



**Ontario**  
**Human Rights Commission**  
**Commission ontarienne des**  
**droits de la personne**

**ONTARIO HUMAN RIGHTS COMMISSION**  
**Submission to the**  
**Ministry of Community and Social Services**

**Regarding**

**The Final Proposed Accessible Transportation Standard**

**March 31, 2009**

The Ontario Human Rights Commission would like to congratulate the members of the Accessible Transportation Standards Development Committee for all their hard work in developing the most recent Proposed Accessible Transportation Standard. This Standard is a vast improvement over the initial standard proposed to government in 2007 and hopefully will become an important driver of change once passed into regulation under the *Accessibility for Ontarians with Disabilities Act (AODA)* 2005. The Commission would, however, like to raise a number of concerns.

AODA standards must set out a clear context so that persons and organizations are aware of the full extent of their legal obligations.

The **Preface** of the Transportation Standard should specifically identify the Ontario *Human Rights Code* where it sets out that the Standard be read in conjunction with other AODA standards and other applicable legislation and regulations.

Moreover, the Standard should identify the relevant human rights principles necessary for **interpreting** the Standard overall and the relationship between each of its parts. Human rights law has confirmed a number of principles that form part of the duty to accommodate persons with disabilities:

- Identify and remove existing barriers
- Design inclusively and universally so that persons with disabilities can participate in an integrated fashion as much as possible
- Create no new barriers
- Take up shared responsibility in the accommodation process which involves individual assessment, consideration and implementation of ideal or next best solutions and interim measures, short of undue hardship, having regard for cost, health and safety
- Realize standards progressively
- All the while minimizing burden and maximizing confidentiality and respect for persons with disabilities

While the Standard sets out specific accessibility requirements for fixed route conventional systems, para-transit service, and other forms including on-demand taxis service, the Standard fails to identify that transportation providers must continuously strive to move away from segregated services towards maximizing an integrated approach for all. In the words of the Committee, “conventional public transit services shall be the primary accessible service. Specialized transit services shall be the primary service available to those unable to use the conventional system or where specialized transit is the only public transportation service available.”

The Standard is also not explicit about the need to consider and put in place interim or “next-best” measures so that accessibility is realized progressively and enjoyed over time while moving towards or phasing in ideal standards. And while more reasonable timelines have now been proposed, the principle of interim measures might help determine timelines for those standards where the Committee could not reach

consensus. The availability of sufficient financial resources will of course also have an impact on implementation.

The Commission finds the guiding principles identified by the Standards Development Committee in its November 18, 2008 letter of transmittal particularly helpful and would strongly recommend they be adapted as interpretive principles into the final regulation.

The Commission is pleased to see that the proposed standard has adopted the **definition** of disability from the *Human Rights Code*. The definition of “accessible fixed route public transit” in section 2 should, in addition to buses, also include reference to streetcars and subways.

The Commission is also pleased to see that **standard 4** on general requirements addresses fare and fee parity between riders with and without disabilities. However, it only requires that “policies and procedures” be established immediately. The Standard should also be clear that such policies and procedures must be immediately put into practice. Additionally, because standard 4 is entitled “General Requirements”, it may not be clear why it only applies to on-demand taxi, booked vehicle, and “other” passenger transportation services, leaving “fare” parity between para-transit and fixed route buses, streetcars, subways, etc., to section 7.13.

Standard 4 should also set out another general requirement that all information available to passengers be accessible in alternate formats, or alternatively, address this at relevant sections throughout the standards including: section 5.6 for information regarding accessible services, section 6.3 for route and destination signage, section 7.3 for para-transit eligibility decisions, etc.

**Standard 5.1 and 5.3** should include commuter rail in the classes of services required to offer assistance with boarding/de-boarding and storage of assistive devices to at least those passengers who use transportable mobility aids on accessible cars identified under standard 6.14.

**Standard 5.4** proposes a one year timeline for implementing audible announcements for all stops, by verbal or electronic means. This standard was already addressed by the Commission in the *Lepofsky* cases before the Human Rights Tribunal of Ontario in 2006 and 2007 and should now be an immediate requirement for all transit providers across the province within 30 days of passing the regulation.

**Standard 5.5** appropriately requires no fare be charged for a support person riding with a disabled passenger but does not set out an implementation timeline. No more than one year should be sufficient time for transit providers to adopt or adapt any necessary assessment procedure for identifying passengers who require support persons. A principle similar to this standard is recognized in the decision of the Canadian Transportation Agency No. 6-AT-A-2008 against Air Canada.

**Standard 5.7** addressing maintenance of accessible equipment should also require that the status of equipment failures, such as elevator breakdowns, be announced to passengers in alternate formats as soon as they become known.

The Commission is pleased to see that **standard 6.1** now requires that accessible vehicle standards apply to all “purchases” whether they be new or used vehicles. And while it is understandable the standard permits the honouring of contractual obligations existing at the date the regulation is passed, the proposed timeline appears to mean that transit providers could continue to enter into inaccessible vehicle contracts for two more years. The standard should conform to the principle “create no new barriers” and prohibit contracts for inaccessible vehicles from the date the regulation is passed.

Furthermore, the standard requires that only “plans” to retrofit or replace inaccessible vehicles be “developed and maintained” within two years, with the requirement for an accessible fleet in 14 years. Nor is there a defined threshold for what constitutes a retrofit. Altogether, this could lead to situations where vehicles are retrofitted now without new accessibility features and then only properly retrofitted or replaced with accessible vehicles just prior to the end of the 14 year timeline.

In order to conform to the principles of “interim measures” and “create no new barriers”, standard 6 must require that any future retrofit or purchased vehicle (new and used) immediately abide by the rest of the section 6 and other relevant accessibility requirements such as standard 5.4 on electronic announcements. This will ensure progressive realization of the standard during its 14 year timeline for entire fleet accessibility and is in keeping with the 2007 ruling of the Supreme Court of Canada against VIA Rail after it had purchased inaccessible used train cars. The Court found that the transportation service must take a universal rather than a segregated approach to accessibility, and not perpetuate or create new barriers when it purchases vehicles.

The **standard 6.3** requirement for accessible route and destination signage should also require at least some signage be positioned so that persons with low vision may walk up to read closely at eye level.

The timeline for **standard 6.4**, which requires audible pre-boarding route or destination announcements, should be the same as the Commission is calling for under standard 5.4 on stops announcements – audible announcements within 30 days consistent with the *Lepofsky* decision, and electronically within six years consistent with standard 5.4.

The **standard 6.12** requirement for emergency response controls should be broadened to apply to all classes of transit vehicles including subway, commuter and inter-city rail and ferries.

**Standard 6.14** requires that commuter and inter-city rail shall have a minimum of one “transportable mobility aid accessible rail car per train”. However, it does not apply to light rail. Also, no set timeline has been proposed. The standard goes on to require all rail cars, except commuter rail, to be accessible to transportable mobility aids. Again, no

set timeline has been proposed. One accessible car per train may be viewed as an interim measure while moving towards the inclusive goal of all rail cars being accessible. These standards must apply to all forms of rail cars. In addition, any future retrofit or purchase of rail cars will need to meet the relevant standards requirements to be consistent with the principles of “create no new barriers” and “progressive realization”, as well as the decision of the Supreme Court of Canada in *Via Rail*.

**Standard 7.1** stipulates that conventional route transit providers shall provide accessible public transit services to passengers with disabilities comparable to the level of service provided to other passengers. This standard might be clarified further by either merging in, or having it followed by, standard 7.6, which describes this alternate type of transit service as “origin to destination” or more commonly known as “special” or “para-transit.”

Moreover, it must be made clear that the application of standard 7 is governed by the duty to accommodate and the principles of inclusive design, integration and interim measures, which the Commission is calling to be set out for interpreting the entire Standard. This recognizes that providers must continuously move towards maximizing the accessibility of their conventional system while offering para-transit as a “next-best” accommodation.

In addition, standard 7.1 identifies no timeline requirement for making para-transit service available, though ultimately, it would be driven by proposed timelines for same day and hours of service under standards 7.8, 7.9 and 7.10.

The requirement under **standard 7.2** to develop accessibility policies and plans within two years for para-transit should be set out in the Standard as a requirement for the conventional transit system as well.

The timeline under **standard 7.5** for visitor eligibility should be at least the same as permanent resident eligibility under standard 7.4 or better, if visitors already have proof of eligibility from another jurisdiction.

The undetermined timeline for **standard 7.10** regarding reservation systems should take into account the Commission’s 2004 settlement with the City of Hamilton’s DARTS para-transit service and the Ministry of Transportation.

**Standard 7.11**, which requires that para-transit allow passengers to ride with dependent children if necessary safety restraints are in place, should also require that new purchase (new and used) or retrofit vehicles be equipped with said restraints.

**Standard 7.12**, which requires that accessible information be provided for service delays, should also set out a standard and a timeline for achieving what is an acceptable minimum delay, and in doing so, be guided by similar standards developed in other jurisdictions.

**Standard 7.13** only requires “base fare” parity to be implemented within two years for single-tier municipalities and six years for multi-tier municipalities, and does not address “fee” parity at all. The right to fare and fee parity for passengers with disabilities was already addressed by the Commission in a 2002 settlement with the Toronto Transit Commission and should now be an immediate requirement for all transit providers across the province.

**Standard 8.1** sets out requirements for on-demand taxi service with wheelchair accessible taxis and taxis with accessibility features by the end of five years. A stipulation should be added that such vehicles be sufficient in number so as to provide comparable service in terms of average wait times, etc. The Commission would also recommend an additional standard be developed for municipal taxi licensing criteria that would give priority to new or renewal applications that offer wheelchair accessible vehicles.

**Standards 9 and 11** addressing booked transit and other services should also require information be made available in accessible formats, and a 30 day timeline for any verbal announcements consistent with the *Lepofsky* decision and the Commission’s comment under standards 4 and 5.4.

The Commission is pleased to see that **standard 10** on school transportation services recognizes the principle of first providing accessible integrated services unless alternative service would be in the best interest of a student with a disability.

While the intent of **Annex A** is to set out that accessible public transportation services may need to be delivered through a flexible mix of service options and vehicles, from fixed route through door-to-door, it too fails to acknowledge the principles of inclusive design, integration and interim measures as overall interpretive principles and goals for accessible public transportation services.

The Commission shares the concerns raised by the Accessible Transportation Standards Development Committee in its letter of transmittal with respect to: cross-sectoral standards to deal with consistency and harmonization, economic benefit of a barrier-free society, compliance and enforcement, funding, implementation guidance, inter-jurisdictional and intra-provincial travel, mobility aids standardization, recognition system for riders who require a support person or service animal, and user training.

Finally, the Commission asks that it have an opportunity to review and provide comment to the Minister or the Minister’s delegate regarding legislative counsel’s final proposed Transportation Standard prior to it being enacted as regulation.