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UPDATE ON THE REPORT OF THE INDEPENDENT REVIEW OF THE ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005

The Community and Health Services Committee recommends the adoption of the recommendations contained in the following report dated September 1, 2010, from the Commissioner of Community and Health Services.

1. RECOMMENDATIONS

It is recommended that:

1. The Regional Chairman write a letter to the Minister of Community and Social Services in support of the recommendations of the independent review of the *Accessibility for Ontarians with Disabilities Act, 2005*, with particular emphasis on the harmonization of the accessibility standards, implementation timelines, funding, leadership and best practice support of municipal accessibility advisory committees.
2. The Regional Clerk forward this report to the York Region Accessibility Advisory Committee, the Municipal Staff Reference Group, local municipalities and their Accessibility Advisory Committees, and the York Regional Police Services Board for their information.

2. PURPOSE

This report provides an update to Regional Council on the information and recommendations contained within “*Charting a Path Forward: Report of the Independent Review of the Accessibility for Ontarians with Disabilities Act, 2005*” by Charles Beer. The report also provides an update on recent announcements made by the provincial government related to the *Accessibility for Ontarians with Disabilities Act, 2005* regulations and compliance requirements.

3. BACKGROUND

York Region must comply with two provincial Acts concerning accessibility

The *Ontarians with Disabilities Act, 2001* (ODA) requires municipalities, including York Region, to prepare annual accessibility plans that address the identification, removal and prevention of barriers to accessibility for people with disabilities in their municipal bylaws, policies, practices, programs, services and facilities. The ODA also requires that the accessibility plan be developed in consultation with people with disabilities and made

available to the public. The ODA applies only to the Ontario Public Service and the broader public sector, including municipalities.

Accessing York: York Region's 2010 Accessibility Plan was recently approved by Regional Council at its meeting on May 20, 2010 through the adoption of Clause No. 3 of Report No. 4 of the Community and Health Services Committee.

The *Accessibility for Ontarians with Disabilities Act, 2005* (AODA) came into effect on June 13, 2005 with the goal to make Ontario fully accessible by 2025. This goal will be achieved through the development, implementation, and enforcement of provincially set accessibility standards relating to customer service, transportation, information and communications, employment and the built environment. Both public and private sector organizations will be required to implement these standards in phases.

The AODA will eventually replace the ODA, however, until the Province repeals the ODA, all public sector organizations, including York Region, must continue to implement both Acts simultaneously.

Accessibility standards have been developed by provincial Standard Development Committees

Under the AODA, provincial Standard Development Committees were established for each of the five accessibility standards: Customer Service, Transportation, Built Environment, Employment, and Information and Communications.

The Accessibility Standards for Customer Service Regulation (429/07) is the first standard under the AODA to become law. It came into effect on January 1, 2008. The Region achieved compliance with the regulation by January 1, 2010, as required by law. The status of the remaining standards is discussed later in this report.

The *Accessibility for Ontarians with Disabilities Act, 2005* must be reviewed within four years of it coming into force

Under Section 41 of the AODA, the Lieutenant Governor must appoint someone to conduct a comprehensive review of the legislation and regulations within four years of it coming into force, and every three years following the first independent review, and report on his or her findings to the Minister. The purpose of the review is to make sure the legislation is effective for people with disabilities, businesses and organizations, and must include public consultation, in particular with the disability community.

The Ministry of Community and Social Services provided the review with terms of reference, with a focus on four areas:

- The Standards Development Committee process.
- The functions of the Accessibility Directorate of Ontario, including public education.

- Recommendations for a repeal strategy for the ODA.
- The role of municipal accessibility advisory committees.

The terms of reference included the authority to recommend amendments to the AODA and to make recommendations for the consideration of additional accessibility standards. It did not include a review of the individual standards.

In June 2009, the Province appointed Charles Beer to conduct this independent review of the AODA. From September to December 2009, Mr. Beer consulted extensively with individuals and organizations across the province. One of the review sessions was hosted by York Region. In addition, four separate roundtable sessions were held with the private sector, accessibility groups, the transportation sector, and the broader public sector (municipalities, universities and colleges, schools and hospitals).

York Region staff provided feedback to the review in a number of ways, including through the Association of Municipalities of Ontario, attendance at several public review sessions and through other professional organizations and coalitions. The Region's concerns included the lack of funding, the non-consideration of municipal processes in implementation schedules, the need for harmonization of standards and applicable legislation, and the continued need to comply with both the ODA and AODA simultaneously.

The review period concluded at the end of 2009 and a report of the findings was filed with the Minister of Community and Social Services in early 2010.

4. ANALYSIS AND OPTIONS

Independent review report released to the public

The independent review, entitled "*Charting a Path Forward: Report of the Independent Review of the Accessibility for Ontarians with Disabilities Act, 2005*," was released to the public on May 31, 2010. In addition to the release of the report, the Minister of Community and Social Services also provided details on the upcoming implementation of the new standards, penalties for non-compliance and a framework for appeals.

The review report is a recommendation document to the Ontario government. The government reviewed the recommendations and released a formal response on August 11, 2010 (see *The Provincial Government's reaction to the review* later in this report).

A full copy of the review can be viewed at
www.accesson.ca/en/mcss/publications/accessibility/charles_beer/tableOfContents.aspx.

The review identified common issues and concerns under four key themes

- **Leadership:** According to the review, leadership in the drive for accessibility is considered a key responsibility of government. Review participants proposed that the provincial government articulate a vision for an accessible Ontario, keep accessibility a high priority and mobilize public support. Many consulted during the review felt that stronger government leadership is required to achieve the 2025 vision of the AODA.
- **Implementation challenges:** Stakeholders raised four major challenges involving the implementation of standards, once adopted:
 - Harmonization - The standards as proposed are not being cross-referenced and contain inconsistencies and overlaps. This lack of alignment is expected to increase compliance costs. Also the potential for misunderstanding is high, with each standard using its own set of criteria to classify obligated organizations.
 - Costs - There is no provincial funding to support the implementation of regulations under the AODA. All obligated sectors expressed significant concerns about affordability and called on the provincial government to identify sources of funding.
 - Education and training – Concern was expressed about stakeholder awareness, readiness and preparedness. Calls were heard on all sides for a massive effort to educate business, the broader public sector and other obligated organizations on what they must do to comply with the AODA.
 - Compliance and enforcement – Questions were raised about the compliance and enforcement framework for the AODA, including the frequency of accessibility reports, who will do inspections and under what circumstances, and which tribunal will hold hearings.
- **Integration of the AODA with other legislation and initiatives:** The issue of harmonization has a larger dimension beyond how the accessibility standards fit together. This involves the relationship between the AODA and other legislation, particularly the Human Rights Code, and with other government initiatives. The Human Rights Code, for example, has primacy over other legislation, yet requires the accommodation of needs of persons with disabilities up to the point of “undue hardship,” which lowers the bar from the AODA’s vision of full accessibility. A review to ensure cooperation and alignment with other legislation and government initiatives is required.
- **Standards development process:** Overall, stakeholders approved of the collaborative approach of the standard development process and saw inclusion of people from the disability community and from the obligated sectors including government as a positive feature. Concerns, however, were raised about the lack of transparency and

effectiveness of committee membership and composition, vague terms of reference, lack of supports and resources, high workload, inconsistent availability of accommodations and alternate formats, and the public review process which many felt did not provide opportunity for meaningful feedback on the proposed standards.

Review recommendations build on accessibility accomplishments but do not address lack of funding

For continued progress towards achieving the 2025 vision of the AODA, the review makes the following key recommendations to the Ontario government:

- Harmonize the accessibility standards prior to releasing the remaining accessibility standards as regulations.
- Renew and strengthen leadership for implementation of the AODA by:
 - Formally designating the Minister of Community and Social Services as Minister Responsible for Accessibility.
 - Strengthening the Accessibility Directorate of Ontario by elevating the role of the assistant deputy minister to deputy minister to provide stronger leadership and accountability for the implementation of the AODA.
 - Focusing the Accessibility Directorate of Ontario on renewed priorities including public awareness and education campaign to support the AODA.
- Amend the AODA to establish an arm's-length advisory board – the Ontario Accessibility Standards Board – to review and develop accessibility standards, replacing the standards development committee process.
- The review recommends a strategy to repeal the ODA, including that it remain active legislation until all of the accessibility standards are in regulation and an accessibility planning framework is incorporated into the AODA. It is anticipated that many of the requirements under the ODA will be covered in the standards developed under the AODA, however until these standards are finalized and released it is not clear what gaps, if any, will need to be addressed.
- Keep Municipal Accessibility Advisory Committees as advisory bodies to municipalities, but strengthen them with best practice and educational support from the Accessibility Directorate of Ontario.

Though identified as a key issue by all obligated sectors, the review does not recommend any accompanying funding to implement the requirements of the AODA.

The Provincial Government's reaction to the review

On May 31, 2010, the Minister of Community and Social Services also announced a revised framework for implementing the remaining standards. In response to public feedback from the standards review process, Ontario will integrate the proposed Information and Communications, Employment and Transportation standards into one streamlined regulation. This was also one of the recommendations made by Charles Beer in his review.

On August 10, 2010, the Minister of Community and Social Services released a formal response to Charles Beer's review, with the following highlights:

- As previously announced, the Information and Communications, Transportation and Employment standards will be integrated into one standard, with plans to have this proposed integrated regulation posted for public review in early Fall 2010 and completed and in force in 2011.
- The Accessibility Standards for Customer Service Regulation will be integrated into the regulation in 2013. Most changes to the Built Environment standard will be reflected in changes to the Ontario Building Code, with the rest integrated into the regulation as well. The Built Environment standard was submitted to the Minister on July 19, 2010, for consideration as law.
- The Government will continue to strengthen public awareness through its current educational programs, with a shift in focus towards the private sector and non-profit sector entities that will be obligated to comply with the standards as of 2012.
- The Government agrees that changes are needed to the current standards development process. The Minister has directed staff to explore the establishment of an Ontario Accessibility Standards Board and report back in early 2011. No organizational changes are planned at this time.
- The Minister plans to repeal the ODA once the regulations for the five standards under the AODA are in place. Appropriate actions of the ODA will be incorporated into the AODA at that time, though the Minister did not specify what those actions are.
- The Government strongly supports the important role that Municipal Accessibility Advisory Committees play in achieving the vision of an accessible Ontario. Continued support includes a best practice sharing section on the AccessOn website and plans for a series of regional forums in 2011 for municipal accessibility advisory committees.

Several issues and recommendations not addressed by the Government's response

The Government's response to the review did not address the lack of funding nor did it commit to the transformative changes recommended by Mr. Beer. Changes not addressed include strengthening the leadership for implementation of the AODA through a new public awareness and education campaign, formally designating the Minister of Community and Social Services as Minister responsible for Accessibility and elevating the role of the assistant deputy minister to deputy minister to provide stronger leadership and accountability.

Compliance penalties and appeals tribunal also announced

According to the Province, proposed penalties will only be used after all compliance assistance efforts have been exhausted. Proposed amounts for these penalties range from \$200 to \$15,000, depending on the size and type of organization, their compliance history and the impact of the violation. This is different than earlier reports which indicated administrative penalties of \$50,000 to individuals and \$100,000 to corporations, per day, for each day the offence occurs.

The Licence Appeal Tribunal will hear appeals as it has experience with similar types of appeals and is well known by the business community due to its involvement with consumer protection regulation. The tribunal will not have the authority to hear claims by individuals who wish to make complaints about specific businesses and organizations.

Association of Municipalities of Ontario responds to the review

The Association of Municipalities of Ontario (AMO) responded to the recommendations of the independent review on June 3, 2010. According to AMO, the review captures many of the concerns with the legislation that AMO has raised previously, including the composition and process of the Standard Development Committees, the need for harmonization of the standards and greater government accountability.

AMO also responded to the Minister's announcement of integrating the proposed Information and Communications, Employment and Transportation standards into a single regulation. Though in support, AMO expressed concern that more flexible timelines for implementing the standards and a less burdensome training schedule have not been addressed at this time.

York Region Accessibility Advisory Committee's reaction to the review

At the June 23, 2010 meeting of the York Region Accessibility Advisory Committee (YRAAC), the Committee recommended that a letter be written to the Minister of Community and Social Services in support of the recommendations of the independent review of the *Accessibility of Ontarians with Disabilities Act, 2005* with particular

emphasis on harmonization of the accessibility standards, implementation timelines, leadership and best practice support of municipal accessibility advisory committees. The YRAAC also recommended the fact that funding was not addressed be noted. Through this report it is recommended this letter be written by the Regional Chairman.

5. FINANCIAL IMPLICATIONS

There are no financial implications associated with this report. The independent review report and the response from the Minister did not recommend funding be provided to implement the AODA, requiring York Region to continue to be responsible for costs associated with implementing the AODA regulations. The full costs to make York Region accessible under the AODA cannot be estimated at this time. Costs can only be assessed as the Province releases the regulations.

6. LOCAL MUNICIPAL IMPACT

Under the AODA, each municipality is required to implement the requirements of the AODA. The Region will continue to share information as it becomes available with the Municipal Staff Reference Group (a group comprised of staff responsible for implementing the ODA and AODA in area municipalities, hospitals, school boards and York Regional Police).

7. CONCLUSION

Charles Beer's independent review of the AODA made important observations and recommendations that may be reflected in revisions to the Act. The Provincial Government has so far acted on the recommendation to harmonize the standards and it is anticipated that this will make the standards easier to understand and implement, offer greater flexibility, eliminate duplication and reduce both costs and regulatory burden. York Region will be in a better position to assess the full impact on the Region once the regulations are released.

Until then, York Region will continue to comply with the Accessibility Standards for Customer Service Regulation, develop annual accessibility plans, provide feedback on the standards through AMO and other professional organizations and coalitions, and prepare for the release of the remaining standards by the province.

For more information on this report, please contact Cordelia Abankwa-Harris, Managing Director, Strategic Service Integration and Policy Branch, at Ext. 2150.

The Senior Management Group has reviewed this report.