the Citizenship ministry and later significantly downsized.

Our analysis shows that in significant part, this bill repeats matters that are already law in Ontario, and offers up several measures that the Ontario Government could have undertaken throughout its two terms without having waited to start for new legislation (e.g. annual ministry barrier removal plans).

The Government says that under this bill, it will lead by example. Yet it has said throughout its mandate that it has already been leading by example on this issue.

This Government has made a number of statements about what persons with disabilities need and what they seek in this legislation. Their statements prove the case for enacting a strong, effective, mandatory and comprehensive ODA. However, Bill 125 does not live up to those statements by the Government. It does not achieve the benefits for Ontarians with disabilities, for Ontario's business community and for all Ontarians that a strong and effective ODA could bring. Both the Government's own public opinion poll and our public opinion research and feedback support the kind of ODA we have been seeking.

OUR PROPOSED AMENDMENTS

In this brief, the ODA Committee proposes a set of detailed amendments. These are designed to achieve four goals: To make the bill include all the things that the Government says it includes; to make the bill fulfil all 11 principles for the ODA (which the Legislature unanimously adopted by resolution on October 29, 1998), to ensure that the bill is "strong and effective" (in accordance with this Legislature's unanimous November 23, 1999 resolution), and to clarify the bill's vague and confusing wording.

Our amendments would:

- make the bill's purpose the achievement of a barrier-free Ontario.
- require barriers to be identified, removed and prevented within specific time frames.
- require that regulations under the bill be made within time frames set in the bill.
- ensure that the bill extends requirements for barrier removal and prevention to the private sector as well as the public sector.
- prevent new barriers from being created with taxpayer's money.
- establish a truly effective consultative and inclusive process to develop regulations and standards which ensure the disability community a voice in these, because of their unique expertise.
- establish effective ways to enforce the legislation, and

- strengthen the role of the provincial council and the municipal advisory committees, so that they have a meaningful role, they are accountable to the disability community and cannot be ignored.

ODA COMMITTEE'S PROPOSED AMENDMENTS TO BILL 125

INTRODUCTION

The following are amendments which the ODA Committee proposes for Bill 125. This bill's preamble reinforces the goals and vision put forward by the ODA Committee, namely the creation of a barrier-free society that provides full citizenship for and full participation by persons with disabilities in all aspects of Ontario life. The following amendments serve to achieve this goal.

One theme among these amendments involves an important change of terminology in the bill. Through the bill, the term "accessibility" has been used. In our proposed amendments, we replace that term with "barrier-free." This term is more inclusive. To some, "accessibility" appears to connote only or primarily removal of physical barriers. It is important that the ODA address all barriers, and that it be clearly heard and seen to address all barriers.

1. Purpose Clause

Recommendation 1: Replace the purpose clause set out in s. 1 with:

The purpose of this Act is to achieve a barrier-free Ontario for persons with disabilities, through the identification and removal of existing barriers and the prevention of new barriers which prevent persons with disabilities from fully participating in all aspects of life in Ontario and to ensure that they play central role in the mechanisms established to achieve this goal.

Rationale: Section 1 of the bill now only refers to improving opportunities rather than achieving a barrier-free Ontario. The language in the preamble is stronger than the bill's "purpose" section. The goal of a barrier-free province should be clearly enshrined in the purpose clause. It is the purpose clause that will be used as a guide to interpreting the rest of the legislation. This proposed amendment makes the bill's purpose clause more suited to the preamble and some of the Government's stated goals as well as those of the ODA Committee.

2. Definitions

Recommendation 2.1: Amend the definition of barrier in s. 2 to read:

"barrier" means anything that prevents a person from fully participating in all aspects of society because of his or her disability.

Without limiting the generality of the foregoing, a barrier can be a physical barrier,

including architectural barriers, an information or communication barrier such as a method of communication, an attitudinal barrier and/or a technological barrier, and barriers can include a policy or practice.

Rationale: As now written, the definition of barrier is too restrictive. Our goal is to ensure that the definition of "barrier" is as inclusive as possible, i.e. it must include all obstacles against all persons with any disability.

Our amendment removes the current wording: "that is not an obstacle to access for other persons." Whether or not people without disabilities are affected by the barrier should be irrelevant. Under the current definition, stairs in front of a building might not be a barrier. This is because they are a barrier not only to people in wheelchairs, but also to persons without a disability pushing a baby stroller or shopping cart.

Recommendation 2.2: Amend the definition of "disability" to add environmental and chemical sensitivity and brain injury as follows:

(a) any degree of physical disability, infirmity, malformation or disfigurement, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, chemical and environmental sensitivities, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device,

(b) an intellectual disability,

(c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,

(c)(1) a brain injury

(d) a mental disorder, or

(e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997; ("handicap")

Rationale: brain injury and chemical and environmental sensitivities are added by our amendment. The term "developmental disability" is changed to intellectual disability. The requirement in the current bill that the disability must be shown to stem from bodily injury, illness or birth defect in the first paragraph was removed. This is because the cause of the disability is irrelevant.

Recommendation 2.3: Amend the definition of "Government of Ontario" to include "the legislature and Legislative assembly of Ontario and its officers."

Rationale: This avoids any dispute over whether the requirements of the ODA apply fully to the Ontario Legislature in all respects. As we have learned throughout the years of advocating for the ODA, the Legislature itself has too many barriers impeding persons with disabilities from experiencing full citizenship at the very heart of our provincial democracy.

Recommendation 2.4: Amend the definition of "ministry" to provide:

"ministry" means a ministry of the Government of Ontario and includes any other organization that the regulations designate as a ministry for the purposes of this Act, but does not include an organization ("ministère");

Rationale: this amendment would remove the ability of the government to exempt a Ministry from the application of this legislation. There is no reason why any ministry of the Ontario Government should be granted an exemption from the requirements of the ODA. This is particularly so since the Ontario Government has stated that it intends the provincial government to "lead by example."

Recommendation 2.5: Amend the definition of Ontario government publication as follows:

"Ontario Government publication" means a publication or an appendix to a publication in any form, including print and electronic forms, that the Government of Ontario, an officer of the Assembly or an officer of the Legislature issues; or a publication that is created by any organization with funds provided by the Ontario Government.

Rationale: In today's society information is the basis for full participation in all aspects of life, such as education, employment or social interaction. The definition should be broad and expansive rather than one that is narrow and that permits exceptions. The information dealt with in this section is important not only to the public, as citizens and taxpayers, but also to people who are employed in the government and elsewhere. Excluding technical and scientific material, as the provision currently does, could have a significant adverse impact on the ability of a person with a disability to obtain employment or otherwise participate fully in society.

Recommendation 2.6: Delete the definition of "Scheduled organization" and the related schedule to the bill.

Rationale: Under the bill, an organization outside certain categories is not covered by the ODA unless it is "scheduled" i.e. included in the schedule to the bill. The bill now lets Cabinet add or remove any organization it wishes from that schedule. The bill sets out no criteria or basis for Cabinet determining when and if an organization should be scheduled.

Instead, the ODA Committee believes that the legislation should apply to all organizations, including the private sector. The only policy question is the time frame in which the legislation's obligations should

come into effect for particular classes of organizations. Our amendment here helps implement our approach. Our other amendments taken together address this policy question. For example, our other amendments, among other things, delete the term "scheduled organization" wherever else it appears in the bill.

Recommendation 2.7: Add a definition for "organization"

"Organization" means any person, entity, or class or persons or entity carrying out a business, enterprise or other activity that offers goods, facilities or services, and without limiting the generality of the foregoing, includes Every district school board as defined in section 1 of the Education Act and every board established under section 68 of that Act, Every hospital as defined in the Public Hospitals Act and every private hospital operated under the authority of a licence issued under the Private Hospitals Act, A board of governors of a college of applied arts and technology, and Every university in Ontario, and its affiliated and federated colleges.

Rationale: There is nothing now in the legislation that defines "organization" to ensure that those who provide goods, facilities and services are subject to this legislation. Our amendment achieves this goal. Moreover, this amendment ensures that the term "organization" includes within it all those who had been defined as "scheduled organizations" under the bill as currently drafted. In the last recommendation, we proposed removing the term "scheduled organization" from the bill. Here we make sure that bill's coverage definitely includes all those who had been listed in the "scheduled organization" definition.

Recommendation 2.8: Amend the definition of employees of the Government of Ontario as follows:

For the purposes of this Act any reference to "employees of the Government of Ontario" also includes consultants, agents or contractors or anyone else doing work with or for the Ontario Government in order to ensure that all persons paid with government funds for their work or services are covered by this legislation.

Rationale: As the bill is now written, it does not apply to all persons with disabilities who do work with or for the Ontario Government. It covers only those defined in law as "public servants." Many people who work for the Government and provide government services directly or indirectly, including persons with disabilities, are not in the group defined as "public servants." The definition of public servants in Ontario legislation is: "public servant" means a person appointed under this Act to the service of the Crown by the Lieutenant Governor in Council, by the Commission or by a minister; and "public service" has a corresponding meaning ("fonctionnaire," "fonction publique"). is no reason why the ODA should address only barriers facing some persons with disabilities who do work with or for the Ontario Government, rather than all of them.

3. *Rights of People with Disabilities Not Reduced*

Recommendation 3: Amend s. 3, recognition of existing legal obligations, as follows:

Nothing in this Act or in any regulations or standards or guidelines made pursuant to it diminishes in any way the obligations of any person or organization, including the Government of Ontario, to persons with disabilities.

Rationale: It is fundamentally important that it be made clear in this bill that nothing in this legislation in any way restricts or reduces the obligations of the Government or any other person or organization to persons with disabilities. The ODA must enhance the rights of persons with disabilities. Nothing in it should be allowed to reduce their rights.

All s. 3 of the bill now protects is "the operation of the Human Rights Code." That is too narrow.

4. *Obligations of the Government*

Recommendation 4: s. 4(1) should be amended as follows:

In consultation with persons with disabilities through the Barrier-Free Council and Directorate and others, the Government of Ontario shall develop and adopt barrier-free design standards to promote accessibility for persons with disabilities to buildings, structures and premises, or parts of buildings, structures and premises, that the Government owns, purchases, leases, or constructs whether or not the building is significantly renovated after this section comes into force. These standards must address all types of barriers, not only barriers to physical access.

For the purposes of this section, the obligation to develop standards can include adopting or adapting existing guidelines.

The standards must be incorporated into regulations no later than six months after they are completed.

Also amend s. 4(3) as follows:

Regulations setting out the time frames for the development and adoption of the barrier-free design standards or other criteria shall be created no later than six months after this legislation is proclaimed in force. The criteria used to determine the time frames may include cost, projected future occupancy, use of the building, and other relevant factors. The regulation shall be developed after consultation with persons with disabilities and other stakeholders affected by the regulation.

The Government of Ontario shall certify that the design of buildings, structures and premises, or parts of buildings, structures and premises, that it owns, purchases, leases

or constructs complies with the standards before occupation of the premises or regular use of it by its employees. The certification should be publicly displayed at the site and made available to the public on request. Buildings should be re-certified on a regular basis as determined by regulation.

The standards are not regulations within the meaning of the Regulations Act.

Rationale: The provision should specify how the consultation will occur. Preferably there should be an independent agency charged with developing the standards. However in the absence of this type of body, the Government must ensure that the people with the appropriate expertise develop the standards.

The bill at present is too limited both in terms of which buildings are covered and which barriers are to be addressed. Now the bill covers only newly acquired and newly renovated government buildings, rather than all government buildings. It also covers only barriers to physical access, not all barriers. It is important to specify in the legislation that all barriers must be addressed. Barriers other than physical access might include having a space for persons who need to find a safe area during a period of high stress, ensuring that the lighting can be modified for persons with epilepsy so that it does not trigger a seizure, and considering the needs of people with environmental and chemical sensitivities.

This section should apply to current buildings, not just newly occupied buildings. The time line for barrier removal may depend on the type of building. However, failing to include current occupancy significantly reduces the impact of the legislation. The alternative to these proposed amendments would be to force persons with disabilities to have to continue to depend solely on the protracted process of individual Human Rights complaints to remove existing barriers.

Subsection 4(2) should be deleted. It permits the standards to be as low as the standards in the Ontario Building Code. If the goal of the legislation is barrier removal and prevention, then nothing short of barrier removal should be acceptable. The Building Code has many limitations, and addresses only a narrow range of barriers. To accept it as a minimum level beyond which the standards need not go, would effectively exclude the removal and prevention of many significant barriers, including those referred to above.

Subsection 4(3) should be significantly amended. The time frames should be set by regulation rather than guidelines, so that they are enforceable and there is public accountability. There should be a public process for comment on the time lines, with rationales provided by the Government.

There should be no power to exempt any class of building or structure from the application of this legislation if it is to be meet its purpose to create a barrier-free society. Where the cost of physical renovations to a particular site is very expensive, the ministry's barrier free plan may include in the interim effective alternative mechanisms for delivering services rather than prompt physical renovation, such as an alternative location.

By replacing the term "ensure" in subsection 4(4) with "certify", as we here propose, our amendment would signify compliance with a specific process and documentation requirement. This could be similar

to elevator inspections, for example. By making the certification publicly available, the public would be able to help evaluate compliance. The purpose of the re-certification is to ensure that compliance is maintained. It also makes a certifying person accountable for his or her decision. Standardized public symbols for certification would be extremely helpful.

It is not enough simply to require the Government to consider compliance with the regulations or standards. The Government must commit not to lease premises that are non-compliant. Where that is not possible, the premises must be brought into compliance. If this section were to permit exceptions, it will perpetuate the expenditure of taxpayer dollars for premises that maintain barriers for people with disabilities. That would be contrary to the spirit and purpose of the legislation.

Re Subsection 4(6): For the reasons stated above, this section should be deleted. The standards should be set in regulation. This ensures that there is publication of the standards, consultation prior to their enactment (see amendments to s. 22 below), and the ability to enforce non-compliance.

5. *Government Purchasing Goods and Services*

Recommendation 5: Section 5 should be amended as follows:

The Government shall not purchase goods or services for the use of itself, its employees or the public that create or maintain barriers for persons with disabilities. Where this is not possible because the goods or services are not available in an appropriate form, the Government shall ensure that the benefits of the goods and services are available for persons with disabilities at no extra cost or effort to persons with disabilities.

The Government, in consultation with persons with disabilities and others through the Directorate, shall develop regulations setting out the standards for barrier-free goods and services.

Rationale: The provisions in the bill in this area now simply ask the Government to "consider" accessibility when purchasing goods and services. This is not sufficient to promote, much less to ensure, a barrier-free society. As a large purchaser of goods and services, the Government can play a leadership role and have a significant impact on society as a whole by demanding goods and services that are barrier free.

The additional section in our proposed amendment recognizes that like the standards for buildings, there must be standards for barrier free goods and services. These must be developed in consultation with persons with disabilities. Without these standards, and without an inclusive process to develop them, it is unlikely that those responsible for government purchasing of goods and services will be able to effectively identify potential barriers. We want to avoid their unwittingly perpetuating the use of government funds to buy goods and services which are not fully usable by persons with disabilities.

6. Government Websites

Recommendation 6: Section 6 should be amended as follows:

The Government of Ontario shall ensure that its internet sites and the content provided on those sites are barrier free. This includes ensuring that the websites do not contain content or form that perpetuate attitudinal barriers, as well as physical barriers.

Rationale: Currently, the bill only requires that the format of Government web sites be accessible. It is not only the web site format that must be barrier-free, but the content itself. It is also important to address the attitudinal barriers to ensure that people with disabilities such as mental illness do not find themselves excluded or stigmatized by the web site or the material on the site.

7. Government Publications

Recommendation 7: Section 7 should be amended as follows:

Government publications must be barrier free in terms of both format and content. Regulations must be developed and enacted within six months of this legislation coming into effect, setting out the standard formats in which material must be available. Where a needed format is not required in the regulations, the government must make all reasonable efforts to respond in a timely way and in any event, in not more than 72 hours, to any request for different formats. Whenever a document has been created in electronic form, it shall be available forthwith in an electronic form that is accessible on request.

In terms of content of government publications, information must be available in ways that can be understood and be free of content which would stigmatize or otherwise create a barrier for a person with a disability. Assistance in understanding Government publications must be made available to those persons who have a need for that information and whose disability makes it difficult for them to understand complex material. Where possible, plain language should be used in these publications to foster access to them for all.

Rationale: Information is a critical component of everyday life. People with disabilities should not be disadvantaged by having to make special requests, be unsure as to whether the request will be honoured and, if so, when. The inability to access critical information can affect a person's livelihood, legal rights and full participation as citizens. There will be times when some formats are not immediately available. This should be dealt with within 72 hours. It is also important, as with the web sites, to address the content of government publications in terms of the potential to stigmatize people and create attitudinal barriers, and to ensure that the information itself is able to be understood by everyone.

8. Government Employees

Recommendation 8.1: Section 8 should be amended to provide as follows:

The Government of Ontario shall create and maintain a barrier-free work environment in which persons with disabilities can obtain employment, maintain employment, fully participate in all aspects of work life, and advance in their career goals.

Rationale: In its present form, s. 8(1) simply repeats what has been the Government's obligation for 20 years. The government is already required to comply with the Ontario Human Rights Code.

Under the bill as currently drafted, the Ontario Government can operate its workplace without regard to the needs of employees with disabilities. The Government can leave the burden on employees with disabilities to seek job accommodation to their disabilities, and file human rights complaints if they are not accommodated.

Our amendment is intended to take a more constructive and proactive approach. It obliges the Ontario Government to actively create a barrier-free workplace for its employees.

Recommendation 8.2: Section 8 should be further amended as follows:

The obligation to create a barrier-free work environment includes all aspects of employment including recruitment and hiring, training, promotion and employment-related interaction.

Rationale: As drafted, the section in the bill now suggests that it applies only if the Government decides that they want to interview the person with a disability. Our amendment is based on the idea that steps should be taken by the Government pro-actively to inform the public that Ontario is committed to a barrier-free workplace environment, and to encourage people with disabilities to apply for positions and promotions in it.

In addition, the section now suggests or implies that the accommodation to which it pertains relates only to physical barriers. This is because the provision now refers only to "accessibility." It should be amended to make it clear that there is an obligation to take steps to remove all other barriers, including attitudinal barriers.

Recommendation 8.3: Amend section 8 to add:

The Minister and Deputy Minister of each ministry are responsible for ensuring that the obligation to create a barrier-free work environment is met within their ministry, including ensuring that all employees responsible for implementation receive appropriate, ongoing training. All deputy ministers and assistant deputy ministers shall receive their training within one year of this Act coming into force. All other employees who are to

receive training shall receive that training within two years of this Act coming into force.

Rationale: The current provision says only that managerial employees are to receive training. It does not specify who is responsible for this. It is not sufficient to train senior management, there must be a clear commitment and obligation from the top down with clear accountability. Our amendment establishes this on a ministry by ministry basis. As well, the current provision does not set any time lines for this training. Our amendment provides these.

Recommendation 8.4: Amend section 8 to add:

All employees must be made aware of the policy, of what steps are being taken to develop a barrier-free work environment and of the process for obtaining appropriate employment accommodation.

Employment accommodation must be provided in a timely manner.

Rationale: Where accommodation is delayed or not provided in a timely manner, the employee's ability to perform his or her duties is undermined. This may have long-term consequences both on career development, and on the employee's relationship with their colleagues.

Recommendation 8.5: Amend section 8 to add:

A person shall be designated in each Ministry who is responsible for ensuring that appropriate accommodation is provided to persons with disabilities who require accommodation.

Rationale: There needs to be a single person in each ministry who is specifically responsible and accountable for ensuring that the accommodation needs of persons with disabilities are met. This kind of strategy has been successful in other areas such as occupational health and safety.

Recommendation 8.6: Amend section 8 to provide:

Information provided to the designated person concerning a person's disability shall not be disclosed to any other person without the consent of the employee, except for audit purposes.

Rationale: For many people with invisible disabilities, such as mental illness, the fear of discrimination and stigma may make a person reticent to request accommodation. The process for seeking and receiving accommodation in the workplace should be designed so as to be barrier-free. This amendment helps advance this goal.

Recommendation 8.7: Section 8 should be further amended to add:

Where a Ministry or employee determines that accommodation will not be provided, the applicant must be advised of the reasons in writing. All refusals of accommodation must be approved by the Deputy Minister. The applicant for accommodation may appeal the decision to the Disability Directorate. The directorate shall consider the appeal in accordance with the duty of fairness and shall render a decision with written reasons within 30 days of receiving notification of the appeal from the person with a disability.

Rationale: Currently the bill provides no internal procedure to assist Ontario Government employees who seek and are refused accommodation in the workplace. This amendment would provide a prompt, accountable process internal to the Ontario Government. This will reduce the need to resort to filing complaints with the Human Rights Commission.

In order to remove workplace barriers, including attitudinal barriers, and the fear that requesting accommodation may be perceived negatively, senior management has an obligation to educate all employees as to the procedure for applying for workplace accommodation and for addressing refusals of accommodation.

Recommendation 8.8: Section 8(5) should be amended to provide:

The Management Board Secretariat shall, out of the money appropriated annually to it for this purpose, which shall not be an amount less than that appropriated in the fiscal year in which this Act comes into force, authorize prompt reimbursement to a ministry for eligible expenses that the ministry has incurred in fulfilling the ministry's obligations under subsections (1) and (2). The amount reimbursed should be sufficient to meet the full range of employee accommodation needs.

(6) The reimbursement shall be in the amount that the Management Board Secretariat determines and be made in accordance with the standards established by the Management Board Secretariat. The standards shall include all types of disabilities, be made available to all employees, and be developed in consultation with employees with disabilities of the Government of Ontario, such consultation being conducted through the Disability Directorate.

Where the Management Board Secretariat receives a request for funds by a ministry in accordance with subsection (5), a decision on that request shall be made within 14 days, and shall be provided in writing. If the request for funding is not granted in full, detailed reasons for the refusal shall be provided in writing. The ministry requesting the funding shall have the right to appeal any refusal to the Disability Directorate, in accordance with the procedure referred to for above regarding refusals of accommodation.

Rationale: The government should not be able to limit the extent to which the Ontario Government's own workplace is barrier free by appropriating inadequate amounts of funding, or by failing to make that funding available to ministries on a timely basis.

It is important that everyone understand the standards, that they be comprehensive and expansive, and that they be developed with the input of persons with disabilities. It is also important that there be a prompt, effective internal appeal route within the Government if a person is refused funding for a workplace accommodation. This is needed to reduce the need for Human Rights complaints, and to ensure accountability by Management Board in making decisions on the funding of individual workplace accommodations.

9. Government-Funded Capital Programmes

Recommendation 9: Section 9 should be amended as follows:

Capital funding for projects shall be made available only where there is a barrier-free plan incorporated into the project that meets the standards set out in regulations to be enacted within six months of this Act coming into effect. The standards must include barriers pertaining to all disabilities.

Rationale: Government funding should not be used to create barriers by funding projects that do not meet the same standards that the Government itself must meet. The language of the current sections of the bill is limited in scope.

10. Ministry Barrier-Free Plans

Recommendation 10.1: Section 10 should be amended as follows:

Ministry Plans

Each ministry has the duty to ensure that the funding, services, programs, practices, legislation and regulations it administers and that its workplace are free of barriers through the development and implementation of barrier-free plans to identify, remove and prevent barriers within the time frame set within regulations to be enacted within six months of this legislation coming into effect.

The regulations shall be developed by the Directorate in consultation with persons with disabilities and others with appropriate expertise.

The Barrier-Free plan that each ministry shall make and implement shall include the comprehensive identification, removal and prevention of barriers to persons with

disabilities in the Acts and regulations administered by the ministry and in the ministry's policies, programs, practices and services, as well as the ministry's workplace. The plan shall contain specific action steps and time lines for the identification, removal and prevention of barriers consistent with the requirements set out in the regulations. Except where not practicable, the plan shall specify who is responsible within the ministry for taking actions set out in the plan.

Rationale: The goal of the ODA is the creation of a barrier-free society. The plans are a mechanism for achieving that goal, but under the current provision, the plans in and of themselves do not necessitate comprehensive barrier removal.

We propose that the plans be called "Barrier-Free Plans" rather than "Accessibility Plans" to ensure that the focus is on all barriers, not merely physical barriers.

It is important that there be clear regulations in place to set time frames for compliance. It is also important to provide a specific mechanism for consultation. As the bill is now drafted, the only consultation in this section is with the Directorate, not with the broader disability community nor with the provincial council, both of which could provide the needed expertise.

As well, this amendment seeks to enhance accountability within the plans, by providing that the plan should specify who within the organization is responsible for taking the various steps or actions which the plan sets out.

Recommendation 10.2: Section 10 should be further amended as follows:

The Barrier-Free plan shall include,

- (a) a report on the measures the ministry has taken to identify, remove and prevent barriers to persons with disabilities;
- (b) whether the Ministry has met its obligations set out in the plan for that year and, if not, the particulars of its non-compliance and the reasons for this;
- (c) the measures in place to ensure that the ministry assesses its proposals for Acts, regulations, policies, programs, practices and services to determine their impact on removing and preventing barriers against persons with disabilities, and the persons responsible for this activity;
- (d) a report on the Acts, regulations, policies, programs, practices and services reviewed during the year, the recommendations made to ensure that they are barrier free, and whether the recommendations were adopted.
- (e) a list of the Acts, regulations, policies, programs, practices and services that the ministry will review in the coming year in order to identify barriers to persons with

disabilities, and the persons responsible for this activity;

(f) the specific measures that the ministry intends to take in the coming year to identify, remove and prevent barriers to persons with disabilities; and

(g) all other information that the regulations prescribe for the purpose of the plan.

Rationale: The barrier removal plans should be effective action plans to implement the legislation. The regulations need to set out specific time frames and obligations. Where the plan is not complied with there needs to be a justification. This is also an avenue for creating a much-needed enforcement mechanism.

Recommendation 10.3: Section 10 should be amended further to provide:

In developing and implementing its barrier-free plan, a ministry shall consult with the Barrier-Free Council, the Disability Directorate, and with persons with disabilities who may be affected by the plan.

Rationale: The Government has emphasized that it intends to assign an important role in the development and implementation of strategies for barrier-removal and prevention to persons with disabilities. This amendment would provide for that direct input. It would include both the Barrier-Free Council and the Disability Directorate as well as persons with disabilities who may be directly affected by the plans.

Recommendation 10.4: Section 10 should be further amended to provide:

A ministry shall make its Barrier-Free plan available to the public in an accessible format within ten days of the plan receiving the signatures of the Ministry's minister and deputy minister.

Rationale: These plans must be accessible to all.

Recommendation 10.5: Section 10 should be further amended to provide:

The Ontario Human Rights Commission shall review all plans where there has not been compliance. The Commission has all of its investigation powers available to it in addressing this responsibility, as are provided under the Ontario Human Rights Code for the investigation of human rights complaints. It can seek an order from the Ontario Human Rights Board of Inquiry to require compliance with the plan, in accordance with the procedures for hearings provided for in the Ontario Human Rights Code.

Rationale: The bill now simply requires a ministry to make a plan. It neither requires the ministry to

comply with the plan, nor provides any avenue for enforcement. This amendment would correct this important omission, by providing an enforcement mechanism.

11. Municipalities

Recommendation 11.1: Section 11 should be amended as follows:

Each year, the council of every municipality shall prepare and implement a Barrier-Free plan.

Rationale: Now the bill exempts municipalities with a population of fewer than 10,000 from this requirement. Our amendment eliminates that exemption. All should participate in this process.

If the goal is to create a barrier free society, then this provision must include all parts of the province regardless of the size of the community where they live. A person with a disability should not have their needs ignored because of the size of their municipality. Concerns with respect to cost can be dealt with in terms of time frames and expectations for removing barriers. There is no good reason for not requiring all municipalities to plan to remove and prevent barriers.

Recommendation 11.2: Section 11 should be further amended in a fashion that is fully consistent with the amendments we propose for s. 10, to include, for example, the following:

The barrier-free plan shall include the comprehensive identification, removal and prevention of barriers to persons with disabilities in the municipality's by-laws and in its policies, programs, practices and services as well as the municipal government's workplaces.

All of the provisions with respect to the development, implementation and enforcement of provincial ministry plans should be applied here.

Rationale: During the Legislature's debates over Bill 125, Government members have emphasized how important municipal government activities are to the daily lives of Ontarians. These amendments seek to make sure that barrier removal and prevention activity at the municipal level will be no less effective and accountable than that at the provincial government level.

12. Barrier-Free Advisory Committees

Recommendation 12.1: Section 12 should be amended as follows:

Each year, the council of every municipality of more than 10,000 people shall establish

or continue a barrier-free advisory committee. A majority of persons appointed to this committee must be persons with a disability. The mandate of the council is to review drafts of the municipality's barrier-free plans, advise the council about their implementation, monitor the effectiveness of the plan, and to advise the municipality on barriers facing persons with disabilities within the territory of the municipality and on means by which the municipal government might address these.

Municipalities of fewer than 10,000 people must either establish a barrier-free advisory committee, or hold public consultations which include people with disabilities on these plans.

Rationale: Now the bill totally exempts any municipality with a population under 10,000 from having a disability advisory committee, even if the municipality could readily establish one. Our amendment recognizes that it may not necessarily be feasible for some small municipalities to have a full barrier-free advisory committee. However, input from persons with disabilities either through such a committee or through some other method of public consultations should still be required in those communities. Our amendment gives these small communities the choice of the mechanism for doing this.

The other changes in this amendment offer more detail about the committee's mandate.

Recommendation 12.2: Section 12 should be further amended to provide:

Duty of Council

The council shall seek advice from the committee on the accessibility for persons with disabilities to a building, structure or premises, or part of a building, structure or premises,

- (a) that the council owns, purchases, constructs or leases or
- (b) that the council currently occupies whether as owner or lessee or
- (c) that a person provides as municipal capital facilities under an agreement entered into with the council in accordance with section 210.1 of the Municipal Act.

Rationale: Currently the bill does not require retrofitting of any existing municipal government buildings that are not subjected to substantial renovation. This amendment extends the Barrier-Free Advisory Committee's advisory activity at the municipal level to existing municipal government buildings. We expect that these are the bulk of municipal government buildings.

Recommendation 12.3: Section 12 should be further amended to provide:

Functions

The committee shall perform the functions set out in this section and all other functions that are specified in the regulations.

The Barrier-Free Advisory Committee shall prepare annual reports to the municipal Council recommending changes to the Barrier-Free plan, reporting on implementation and effectiveness of previous plans and making any other recommendations necessary to identify, remove and prevent barriers in the territory of the municipality.

When the Advisory committee makes recommendations to the Municipal Council, the Council shall respond to it within 14 days. If the Council decides to decline the Advisory Committee's advise in whole or in part, it shall provide written reasons for its decision. Recommendations and reports from the advisory committee and responses to these from the municipal council shall promptly be made public. The Municipal Council shall fulfil all reasonable requests for information by the Advisory Council within the mandate of the Advisory Committee's work. Reasonable compensation including reasonable expenses shall be provided by the Municipal Council for the members of the advisory committee.

Rationale: Now the bill gives the advisory committee various tasks but requires them to be volunteers who pay out of their own pocket for the expenses associated with this activity. As well, the bill now does not require the municipality to respond to any advice it receives from the advisory committee. These amendments strengthen the role of the advisory committee and make the municipality openly accountable for its conduct when it receives recommendations from the advisory committee.

13. *Municipal Goods and Services*

Recommendation 13: Section 13 should be amended to parallel the amendments proposed above for s. 5, regarding the conduct of the Government of Ontario. It should, for example, provide:

The Government shall not purchase goods or services for the use of itself, its employees or the public that create or maintain barriers for persons with disabilities. Where this is not possible because the goods or services are not available in an appropriate form, the Government shall ensure that the benefits of the goods and services are available for persons with disabilities at no extra cost to persons with disabilities or effort.

The regulations developed under s. 5.1 shall apply to municipalities.

Rationale: The bill now requires municipal governments to consider accessibility only when purchasing goods and services. Simply "considering" accessibility is not sufficient to ensure a barrier-free society. As purchasers of goods and services, municipal governments across Ontario can demonstrate leadership and have a significant impact on society as a whole, by demanding goods and services that are barrier free.

The additional provision recognizes that like the standards for buildings, there must be standards for barrier free goods and services and that these must be developed in conjunction with persons with disabilities. Without these standards, and the consultative process to develop them which we propose, it is unlikely that those responsible for municipal procurement in various communities all over Ontario will be able to adequately identify potential barriers.

14. *Duties of Other Organizations, Agencies and Persons*

Recommendation 14: Public transportation organizations Section 14 should be amended to read:

Each year, every public transportation organization shall prepare and implement a Barrier-Free plan. The provision regarding transit providers should be similarly amended to parallel the development, implementation and enforcement of Ontario Government ministry barrier-free plans.

Rationale: The same mandatory activities for barrier removal and prevention at the provincial ministry and municipal government levels should apply to transit providers, given the importance of public transit to persons with disabilities.

15. *Organizations*

Recommendation 15.1: Section 15 should be amended to read:

15.(1) Each year, every organization not otherwise covered by ss. 10, 11 14 or 16, shall prepare and implement a barrier-free plan based on the requirements for its class of organization as set out in the regulations.

Rationale: Every organization should be covered by the ODA. The only questions to be addressed in this regard, which the regulations should address, are: (i) what the time frame is for different classes of organizations, and (ii) what must be included in their barrier-free plan. This should be determined by regulations based on the class in which the individual organization falls.

Recommendation 15.2: Section 15 should be amended to provide:

The barrier-free plan shall require the comprehensive identification, removal and prevention of barriers to persons with disabilities in the organization's by-laws, if any, and in its policies, programs, practices and services as well as its workplaces.

Beyond this, the provision should be amended to parallel the provisions regarding the development,

implementation and enforcement of provincial ministry and municipal barrier free-plans, except for the proposed amendments regarding government consultation with a municipal advisory committee or the provincial Barrier-Free council.

Recommendation 15.3: Section 15 should be further amended to provide as follows:

The classes of organizations shall be set out in regulations passed no later than six months after this legislation comes into effect. The regulations setting out the requirements for each class of organization shall be passed no later than one year after this legislation comes into effect.

Rationale: These amendments make the barrier-free plans effective for organizations covered in this provision. The time lines in this provision ensure that regulations needed to make the provision work are developed along reasonable time lines.

16. Agencies

Recommendation 16.1: Section 16 should be amended to read:

16.(1) Each year, every agency shall prepare and implement a barrier-free plan.

Rationale: Currently, s. 16 requires agencies only to prepare a "policy" rather than a full "plan," and does not require annual planning. There is no good reason for these lesser duties.

Recommendation 16.2: Section 16 should be further amended to provide:

The barrier-free plan shall require the comprehensive identification, removal and prevention of barriers with respect to the provision of services and facilities, as well as with respect to the policies, programs and practices of the agency, and the agency's workplaces.

Again, the provisions regarding the development, implementation and enforcement of these plans should be amended to parallel the provisions for provincial ministry plans, except for the requirements of consultation with the Barrier-Free council.

Rationale: This harmonizes the bill's various planning provisions.

17. Joint Barrier-Free Plans

Recommendation 17: Section 17 should be amended as follows:

Two or more ministries, municipalities, organizations specified by a regulation made under clause 22 (1) (g), or public transportation organizations that are each required to prepare a barrier-free plan and to make it available to the public may prepare a joint barrier-free plan and make it available to the public.

Ministries, municipalities, organizations specified by a regulation made under clause 22 (1) (g), and public transportation organizations that prepare a joint barrier-free plan and make it available to the public are not each required under this Act to prepare an individual barrier-free plan and to make it available to the public if the joint plan meets the requirements of this Act for the individual plan.

Where one or more ministry, municipality, public transportation organization, organization or organization prepares a joint barrier-free plan, each entity is required to comply with the obligations under this Act and the plan as if they had individual plans.

Rationale: This is a housekeeping amendment to bring this provision in line with the earlier amendments proposed above.

18. *Regulations for Barrier-Free Plans and Policies:*

Recommendation 18.1: Section 18 should be amended as follows:

The Lieutenant Governor in council shall specify by regulation the requirements for the preparation and content of barrier-free plans under this Act. The regulation may set out different requirements for classes of ministries, municipalities, organizations or agencies.

Exemptions

Where an organization or agency cannot comply with the regulation because of undue hardship within the meaning of the Ontario Human Rights Code, it may apply to the Minister for an exemption from the regulation. The exemption cannot exceed a period of one year. The minister shall give reasons for granting an exemption, which he or she shall make public. Any person affected by the exemption may refer the grant of the exemption to the Ontario Human Rights Commission. The Commission may investigate the circumstances of the exemption. If, in its opinion, the exemption was unwarranted, it may apply to the Ontario Human Rights board of inquiry for a hearing to determine whether the exemption should be modified or rescinded.

Rationale: Under the current bill, the Ontario Government has sweeping authority to exempt anyone and everyone from this Act. It need have no reason and needs to give no reasons. This undermines the very purpose of the bill.

Our proposed amendment provides a more accountable, less arbitrary approach. Exemptions should only be available, if at all, on an individual case-by-case basis and must be justified on an appropriate standard. The regulations may set different time frames for different classes in order to deal with the challenges faced by small business and others. However, there is no basis for a total exemption.

19. *Barrier-Free Council*

Recommendation 19: Section 19 should be amended as follows:

The Minister shall establish the Barrier-Free Council of Ontario comprised of 12 members, a quorum of which shall be seven.

Members

A majority of the members of the Council shall be persons with disabilities.

Each member of the Council holds office for a term of two years and may be re-appointed. In the first year appointments may be made for one and three year terms as well, in order to ensure continuity. A member may be appointed for a maximum of three consecutive terms.

The members of the Council may select a Chair and Vice-Chair.

A majority of the members of the Council constitutes a quorum.

The purpose of the Council is to:

(a) provide for and facilitate the participation of persons with disabilities in the development of Government policies and programs relating to or affecting persons with disabilities;

(b) establish a central mechanism to ensure that the concerns of persons with disabilities respecting policy and program development and delivery are conveyed to the appropriate ministries and offices of the Government; and

(c) ensure that the concerns of persons with disabilities will be promoted in and considered by the Government, especially in matters of policy and where the concerns affect several ministries or offices of the Government.

(d) facilitate consultation with persons with disabilities around Ontario on the development of standards and regulations under this and any other legislation, regulations, policies and programs that affect the rights, obligations or interests of persons with disabilities.

(e) Evaluate the effectiveness of this legislation and regulations and standards, developed under it and make recommendations for new or amended legislation, regulations, standards, programs and policies;

(Note: The first 3 paragraphs are taken almost verbatim from Disabled Persons Commission Act. 1989, c. 4, s. 1., Nova Scotia legislation passed in 1989.)

The Minister shall pay the members of the Council the remuneration and the reimbursement for expenses that the Lieutenant Governor in Council determines.

The Council is authorized to undertake the following activities:

(a) consult with persons with disabilities and others, including those with relevant expertise, on the implementation of this Act;

(b) recommend to the Minister or the Ontario Human Rights Commission that where there are problems in the implementation of this Act or regulations, standards or guidelines made pursuant to it steps to enforce the legislation be taken, and request a report on the actions taken.

(c) undertake research about the barriers facing persons with disabilities in Ontario, and on strategies in Ontario and elsewhere to address these;

(d) provide programs of public information related to this Act;

(e) consult with persons with disabilities and others, including those with expertise, and make recommendations to the Minister with respect to the accessibility for and full enjoyment by persons with disabilities to services, goods and facilities provided or funded by the Government of Ontario;

(f) consult with persons with disabilities and others, including those with relevant expertise, and make recommendations to the Minister with respect to actions that should be taken to improve the access for persons with disabilities to employment opportunities in Ontario;

(g) recommend the development or enactment of new standards or regulations to improve the effectiveness of the legislation;

(h) respond to specific requests from the Minister.

For the purposes of the Freedom of Information and Protection of Privacy Act the report of the Barrier-Free Council or any other information provided to the Minister is deemed not to constitute advice to the Minister for the purposes of disclosure.

The council shall be provided with adequate resources to carry out its mandate effectively.

The council shall be authorized to contract with any person to assist it in carrying out its mandate.

In order to ensure an inclusive council, the Minister must ensure that:

There is representation as much as is practicable of the full range of disabilities and of the different regions of Ontario and of gender, ethnicity and of First Nations. Each member of the Council is an independent representative to the Commission and does not represent the concern of only one disability or group.

There should be a public nomination process whereby any individual may apply or be nominated to become a member of the Council. The names of nominees should be made public, to afford an opportunity for public input including input from persons with disabilities.

The appointments to the Council shall be reviewed by the Public Appointments Committee.

The Council shall provide an annual public report to the Legislature on its activities.

Rationale: The Ontario Government has emphasized in its public statements on this bill that the new provincial council is a key element of this bill, and provides a means for the disability community to participate. The bill does not provide the council with power to fulfil that role. These amendments are designed to achieve the Government's stated objectives.

If the council is to have any real impact it must have the authority to consult, conduct independent research, make recommendations for change and hold the government accountable. It must also be able to communicate directly with the public in the collection and dissemination of information. It should have a means for effective accountability to the disability community, who should have an avenue for input into the selection of its members. As with other items in this bill the narrow term "accessibility" is replaced with the more effective term "Barrier-Free" in the council's name.

20. *Barrier-Free Directorate of Ontario*

Recommendation 20: Section 20 should be amended as follows:

20. (1) The Minister shall establish and maintain the Barrier Free Directorate of Ontario. The employees who are considered necessary shall be appointed under the Public

Service Act to form this directorate.

(2) Mandate

The mandate of the Barrier-Free Directorate is to remove barriers and ensure that people with disabilities in Ontario are able to participate fully in all aspects of life in Ontario by:

- (a) Improving people's understanding and knowledge of disability issues;
- (b) Providing expert counsel and consultation to government ministries in the development of integrated, coordinated public policies, programs and services for persons with disabilities, their families/support structures, and organizations that represent persons with disabilities and other stakeholders;
- (c) Working with government ministries and offices and the disability community to provide expertise, and identify and resolve issues of concern;
- (d) Acting as a vehicle for collaboration and partnership with the disability community; and
- (e) Providing leadership, coordination, research, policy development, education, communication, consultation and negotiation.
- (f) participating on behalf of Ontario at federal and interprovincial meetings;

(Note: Drawn from the British Columbia and Saskatchewan programs)

Duties

(3) The duties of the directorate are as follows:

- (a) support the Barrier-Free Council of Ontario;
- (b) conduct research and develop and conduct programs of public education on the purpose and implementation of this Act;
- (c) consult with ministries, municipalities, organizations or any person or entity that prepares a barrier-free plan to assist in the preparation, implementation and monitoring of that plan.
- (d) consult with the persons and organizations to develop and make recommendations to the minister and others on standards, guidelines and regulations related to the subject-matter of this Act;

(e) examine and review Acts, regulations, and programs or policies established by Acts or regulations and make recommendations to the Barrier-Free Council and the Minister for amending them or adopting, making or establishing new Acts, regulations, programs or policies to improve opportunities for persons with disabilities;

(f) carry out all other duties related to the subject-matter of this Act.

Rationale: The Government's statements about this bill emphasize the central importance of the directorate in its strategies for achieving a barrier-free Ontario. This amendment is aimed at clarifying and strengthening the mandate of the directorate so that it can more effectively fulfil the Government's stated goals for this office.

This section was amended to give the office a clear mandate within which to work, and to require that it report both to the Minister and the Barrier-Free Council.

21. Future Legislative Review of ODA

Recommendation 21: Section 21 should be amended as follows:

The Executive Council shall undertake a public review of this legislation after three years to determine the following:

- (a) whether it is successful in achieving a barrier-free society;
- (b) whether changes are necessary to improve the effectiveness of the legislation
- (c) whether persons with disabilities are able to participate fully and effectively in the implementation of the legislation

The Government of Ontario shall consult with persons with disabilities and other interested stakeholders on the matters referred to in subsection(1) s part of the review provided for in that provision, and shall report to the public on the results of any review conducted.

Rationale: After the six and a half year wait for this bill, persons with disabilities should not have to wait another full five years before it is reviewed again. If it is reviewed in three years, then any amendments that are needed could be enacted by or before the five year target now set in the bill for its next review.

22. Regulations

Recommendation 22.1: Section 22 should be amended to add the following:

In order to ensure the full participation of persons with disabilities in the development of regulations, any regulations to be created under this legislation must be published in draft form no less than 90 days prior to the date they are to be enacted. There must be an opportunity for public input and comment, in writing or in the form of public forums or hearings before the regulation is enacted. Where the Barrier-free Council requests in writing that public hearings or forums be held by the minister or the directorate with respect to a proposed regulation, such hearings or forums shall be held within 45 days of the written request. Following the comment period there must be a public report produced by the Government of Ontario summarizing the comments, and providing the Government's reasons for accepting or rejecting proposed changes. In addition, the Barrier-Free Council may consult with the public on the proposed regulations, and provide its recommendations to the minister arising therefrom.

Rationale: The Government has stated that under this bill, persons with disabilities will have input into the setting of standards and the making of regulations. The bill does not provide for this at present. This amendment would better provide for that. We would prefer if the amendment could provide where possible an opportunity for input through hearings, rather than in writing, to ensure better communication and to avoid barriers in the process.

Recommendation 22.2: Section 22(1) (a) should be amended as follows: designating an organization that is to come within the definition of "ministry" or "Government of Ontario" in section 2.

Rationale: This amendment is designed to make this section consistent with the proposed amendment to s. 2.

Recommendation 22.3: A series of technical housekeeping amendments is required as follows: Section 22(1)(b) should be deleted since there is no longer a category of "scheduled organizations;"

Section 22(1)(e) should be amended to remove the provision for making regulations defining "significant renovation." There is no need for such a provision because that term was removed from the section it refers to by our package of amendments.

Section 22(1)(f) should be amended as follows: governing the preparation and contents of barrier-free plans or policies under this Act including the mechanisms for ensuring compliance where this obligation is not met.

Rationale: This amendment specifically allows clearly for regulations to be made which deal with compliance.

Section 22(1)(h) should be amended as follows:

Regulations must be enacted within six months after this legislation takes effect

specifying a time period within which the Government of Ontario or any ministry, municipality, organization specified by a regulation made under clause (g), public transportation organization, agency or other organization or person or class of organizations is required to comply with an obligation described in this Act if this Act does not specify or otherwise provide a time period for that purpose;

Section 22(1)(i) should be amended as follows:

upon approval of the Minister after consultation with the Barrier Free Council and providing written reasons, exempting a person, a ministry, a municipality, an organization specified by a regulation made under clause (g), a public transportation organization, an agency, any other organization, a building, structure or premises or a class of any of them from the application of a specified provision of this Act or the regulations, such exemption to only last for a maximum of one year (subject to a further application), and only to be granted on a showing that compliance is not reasonably possible;

Section 22(1)(j) should be amended as follows:

respecting any matter that the Lieutenant Governor in Council considers necessary to facilitate the implementation or administration of this Act including the creation of mechanisms for enforcing the obligations under this legislation, and remedies for non-compliance.

Section 22 should be amended by adding:

No regulation may be adopted which has the effect of creating a barrier to persons with disabilities, preventing or delaying the identification and removal of a barrier in any sector or which conflicts with the purpose of the legislation.

Rationale: This ensures that the bill's very substantial delegation of power to Cabinet to make regulations does not undermine the goals of the legislation.

Recommendation 22.4: Section 22 should be further amended to require Cabinet to make regulations within three months of the Act coming into force, designating which Minister or ministers and which ministries will be responsible for fulfilling duties which the Act otherwise assigns to the "Government of Ontario."

Rationale: Currently the bill assigns various obligations globally to the "Government of Ontario." It does not generally say who must fulfil these. In the interest of accountability and efficiency, and to enable persons with disabilities to know where to go to have their input, these duties should be assigned promptly to specific ministers or ministries, by regulation. This amendment would meet this need.

23. *Enforcement of this Act*

Recommendation 23: The Act should be further amended so that it includes the following:

Enforcement

The Ontario Human Rights Commission and the Ontario Human Rights Board of Inquiry have jurisdiction with respect to compliance with and enforcement under this legislation, and have with all necessary modifications all the authority and jurisdiction as is provided to them under the Code. The Minister of Finance shall within 3 months of the enactment of this bill place before the Legislature a proposal for providing additional funding to the Commission and the Board to address these new responsibilities.

Rationale: This bill provides no independent, arms-length agency with the power to take enforcement proceedings under the bill. While the ODA Committee has preferred the establishment of a new, expert disability enforcement agency, the time constraints for the consideration of this bill have led us to recommend that for now, this responsibility should be given to the Ontario Human Rights Commission.

24. *Municipal and Provincial Election Act Amendments*

Recommendation 24: The bill's revisions to the Municipal Elections Act and the provincial Elections Act should be expanded as follows:

- (a) to require that no polling station shall be located in a location which is inaccessible, absent a showing that it was impossible to locate a polling station within five miles;
- (b) to require that ballots be adapted to enable voters with disabilities wherever possible to mark the ballots themselves in private;
- (c) to require the government holding the election to provide American Sign language interpretation or other like accommodation where needed for voters who are deaf, deafened or hard of hearing, to enable them to participate fully in the voting process;

Rationale: Currently there are significant barriers facing persons with disabilities in provincial and municipal elections. These amendments would address some of the most obvious ones, but should not exclude consideration of the removal of all barriers in the election process.

25. *Municipal Act Licensing Authority*

Recommendation 25: Section 28 of the bill now extends municipal licensing authority to impose conditions regarding the licensed business to be physically accessible. This should be amended to

include a requirement of the business to become barrier-free, and not merely to address physical barriers.

26. ODA To Bind the Crown and Override Other Legislative Barriers

Recommendation 26: The bill should be amended to provide explicitly that it

- (a) binds the Crown in Right of Ontario;
- (b) supersedes any legislation, regulations, bylaws or policies which provide lesser protection for persons with disabilities.

Rationale: Bill 125 does not provide that it binds the Ontario Crown. This amendment is needed to ensure that it does, and that it supersedes provincial laws and the like which provide persons with disabilities with lesser protections.

27. Establish Certain Time Lines in Bill

Recommendation 27: The bill should be amended to provide that notwithstanding anything else in the Act or regulations,

- (a) The government of Ontario shall become barrier-free within five years of this Act coming into force; and
- (b) The Ontario Legislature shall become barrier-free within five years of this Act coming into force.

Rationale: The Citizenship Minister stated on CBC Radio's "Metro Morning" programme on November 6, 2001 that he believed the Ontario Government could achieve compliance in five years. This amendment entrenches this. Moreover, a legislative time line for the Legislature is important, since barriers at the heart of our provincial democracy have yet to be addressed.