

# Accessibility for Ontarians with Disabilities Act (AODA) and Cross-Canada Update

- Anneli LeGault, Partner (Toronto)

# Agenda

## AODA:

- What should be completed by now?
- What if it isn't done?
- Cross Canada checkup.

# Customer Service

Accessible customer service plan	1 to 19 employees – Jan.1, 2012 20 to 49 employees – Jan. 1, 2012 50+ - Jan. 1, 2012
Training for public-facing employees and those who prepare company's policies and practices	1 to 19 employees – Jan.1, 2012 20 to 49 employees – Jan. 1, 2012 50+ - Jan. 1, 2012
Process for receiving and responding to feedback about customer service	1 to 19 employees – Jan.1, 2012 20 to 49 employees – Jan. 1, 2012 50+ - Jan. 1, 2012
Notice of temporary disruptions in services or facilities, if applicable	1 to 19 employees – Jan.1, 2012 20 to 49 employees – Jan. 1, 2012 50+ - Jan. 1, 2012
Report online	1 to 19 employees – N/A 20 to 49 employees – 2012, 2014, 2017, <b>2021</b> , 2023 50+ – 2012, 2014, 2017, <b>2021</b> , 2023

# General Accessibility Requirements

Prepare accessibility policies	1 to 19 employees – Jan.1, 2015 20 to 49 employees – Jan. 1, 2015 50+ - Jan. 1, 2014
Prepare statement of organizational commitment	1 to 19 employees – N/A 20 to 49 employees – N/A 50+ - Jan. 1, 2014
Multi-year accessibility plan and update by 2019, 2024	1 to 19 employees – N/A 20 to 49 employees – N/A 50+ - Jan. 1, 2014
Training on AODA and Human Rights Code disability provisions (extra-provincial training requirement)	1 to 19 employees – Jan.1, 2016 20 to 49 employees – Jan. 1, 2016 50+ - Jan. 1, 2015
Accessible self-service kiosks	1 to 19 employees – Jan.1, 2015 20 to 49 employees – Jan. 1, 2015 50+ - Jan. 1, 2014
Make any feedback process accessible	1 to 19 employees – Jan.1, 2016 20 to 49 employees – Jan. 1, 2016 50+ - Jan. 1, 2015

# Employment Standard

<p>Individualized emergency response information to employees with disabilities</p>	<p>1 to 19 employees – Jan.1, 2012 20 to 49 employees – Jan. 1, 2012</p>
<p>Notify public of accommodations for applicants with disabilities; notify new hires</p>	<p>20 to 49 employees – Jan.1, 2017 50+ – Jan. 1, 2017</p>
<p>Inform employees, consult with employees concerning accommodation, provide communication support to employees</p>	<p>1 to 19 employees – Jan.1, 2017 20 to 49 employees – Jan. 1, 2017 50+ - Jan. 1, 2016</p>

# Employment Standard

In performance management take accessibility of employees into account	1 to 19 employees – Jan.1, 2017 20 to 49 employees – Jan. 1, 2017 50+ - Jan. 1, 2016
In career development and advancement take accessibility needs of employees into account	1 to 19 employees – Jan.1, 2017 20 to 49 employees – Jan. 1, 2017 50+ - Jan. 1, 2016
Prepare individual accommodation plans	1 to 19 employees – N/A 20 to 49 employees – N/A 50+ - Jan. 1, 2016
Return to work process	1 to 19 employees – N/A 20 to 49 employees – N/A 50+ - Jan. 1, 2016

# Information and Communication Standard

<p>New or refreshed website – site and content meet WCAG 2.0 Level A</p>	<p>1 to 19 – N/A 20 to 49 – N/A 50+ – Jan. 1, 2014</p>
<p>Upon request, provide information in accessible format</p>	<p>1 to 19 – Jan. 1, 2017 20 to 49 – Jan. 1, 2017 50+ – Jan. 1, 2016</p>
<p>Websites meet WCAG 2.0 Level AA (except live video captioning, prep-recorded video audio descriptions)</p>	<p>1 to 19 – N/A 20 to 49 – N/A 50+ – Jan. 1, 2021</p>

# Design of Public Spaces Standard / Built Environment

Accessible service counters (newly built)	1 to 19 – Jan. 1, 2018 20 to 49 – Jan. 1, 2018 50+ – Jan. 1, 2017
Accessible waiting area (seating and waiting lines fixed to floor)	1 to 19 – Jan. 1, 2018 20 to 49 – Jan. 1, 2018 50+ – Jan. 1, 2017



# Ongoing obligations

- Training
- Report compliance on Service Ontario website every 3 years to 2023; 31/12/20 compliance reporting deadline extended to 30/06/21
- Review and update multi-year accessibility plan at least every 5 years
- All websites and content published after 1/1/12 must meet WCAG 2.0 Level AA by 1/01/21

# Penalties for non-compliance, including failure to file an accessibility report

- Inspections
- Order to comply
- Failure to comply → administrative penalties \$500 - \$15,000, depending on history of contraventions and severity of non-compliance – for example, failure to report on-line is considered a serious failure
- Criminal prosecution – none to date

# Enforcement

- The enforcement process is not complaint based
- Emphasis on education and outreach
- Audits are conducted to ensure organizations are fulfilling their obligations (2791 audits in 2018)
- Companies are selected for audit based on risk and the answers provided in the online accessibility report
- Audits are conducted on organizations that did not file a report, answered “No” to one or more questions and also random audits on reports indicating full compliance or exempt from reporting

# Audit

- If an organization is found to be non-compliant, a Return to Compliance Plan is negotiated
- Return to Compliance Plan will outline the steps to be taken, with deadlines
- Failure to comply may lead to referral to an Inspector or Director's Orders

# Inspection

- Inspectors can conduct inspections, issue Director's Orders to comply and/or pay an administrative monetary penalty
- The government's stated goal is compliance by 2025, not the issuance of fines
- If an organization does not respond to a Notice that an Order may be issued, a Director's Order will be issued
- Director's Order requires certain information to be filed, may include an administrative penalty of \$200 to \$15,000
- Company may request review of Director's Order
- Companies may appeal a Director's Order to the Licence Appeal Tribunal
- If an organization does not respond to the Director's Order it may face fines and prosecution

# Licence Appeal Tribunal

- Tribunal hears appeals of Director's Orders only
- It does not hear complaints from the public
- Members of public who complain are encouraged to contact the Human Rights Commission/Human Rights Tribunal of Ontario
- 4 organizations which were ordered to pay penalties of \$2,000 for failure to report on-line all successfully appealed and had penalties reduced to \$250 or \$500

# Canada's Accessibility Laws

## Current Status

- Ontario – *Accessibility for Ontarians with Disabilities Act, 2005* (AODA)
- Manitoba – *The Accessibility for Manitobans Act (2013)* (AMA)
- Nova Scotia – *Accessibility Act (2017)* (AA)
- An Act to ensure a Barrier-free Canada (2019)
  - “Accessible Canada Act” (ACA)

# MANITOBA – AMA

- Five regulatory standards as building blocks to achieve accessibility under the AMA by 2023; like AODA, not complaints-based
  - Customer Service Standard – private sector compliance by November 1, 2018 - private sector organizations with 1+ employees in Manitoba which provide goods/services directly to the public or to another organization in Manitoba
  - Accessible Employment Standard – private sector compliance by May 1, 2022; exception: workplace emergency response information and emergency assistance required by May 1, 2020
  - Built environment (design of public spaces)
  - Public transportation
  - Delivery of goods, services, information and communications



# NOVA SCOTIA – AA

- Six standards for an accessible Nova Scotia by 2030
- Standards under development (work began in 2018, with implementation by 2022):
  - Education
  - Built Environment
- Other standards to be developed 1 per year starting in 2021:
  - Delivery of goods and services
  - Information and communication
  - Public transportation and transportation infrastructure
  - Employment

# FEDERAL – ACA

## Royal Assent on June 21, 2019

- What the Act will not do:
  - Make Canada accessible
  - Require provinces to take steps
- What the Act will do:
  - Require employers governed by federal law to implement accessibility – e.g. broadcasting, inter-provincial transportation, railways, shipping, banks

# FEDERAL - ACA *cont'd*

- Requires an accessibility plan
- Plan updated every 3 years
- Feedback process
- Publication of progress reports in consultation with persons with disabilities
- Enforcement includes inspections, production orders, compliance orders, monetary penalties, compliance agreements
- Unlike AODA, includes a complaint process to Accessibility Commissioner
- Can order compensation for lost wages, additional costs incurred, up to \$20,000 for pain and suffering, up to \$20,000 in case of barrier a result of willful or reckless practice

# Canadian Accessibility Standards Development Organization

- Established 26 August 2019 to develop standards.
- Held public consultations in September 2020.
- Currently awarding grants and funding research projects.
- It appears that the first four federal standards to be developed will be:
  - Outdoor spaces (Built environment)
  - Emergency egress (Built environment)
  - Employment
  - Plain language (Communication)

大成 DENTONS

# Thank you



**Anneli LeGault**  
Partner, Toronto  
+1 416 863 4450  
[anneli.legault@dentons.com](mailto:anneli.legault@dentons.com)