

THE REGIONAL MUNICIPALITY OF YORK

Community Services and Housing Committee

October 19, 2005

Report of the

Commissioner of Community Services and Housing
and
Regional Solicitor

PARALLEL IMPLEMENTATION OF THE *ONTARIANS WITH DISABILITIES ACT, 2001* AND THE *ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005*

1. RECOMMENDATIONS

It is recommended that:

1. The Region write to the Association of Municipalities of Ontario (AMO), in their role in consulting with, representing and bringing forward the perspectives of municipalities and ask that they endorse the Region's recommendations for regulations that will assist municipalities in their implementation of the *Accessibility for Ontarians with Disabilities Act, 2005* (AODA) and advocate with the Province to address the following recommendations in the accompanying regulations to the AODA:
 - a) The Province establish a specific municipal sector standard development committee to allow for focused representation of municipal issues and standards.
 - b) The Province include definition of the terms "accessibility" and "services" in the legislation to clarify the provincial government's expectations, ensure long-term consistency and guide the development and enforcement of accessibility standards.
 - c) The Province provide for a resolution process for persons/organizations who are subject to more than one standard and/or where one organization has more than one class.
 - d) The Province recognize organizations where work is already underway under the ODA to enhance accessibility by incorporating flexibility into the initial targets and timelines of the AODA.
 - e) The Province establish a mechanism and funding source to support municipalities in the ongoing implementation of the AODA.
2. This report be sent by the Regional Clerk's Office to the area municipalities, the York Region Accessibility Advisory Committee (YRAAC), members of the Municipal Staff Reference Group, the Association of Municipalities of Ontario and the Accessibility Directorate of Ontario for their information.
3. Staff report back to Council, as appropriate, on the standards development process under the AODA.

2. PURPOSE

The purpose of this report is to provide an overview of the newly proclaimed *Accessibility for Ontarians with Disability Act, 2005 (AODA)*.

This report also identifies key implications and outlines an approach and next steps for how the Region is to prepare for the parallel implementation of the AODA and the *Ontarians with Disabilities Act, 2001 (ODA)*.

3. BACKGROUND

Council was provided with a general overview of the AODA when the legislation was first introduced in October, 2004. At that time, the Region made a number of recommendations and formally participated in the second reading Committee Hearings to voice our concerns and recommendations for changes to the AODA.

The Accessibility for Ontarians with Disabilities Act, 2005 (AODA) has since received Royal Assent and was proclaimed on June 13, 2005. The AODA applies to both the public and private sectors and covers every aspect of life available to the public except private homes. The goal of the AODA is to ensure that all Ontarians with disabilities have full access to goods, services, facilities, accommodation, employment, buildings, structures and premises by January 1, 2025. This goal will be achieved through the development, implementation and enforcement of provincially-set accessibility standards. Both public and private sector organizations will be required to implement these standards in increments that could range from as little as six months to a maximum of five years.

Enforcement of the AODA will be through a process of reporting, inspection, investigation, compliance orders and administrative penalties.

The AODA will eventually replace the current *Ontarians with Disabilities Act, 2001 (ODA)*. However, the Province has indicated that the ODA will remain in effect for the foreseeable future while the AODA is phased in. The Region, like other municipalities, will therefore be required to implement both Acts simultaneously during this period.

4. ANALYSIS AND OPTIONS

The AODA provides the legal authority, framework and processes, under which the Government of Ontario will develop, implement, administer and enforce accessibility standards. The legislation indicates that accessibility standards will be specific to

particular sectors, industries, classes of persons or organizations. The scope of the AODA is broad – it includes any person or organization that:

- Provides goods, services or facilities to the public.
- Employs persons in Ontario.
- Offers accommodation to the public.
- Owns or occupies a building, structure or premises that is open to the public.
- Is engaged in a business, activity or other undertaking that may be prescribed by regulation.

The AODA is overriding legislation and therefore has primacy over all other legislation. For example, where a standard conflicts with other legislation (e.g. the Ontario Human Rights Code, the Ontario Building Code), the standard with the highest level of accessibility prevails.

With the proclamation of the AODA, the Province has begun the process to establish accessibility standards. The Province has indicated that they plan to have the first standards in place by the end of this year. The standards will have their own implementation timelines that could range from six months to five years. There is no indication that there will be any financial provincial resources to assist organizations in implementing the AODA. The province has stated that since change will be phased in incrementally, the cost of accessibility improvements must be absorbed in regular planning and budget cycles.

As components to the AODA continue to be announced by the Province, it is important for the Region to understand and prepare for these new and expanded requirements. Also given that the current ODA is still in effect, and with no provincial resources to support the parallel implementation of both Acts, the Region must develop an approach that both balances and meets our legal obligations under the ODA and AODA.

4.1 Amendments to the AODA and Legislative Gaps

In January 2005, Regional Council made a number of recommendations to the Province for amendments to the AODA. Regional staff participated at the provincial standing committee hearings and presented the Region's recommendations for changes to the AODA. Many of the Region's recommendations were also supported and endorsed by several other municipalities. The Region's recommendations included:

- The Province establish a specific municipal sector standards development committee to allow for focused representation of municipal issues and standards.
- The Province include definition of the terms "accessibility" and "services" in the legislation to clarify the provincial government's expectations, ensure long-term consistency and guide the development and enforcement of accessibility standards.
- The Province provide for a resolution process where a person/organization is subject to more than one standard and/or where one organization has more than one class.
- The Province recognize organizations where work is already underway to enhance accessibility by incorporating flexibility into the initial targets and timelines of the AODA.

- The Province establish a mechanism and funding source to support municipalities in the ongoing implementation of the AODA.

There were very few changes to the AODA from first to third reading. It appears that much of what the Region is advocating may be addressed in the accompanying regulations to the AODA. It is therefore recommended that the Region continue to press the Province to address these recommendations in the AODA regulations.

In addition to the concerns mentioned above, there is no specific training or education on the AODA and its implementation for the municipal sector. However, there is a provision for the Accessibility Directorate of Ontario to conduct public education programs on the purpose and implementation of the Act for schools, colleges, universities, trade or occupational associations and self-governing professions, but not for municipalities.

The few amendments that were made to the AODA focused on increasing transparency in the standards development process. There will now be a 45-day public consultation on each set of draft standards and regulations. Also, the terms of reference and minutes of the standards development committees will be made public. Now the legislation also includes clearer timeframes. For example, the AODA will be reviewed within four years after it comes into force and every three years thereafter; and organizations will have fifteen days to appeal an order to comply, or be subject to an administrative penalty.

4.1.1 What are the Key Components of the AODA?

From the Region's standpoint, the key components of the AODA are as follows:

1. The Province alone sets the scope, pace and rate of change

Unlike the ODA, under the AODA, the provincial government will now set the agenda for the scope, pace and rate of change. This is a key difference between the current ODA and AODA. Under the ODA, the Region could develop its own initiatives to identify, remove and prevent barriers and set its own timelines to implement these initiatives, based on locally determined priorities and budgets.

Under the AODA, the Minister will establish and appoint members to the standards development committees (SDCs). The committees will submit standards for change to the government for adoption as regulations. Standards will be set in both the public and private sectors to address the full range of disabilities – including physical, sensory, mental health, developmental and learning. The decisions from these committees will be very important because they will direct what changes will occur and how quickly Ontario's programs and services will have to become accessible. The province has indicated that they are planning to have the first SDCs established in the fall. It is still unclear as to whether there will be a specific municipal standards development committee.

2. There will be enforced compliance of standards and penalties to address non-compliance

Organizations will be required to demonstrate their compliance with the AODA in a number of ways:

- Implementation of provincial standards.
- Regular filing of quarterly, bi-annual or annual accessibility reports to the province for further monitoring of progress and compliance with standards.
- Municipal accessibility advisory committees (AACs) will now audit municipal Councils' implementation of standards and compliance reports through various enforcement measures, including:
 - Inspections and spot audits.
 - Compliance orders.
 - Administrative penalties.
 - Fines of not more than \$100,000 for corporations and \$50,000 for its directors or officers for each day in which the provincial offence occurs upon conviction.

3. The Municipal Accessibility Advisory Committee's Role will Evolve

Municipal Accessibility Advisory Committees (AACs) will still exist under the new AODA. However, their role of advising Council on their annual accessibility plans and implementation, as required under the ODA, will now evolve into a role of auditing compliance of the new AODA. They will advise Council on the Region's compliance with the new accessibility standards and in the preparation of accessibility reports.

Regional Council will still be required to seek advice from the AAC on accessibility for persons with disabilities on buildings, structures or premises that Council purchases, constructs or significantly renovates or for which Council enters into a lease or provides as a municipal capital facility.

While the ODA and AODA exist simultaneously, the AACs will have a dual role.

4.2 Association of Municipalities of Ontario's (AMO) Role

AMO has been representing the municipal sector regarding the municipal role in the implementation of the new AODA and in the design of the standards development process and committee structure. AMO generally supports the direction of Bill 118. York Region shared its AODA submission with AMO and AMO's submission on the AODA made a number of recommendations that complimented York Region's position. Some of these recommendations included: AMO representation on all Standard Development Committees, which could apply to municipalities; and that the Province establish a long-term funding program to support the goals of the AODA.

York Region was recently appointed to AMO's Barrier-Free Working Group. This group has been monitoring the AODA and will continue to advocate the municipal position during the implementation phase of the AODA.

4.3 Key Implications and Challenges for York Region

Until all standards under the AODA are in place, the *Ontarians with Disabilities Act, 2001* will remain in effect, and municipalities will continue to have planning obligations in accordance with that legislation as well as increasing obligations under the AODA as they develop. The Province has indicated that the ODA will remain in effect for at least the next few years.

York Region, like other municipalities, will be impacted in several ways by the new requirements of the AODA and the requirement to implement both the AODA and ODA simultaneously.

The key challenges will be to:

- Balance existing ODA requirements with those of the AODA. York Region must continue to develop, implement and report on annual Accessibility Plans in addition to meeting the multiple standards of the AODA as they are released.
- Establish the expertise and infrastructure to react to proposed standards and regulations and support compliance.
- Implement standards simultaneously until 2025.
- Train/support staff to be aware of and meet compliance requirements.
- Respond to legal, regulatory, and enforcement issues.
- Develop, implement and file AODA accessibility reports.
- Support and respond to the AAC as it carries out its mandate under the ODA and in its evolving role as advisor and auditor under the AODA.
- Manage public expectations. With the introduction of the AODA, the Region has begun receiving calls for information from organizations for advice and information on the AODA.
- Local municipalities will face the same key challenges as York Region. In addition, the Province has not ruled out the possibility that municipal inspectors may be responsible for enforcing standards in the non-municipal sector.

4.4 Next Steps

York Region is recognized as a leader in ODA implementation for its “Made-in-York Region” accessibility planning process.

During the transition period, the Region will need to develop processes and tools for: implementing the requirements of the AODA, responding to the standards that are being developed, training staff and the AAC, analyzing best practices, as well as meeting the timetable for the implementation of any standards that are released during this period and any other compliance reporting requirements. At the same time, the Region will continue to implement the ODA by developing, implementing and monitoring its annual accessibility plans and supporting the York Region AAC.

The municipal AACs will need to develop the capacity to play a dual role both in advising their Councils on its ODA accessibility plan, as well as on their compliance with

and implementation of the accessibility standards and in the preparation of accessibility reports under the AODA.

4.4.1 Parallel Implementation Process

In order to fully implement the new requirements of the AODA, the Region will consider a number of modifications to the current approach which was developed to administer and support the implementation of the ODA. Currently, the AODA will be managed in a decentralized manner by individual Departments. The AAC will continue to be supported corporately. The Region will continue to review options for handling workload and may modify them as the AODA evolves.

4.5 Relationship to Vision 2026

In 2001, approximately 90,330 residents with disabilities and their families resided in York Region. Based on population forecasts, approximately 230,000 York Region residents with disabilities and their families will be impacted by the implementation of the ODA and AODA by 2026. York Region's approach to the implementation of the ODA has been guided by the principles and goals in Vision 2026 and we will continue to strive to meet these goals.

5. FINANCIAL IMPLICATIONS

There is no funding from the provincial government to support the implementation of either the ODA or the AODA. The costs to make the Region accessible under the AODA can only be assessed incrementally as the province releases the multiple standards and timetables for implementation. There will likely be significant administrative and program costs to the Region once the standards and details around the compliance reporting requirements are known. Once these details are known, resource needs will be reviewed by the applicable Department and they will report back to Council on any resource implications. The Community Services and Housing Department will do the same for its specific program areas but will also include an assessment of corporate resource implications required to coordinate the parallel implementation of the two legislations.

It is likely that each accessibility standard will have costs associated with it in order to achieve the desired results of change and revisions in the delivery of goods, services, employment and accommodation. Each Department will be responsible for interpreting and implementing the standards which pertain to their program mandates. As such, any additional costs related to the implementation of the accessibility standards will be addressed individually through Departmental budgets and business plans. At this time, no standards have been released by the Province. Therefore, no additional funds have been requested in 2006 for standards implementation.

Additional costs may also be incurred if municipalities are requested to undertake the enforcement function of the AODA, as additional inspectors may be required to perform this task or the workload of existing inspectors will be increased. There may also be

costs related to the training of inspectors so that they are able to enforce the accessibility standards.

6. LOCAL MUNICIPAL IMPACT

Local municipalities will face many of the same resource and implementation challenges as York Region in implementing the AODA and ODA and perhaps more. As agreed to by Council, the Region will provide support to local municipalities by:

- Hosting an information workshop on the AODA for local municipal staff and Regional AACs in the fall/winter of 2005/2006.
- Continuing to meet, as appropriate, with the municipal staff reference group.
- Sharing reports/information as appropriate with local municipalities through the York Region AAC or Regional Council.

7. CONCLUSION

York Region is a proven supporter of accessibility for all of its residents. The new *Accessibility for Ontarians with Disabilities Act, 2005* will now require municipalities, like York Region, to make changes based on provincially-determined priorities and timelines, with no funding support or policy interpretation or guidance from the Province.

In moving forward in implementing the AODA and the ODA simultaneously, the Region's approach to accessibility planning must now balance and meet the requirements of both Acts. The Region will continue to work to implement its accessibility plans and pursue regulations and policies that will provide municipalities with the necessary tools and resources to implement the new AODA in a balanced and effective manner.

The Senior Management Group has reviewed this report.

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