

# AODA: Buying into Collaboration

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# Layers of Legislation

- Canada ratified the UN Convention on the Rights of People with Disabilities in 2010.
  - One caveat: if Canadian law is more stringent than the CRPD, Canadian Law takes precedence.
- Canadian Charter of Rights and Freedoms.
  - Duty to Accommodate.
- Ontario Human Rights Code:
  - Duty to Accommodate.
  - Undue Hardship Standards.
  - Conflicting Human Rights Framework.
- Accessibility for Ontarians with Disabilities Act:
  - And its subsequent standards.
- Accessibility for Manitobans with Disabilities Act.

# Convention on the Rights of People with Disabilities

- This is the first treaty by the UN that included contributions from people with disabilities and “DPO’s” or Disabled Persons Organizations.
- This created quite a controversy.
- It is also the first treaty where synchronous notes were available as items were being discussed instead of having to wait for translations, approved minutes and so forth.
  - This allowed for a faster method of acceptance and voting on articles.
  - Leveraged the use of technology during the process...another first.
- Roughly 158 countries have ratified the CRPD:  
<http://www.un.org/disabilities/countries.asp?id=166>
  - For those who have been following this in the US, the CRPD has been signed but not ratified.
  - Fears that by adopting the CRPD, Americans will lose sovereignty/constitution.
  - If Canada is an example, it changes nothing.
  - Ironic because the CRPD is roughly based on the Americans with Disabilities Act (ADA).

# CRPD Articles 1-10

- Article 1 – Purpose.
- Article 2 – Definitions.
- Article 3 - General principles.
- Article 4 - General obligations.
- Article 5 - Equality and non-discrimination.
- Article 6 - Women with disabilities.
- Article 7 - Children with disabilities.
- Article 8 - Awareness-raising.
- Article 9 – Accessibility.
- Article 10 - Right to life.

# CRPD Articles 11 – 20

- Article 11 - Situations of risk and humanitarian emergencies.
- Article 12 - Equal recognition before the law.
- Article 13 - Access to justice.
- Article 14 - Liberty and security of person.
- Article 15 - Freedom of torture or cruel, inhuman or degrading treatment or punishment.
- Article 16 - Freedom from exploitation, violence and abuse.
- Article 17 - Protecting the integrity of the person.
- Article 18 - Liberty of movement and nationality.
- Article 19 - Living independently and being included in the community.
- Article 20 - Personal mobility.

# CRPD Articles 21 - 30

- Article 21 - Freedom of expression and opinion, and access to information.
- Article 22 - Respect for privacy.
- Article 23 - Respect for home and the family.
- Article 24 – Education.
- Article 25 – Health.
- Article 26 - Habilitation and rehabilitation.
- Article 27 - Work and employment.
- Article 28 - Adequate standard of living and social protection.
- Article 29 - Participation in political and public life.
- Article 30 - Participation in cultural life, recreation, leisure and sport.

# CRPD Articles 31 – 40

- Article 31 - Statistics and data collection.
- Article 32 - International cooperation.
- Article 33 - National implementation and monitoring.
- Article 34 - Committee on the Rights of Persons with Disabilities.
- Article 35 - Reports by States Parties.
- Article 36 - Consideration of reports.
- Article 37 - Cooperation between States Parties and the Committee.
- Article 38 - Relationship of the Committee with other bodies.
- Article 39 - Report of the Committee.
- Article 40 - Conference of States Parties.

# CRPD Articles 41 – 50

- Article 41 – Depositary.
- Article 42 – Signature.
- Article 43 - Consent to be bound.
- Article 44 - Regional integration organizations.
- Article 45 - Entry into force.
- Article 46 – Reservations.
- Article 47 – Amendments.
- Article 48 – Denunciation.
- Article 49 - Accessible format.
- Article 50 - Authentic texts.



# Article - 9 Inclusion

22: Accessibility is group related, whereas reasonable accommodation is individual related. This means that the duty to provide accessibility is an *ex ante* duty. That means the State party has the duty to provide accessibility before individual request to enter or use a place or service. State parties need to set accessibility standards which have to be negotiated with organizations of persons with disabilities, and these standards need to be prescribed to service providers, builders, and other relevant stakeholders.

Accessibility standards need to be broad and standardized. In addition, in particular cases, when a person with disability has a rare impairment that was not included in the elaboration of the accessibility standards or simply do not use some of modes, methods or means offered to achieve the accessibility (for example, they don't read Braille print), even the application of disability standards may not be sufficient to ensure access for that particular persons with disability. In such cases, reasonable accommodation may apply.

Item 22 of the proposed revisions to Article 9: Accessibility/normative content.

<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGCArticles12And9.aspx>

# Article 9 –Accommodation

23: In contrast, the duty to provide reasonable accommodation is an *ex nunc* duty, which means from the moment an individual with an impairment needs it in a given situation (work place, school, etc.) in order to enjoy her or his rights on basis of equality in a particular context. Here accessibility standards can be a help or even an indicator but may not be taken as prescriptive. Reasonable accommodation can be used as a mean to ensure accessibility for an individual with disability in a particular situation. Reasonable accommodation seeks to achieve individual justice in the sense that non-discrimination or equality is provided taking the dignity, autonomy and choices of the person into account. Thus, a person with disability, who has a rare impairment might ask for accommodation that falls outside the scope of any accessibility standard. If it has to be provided depends on if it is reasonable and not imposing a disproportionate or undue burden.

Item 23 of the proposed revisions to Article 9: Accessibility/normative content.

<http://www.ohchr.org/EN/HRBodies/CRPD/Pages/DGCArticles12And9.aspx>

# Incheon Strategy

- Incheon Strategy is the Asia Pacific response to implementing the CRPD.
- Ten goals with core indicators.
  - Significantly different from AODA approach (AODA has no identifiable benchmarks or core indicators that the legislation has been successful).
- “Make the Right Real!”
- “The Incheon Strategy provides the Asian and Pacific region, and the world, with the first set of regionally agreed disability-inclusive development goals.”
- “The Incheon Strategy is composed of 10 interrelated goals, 27 targets and 62 indicators.”
- “Goals describe the desired end results. Targets are aimed to be achieved within a given time frame. Indicators measure progress towards the targets and verify that the targets have been achieved. There are two types of indicators: core indicators and supplementary indicators.<sup>3</sup> All indicators should be disaggregated by sex wherever possible.”

# 10 Goals of Incheon Strategy

1. Reduce poverty and enhance work and employment prospects
2. Promote participation in political processes and in decision-making
3. Enhance access to the physical environment, public transportation, knowledge, information and communication
4. Strengthen social protection
5. Expand early intervention and education of children with disabilities
6. Ensure gender equality and women's empowerment
7. Ensure disability-inclusive disaster risk reduction and management
8. Improve the reliability and comparability of disability data
9. Accelerate the ratification and implementation of the Convention on the Rights of Persons with Disabilities and the harmonization of national legislation with the Convention
10. Advance sub regional, regional and interregional cooperation

# Goal 3 Normative Content

“Access to the physical environment, public transportation, knowledge, information and communication is a precondition for persons with disabilities to fulfil their rights in an inclusive society. The accessibility of urban, rural and remote areas based on universal design increases safety and ease of use not only for persons with disabilities, but also for all other members of society. Access audits are an important means of ensuring accessibility and must cover all stages”

“of the process of planning, design, construction, maintenance and monitoring and evaluation. Access to assistive devices and related support services is also a precondition for persons with disabilities to optimize their level of independence in daily life and live in dignity. Ensuring the availability of assistive devices for those living in low-resource settings involves encouraging research, development, production, distribution and maintenance.”

# Goal 3 Targets

## **Target 3.A**

Increase the accessibility of the physical environment in the national capital that is open to the public

## **Target 3.B**

Enhance the accessibility and usability of public transportation

## **Target 3.C**

Enhance the accessibility and usability of information and communications services

## **Target 3.D**

Halve the proportion of persons with disabilities who need but do not have appropriate assistive devices or products

# Goal 3 Core Indicators

- Proportion of accessible government buildings in the national capital
- Proportion of accessible international airports
- Proportion of daily captioning and sign-language interpretation of public television news programmes
- Proportion of accessible and usable public documents and websites that meet internationally recognized accessibility standards
- Proportion of persons with disabilities who need assistive devices or products and have them

# Goal 3 Supplemental Indicators

- Availability of a government access audit programme that requires the participation of experts with disabilities
- Availability of mandatory technical standards for barrier-free access that govern the approval of all designs for buildings that could be used by members of the public, taking into consideration internationally recognized standards, such as those of the International Organization for Standardization (ISO)
- Number of sign language interpreters
- Availability of mandatory technical standards for barrier-free access that govern the approval of all ICT-related services, such as websites for the public, taking into consideration internationally recognized standards, such as those of the ISO.



# Canada and the CRPD

- We are uniquely situated in that Ontario can use the CRPD as further clarification of the AODA and its subsequent standards while other countries are using it as a basis for basic human rights for people with disabilities.
- Canada has a responsibility under the CRPD to advocate for inclusion within its borders, create a more inclusive society and to provide accurate reports on the progress to full implementation of the Convention on the Rights of People with Disabilities.
- Who knows that Canada ratified the CRPD in 2010?
- Why doesn't the preamble to the AODA include the history of the CRPD and that Canada has responsibilities and accountability to implement the CRPD?
  - The ADA and Section 508 are mentioned extensively.

# Canadian Charter of Rights and Freedoms

- This is the basis for all human rights in Canada.
- Individual provincial human rights codes build on these basic human rights.
- As AODA consultants or AMDA Consultants, we need to know what rights are embodied in the charter and federal human rights laws.
- Which laws are still “active?”
  - Blind Persons Rights Act?

# Ontario Human Rights Code

- In looking at the OHRC and the Manitoba Human Rights Code, Ontario has more robust definitions and infrastructure.
  - Clear documentation on Duty to Accommodate for education and employment as well as general duty to accommodate.
  - Documentation clearly establishing Undue Hardship Standards:
    - A claim of undue hardship cannot be based on stereotype, perception or impression.
  - There are only 3 criteria to prove undue hardship:
    - Cost to the entire organization not the specific project or department.
    - Outside sources of funding, if any .
    - Health and safety requirements, if any.
    - See more at: <http://www.ohrc.on.ca/en/policy-and-guidelines-disability-and-duty-accommodate/5-undue-hardship#sthash.37vdesTV.dpuf>
  - Undue Hardship Standard: <http://www.ohrc.on.ca/en/guidelines-accessible-education/undue-hardship-standard>

# Section 11 of the OHRC

- Paraphrased: no additional layer of discrimination can be added onto a group already identified in the Ontario Human Rights Code as a group protected. For example people with disabilities.
- Important given discussions about income based transit by a few municipalities while there is no discussion of income based transit for people without disabilities.
  - Feasibility of actually implementing this would cost more than the implementation.
  - It adds an additional layer of discrimination/based on income for those with disabilities.

# Constructive Discrimination - OHRC

**11.** (1) A right of a person under Part I is infringed where a requirement, qualification or factor exists that is not discrimination on a prohibited ground but that results in the exclusion, restriction or preference of a group of persons who are identified by a prohibited ground of discrimination and of whom the person is a member, except where,

- (a) the requirement, qualification or factor is reasonable and *bona fide* in the circumstances; or
  - (b) it is declared in this Act, other than in section 17, that to discriminate because of such ground is not an infringement of a right. R.S.O. 1990, c. H.19, s. 11 (1).
- [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90h19\\_e.htm#BK13](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h19_e.htm#BK13)

# OHRC – Conflicting Human Rights

- As of November 2012, the OHRC has a tool kit to determine solutions for “conflicting human rights.”
- For example: A teacher uses a guide dog and a student has allergies to pet dander.
  - Whose “rights” take precedence?
    - This is an actual case in which the Conflicting Human Rights Framework was used.
- Conflicting Human Rights Framework: <http://www.ohrc.on.ca/en/balancing-conflicting-rights-towards-analytical-framework>
- It is a detailed and documented process of mediation, accommodation, solution sourcing and balancing the human rights of both parties.

# AODA, 2005

- The Accessibility for Ontarians with Disabilities Act builds on the Ontario Human Rights Code and sets standards for non-discriminatory practices and an inclusive community.
- Sets standards for:
  - Customer Service.
  - Information Communication, Employment, Transportation, Open Spaces (Integrated Accessibility Standards Regulations).
  - Built Environment standards to come.
- In terms of the layering, the AODA states that when looking at the built environment standards for example, if the Canadian Building Code and/or the Ontario building Code have more stringent accessibility standards, then those are the standards to be used.
- Similar to Canadian approach to the CRPD – If Canada has human rights laws that are more stringent than the CRPD, those laws are the ones to be enforced.

# Information Communication

- In many ways, this standard is “old.”
- WCAG 2.0 is for HTML content.
  - This is similar to those of us working with Section 508 and trying to map it to other document formats.
- If content is created to be accessible, why should it be the responsibility of an organization to make it “differently accessible.”
- If there are standard textbooks in primary and secondary education why wouldn't it be the responsibility of the Ministry of Education to ensure that upon procurement, an accessible format of that text is available?
- There are other standards such as PDF/UA for accessible PDF documents.
  - These standards are not referenced in WCAG 2.0...yet.
- We need to have collaboration and inclusion of format standards.
- The legislation should have included this type of text.



# Employment Standards

- The Employment Standards further define reasonable accommodation.
- They do not promote an inclusive working environment where accommodation is the exception rather than the rule.
- Job postings:
  - Have the level of IASR compliance for built-environment and software/hardware.
  - Have identification as to whether the interview and workplace are accessible.
  - Have an indication of what AT is supported by the IT department/employer/organization.
- We should be able to apply for work based on skill not whether we know if our AT will work with existing tools/
- Article 9 of the CRPD also states that accommodation is to be the exception rather than the rule.

# Transportation Standards

- No consideration in the standards for rural transit.
  - Often in rural municipalities Para transit is the first public transit to be needed and implemented.
  - It typically takes the form of taxi-based service sometimes with support from mini-van shuttle service between distances.
- Language is confusing around “fare parity:”
  - You can charge people with disabilities less, BUT you can’t charge them more for transit (either conventional or specialized).
- The standards must clarify public transportation and that both conventional and specialized transportation are under the more general category of public transportation.
  - This will assist municipalities that already have a specialized transportation service that is taxi-based in understanding that public transit is not a “gift that can be taken away at a whim.”
  - Will assist municipalities who begin planning for public transit in establishing an accountable and responsible service at the start.

# AODA – Internal Collaboration

- Dean Mayo-Moran Independent Review of AODA.
- Independent Review of Customer Service standard.
- Notice that if customer service issues were raised in the AODA presentations that they would NOT be shared with the Customer Service Standards Review committee.
- An “inclusive Ontario” appears to be the domain of the aDO and if you contact any other entity of the provincial government about a compliance or violation issue, you are referred back to the ADO.
  - “It’s not our problem. It’s an accessibility problem.”
  - No collaboration or sense of everyone working together within the provincial government.
- The opportunities for collaboration exist.
- How can we expect organizations in general to collaborate when the provincial government does not?

# Seminars on the CRPD

- The IDPP or Institute for Disability and Public Policy:
  - <http://aseanidpp.org/crpd-seminar>
- Offers free seminars through Blackboard CourseSites on both the CRPD and the Incheon Strategy.
  - 4 weeks, one hour each week plus slides and resources.
  - Opportunity to discuss collaboratively what is happening in the area of disability rights around the world.

# Resources – 1

- Karlen Communications AODA webpage:  
<http://www.karlencommunications.com/AODA.html>
- First Review of the AODA:  
[http://www.mcsc.gov.on.ca/en/mcsc/publications/accessibility/charles\\_beer/what\\_review\\_heard\\_implementation.aspx](http://www.mcsc.gov.on.ca/en/mcsc/publications/accessibility/charles_beer/what_review_heard_implementation.aspx)
- Convention on the Rights of People with Disabilities:  
<http://www.un.org/disabilities/default.asp?id=259>
- Incheon Strategy:  
<http://www.unescap.org/sdd/publications/IncheonStrategy/Incheon-Strategy.pdf> (not sure if this document is accessible or not)
- What is “Make the Right Real?” <http://www.unescapsdd.org/make-the-right-real>

# Resources – 2

- UN Enable: Convention on the Rights of People with Disabilities: <http://www.un.org/disabilities/default.asp?id=259>
- UN Resolution on the Right to Education for People with Disabilities (March 2014): <http://www.internationaldisabilityalliance.org/sites/disalliance.e-presentaciones.net/files/public/files/Adopted%20Resolution%20on%20the%20right%20to%20education%20of%20persons%20with%20disabilities%2028%20March%202014.doc>
- Canadian Charter of Rights and Freedoms: <http://www.efc.ca/pages/law/charter/charter.text.html>
- Canadian Human Rights Commission, duty to Accommodate: <http://www.chrc-ccdp.ca/eng/content/duty-accommodate>
- Canadian Human Rights Act: <http://laws-lois.justice.gc.ca/eng/acts/H-6/>

# Resources – 3

- Ontario Human Rights Code: [http://www.e-laws.gov.on.ca/html/statutes/english/elaws\\_statutes\\_90h19\\_e.htm](http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h19_e.htm)
- OHRC Duty to Accommodate: <http://www.ohrc.on.ca/en/policy-drug-and-alcohol-testing/duty-accommodate>
- OHRC: Undue Hardship Standards: <http://www.ohrc.on.ca/en/guidelines-accessible-education/undue-hardship-standard>
- OHRC: Conflicting Human Rights Framework: <http://www.ohrc.on.ca/en/balancing-conflicting-rights-towards-analytical-framework>
- Accessibility for Manitobans with Disabilities Act: <http://web2.gov.mb.ca/bills/40-2/b026e.php>

# Karlen Communications

- Contact Karlen Communications:
  - [info@karlencommunications.com](mailto:info@karlencommunications.com)
  - <http://www.karlencommunications.com>
  - Submission to the Dean Mayo Moran Independent Review of the AODA:

Make the  
Right Real!