
Submission to the
Legislative Assembly
Standing Committee on
Financial and Economic Affairs

Bill 125
The Ontarians with Disabilities
Act

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 **TORONTO** City Council

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I. Introduction

The City of Toronto Community Advisory Committee on Disability Issues appreciates the invitation by the Standing Committee on Financial and Economic Affairs to submit its views on Bill 125, the Ontarians with Disabilities Act.

Toronto City Council has requested that the Toronto Community Advisory Committee on Disability Issues act on its behalf before you.

The Committee is an eighteen member committee comprising all sectors of the disability community in Toronto. The members are appointed by Toronto City Council and is chaired by an elected member of City Council, Councillor Joe Mihevc. The Committee provides advice to City Council, through the standing committees of Council and makes recommendations for positive change that shall improve the quality of the lives of the members of the City's disability community.

This brief outlines the challenges and initiatives undertaken by the City of Toronto in addressing disability issues and the City concerns regarding Bill 125.

While supporting positive proposals in Bill 125 for establishing the structured processes and a beginning framework to ensure the right of persons with disabilities to equal treatment and equal opportunity, the City of Toronto Community Advisory Committee on Disability Issues recommends that amendments be made to the Bill. Given the size and concentration of the disability community in Toronto (estimated at 45 percent of the 1.6 million Ontarians with disabilities), a strong and effective Ontarians with Disabilities Act is critical in supporting and strengthening the City of Toronto's commitment and present efforts to addressing the needs of people with disabilities.

II. Background

Persons with Disabilities in Toronto

It is estimated that approximately 17 percent of the people living in the Province of Ontario have some form of disability. This population is not evenly distributed throughout the Province: evidence has suggested estimates of up to 45 percent of that population reside in Toronto. The City of Toronto is therefore particularly impacted by and concerned with ensuring the full participation in society of persons with disabilities.

By the year 2011, it is estimated that one in every six Ontarians will be over the age of 65 and the over 75 population will more than double. Given that the development of some form of disability increases with age, the proportion of the population today with some form of disability is not only significant, but growing rapidly.

Anywhere from 50 to 80 percent of people with disabilities either are unemployed or have never been tied to the labour market directly as a result of their disability. In 1994, the Ministry of Citizenship received a report from the Working Group on the Employment of Persons with Severe Disabilities entitled "Towards Equity: The Employment of Severely Disadvantaged Persons with Disabilities". This report conservatively estimated the cost of exclusion from the labour market of people with disabilities to be 5 billion dollars.

This report also found that more than double the number of persons with disabilities have incomes of less than \$20,000 than do persons who do not have disabilities. Over one-quarter of persons with disabilities live in poverty.

People with disabilities continue to face physical, attitudinal and systematic barriers in being able to realize their full entitlement to participate in employment and in being able to access services.

III. Comments on Bill 125

The Government first promised an Ontarians with Disabilities Act in 1995.

An earlier Bill, Bill 83 introduced in 1998, was withdrawn after widespread criticism that it failed to:

- apply to all sectors;
- impose mandatory requirements;
- establish enforcement mechanisms;
- provide timelines.

Other than requiring public sector agencies to develop accessibility plans and establish advisory committees, the same weaknesses can unfortunately generally be applied to this new Bill.

On October 29, 1998, the Ontario Legislative unanimously adopted 11 principles that should comprise the core goals and components of an Ontarians with Disabilities Act. On November 23, 1999, the Legislature unanimously adopted a further resolution that such an Act be strong, effective and mandatory.

Significant amendments to Bill 125 are therefore required to address the failings of the earlier Bill, Bill 83, and to conform with the requirements of the unanimous resolutions adopted by the Ontario Legislature.

Proposed amendments:

- Section I. Purpose:

The purpose of the Bill should be restated to achieve a barrier-free Ontario.

The City of Toronto finds both the intent and content of this Bill to be disappointingly modest. The purpose is to merely “improve opportunities for persons with disabilities and to provide for their involvement in the identification removal and prevention of barriers to their full participation”.

The provisions of the Bill do not begin to actually provide protection and removal of barriers to persons with disabilities. It merely creates the structured processes by which something in the future might possibly be implemented

- Coverage:

The Bill be amended to require barrier removal and prevention in the private and voluntary sectors as well the public sector.

The Bill again fails to recognize that the greatest barrier faced by people with disabilities is access to private goods and services.

- **Require Barriers be Removed:**

The Bill does not actually require and mandate the removal and prevention of barriers in all aspects of life. Nor does it even begin to detail in any holistic fashion the role and responsibilities of the public sector – let alone the private or voluntary sectors – in its role as an employer, a service provider, a regulator, a purchaser of goods and services, or as a provider of grants. The Bill fails to provide the necessary leadership that would support and strengthen the commitment and efforts of other institutional sectors – including the City of Toronto and other municipalities – in addressing the needs of the disability community.

- **Strengthened Role of Advisory Committees:**

The Minister of Citizenship has suggested that the Bill puts persons with disabilities in the “driver’s seat” through the establishment of a new provincial Accessibility Advisory Council and municipal and other public agency advisory committees. While such democratic ‘opportunity structures’ are an important mechanism of citizen input, it is an overly optimistic expectation that such advisory groups are in a position to direct, monitor, control and attain a barrier-free society. Imposing the onus upon the disability community itself to achieve change is an unfair burden and false expectation unless these committees are given greater and clearer authority.

- **Mandatory Requirements on the Municipality:**

The Bill requires two things of the City: the establishment of a community advisory committee and the establishment of an accessibility plan. The City already has in place a Community Advisory Committee on Disability Issues, chaired by Councillor Joe Mihevc. Secondly, in implementing all the recommendations of the Task Force on Community Access and Equity, as adopted by City Council in December 1999, which includes the requirement for City Departments and its Agencies, Boards and Commissions to prepare annual Access and Equity Action Plans, the City would appear to go beyond the mandated requirements for an “accessibility plan”.

- **Parking for People with Disabilities:**

The initial media attention to Bill 125 focused on the proposed changes to the Highway Traffic Act to increase the fine to not less than \$300 and not more than \$5,000 for various offences related to the use of persons with disabilities parking. It has been suggested that this media focus was a bit of a red herring, perhaps reflecting and deflecting from the lack of substance in the rest of the Bill, and unnecessarily emphasizing a trivial inconvenience to the broader public.

In addition to illegal parking, the Toronto Police Service has been investigating a number of misuses and abuses of the provincially issued persons with disabilities parking permit. These

issues suggest that Bill 125 should incorporate directives to the Ministry of Transportation to review for example, current eligibility criteria for disabled person parking permits, to establish a verification process on all disabled parking permit applications, to recertify a permit holder's disability each renewal period, and redesigning the permit so that it cannot be easily reproduced.

- Accessible Government Buildings:

The major thrust of the Bill's provisions focus on barriers faced by persons with disabilities particularly as they pertain to the design of newly-acquired or leased government buildings. It required that they meet the standards of the 1992 Building Code. Given that these standards already exist, these provisions to the Bill would therefore seem to be redundant. Instead, given that the disability community has expressed concerns for some time that the requirements of the Ontario Building Code are themselves minimal and need to be considerably strengthened, amendments to the Ontario Building Code Act need to be made.

- Other Implications of this Bill for the Municipality:

The proposed Bill will include amendments not only to the Highway Traffic Act, but also to a number of other Acts including *the Elections Act, the Legislative Assembly Act, the Human Rights Code, the Municipal Act, the Municipal Elections Act, the Planning Act, and the Social Housing Reform Act*. Many of the various Acts to which proposed amendments will be made have direct impact on the municipality. However, given the vagueness of some of the terminology used in this Bill, it is not immediately apparent how many of its provisions will work. For example:

- Bill 125 proposes to amend Section 28(1) Clause 257.2(2)(f) of the *Municipal Act* by striking out "and" at the end of subclause (ii) and by adding the following subclause: (ii.1) requiring the premises of the business, or a part of the premises, to be accessible to persons with disabilities.

This amendment would permit Municipalities to make it a condition of any business license that the premises or a part of the premises be made accessible. This would, however, put an undue hardship on the licensee who may be renting a property when the responsibility for accessibility should be placed upon the owner of the building. This clause therefore needs clarification.

- Secondly all businesses in the City of Toronto are not licensed nor do they require licensing. As a result, this legislation would not address the accessibility issues in many businesses. It would appear to discriminate against those businesses that are licensed.

It seems that the legislation is doing indirectly that which it could do more directly and more comprehensively by amending the Ontario Building Code Act (BCA). It is therefore recommended that an amendment to s.15.1(3) of that Act to authorize municipal councils to pass by-laws prescribing standards for accessibility requirements for persons with disabilities

for property and for prohibiting the occupancy or use of such property that does not conform with the standards would provide a more appropriate and effective approach.

An amendment to the Building Code would permit municipal councils to pass by-laws prescribing standards for accessibility on property within the municipality or within an defined areas. A by-law passed under this section would also be retroactive and applicable to all existing properties in the City thus providing a broader base to achieve accessibility goals.

- Bill 125 defines a “public transportation organization” to mean a person or entity that provides any service for which a fare is charged for transporting the public by vehicles operated:
 - (a) 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;
 - (b) under an agreement between the Government of Ontario and a person, firm, corporation, or transit or transportation commission or authority;
 - (c) under an agreement between a municipality and a person, firm, corporation, or transit or transportation commission or authority; or
 - (d) under a license issued by the Government of Ontario or a municipality to a person, firm, corporation, or transit or transportation commission or authority.

This definition of “public transportation organization” is very broad and appears to catch the taxi industry. If this was the intention, it will put an undue hardship on that industry including drivers, owners, and brokerages that we assume was not intended.

- In summary, amendments should be made to this Bill as recommended above with mandatory and enforceable requirements, and that the legislation and related regulations be reviewed every five years.

IV. Conclusions

There is very, very little of substance in this Bill. It is a hollow framework. The analogy used by a member of the City of Toronto's Community Advisory Committee on Disability Issues is that it is an empty truck: the task is to fill it with boxes if it is to have any meaning.

After many years of waiting, the disability community in Toronto is very disappointed with this Bill. The people of Ontario are letting down the disability community very badly with this Bill.

The Bill does not meet Toronto City Council's call for a strong, effective and mandatory Act that will ensure the right of persons with disabilities to equal treatment and equal opportunity. The Bill also does not meet the Ontario Legislature's own commitments to a set of 11 principles.

In summary, this Bill is not proactive, it is not prescriptive, and may be interpreted as a declaration that people with disabilities are not now or soon to be entitled to equal opportunities to conduct their affairs or improve their lifestyle through less reliance on community support.

This Bill will not ensure that persons with disabilities will have equal opportunity to fully and meaningfully participate in all aspects of life.

This Bill does not supersede all other legislation, regulations or policies which either conflict with or provide lesser protections and entitlements to persons with disabilities.

This Bill does not require the private and voluntary sectors (and only partly the public sector), to be made fully physically accessible.

The Bill does not require that providers of goods, services and facilities to the public ensure that they are fully usable by persons with disabilities.

This Bill does not require public and private sector employers to take proactive steps to achieve barrier-free workplaces within prescribed time limits.

This Bill does not provide for a prompt and effective process for enforcement.

This Bill does not require a review after three or five years, nor that regulations be made on a sector-by-sector or industry-by-industry basis.

This Bill does not mandate the Government to provide education and other assistance to private sector organizations, individuals and groups who seek to achieve a barrier-free environment.

This Bill does not require the Government to promote the development and distribution of new adaptive technologies and services for persons with disabilities.

This Bill does not make it a strict condition of public sector contracts or grants that the services, goods or facilities be fully accessible to persons with disabilities.

This Bill does not have real force and effect. It is little more than window dressing. As such it guarantees a legacy of increasing costs to the public and private sectors who will delay taking action if not strongly encouraged, leaving a further burden of support to the next generation.

Appendix

The City of Toronto's Commitment to Removing Barriers for Persons with Disabilities

Earlier this year, at its meeting of February 29, March 1 and 2, 2001, the Council of the City of Toronto unanimously adopted the motion that any legislation applying to the prevention and removal of barriers for Ontarians with Disabilities be mandatory and apply to all sectors: public, private and non-profit.

The Council of the City of Toronto unanimously adopted a further motion at its meeting of November 8 and 9, 2001 reiterating its commitment to, and call for a strong, effective and mandatory Ontarians with Disabilities Act. This motion further reiterated Council's commitment to making Toronto a truly barrier-free City by 2008.

A strong foundation of commitment and leadership has already been established by the City of Toronto. The policy imperative in dealing with issues concerning the needs and rights of persons with disabilities is already contained within City Council's Strategic Plan as well as within a considerable number of existing policy commitments. The fundamental right to equality of access, opportunity and outcomes for all members of Toronto's population has been a long-held pillar of governance policies in the City of Toronto.

The City of Toronto believes that the diversity of our community is an asset and core strength.

The City of Toronto believes in an inclusive society where all residents are able to fully participate in the social, cultural, economic and political life of the city.

The City of Toronto believes in an accessible and equitable society where every resident is given an equal chance to learn, work, and live free from barriers and discrimination.

And while high profile statements of ideals are important, they remain mere paper commitments if they are not incorporated into all aspect of the City's operations. This is why the City is translating its commitments and plans into actions. The City is not only moving forward with its responsibility for ensuring physical access to its facilities and properties but also in implementing an array of initiatives in its role as an employer, a service provider, a grants provider, a purchaser of goods and services, and in its role in outreaching, involving and strengthening the civic community.

City of Toronto Community Advisory Committee on Disability Issues:

The final report of the City of Toronto Task Force on Community Access and Equity, which was unanimously adopted by Toronto City Council in December, 1999 establishes a plan of action and program framework for implementing access and equity in the City of Toronto. As part of this plan, the City struck a number of community advisory committees. Among these committees is the Disability Issues Advisory Committee. It is co-chaired by Councillor Joe Mihevc, and two citizen co-chairs. Its membership includes people with disabilities and citizens interested in accessibility matters.

Accessible Municipal Facilities:

In furthering its commitment to accessibility for persons with disabilities, the City through the Facilities and Real Estate Division of the Corporate Services Department, has already contracted with one of Canada's leading barrier-free design consultants to upgrade its current Accessibility Guidelines and to develop and implement a methodology to evaluate and upgrade its existing buildings to an acceptable level. Phase one of this task is expected to be completed by June 2002 and will include accessibility evaluations of a wide range of City buildings and an estimated budget for a five-year remediation work plan.

The Guidelines will apply to all municipal properties, such as community centres, recreation facilities, hostels, municipally owned theatres, etc., and they will go far beyond the standards of the Ontario Building Code, and in many cases exceed those in ADA (Americans with Disabilities Act) documents. The City hopes that by setting an example in its own buildings, the private sector and other levels of government will follow our lead. We plan to publish the guidelines for use by all architects and builders. By so doing, the City hopes to raise the bar in the barrier-free design solutions environment.

City buildings staff administer and enforce the provisions of the Ontario Building Code, in which section 3.8, outlines "minimum standards" of barrier-free design that apply only in common use areas of privately owned buildings. The City has no authority to induce building owners to go further with accessible design than the provisions of the OBC other than by negotiation and goodwill. The consultant's contract provides a training program for City Planning staff and building inspectors, offering them an opportunity to identify potential accessibility opportunities when buildings are being planned, built, or modified.

Official Plan:

Clearly, the City is not able to correct the barriers in the built environment instantly, so an incremental approach is required. Hence the development of the City of Toronto's Official Plan has made input from people with a special needs a part of its work program. The report entitled, "Planning a Barrier Free City of Toronto: A Statement of Planning Principles," submitted by the former Toronto Joint Citizens Committee for People with Disabilities was among the first contribution to the City of Toronto Official Plan Process.

Numerous opportunities have been offered to the disability community to have input to the Official Plan, both in public meetings, and via written responses to the support documents that were presented for public comment over the last year.

Tourism in Toronto:

Tourism Toronto, which is, in part sponsored by the City of Toronto have employed a staff person whose responsibilities include encouraging the hospitality and retail business communities to make their facilities more accessible by visitors with special needs. The driving force in this initiative is our American visitors who ask whether their destinations are ADA (Americans with Disabilities Act) compliant. Over the last decade, the tough provisions of this

legislation has transformed the facilities and services environment in the USA to be nearly barrier-free. Without such a powerful legislation tool in Ontario, our challenge is to convince the property owners of Toronto that it is good business to modify their existing facilities, or at least, to not build barriers into new structures, in order that our visitors will still find Toronto a desirable destination.

The City's Human Resources Policies and Practices:

The City's Employment Equity Policy already has a provision to identify and remove systematic barriers for designated groups including persons with disabilities. In addition, the City of Toronto is in the process of updating its Accommodation Policy, which will clearly outline the roles and responsibilities of all those involved in accommodating the needs of persons with disabilities. Included in this will be the expectation that areas such as Information Technology and Purchasing ensure that accessibility of persons with disabilities is a key requirement for any goods or system that are purchased.

Purchasing:

The Purchasing and Materials Management Division of the City's Department is implementing, both in policy and practice a number of initiatives with regard to accessibility for persons with disabilities in both the provision and receipt of goods and services purchased by the City.

Municipal Elections:

Similarly, the City's Elections Services Office already has in place a detailed 20 point Disabled Elector Strategy that describes the existing City policies and procedures pertaining to communications and signage, voting places, and voting place procedures by which the City is addressing the needs of electors with disabilities.

Transportation:

The Toronto Transit Commission has had in place for a number of years an extensive and comprehensive accessibility plan and program (e.g. acquisition of "low floor buses" and installation of elevators in subway stations) including Wheeltrans, all of which are guided by consultation with a community advisory committee.

Parking for Persons with Disabilities:

The Toronto Police Service established a Parking Enforcement Disabled Liaison Unit in 1999 to respond to the needs of people with disabilities and to investigate these and other issues such as the lack of compliance and consistency regarding disabled parking signage and the uses and abuses of parking permits. This Unit will continue to consult with and inform provincial authorities in the development of standards, procedures and regulations.

These are just some examples of how the City is attempting to take a holistic approach in its role not only as the owner of public facilities, but also as an employer, as a service provider, as a regulator, as a purchaser of goods and services, and also as a provider of grants.

In ensuring that all people with disabilities deserve fair and equitable treatment in all areas of their lives, the City of Toronto has begun to show leadership in some areas, and has at the same time understood the need to deal with the issues more comprehensively. While we have much to learn; while we will continue to develop, test and adjust our approaches; and while we may sometimes be impatient with the pace of progress, it is part of the process of embedding, of fully integrating accessibility into the everyday thinking of all municipal government action.

And it is within this context that the City of Toronto looks to a clear, strong and effective Ontarians with Disabilities Act that will further accelerate and strengthen the efforts of the City of Toronto on behalf of persons with disabilities.