

Accessibility in Ontario: Understanding Evolving Requirements under the AODA

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In June 2005, the Ontario Government passed the Accessibility for Ontarians with Disabilities Act (the “AODA”) with the stated goal of making Ontario fully accessible to persons with disabilities by the year 2025. In the last year there have been significant milestones that have brought Ontario closer to achieving this goal. Many of the milestones require organizations in Ontario to take positive steps to promote accessibility.

I. THE CUSTOMER SERVICE STANDARD

i. Compliance

As of January 1, 2012 the private sector was required to comply with the Accessibility Standards for Customers Service (“Customer Service Standard”). The Customer Service Standard requires organizations, including retirement communities, to make their services accessible to persons with disabilities by taking the following steps:

1. Establish policies, practices and procedures governing the provision of the organization’s goods and services to persons with disabilities. This includes reviewing existing policies, practices and procedures and amending them where possible to remove barriers faced by persons with disabilities.
2. Ensure the organization, and individuals who interact with the public or other third parties on behalf of the organization, communicate with persons with disabilities in a manner that takes into account their disability.
3. Establish a policy that addresses the use of assistive devices (i.e. wheelchairs, tele-typewriters, etc.) by persons with disabilities to access the organization’s goods and services; and ensure the policy identifies measures the organization utilizes to enable persons with disabilities to access its goods or services.
4. Permit persons with disabilities to bring service animals with them onto those areas of the organization’s premises open to the public or to third parties, unless otherwise excluded by law.
5. Permit persons with disabilities to be accompanied by a support person in those areas of the organization’s premises open to the public or third parties, while accessing the organization’s goods and services; and ensure if there is an amount payable for admission to the organization’s premises and the organization intends to charge an amount in respect of the support person, notice of this amount is provided in advance.

6. Establish a method of notifying the public when facilities or services persons with disabilities require to access the organization's goods and services are temporarily unavailable.
7. Provide training on the topics identified in the Customer Service Standard to all individuals who interact with the public or other third parties on behalf of the organization or who participate in the development of the organization's policies, practices and procedures that govern the manner in which the organization delivers its goods and services.
8. Establish a process through which customers can provide feedback about the manner in which the organization provides goods or services to persons with disabilities; and identify how the organization will respond to complaints.

Organizations with twenty or more employees must also ensure all of the mandatory requirements of the Customer Service Standard (as described in points 1 – 8 above) are set out in writing, and advise the public the documents are available, in an accessible format, upon request.

ii. Reporting

Private sector organizations with 20 or more employees are required to report compliance with the Customer Service Standard by December 31, 2012. The report is not onerous. It consists of 15 yes or no questions that ask the organization to confirm it has met each of the requirements under the Customer Service Standard. The report is completed online and submitted to the Ministry of Community and Social Services (the "Ministry"). To view the questions asked on the report [click here](#) and to file the report [click here](#).

It is important to file the report by the deadline. Organizations that fail to report compliance may be targeted for enforcement measures including for example, Ministry inspections, orders to comply and/or administrative penalties.

II. THE INTEGRATED STANDARD

The Integrated Accessibility Standards ("Integrated Standard") came into force on July 1, 2012 and includes accessibility requirements in the areas of employment, information and communication and transportation.

The implementation of the Integrated Standard is taking a different course than the Customer Service Standard. Rather than requiring organizations to comply with all of the requirements of the Integrated Standard at once, individual accessibility requirements are being phased in over a number of years between 2011 and 2021. Moreover, not all organizations to which the Integrated Standard applies are obligated to comply with every individual accessibility requirement within the broader Integrated Standard.

The Integrated Standard separates organizations into different classifications. In the private sector there are: (i) organizations with 50 or more employees ("Large Organizations"); and (ii) organizations with at least 1 but fewer than 50 employees ("Small Organizations"). The manner in which an organization is classified and the type of business it operates, will determine which individual accessibility requirements apply and the date for compliance. To assist organizations identify applicable requirements and timelines the Ministry has developed a useful online tool called the Wizard which can be accessed [here](#).

i. Compliance by January 1, 2012

There are two accessibility requirements under the Integrated Standard with which retirement communities were required to comply by January 1, 2012.

1. An organization that prepares emergency procedures, plans or public safety information and makes this information available to the public must provide this information in an accessible format (i.e. large print, recorded audio and electronic formats) or with appropriate communication supports (i.e. captioning, plain language), as soon as practicable, upon request. This requirement is not applicable if the organization does make emergency or public safety information available to the public.
2. An organization must provide individualized workplace emergency response information to an employee who has a disability, if the disability is such that the individualized information is necessary and the employer is aware of the need for accommodation due to the employee's disability. If an employee who receives this information requires assistance, with the employee's consent, the employer must provide the workplace emergency response information to a person designated by the employer to provide assistance to the employee.

ii. Compliance between 2014 and 2021

The remainder of the accessibility requirements under the Integrated Standard affecting retirement communities will take effect between 2014 and 2021. For retirement communities with 50 or more employees, the accessibility requirements that will take effect in 2014 include the following:

1. Develop, implement and maintain policies governing how the organization already achieves or will achieve accessibility through meeting the requirements of the Integrated Standard.
2. Establish, implement and maintain a multi-year accessibility plan that outlines the organization's strategy to prevent and remove barriers for persons with disabilities and meet the requirements of the Integrated Standard. The accessibility plan is different from the requirement to establish policies described above because it requires organizations to create a more detailed roadmap setting out how it will achieve the objectives identified in its policies.
3. If the organization uses self-service kiosks to deliver any service, it must have regard for the accessibility for persons with disabilities when accessing those kiosks. While the Integrated Standard does not specify what features would make a kiosk accessible, the Ministry has suggested considering: (a) colour contrast on the screen, (b) size and style of font, (c) visual and non-visual modes of operation, (d) height and stability of the kiosk, (e) headset jacks with volume control etc.
4. Ensure new internet websites and web content conform with the Web Consortium Web Content Accessibility Guidelines ("WCAG") 2.0 Level A. For the purposes of this requirement a new website and new web content means a website with a new domain name or a website that is undergoing a "significant refresh". While "significant refresh" is not defined in the Integrated Standard, it may include: (a) a website that is updated to have a new look and feel, (b) a change in how the website is navigated or (c) a substantial change to the content of the website.

Retirement communities with fewer than 50 employees will have to comply with the requirements described in point numbers 1 and 3 by January 1, 2015 and will be completely exempt from the requirements described in points 2 and 4.

III. TIPS ON HOW TO IMPLEMENT THE AODA

The AODA is unprecedented legislation in Canada and for many organizations, compliance is going to require a major shift in the way the organization understands and prioritizes accessibility. While the retirement community has an advantage because it already operates in an industry where accessibility issues are prevalent,

throughout the next decade it too will have to approach accessibility in a fresh or at least revised manner. Here are some tips to help achieve compliance strategically and efficiently:

1. Ensure consistency and accountability. Assign one or more individuals (a team may work best) within the organization to be responsible for compliance with the AODA. Compliance with this legislation is a marathon not a sprint and it will be important to have a team responsible for keeping apprised of developments, implementing required accessibility policies and procedures and holding front line employees accountable for their obligations under the AODA.
2. Appreciate and stay true to the organization's goals. Quite apart from legal requirements accessibility will mean different things to different organizations depending on the organization's area of business, branding objectives, budget, core values, etc. Some organizations will aim to meet the minimum legal requirements while others may strive to exceed these requirements. A retirement community, because of the individuals it serves, may see business potential associated with embracing the gold standard of accessibility. Whatever the standard, it is important to have one and stay true to it.
3. Know compliance deadlines. Compliance should not come as a surprise. Some requirements of the Integrated Standard cannot be implemented overnight. For example, creating an accessible website will require external expertise and time. If the organization is planning to update its website in 2013 consider including the website accessibility requirements as part of this project now.
4. Involvement of stakeholders. Generally speaking two heads are better than one. Consider whether and which stakeholders should be consulted throughout the entirety of the accessibility process. This might include residents, family members and staff. Unionized retirement communities will also want to review their collective agreement(s) to determine whether consultation and/or agreement with the union is required, and even if it is not required, whether consultation might be appropriate for a variety of business reasons. To this end the assistance of the organization's labour lawyer is likely prudent.

Bottom line is accessibility in Ontario is here to stay – and not just a little. Because of the individuals they serve, retirement communities are poised to be at the forefront of compliance, but also potentially under the greatest scrutiny. To learn more and/or for assistance understanding applicable legal requirements as well as best practices for compliance, contact a member of the team at Sherrard Kuzz LLP.

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