

Committee on the Rights of Persons with Disabilities  
Draft General Comment on Article 9 of the Convention-Accessibility

Karen McCall, M.Ed.

AODA Consultant (Accessibility for Ontarians with Disabilities Act, Ontario Canada)

## I. Introduction

### Comment on item 8:

As with the issue of the legal challenge for access to managing one's own finances, the individual court cases may provide insight to more global issues that may require further clarification and definition under the CRPD. The individual court cases provide access to possible trends in exclusion and discrimination and are therefore useful as a "red flag" or possible area of increased discrimination...or to an area previously not considered under the CRPD.

## II. Normative content

### Comments on item 11/alternative text:

Although there may be perceived "new rights" for some civil societies and governments, for others, such as in Canada, the CRPD articles are useful to clarify and define rights already embodied in the Canadian Charter of Rights and Freedoms, the individual provincial human rights codes and in provincial specific legislation such as the Accessibility for Ontarians with Disabilities Act and the newly passed Accessibility for Manitobans with Disabilities Act. If there is any question about the rights and/or standards identified in any of these pieces of legislation, those of us in Canada have the CRPD to refer to as further identification of the goals and objectives of legislation. In this regard, the CRPD further entrenches existing rights for some countries/regions while establishing a baseline for legislation and rights for others.

### Comment on item 13:

This is a significant statement in that in many rural areas, it is specialized transportation services or para transit (also known as Parallel transit) that is needed and/or implemented first, before conventional transportation for those without disabilities. Due to the naming convention of Para or Parallel transit, many communities and municipalities do not identify and act on the need for people with disabilities to be able to move within their own communities until there is a demographic need for conventional transportation. This systemic and attitudinal discrimination must be changed if people with disabilities are to be equal and have access to the same goods, services, employment and educational opportunities in rural areas as they do in urban areas. The change in thinking and implementation is that one doesn't need an existing conventional transportation service in order to implement specialized transportation service. This is one reason that there is the revised naming convention of "specialized transportation service.

### Comment on item 16:

Additionally, at some point, the global educational environment must be addressed. People with disabilities cannot be continuously "accommodated for" as we move forward in the post-2015 society. People with disabilities are only one part of the equation to ensure that there is equity and access. The educational systems at the primary, secondary and tertiary levels MUST teach that anything produced IS accessible. For example, if there is peer evaluations or collaborative projects, even if a person with a disability knows how

to use their technology and how to work with a specific file format or environment, if the deliverable is not designed to be accessible, the barrier still exists. Further, if we don't start producing graduates that simply create universally designed deliverables, employers will start rebelling against having to re-educate employees on how to create inclusive products/universally designed products. This is true whether we are talking about building/architecture, software, content, transportation, customer service or Human Resources solutions...as we continue to exclude the teaching of universal design as an integral and mandatory part of everything done in the educational environment, we will continue to support and passively condone the barriers for people with disabilities. We will never achieve our goals of inclusive societies. The goal would be to have "accommodation" for people with disabilities be the exception rather than the norm as per Article 12 of the CRPD.

#### Comment on item 19:

Again, I go back to the need to reform global education to include the seamless integration of universal design so that all of these electronic and built-environment aspects of inclusion are created to be accessible by default.

#### Comment on item 20:

This is where many states parties fall short of ensuring that people with disabilities have access to action if human rights laws are violated. For example, on paper and in legislation in Ontario Canada, there are standards for specialized transportation service. There is a section of the legislation that outlines enforcement and fines for non-compliance to the legislation/transportation standards. The reality is that the parties responsible for compliance and enforcement are nowhere to be found. The Accessibility for Ontarians with Disabilities Act is not "complaint based" so people with disabilities who experience discrimination and a violation of the standards have nowhere to identify the barriers and begin the enforcement and compliance activities.

The only recourse people with disabilities have in Ontario is to file an Ontario Human Rights Complaint. This opens jurisdictional issues and delays in ensuring that the human rights laws are adhered to. In Ontario 59% of human rights complaints are related to discrimination against people with disabilities. This is the province with the most stringent and specific human rights code and the standards for that code set out in the Accessibility for Ontarians with Disabilities Act. In Nova Scotia, a province with a provincial human rights code but not a further set of standards, and a smaller province in population and geography, the percentage of human rights complaints related to discrimination against people with disabilities is 56%.

States Parties must give more than ratification, reports and lip service to their obligations toward people with disabilities and the articles of the CRPD. Monitoring, investigation and reporting of violations as they relate to people with disabilities must be part of the post-2014 goals. Again pointing to Canada, no one really knows that Canada even ratified the CRPD and what Canada's obligations under the CRPD are. No one knows who to contact or what department houses the monitoring and reporting of CRPD based activities. It is a well-kept secret.

I know from attending the second annual Forum on the Rights of Children with Disabilities that a primary focus is on quantifying the number of people with disabilities. This goal should be secondary or tertiary to the goal of ensuring that the existing rights people with disabilities have in countries/regions are preserved and available. We can't be paralyzed into inaction waiting for an accurate head count. We must move forward and ensure that the rights of those with disabilities are live and active rights.

Again using Canada as the example, there are several well defined layers of human rights legislation but no coordination of monitoring and enforcement of those rights. There is no apparent relationship between the layers and the government agencies responsible for each layer and no understanding of how the layers of human rights legislation interact and are to be applied by either local municipalities, public or private organizations or even by people with disabilities themselves.

What I like about the Incheon Strategy is that it identifies core indicators as a measure of progress. However, in Ontario Canada there are specific standards embodied in legislation for customer service, employment, information/communication, transportation, open spaces and the built environment with “concrete” deadlines but no mechanism to educate, train, bring to the attention of compliance and enforcement entities, no identification of who is responsible for ensuring compliance and enforcement, and no compliance and enforcement. Legislation is one of the most common methods to ensure that human rights are preserved and “lived” BUT without the ability to intervene and educate or enforce the CRPD or any other layer of human rights treaty or legislation, it is just paper and words and does nothing to advance the goal of an inclusive society.

#### Comment on item 21:

The issue of cost can be addressed with the inclusion of universal design at all levels of the educational process. One of the biggest barriers in terms of cost is attitudinal. Again I point to the areas of Ontario where statements such as “if they can afford to go grocery shopping, they can afford to pay full taxi fare” and “if they can’t afford a taxi, call an ambulance. Become justification for eliminating specialized transportation. These statements identify systemic discrimination and attitudinal barriers facing people with disabilities in even retaining or gaining access and services they need to be independent. The issue of affordable and sustainable services must also be addressed. The same municipality from which the previous statements were derived does not have a strategy or plans to ensure the sustainability of specialized transportation service. This is despite the requirement to supply the provincial government with accessibility plans at the start of each year. In fact the municipality deliberately rebranded specialized transportation service as a “subsidized transportation program” to avoid the provincial law. This of course is a semantic difference and the current program meets the definition of specialized transportation by the AODA but with no enforcement of the law, it is up to diligent advocates to constantly barrage elected officials with quotes from the legislation and often the result is that the elected officials do what they want because there are no consequences.

One of the principles of the AODA that is useful, at least on paper, is that people with disabilities pay no more for something/a service than people without disabilities. They can pay less, but they can’t pay more. For areas with public transportation, specialized transportation services had to stop charging people with disabilities double the fare. There are still pockets of non-compliance including one region north of Toronto where people with disabilities are charged limousine fares for specialized transportation service as the service provider states that accessible vehicles are “luxury vehicles” and therefore are subject to limousine rates.

The principle is a good one until we come to rural transportation where the only means of transportation if you can’t drive is taxi. In most cases taxi fare in rural areas prohibit the use of taxis by people with disabilities who are mostly living at or below the poverty level.

So when we talk about cost, especially in terms of transportation services and/or what can be described as “equal” services, there should be a preface identifying access as affordable and sustainable. We must encourage thoughtfulness and planning. If, for example, a region establishes a specialized transportation service without planning and strategy, then discovers that it can’t be sustained within a one year period, people with disabilities who had been independent or who came to rely on the service to participate in their community, will once again be isolated. Moving to urban areas is often more expensive for people with disabilities and removes them from family, friends and a support network. This is especially true for farmers with disabilities and their family members with disabilities.

Cost should also be amortized within any project funding. Any project that is funded by any organization MUST include people with disabilities and adherence to the CRPD.

#### Comment on item 22:

This confusion between accommodation and inclusion is part of the problem with many existing “standards” and some legislation. Again pointing to the Accessibility for Ontarians with Disabilities Act in Ontario, the Integrated Accessibility Standards Regulations, parts II – Information and Communication and III – Employment, the focus is on providing alternate format “upon request” rather than by design for information communication; and the entire section of the IASR on Employment defines accommodation for employees with disabilities. It is not clear whether the authors of the legislation did not understand the concept of inclusive employment and access to information or whether vested interests would not permit inclusive rather than accommodated for legislation. It is clear, that as this section and the next section of this revision document define, and the goal is inclusion rather than perpetual accommodation. This is a perfect example of how, for countries with existing layers of human rights legislation that includes people with disabilities, that the CRPD can be used to clarify responsibility and the creation of standards associated to the existing human rights. After reviewing article 12 of the CRPD, I like the clear distinction between inclusion and accommodation.

#### Comment on item 23:

The goal should be that accommodation is the exception not the expected behaviour or action. I like the separated defined difference between providing accommodation and developing a truly inclusive society. As some disabilities are severe or difficult to design for, we will always need to provide reasonable accommodation. However, these should be one-off solutions.

### III. State party obligations

#### Comment on item 26:

First, using the province of Ontario and transportation as an example, there are legislative standards and layers of human rights law that clearly identify the “rights” and standards for those rights, for people with disabilities to access specialized and/or conventional transportation. There are, on paper, significant fines and a process for enforcement for non-compliance. However, the legislative standards have no teeth nor are they being enforced. There are instances of people with disabilities not being able to access designated accessibility seating on conventional transportation because service providers will not ask those without disabilities to move; there are instances where accessible vehicles/taxis are called “luxury vehicles” by some taxi companies and people with disabilities are charged limousine rates for transit. Recently, a BBC article identified a taxi company that now refuses to transport people with disabilities because the

company has been told they can't overcharge people with disabilities. As the CRPD and other human rights laws and standards become visible, so are the immense cracks in the area of human rights. A part of the focus on the CRPD and the identification of the rights of people with disabilities must be the identification of violations and the enforcement of human rights laws and standards.

Transportation must be an article of its own in the CRPD so that the access to affordable and sustainable public transportation and taxis is clearly defined. In rural areas where taxis are often the most effective "public transit" for those with disabilities, this needs to be recognized as an integral part of public transportation. In many ways, "we" need to begin rethinking how people move around their communities, regions and globally and reinforce the dignity of people with disabilities while traveling and the right to accessible, affordable and sustainable transportation.

This is not confined to transportation. "We" also need to rethink the acquisition of knowledge and learning and begin to reform the educational environment, experience and access to learning. Both transportation and education are examples of systemic barriers that are now being revealed. They need to be addressed in any revisions of any treaty or human rights law and standards.

#### Comment on item 27:

At this point, even looking at the Incheon Strategy and the discussions of the second forum on the rights of Children with Disabilities held at UNICEF House in September 2013, an emphasis is on data collection of how many people with disabilities there are in the world and what those disabilities are. The emphasis should be on the number of human rights violations, especially within the countries which ratified the CRPD. Through the identification of the violations and issues in implementing existing human rights laws and standards, we can then identify the population of people with disabilities and gather the data. If the focus is on identifying the number of people with disabilities, the inference is that human rights law is there, but "we want to see how many people have disabilities globally before we actually implement anything."

Whereas the emphasis should be on improving the access to goods, services, transportation, education, employment and the built-environment.

The collection of data also presupposes that people with disabilities will stand up and be identified. The attitude of most people with disabilities is that of not calling any attention to themselves by identifying themselves as having a disability due to human rights violations and discrimination experienced.

Even in Ontario Canada, where there are several layers of human rights laws and standards, those with disabilities are reluctant to self-identify because there is no enforcement of those layers of legislation and standards. Given the rise in the number of those aging and acquiring disabilities within the next few years, we know that the number of people with disabilities is increasing. Given the number of people who are acquiring disabilities due to lifestyle choices or lack of access to nutrition and health care, we know this population is increasing.

Do we really need to count every head and hair in order to support the human rights of people with disabilities?

#### Comment on item 28:

Great idea, but as is demonstrated in Ontario Canada, we have the legislation. We have the standards. We do not have any communication between federal, provincial and local governments or organizations. We have compliance on paper but not in reality. Although there is enhanced human rights legislation on paper, those with disabilities have not seen any improvement in their quality of life since the Accessibility for Ontarians with Disabilities was enacted in 2005. Many local governments are waiting for the 2025 deadline to come and go so that they can forget about the legislation. What types of frameworks will the UN put in place to ensure that reports are accurate from states parties and that violations or inaction is visible to the global community?

#### Comment on item 29:

Agreed. However, this involves education of those who are charged with procurement. The local government where I live does have the language in RFP (Requests for Proposals). But...they do not understand what that language means and will not take the time to learn what it means in order to be well-informed. It is one thing to have the language present in procurement documents, but without educating those who are procuring as to what that language really means, the language is useless.

#### Comment on item 30:

This is what was lacking in the legislation in Ontario. The laws/standards were passed without thorough identification of the costs and resources that will be needed to enact the legislation. This was identified in the first review of the legislation in 2010. Since that initial review of the success and implementation, nothing has been done to improve the situation. There were four areas of problems identified by the review: lack of harmonization of the standards, lack of communication among the committees and advisory boards creating the standards, lack of identification of costs, and lack of education and training. It is hoped that the committee reviewing and promoting the CRPD can learn from these mistakes.

[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)

## IV. Inter-sectional issues

#### Comment on item 31:

With the Ontario Human Rights Commission overwhelmed and overloaded with complaints based on discrimination toward people with disabilities, suggestions on an infrastructure to handle the myriad of complaints that result from systemic and environmental discrimination must be established. For example, an Ombudsperson with investigative teams, a separate human rights entity to handle only the cases/complaints related to discrimination against people with disabilities, or a fully supported enforcement infrastructure. Having any layer of human rights legislation or standards without a process for those with disabilities to identify possible non-compliance, discrimination or to ask for assistance for their region, municipality or organization denies those with disabilities the opportunity to be included in their communities and participate in their own lives. Although this is another example based on the experience in Ontario Canada, this is not a unique situation.

#### Comment on item 32:

Agreed and the federal and provincial governments in Canada have not done this. Very few Canadians with or without disabilities, know that Canada ratified the CRPD in 2010.

### Comment on item 34:

This brings up the issue of a person with a disability not being charged more for the same information available to someone without a disability. It also raises the issue of alternate format and how much responsibility for accessing information that is already accessible (meets the ISO standards for document or software accessibility). For example, if content is created to be optimally accessible given current standards and laws, does it have to be provided in a “differently accessible format?” Who should pay in that instance? From one perspective this is not over-charging if an additional fee is charged because the content was accessible to begin with. While it would appear to be discriminatory to charge someone with a disability to make content or software accessible, if that content and software is already accessible, is an additional charge to make the content or software “differently accessible” appropriate? In other words, we need to understand the difference between accessibility and end-user preference.

### Comment on item 35:

This includes any deliverables provided by other students and faculty. Education and the increasing focus on intelligent content design must mean that it is not only the student with the disability who is in the classroom but all students who are working collaboratively and as a group within the educational environment and therefore, every aspect of learning must be accessible. Universal design and intelligent design based on the ability to render information and content in a format that the student/end-user needs or wants at that point in time must be a seamless part of the educational process. Additionally, if the government mandates a curriculum with specific texts and software or other tools to be used, those texts, software and other tools must be accessible at the purchase point/procurement process, and not made accessible or provided in an accessible format at the “request” of a student or faculty member. The responsibility for learning opportunities should not be on the student to ensure accessibility and access. The standards for accessibility must be part of the decision process and procurement process at the governmental level in those situations. This will prevent the redundant requests and expenses for obtaining course material and tools in an accessible format. If a school district or department decides to use texts, software or tools in the learning environment, then these texts, software or tools must be procured in an accessible format. It should not be incumbent on the student to request accessible texts, software or tools at the time they enrol in a course or stream of study. The accessibility of the global learning and educational environment must be implemented during the curriculum-based decisions. The goal is an inclusive learning environment not an accommodated for learning environment.

### Comment on item 36:

As we move toward more digitized health records, the accessibility of those records to both patients and medical personnel with disabilities is essential. What is known commonly as E-health, is in its early stages of evolution and the principles of universal design and accessibility standards must be incorporated into the evolution. Patients with disabilities must be able to access digitally-based medical content. Medical care is rapidly becoming more than access to the built-environment and services. It is becoming a right to accessing one’s own medical records in an accessible manner.

### Comment on item 37:

This brings in the procurement process to ensure that as employers move forward, any tools used in the performance of a task meets the international and/or legislative standards for accessibility/universal design. If the workplace environment, both physical plant and digital environments were optimally



accessible, the need for individualized accommodation would be lessened. The workplace would be inclusive and reasonable accommodation would be the exception as opposed to the norm. Potential employees with disabilities would be able to focus on the skills and potential they bring to the job rather than trying to troubleshoot IT issues and figure out if their adaptive technology will work.

#### Comment on item 38:

One of the elements of human rights and the ability to run for and hold public office relates to both women and people with disabilities. The Ontario Municipal Act, for example prohibits an absence of more than three meetings and does not allow for the participation of elected officials from home when or if necessary. It is apparent that the legislation has not caught up with the reality of working mothers or elected officials who might be pregnant, or people with disabilities who may for various reasons, including weather or availability of accessible, affordable transportation, may not be able to be at a physical meeting place, but who might be able to attend virtually through the use of accessible conferencing and adaptive technology.

#### Comment on item 43:

Those of us with disabilities must have a venue for reporting and having investigated the violations of the CRPD, federal and local human rights laws and standards. As has been demonstrated by case study and formal review of the Accessibility for Ontarians with Disabilities Act (and referred to as an example in these comments), there is no such mechanism within Canada. It takes years for an Ontario (or other provincially based human rights complaint) to go through the system. With over 50 percent of human rights complaints being disability based, it is apparent that monitoring and enforcement are not a priority...or do not appear to be. Those of us who are experiencing discrimination must have access to assistance in the form of educating those who are discriminating against us and, as a last resort, enforcement of the legislation and standards that are in place.

The ability of states parties to take the human rights of people with disabilities as an integral part of who they are and what the future of the states are is important. Without the monitoring, compliance, education/training and enforcement of the CRPD and human rights legislation/standards, those of us with disabilities will not have the opportunity to realize our full potential. It is acknowledged that even in developed countries this involves a paradigm shift in how people with disabilities are viewed. However, it is not an impossible task. We must, however, be included in the decision making of the legislation and standards for our own lives.

Additionally, I suggest that an article or two specific to transportation for people with disabilities be included in the CRPD. These articles should focus on the need for specialized transportation service in rural areas as a possible precursor to conventional transportation, that specialized transportation service is a recognized sub-sector of public transportation, that people with disabilities can be charged less but cannot be charged more for transportation, and other issues that are readily identifiable as discriminatory related to the ability to move freely and participate in an active and productive life.

This article is correct, without accessible, affordable and sustainable transportation in both rural and urban areas, in both developed and developing countries, people with disabilities will be relegated to lives of poverty and discrimination for the foreseeable future.

The ability to manage and act upon one's own finances is an essential component of any human right. It might also be useful to have an article specific to this goal. For example, accessing banking machines,



## **ADVANCE UNEDITED VERSION**

---

websites, the built-environment, including access to bills and correspondence sent to a person with a disability electronically.

As we move forward with the CRPD being used as both a definitive reference for existing standards and legislation and as the basis for new standards and human rights legislation, the inclusion of articles specific to transportation and an understanding of the need for accessible and affordable transportation to achieve educational, employment and participation in our own lives is essential.