

# **Emerging Trends in Specialized Transport in Rural Communities**

## **Exposing the Myths**



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## **Executive Summary**

The category of public transport that used to be called “Para transit” or parallel transit is evolving to recognize that the only implementation of public transport for people with disabilities does not have to be parallel to an existing conventional fixed route public transport system. The redefined category is that of specialized transport. This is similar to the trend in the more general category of public transport to include all modes and models of transport, not just fixed route “conventional” transport.

The change in defining specialized transport for people with disabilities as public transport allows for its implementation as a standalone public transport system in rural communities. In rural communities there is often a recognized need for and implementation of specialized transport for people with disabilities years or decades before what is categorized as “conventional” or fixed route transport.

In Ontario Canada, the Ontario Human Rights Commission, in 2002, took the position that in order for Para transit to exist within a community, conventional fixed route public transport must exist (Ontario Human Rights Commission, 2002). This position was the result of public transport service providers attempting to designate Para transit as a special program under the Ontario Human Rights Code, which the Commission determined was a misuse of the designation “special program.”

The concept of Para transit, now specialized transport, depending on the existence of a conventional fixed route transport system has not been revised since 2002 and is still referred to as “law.”

The rationale for continuing this perspective is based on tradition and history. This position negates the implementation of specialized transport in rural communities where there is not enough population density to establish a fixed route transport system but there is a recognized need within the community to establish a specialized transport system for people with disabilities.

The premise for this report came as a result of one municipality in south-central Ontario Canada making and supporting conscious decisions to restrict access to specialized transport within the municipality after providing a fuller service for about 20 years.

The myths exposed in this report come from desperate and disparate attempts to leverage the traditions and history about specialized transport to circumvent and violate layers of human rights legislation in Ontario (McCall K., AODA: Blueprint for Exclusion, 2013). The case study has been presented at several conferences and remains an example of a determination to avoid implementing human rights and standards related to specialized transport (McCall, AODA: Blueprint for Exclusion (Update 2014), 2014). Although reference is made to the case study of the south-central Ontario municipality, the myths surrounding specialized transport apply in many regions.

Traditions and history often become myths, in the case of specialized transport, affecting the ability to identify human rights codes, standards and models of service delivery in rural communities. Interpretations of items included in human rights laws and treaties, including the UN Convention on the Rights of People with Disabilities, then become barriers to inclusion, independence and empowerment.



## **Intent of this report**

The purpose of this report is to identify lingering traditions about providing specialized transport in rural communities. These traditions have evolved, in some instances, as further clarifications under the Ontario Human Rights Code to prevent discrimination and avoidance of the Code. As an example, in a consultation document in 2002, the Ontario Human Rights Commission stated (Ontario Human Rights Commission, 2002).

Public transit in cities across Ontario is fundamental to the ability of many people to participate meaningfully in the life of their communities. Public transportation is used to access employment, education, public and social services and community activities.

Equal access by persons with disabilities to public transportation is a right protected under the Ontario Human Rights Code [1] ("Code"). Equal access to transit services is not a reality for many citizens of the Province and despite its importance in our daily lives, barriers to public transit services remain.

Over the past years, the Ontario Human Rights Commission has received numerous complaints against transit providers in Ontario alleging that aspects of their respective transit service, including para-transit service, infringe the right to equal treatment with respect to services on the ground of disability. Transit providers frequently take the position that the para-transit service operating in their respective community is a "special program" under section 14 of the Code.

The concern in 2002 was the provision of specialized transport for people with disabilities in cities where it is implemented alongside conventional fixed route public transport. Those living in rural communities are not included in the position of the Ontario Human Rights Commission, which then creates an inequity in applying the Ontario Human Rights Code in rural communities. We are now 12 years away from that initial position and our approach to specialized transport must evolve forward.

Support for people with disabilities has historically been framed as charity or a social burden, even in developing countries. In recent history, three historical events have significantly changed the way society regards people with disabilities: Word Wars I and II (British Heritage, 2014) and the declaration of the United Nations International Year of People with Disabilities in 1981. People with disabilities are advocating for their human rights and substantive equity in all areas of their lives.

In the south-central Ontario community which had specialized transport for 20 years, a charity model of program delivery has been promoted in response to a lack of management and oversight of the specialized transport system.

Upon discovering the lack of budget, management and oversight people with disabilities heard the following:

"It (specialized transport) is a gift, done out of the goodness of our hearts...and we can take it away any time we want" (McCall, AODA: Blueprint for Exclusion, 2013)

There were immediate and concerted attempts to control access, eligibility and destinations where people with disabilities could travel within their community.

Positioning specialized transport as a charitable gift, implies the following (Wood, 2012)

"Charity is a way for individuals and society to avoid their obligation to remove social barriers and support needy members of the community".

Framing specialized transport as charity, a gift that can be removed at the whim of those without disabilities denies people with disabilities their rights and places them in perpetual gratitude for even the smallest of concessions. It also promotes an atmosphere of fear of reprisal if the gift is not appreciated.

The purpose of this report is not to mandate the creation of a specialized transport system in every rural community. The purpose of this report is to further the discussion and promote and advocate for the need to clearly identify specialized transport as a stand-alone form of public transport, which then lets us create standards of service and access and independence for people with disabilities living in rural communities.

With the general category of public transport and new models of how we move people effectively around their communities, models of specialized transport must change and evolve as well.



This in turn helps the governments of rural communities create the necessary infrastructure to meet the needs of people with disabilities within their community and assists in the strategic planning, rationale, and ability to gather data and evaluate the success of the system. It also provides the framework for the development of more conventional public transport as the need arises within the rural community. In other

words, establishing a specialized transport system for people with disabilities provides the foundation for expansion of public transport as needed for people without disabilities.

Let the discussion begin!

## **Introduction**

Over the past several years many rural communities have begun to investigate the need for specialized transport for people with disabilities. This is a result of several factors:

- Countries have signed the United Nations Convention on the Rights of People with Disabilities (CRPD) (Enable, UN, Canada ratified 2010).
- Municipalities and regions realize that as Baby Boomers age they will acquire disabilities and want to remain in their homes. The Government of Ontario has an Aging at Home Strategy whose goal is to provide the necessary supports for people to stay in their homes rather than move to long term care facilities as they age (Government of Ontario).
- Countries create legislative standards for specialized transportation focusing on the movement of people rather than the vehicles used (or existence of a more conventional fixed route transit service) (Sustainable Cities Collective, 2014).

One of the interesting trends emerging in public transport is the adaptation of the specialized or Para transit model as a model to meet the needs of average citizens. In time, as vehicles for public transport are mandated to be accessible, this might mean the end of the category of specialized transport in favour of the more inclusive “personal rapid transit” model (Wikipedia, 2014) which provides public transport for people without disabilities but which is based on the old Para transit model.

What then can we adopt from more conventional forms of public transport to advance the implementation of specialized transport service for people with disabilities in rural communities and even in developing countries? Before we can begin moving toward a goal of inclusion, we must deal with and set aside existing myths about specialized transport for people with disabilities.

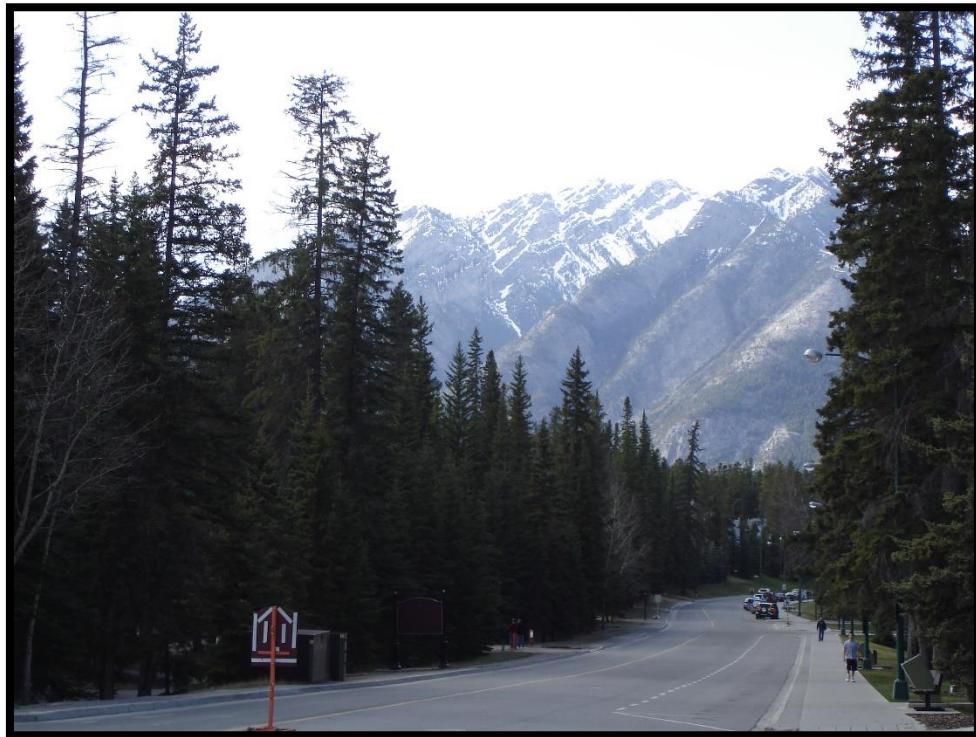
### **A Historical Perspective of Specialized Transport**

Para transit or “parallel” transport has its roots in the American Rehabilitation Act of 1973 (Wikipedia, 2014) as a model for providing access to federally funded services by people with disabilities who were not able to access inaccessible fixed route transport. Under the Americans with Disabilities Act, the concept of “parallel” transport was expanded as a more economical way of providing independence for people with disabilities (Wikipedia, 2014). This is often referred to as door-to-door service or demand responsive transport (Wikipedia, 2014).

As we move toward the United Nations Post 2015 goals and the recognition that people with disabilities have the same human rights as other community members, it is time for models of public transport for people with disabilities to evolve and adjust to a concept of moving people in urban, Peri-urban and rural communities.

It is also time to recognize that the rights embodied in the UN Convention on the Rights of People with Disabilities are dependent on people with disabilities being able to access them. This includes access to education, employment, independent living, participation in the political process, access to goods and services, and access to religious, social and recreational activities. In the current articles of the CRPD access to public transport or transport is mentioned but not emphasized or clearly identified as being essential to accessing the rights outlined in other articles of the CRPD.

Toward those goals, it is recommended that at least one new article be added to the CRPD: Public Transport which includes access to public transport/specialized transport in rural communities. The intent is not to mandate public transport in rural communities but rather to provide guidance when communities are developing public transport systems to ensure that there are standards for inclusion and accessibility that support the CRPD goals and to recognize that “specialized” transport ought to be “public” transport.



## **Myths of Specialized Transport**

Some of the first items to discuss before we can begin to discuss inclusion for people with disabilities are the current myths around implementing a specialized transport system such as:

- In order to have a specialized transport system a conventional fixed route transport system must exist in the community.
- Specialized transport is a charitable gift to people with disabilities.
- Specialized transport is not a contract for public transport.

In this report, the author has included the designation of special program under the Ontario Human Rights Code as part of the historical legacy that has become a myth. The intent of a special program under the Code is to promote affirmative action and substantive equity.

Just as in 2002 when conventional public transport organizations attempted to designate Para transit as a special program to avoid human rights laws, some rural municipalities are attempting to identify specialized transport as a special program with the same goals of avoiding human rights laws and the Integrated Accessibility Standards Regulations Transportation standards.

The need of the Ontario Human Rights Commission to investigate and revise its position on specialized transport will allow people with disabilities living in rural community's access to the same level of public transport as those living in urban or Peri-urban communities.

The time has passed when we only accept the existence of specialized transport if a conventional fixed route transport system is in place. Public transport is evolving to consider the movement of people, with and without disabilities, around their community in a sustainable and cost effective manner.

In Ontario, it is not possible to purchase an inaccessible bus for public transport as it is against the law (Government of Ontario, 2011). As a large segment of the population ages, it is anticipated that within ten years, it will not be possible to purchase an inaccessible taxi-based vehicle (James, 2013). This will further encourage and promote inclusion.

Many people with disabilities living in urban or Peri-urban areas in Ontario Canada or North America in general are now able to board fixed route transportation when it is available in their community. This level of access supports specialized transport but may not replace the need for it.

Access to fixed route public transport does not negate the need for specialized transport for people with disabilities who may not be able to get to a fixed route transport stop, who may want to travel spontaneously, or who may have heavy items to bring home.

Moreover, just as public transport for people without disabilities is evolving to meet needs, the transport of people with disabilities must evolve to meet the needs of inclusion and independence. In order to accomplish this, we must move away from the existing traditions and myths of specialized transport and move toward a more inclusive public transport model. In turn, this assists in the establishment of specialized transport in rural and developing communities.



## **Specialized Transport is Dependent on Conventional Transport**

That the belief that providing public transport for people with disabilities is dependent on providing public transport for people without disabilities constitutes the first myth exposed in this report.

As previously stated in this report, the myth is based more on legacy human rights application than the evolution of public transport.

In 2002, four communities in Ontario (Toronto, Ottawa, Hamilton and London) had conventional fixed route public transport systems. A claim was made by each of them that Para transit was a special program under the Ontario Human Rights Code so the municipalities did not have to provide it. Under the Code, a special program is voluntary and clarity was needed as to whether Para transit was a special program or a Duty to Accommodate (Ontario Human Rights Commission, 2014). The Ontario Human Rights Commission assigned the provision of Para transit as a Duty to Accommodate under the Code (Ontario Human Rights Commission, 2014). A Duty to Accommodate is not voluntary under the Code. This is reflected in the decision by the Ontario Human Rights Commission

and the subsequent designation of specialized transport where a conventional fixed route public transport system exists (Ontario Human Rights Commission, 2002):

The position taken by the Commission in its Consultation Report is that para-transit services are a form of accommodation that can be required to meet the duty to accommodate under the Code:

Where individuals are unable, because of their disabilities or because of the non-inclusive design of many older transit systems, to access conventional transit systems, transit service providers have a duty to accommodate these needs, up to the point of undue hardship. While some transit providers argue that para-transit is a type of voluntary special program under human rights law, it is the position of the Commission that para-transit is a form of accommodation that can be required to meet the duty of accommodate under the Code. [4]

While this was progress in 2002, in 2014 taking the position that a community cannot have specialized transport without having conventional transport negates the needs of people with disabilities living in rural communities. It reflects a bias toward access to public transport in urban or Peri-urban areas. There are currently several examples of rural communities implementing specialized transport for whom this position is problematic. If the Ontario Human Rights Commission does not recognize specialized transport in rural communities as a stand-alone public transport system, what legislation and safety standards are to be followed? This position by the Ontario Human Rights Commission puts people with disabilities at risk and leaves the door open to further discrimination.

Within the language of the decision, however, there appears to be a way to apply the decision in rural communities: “para-transit is a form of accommodation that can be required to meet the duty of accommodate under the Code.” If the establishment of a specialized transport system is a duty to accommodate in urban and Peri-urban areas, this rationale should apply to rural communities as well.

Among the implications (intended or not) is a perception that rural communities do not have to apply the same “Duty to Accommodate” if they don’t have a conventional fixed route public transport system. Due to the lack of consistent application of the designation “special program” there appears to be no support for upholding the human rights of people with disabilities in rural communities when it comes to mobility and how a rural community decides to approach this subject. For example, in discussing this issue with a representative of the Ontario Human Rights Legal Support Service, the representative had the opinion that in the south-central Ontario rural community, there was no specialized transport because there was no conventional fixed route transport system. When the designation of special program was challenged using statements from the Ontario Human Rights Commission documentation on special programs, the response was “well, then they have an exemption.” What does this mean? There was no response. Clearly it is time to revisit the application of the Ontario Human Rights Code as it applies to public transport

and the ability of rural communities to know, without doubt or confusion, that there does not need to be a conventional fixed route transport system to have specialized transport.

In the case of Ontario, this misperception results in:

1. The failure to implement the Integrated Accessibility Standards Regulations for specialized transport in rural communities;
2. Confusion around the distinction between specialized transport versus a special program (substantive equity);
3. People with disabilities being “left to the mercy” of staff and elected officials of a rural community for their independence;
4. A lack of assurance that decisions about specialized transport will not leave people with disabilities vulnerable to additional discrimination and/or potential personal safety issues.

Access to employment, education, the political process, goods and services and religious, social and recreational activities are an integral part of human rights. The ability to move around one's own community in an accessible and affordable manner without restriction to access those human rights is the key to achieving inclusion, the UN post 2015 goals and the goals of the CRPD. Many rural municipalities have taken the initiative to provide public transport in the form of specialized transport for people with disabilities in rural communities as a way to encourage independence and to adhere to human rights laws of the country.

However, in rural communities, there is often not enough population in a concentrated area to implement a fixed route public transport system. Research shows that in almost every case, the use of minivans and/or taxis provide the most cost effective flexible and efficient mode of public transport for people with disabilities living in rural communities (Access Exchange International, 2012).

Even within urban areas such as Hamilton Ontario, there is a recognition that not every person with a disability is going to be able to use conventional or fixed route transit, there are times when specialized transportation does not meet someone's needs and there are times when there are too many groceries, large bulky purchases or someone with a disability just wants to travel spontaneously. For this reason, Hamilton has created a model that uses large city buses, smaller Para transit buses and access to taxi service through a coupon program (City of Hamilton Ontario, 2014). This provides optimal accessibility and flexibility for moving around the community and supporting independence.



### **Specialized Transport is a “Charitable Gift”**

A second tradition and myth is that public transport for people with disabilities in rural communities is a “charitable gift.” Although not a common sentiment, it has surfaced recently as justification for restricting the movements of people with disabilities in one rural community in south-central Ontario despite several layers of human rights laws including the CRPD (McCall K., 2014). Just as we are past the point of a person with a disability as a “poster child,” we are well past the point where access to education, goods, services, employment, the political process, and religious, social and recreational activities can be identified as a “charitable gift” for people with disabilities.

Providing accessible, affordable and sustainable specialized public transport is part of any sustainable development planning for rural communities just as it is for urban and Peri-urban communities. When rural communities identify the need for specialized transport years or decades before the need for conventional public transport is identified, the planning for and implementation of specialized transport must be held accountable to the same standards and safety regulations as any other phase of sustainable development (Access Exchange International, 2012).

The belief that people with disabilities are only worthy of charity and not equality is a throwback to the previous centuries. The inclusion of people with disabilities as equals began in earnest after World Wars I and II (British Heritage, 2014). Soldiers returning from the wars with disabilities were “rewarded” for their service by being included (to some degree) in employment opportunities. With the start of the Second World War, soldiers with disabilities from the First World War played an integral part in maintaining industry

during the war. This helped move society's perception of people with disabilities as being capable and equal in terms of human rights. In the United States, the Korean and Vietnam Wars furthered inclusion of people with disabilities. The United Nations Year of People with Disabilities in 1981 gave global support to the struggle for equality for people with disabilities. This has been further supported by the United Nations Convention on the Rights of People with Disabilities, which was the first United Nations Treaty created in direct consultation with people with disabilities(Enable, UN, Canada ratified 2010).

Victor Finklestein, in a monograph on attitudes toward people with disabilities describes an ongoing paradox between people who care for and help people with disabilities and people with disabilities themselves. The premise for his work is based on those supporting the daily activities of people with disabilities, which in turn empowers people with disabilities to strive for equality (Finklestein, 1981). As the relationship between those supporting people with disabilities and people with disabilities themselves change and evolve, the attitudinal barriers are challenged. We can see this in the struggle for equality in Canada while still encountering some of the old attitudes that thwart equality.

In Canada, the advocacy and push for equality under the law is best represented with the process of defining Section 15 of the Canadian Constitution or Canadian Charter of Rights and Freedoms. The focus of the 1980 presentation to a Parliamentary Committee by David Lepofsky was the need for protection in the constitution for people with disabilities who were being patronized, condescended to and marginalized by existing legislation (Lepofsky, April 22, 2012). Mr. Lepofsky identified the misperceptions of people with disabilities as being incapable of managing their own lives, finances and educational opportunities as barriers to equality. At that time, many of the provinces had legislation that gave power to third parties over many or all aspects of the life of a person with a disability simply because they had a disability.

From the inclusion of people with disabilities in the Charter of Rights and Freedoms to inclusion in the Ontario Human Rights Code and the creation and passing of the Accessibility for Ontarians with Disabilities Act, which sets the standards for the Ontario Human Rights Code, progress has been made toward the elimination of stereotypes of people with disabilities. This has also moved us as a country, toward full equality of people with disabilities in the area of human rights.

However, as most advocates realize, there is a disconnect between legislation and attitudes. While legislation can set the stage for change, change must occur in the attitudes toward people with disabilities.

In an article for the Disability History Museum, Laurie Block provides some context for the attitude toward people with disabilities as those in need of charity (Block, 2014):

Until recently, attitudes toward individuals and groups, embodied in popular culture images, would have been called stereotypes. This word suggests that the image or the attitude is unconsidered, naive, the by-product of ignorance or unfamiliarity.

Stereotypes are also by definition unchanging; when a stereotype has been exposed as inadequate or false to experience, it can be transcended and left behind. The "myths of disability" which we bring to encounters with physical and mental difference are beyond stereotypes. Such deep-rooted conceptions are what sociologists now call constructions.

Like myth and folklore (of which they are partly made) these constructions undergo transformations. They transcend geographical boundaries. They persist across generations. They go underground, and reappear, unacknowledged, in apparently rational and value-free analyses and plans. They still have power today to alter and affect the lives of individuals with disabilities as well as the lives of their family members and care providers.

3. The burden of disability is unending; life with a disabled person is a life of constant sorrow, and the able-bodied stand under a continual obligation to help them. People with disabilities and their families -- the "noble sacrificers" -- are the most perfect objects of charity; their function is to inspire benevolence in others, to awaken feelings of kindness and generosity.

In the example of the south-central Ontario community where local government officials define specialized transport as a charitable gift, we can experience the conflict between those who ignore human rights legislation in favour of archaic attitudes and people with disabilities expecting the legislation to be followed.

There is a significant impact when the charitable gift model prevails on society in general. Taking the position that specialized transport is a charitable gift implies by extension, that the following are also gifts that can be taken away at any time by anyone (McCall, Presentation to Dean Mayo Moran Independent Review of the AODA, 2014):

- Access to education.
- Access to medical and health care.
- Access to employment disabilities.
- Access to social, recreational and religious activities.
- Access to any goods and services.
- Access to voting and participation in the political process.

In the south-central municipality cited in this document, it has been suggested that people with disabilities could all "just move away" (McCall K. , AODA: Blueprint for Exclusion, 2013). The implication of this suggestion is that residing in any community is a "gift" that can also be taken away at any time.

The creation of the Convention on the Rights of People with Disabilities -- one of the first inclusive treaty creation processes for both the United Nations and for those of us with disabilities -- transforms the lives of people with disabilities from being positioned as dependent upon charity and benevolence from those without disabilities into being

experienced as lives of inclusion and self-determination with rights equal to those of other community members.

## **Specialized Transport is not a contract for public transport**

A third tradition and myth that needs to be dealt with is the idea that a contract for specialized transport is not a contract for public transport. When a municipality contracts for specialized transport they are contracting for public transport with all of the treaties, laws, standards and rules that go with public transport.

A contract to provide specialized transport cannot be viewed as an unlimited income pool for the contractor, a nuisance by the municipality or as a burden to be carried by either the municipality or the service provider.

In Ontario the Integrated Accessibility Standards Regulations only identify conventional and specialized transport and fails to link the two under the general category of public transport. As identified in this report, the entire category of public transport is evolving to include modes of transport such as Pedi-bike, personal rapid transit, and "autorickshaw." In Helsinki Finland, public transport is evolving to include any mode of transportation that one can use to reach a destination in a cost effective, time efficient manner (Sustainable Cities Collective, 2014). We can no longer support the notion that public transport only relates to a specific model of service delivery.

In rural communities, the current model of specialized transport is one that uses taxi companies to provide transport. If a taxi company does not exist in the rural community, often a non-profit company emerges to provide limited access to transport. An example of the former implementation is found in the south-central Ontario community used as the case study for this report. An example of the latter implementation is the Flexibus program in Ireland (Navan Enterprise Centre, 2014).

The interesting element to the Flexibus system is that while it includes people with disabilities, it serves anyone living in the rural community including seniors, people of low income or people who just don't have cars. It can be used to access employment, education, goods, services, religious activities and has specific routes for social or recreational activities as well as door-to-door service. In reading the description of Flexibus, the goals are to meet the public transport needs of people living in rural communities in Ireland.

In the south-central Ontario rural community, the public transport system has not included other segments of the population. It is clearly identified as a specialized transport system for people with disabilities. Unlike the Flexibus system, which has both door-to-door service and specific routes, the specialized transport system in the south-central Ontario community only provides door-to-door service. Another difference between the two models is that the south-central Ontario community uses taxi or car for hire vehicles only.

Yet both of these models are models of public transport. The Flexibus service provides a combination of conventional fixed route and specialized transport using multiple types of

vehicles. The south-central Ontario service provides the service for people with disabilities and uses accessible mini-vans and sedan vehicles.

The Flexibus service is a stand-alone organization with a voluntary board. The specialized transport system in south-central Ontario is administered by the municipality and is provided through an RFP (Request for Proposals) and subsequent contract with a service provider.

Both are “contracts for public transport” and should be treated as such with all of the human rights laws, vehicle standards and safety considerations of any other public transport system (the Author is not familiar with these elements in the context of Ireland.). Both provide innovative solutions to public transport in rural communities.

While the underlying purpose of the Flexibus appears to be supporting people in the community and meeting a need with a strategy, plan, and budget and funding; the specialized transport system in south-central Ontario is based on providing a charitable gift where the gift giver can create the rules and change them at any point in time.

The south-central Ontario specialized transport system demonstrates the need to have any implementation of transport systems in rural communities clearly defined as public transport. In this case, people with disabilities are left to the mercy of a local “gift giving government” that has ignored provincial legislation and standards for specialized transport.

Any implementation of public transport, including specialized transport, must be treated as public transport with a multiyear business plan, multiyear budget, and vehicle and ridership projections. The system must also be staffed with public transport professionals. Wages must be in line with public transport wages and salaries, and drivers and dispatchers must be given the same “rules” as any other public transport system.

One of the persistent problems with not treating specialized transport as public transport is seen in the south-central Ontario municipality where it is difficult to get drivers to work weekends or during specific time periods. This is due in part because the drivers, who are not involved in the primary business of the service provider, are only paid for the time they are taking people with disabilities to a destination. While the specialized transport system can be overwhelmed at some times, at other times (due to an increase in trip restrictions) drivers are “not working and therefore are not paid for that time.”

Up until September 2014, people with disabilities who used the specialized transport system in south-central Ontario had access to holiday service, were able to call 14 hours before they wanted to travel, were able to use specialized transport within the largest town in the municipality and had few restrictions. Ironically this met most of the transportation standards for the Integrated Accessibility Standards Regulations.

In May 2012, faced with a lack of budget, management and oversight, the goal of the south-central Ontario municipality became “redefining their charitable gift” of specialized

transport. There were statements made about people with disabilities such as (McCall, AODA: Blueprint for Exclusion, 2013):

- “They are abusing the service by going grocery shopping.”
- They are abusing the service by going to the casino.”
- “We can’t let anyone with a disability go anywhere they want.”
- “This (specialized transport) is a gift, done out of the goodness of our hearts...and we can take it away any time we want.”
- “People with disabilities need to learn how to manage their finances like everyone else...if they can’t afford the luxuries, they need to rethink their lifestyle or move.”
- “AODA is not a real law...if we rebrand specialized transportation as subsidized transportation, we can get rid of AODA.”
- “If they can’t afford a taxi, call an ambulance.”
- “If a human rights complaint is filed, the service will stop.”

By September 2013 when a new contract was signed, as a result of these systemic attitudes toward people with disabilities that are driving the decision making in the community:

- Holiday service was eliminated.
- Service within the largest town in the municipality was eliminated.
- People with disabilities have to remember to call before 1PM the day before wanting to travel; by 1PM Friday if they want to travel on Sunday or Monday; and by 1PM on the Friday before a holiday if they want to travel on the Tuesday after the holiday.
- At the August 23 meeting of Council, the current service provider was instructed to increase trip restrictions despite the County Solicitor stating that there can be no trip restrictions as per human rights laws in Ontario.

Holiday service was eliminated, after being available for 20 years, because the main business of the current service provider did not operate on holidays. Driving for the service provider is seen as a 9-5 job, the drivers are reluctant to work outside of those hours. This is the same issue we see when using volunteers to provide transport services for people with disabilities (Ontario Human Rights Commission, 2001). This creates a cycle of unreliable specialized transport with increased trip restrictions, which results in an increase in unreliability of the specialized transport system and a loss of independence for people with disabilities.

Specialized transport must be regarded as any other public transport service for any other demographic. There must be professionalism, adherence to safety standards, accessible vehicle standards and, within Ontario, the standards for service, training of staff and planning that are identified in the Integrated Accessibility Standards Regulations for Transportation (Government of Ontario, 2011).

This will require an archetypal shift in thinking about how people move around their communities and also about inclusion in general.



### **Specialized Transport versus “Special Program”**

The last item to discuss in this report is an unclear application of a special program designation as opposed to the designation of specialized transport under the Ontario Human Rights Code. The designation of specialized transport versus special program versus instances when there is an “exemption” to the Code that has crept into policy and practice in implementing human rights legislation in Ontario further blurs the lines in determining what public transport is. This semantic confusion and application of the Code leads to marginalization and disenfranchisement of people with disabilities living in rural communities.

The Ontario Human Rights Code provides the designation of special program as a temporary measure to support affirmative action and/or substantive equity (Ontario Human Rights Commission, 2014). For the example of specialized transport for people with disabilities, although people without disabilities are excluded from the service, the goal of providing the service under the designation special program would be to eventually

implement specialized transport as a stand-alone service. Special programs are solutions to support the human rights of the demographic they are designed for, not to violate them. Both the webpage and the Guide for Special Programs published by the Ontario Human Rights Commission state that the goal of a special program is to eliminate barriers to inclusion.

In turning to the designation of special program in the south-central Ontario community, the designation was made in an attempt not to identify the specialized transport system as a specialized transport system. Currently there is no documentation related to the designation of special program in the south-central Ontario community. The designation special program is being used to create barriers to inclusion and circumvent the rights of people with disabilities living in the community.

The Ontario Human Rights Commission has published a detailed guide for developing a “special program” under articles 14 and 18 of the Ontario Human Rights Code that include the fact that they are temporary solutions to existing barriers (Ontario Human Rights Commission, 2014)

This section allows organizations and employers to create temporary special measures on a voluntary basis. The purpose of a special program is to help create opportunities for people who experience discrimination, economic hardship and disadvantage. [31]

To be a special program, the program must meet one of the following conditions:

It must relieve hardship or economic disadvantage, or

Help disadvantaged people achieve, or try to achieve, equal opportunity, or

Help eliminate discrimination.

Special programs must be developed carefully and with clear reasons about why a particular group is chosen for special assistance.

Above all, the intent of special programs is not to circumvent the Ontario Human Rights Code or the Canadian Charter of Rights and Freedoms (Ontario Human Rights Commission, 2013). There are also guidelines for developing a special program that include a rationale, data collection, consultation with the demographic for whom the special program is intended, a multi-year budget and expectations of how barriers will be removed by implementing the special program.

In a court ruling around restrictions in a special program (Ontario Human Rights Commission, 2013):

The Court also cautioned that:

"Special programs aimed at assisting a disadvantaged individual or group should be designed so that restrictions within the program are rationally connected to the program. Otherwise, the provider of the program will be promoting the very inequality and unfairness it seeks to alleviate."

Example: A government program gives financial help to people with visual disabilities so they can buy equipment to help them. However, only people under age 30 can apply. This exclusion could be challenged.

The government would have to justify why an age limit is relevant.

Under the guidelines for a special program by the Ontario Human Rights Commission, there must be a rationale for establishing the special program:

A clear rationale can help an organization set goals for the program and criteria to evaluate the progress of the program to know when the goals have been met (see the section, Evaluating a Special Program).

There are further guidelines in the eligibility section of the Ontario Human Rights Commission document on special programs that indicate there is not to be discrimination within the program (Ontario Human Rights Commission, 2013):

People are protected from discrimination when they take part in a special program, just as they are when receiving a service that is not a special program. Rules or restrictions placed on people participating in the special program must not disadvantage people based on *Code* grounds.

Special programs often have limited resources. The temptation may be to restrict eligibility to put less strain on these resources. But financial limitations alone will not remove the obligation to justify the connection between eligibility and the reason for the program. Resources must be allocated in a way that furthers the purpose of the program and is in line with the intent of the *Code*.

It is clear from the two documents referenced for this article on what "special programs" are as defined by the Ontario Human Rights Commission, that they are temporary and designed to remove barriers and restrictions for demographics identified in the Ontario Human Rights Code. A special program is not a methodology to perpetuate systemic environmental and institutional discrimination.

In discussing the implementation of specialized transport as a special program in the south-central Ontario community with a representative from the Ontario Human Rights Legal Support Services, the representative stated that the south-central Ontario community

had an exemption within the designation of special program. It is not clear what this means. The representative didn't have a clear response or documentation to refer to. This is symptomatic of the core issues around public transport and specialized transport in rural communities. It is clear that with the passing of the Integrated Accessibility Standards Regulations and the changing definition of what public transport is, that there is confusion among the legal community and the Ontario Human Rights Commission on supporting human rights for people with disabilities in Ontario.

The Integrated Accessibility Standards Regulations make a distinction as to what specialized transport is. In the AODA there is no dependency on a conventional public transport service to have a specialized transport service. While both may exist, specialized transport is not dependent on the existence of conventional or fixed route transport.

The two articles of the Integrated Accessibility Standards Regulations that define a specialized transport service are as follows (Government of Ontario, 2011):

(33) "Specialized transportation service provider" means a designated public sector transportation organization described in paragraph 5 of Schedule 1 that provides specialized transportation services that operate solely within the Province of Ontario; ("fournisseur de services de transport adapté")

"Specialized transportation services" means public passenger transportation services that,

- (a) Operate solely within the Province of Ontario,
- (b) Are provided by a designated public sector transportation organization as described in paragraph 5 of Schedule 1, and
- (c) Are designed to transport persons with disabilities; ("services de transport adapté")

And...

Schedule 1, article 5: 5. Every public transportation organization in Ontario, including any municipally operated transportation services for persons with disabilities, that provides services for which a fare is charged for transporting the public by vehicles that are operated,

- i. by, for or on behalf of the Government of Ontario, a municipality, a local board of a municipality or a transit or transportation commission or authority,
- ii. under an agreement between the Government of Ontario and a person, firm, corporation, or transit or transportation commission or authority, or
- iii. under an agreement between a municipality and a person, firm, corporation or transit or transportation commission or authority.

Taking these definitions as a whole, once an RFP goes out, a contract is signed to provide specialized transport, the contractor becomes a designated public sector provider. There is an agreement to provide specialized transport for people with disabilities, in this case, in rural communities which then mean the articles of the Integrated Accessibility Standards Regulations must be adhered to.

There is currently discussion among public transport service providers in all communities about the implementation of the articles of the Integrated Accessibility Standards Regulations for Transportation. There is an urgent need to clarify the language, identify specialized transport as a stand-alone entity for implementation in rural communities and to expand the existing standards.

One of the issues between the Ontario Human Rights Code and the Accessibility for Ontarians with Disabilities Act is exactly how the two work together or if they even do (Ontario Human Rights Commission, 2013). While it is true that no right is absolute, that there is a mechanism for special programs, a duty to accommodate and a framework for competing human rights, both the Ontario Human Rights Code and the Accessibility for Ontarians with Disabilities Act (which includes the Integrated Accessibility Standards regulations) are provincial law.

It is clear from the wording in the Integrated Accessibility Standards Regulations that the foundation for inclusion of specialized transport in the more general category of public transport is laid. What is needed now is a repositioning on public transport in rural communities, clearer definitions and implementations of special programs and duty to accommodate under the Code, and an integration of the Integrated Accessibility Standards Regulations into the application of the Code.



## Change is Difficult

The inclusion of public transport in rural communities in any sustainable development strategy is often overlooked. Even in conducting research, people with disabilities and transport in rural communities are often forgotten.

An example of this type of oversight can be found in the documents published by the Zero Project, an organization whose purpose is to support the rights of people with disabilities (Zero Project, 1014):

The Zero Project was initiated by the Essl Foundation in 2010. It is run in partnership with the World Future Council (WFC) since 2011 and with the European Foundation Centre (EFC) since 2013.

The vision of the Zero Project is to work for a world without barriers, according to the principles and Articles of the UN Convention on the Rights of Persons with Disabilities (CRPD).

In the 2014 Zero Project report focusing on accessibility, survey questions around public transport access had to be modified to expand the definition and access to public transport by persons with disabilities within urban areas. People with disabilities in rural communities who need access to public transport were not considered in the report (Zero Project, 2014 ). The report also acknowledges the biases perpetuated and built upon by relying on existing articles, publications and reports that have not expanded our thinking and understanding of issues related to inclusion and human rights (Zero Project, 2014 ).

(The author would like to acknowledge at this time that several articles written by the author have been used as references in this report. It is hoped that as more people begin discussing, researching and implementing models that set aside the myths identified in this report, we will have more current research to rely upon.)

Currently public transport that includes or is specific to people with disabilities is focused on urban or Peri-urban areas. We must expand our thinking and understanding of the importance of public transport/specialized transport to empower people with disabilities in rural communities.

It is difficult to shift a position of public transport for people with disabilities from being an ad hoc charitable gift to one of equal access. Part of the difficulty lies within the structure of an ad hoc transport system for people with disabilities in rural communities and the language used when discussing public transport.

An ad hoc charitable focused transport service means that people with disabilities must wait each year around budget time to see if they can remain independent and continue to reside in their community. This is especially critical in rural communities where there is a distance from home to home or village to village.

A charity-based approach to public transport has the side-effect of making people with disabilities fearful and unwilling to challenge the charitable gift as there is the real fear that they will lose whatever access to independence they have and be left isolated and alone in their homes. It fosters a systemic environment of dependence, silence, subjugation, and loss of empowerment.

The failure to recognize specialized transport as public transport and to adhere to the treaties, laws and standards of public transport negates and further marginalizes people with disabilities.

Having a Human Rights Commission that has not updated its position on public transport since 2001 does not help in supporting inclusion and independence. Being able to redefine a public transport system for people with disabilities as something that is ruled and restricted under the guides of a special program or exemption to a special program does not promote substantive equity and inclusion. Those charged with protecting and applying our human rights must move forward with their thinking and support people with disabilities living in rural communities.

In the example of the south-central Ontario municipality, people with disabilities were independent because of a specialized transport system that had been operating for about 20 years. It was only in 2012, when a Councilor pointed out the lack of budget, management and oversight of the specialized transport system that people with disabilities lost their independence and ability to participate in their community due to the ongoing attempts to circumvent human rights laws and the Integrated Accessibility Standards Regulations for transportation.

The traditions and myths reviewed in this report represent an ongoing microcosm of marginalization and disenfranchisement existing in one south-central Ontario community. However, the traditions and myths are being applied, promoted and supported individually or in unison in other rural communities. We have an opportunity to bring these traditions and myths to light and move past them.

### **Specialized Transport as an Instrument of Change**

Accepting the standard of specialized transport for people with disabilities as having the capability of being a stand-alone public transport system will make it easier to develop public transport for everyone in a rural community. This is exemplified in the Flexibus model in Ireland (Navan Enterprise Centre, 2014)

The Flexibus model illustrates how effective a public transport system in a rural community can be when looking at how people move around their community rather than being confined by existing models of urban or Peri-urban models of public transport.

In the case of the south-central Ontario rural community, if there wasn't a determination to avoid human rights laws, transportation standards identified in the Integrated Accessibility Standards Regulations and intimidate people with disabilities, this could be another model in leadership toward inclusive public transport.

The implementation of a specialized transport system in a rural community is an opportunity to lay the foundations for public transport for people *without* disabilities in the future.

The advantage to making the shift in thinking is that rural municipalities can begin with a relatively small segment of the population (people with disabilities are typically 15-20% of the population) and work through what public transport needs are in rural communities. Once the population in larger towns can support more globally accessible public transport, the implementation will be easier and strategically planned for.

Within the context of Ontario Canada, consider the following model of developing a sustainable public transport infrastructure:

1. Establish a temporary special program of specialized transport for people with disabilities that incorporates the transportation standards identified in the Integrated Accessibility Standards Regulations and includes strategic planning, rationale, data gathering, consultation, evaluation and designation of a special program for a specific period of time with the goal of then maintaining the specialized transport system.
  - a. Once the goal has been reached and the designation of special program has proven that the program is viable as an accessible, affordable and sustainable stand-alone specialized transport system;

2. A second special program is developed to add seniors and/or those living at or below the poverty level to expand specialized transport into more of a public transport system.
3. Once the designation of special program has concluded and the population of the rural community increases, decisions can be made as to the implementation of a fully functional public transport system (not necessarily defined as fixed route transport).

In approaching public transport in rural communities in this manner, public transport is implemented gradually, the infrastructure costs may not be overwhelming, and the needs of those who are most vulnerable in the population are supported.



As long as public transport vehicles are accessible to people with disabilities, it would be possible to slowly expand public transport over a period of years rather than have to implement a huge public transport system all at once. This is only one idea for a model. We must start thinking of others.

However, before we can begin to leverage our experiences in specialized transport toward being an instrument of change, we need to identify and expose the traditions and myths that lead to and appear to support discrimination against people with disabilities living in rural communities.

We must begin to include the protection of human rights laws to people with disabilities living in rural

communities as part of who we are and how we move toward an inclusive community.

“Inclusion” is not merely for those living in urban or Peri-urban areas.

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