

The Accessibility Advisory Council

Initial Recommendations to the
Minister responsible for Persons with
Disabilities on Accessibility Legislation

June 15, 2012

Introduction

The Accessibility Advisory Council was established with the passage of *The Accessibility Advisory Council Act* on June 16, 2011. The Council was created to make recommendations to the Minister responsible for Persons with Disabilities, the Honourable Jennifer Howard, on enacting legislation for the prevention and removal of accessibility barriers, and on other policies and practices the government can undertake to improve accessibility.

The Accessibility Advisory Council is made up of 12 members with diverse backgrounds and experiences, including representatives of organizations of persons with disabilities, business, municipalities and other organizations. The Council has been meeting regularly since November 2011. Meeting summaries have been provided to the public on the Council's website and the ideas, questions and concerns of numerous individuals and stakeholders have been considered as the Council prepared its recommendations.

Background

Our conviction is that removing barriers for persons with disabilities will be of great benefit to Manitoba. The Council has worked hard to build consensus regarding the recommendations required to achieve this goal. The main goal of the recommendations contained in this report is to remove barriers by working with the public and private sectors to make proactive, long-range plans, standards and regulations that enhance accessibility for everyone.

Despite over 30 years of human rights legislation, barriers continue to restrict access for persons with disabilities in the design of goods, services and the built environment. The recommendations promote the concept of "universal design" which strives to create structures, products and systems that accommodate a widest possible range of people and abilities. The Council recognizes that public education is crucial to achieving greater accessibility since barriers often come from a lack of planning and not understanding how they affect the daily life of many people.

The Council is committed to developing a Made-in-Manitoba approach towards this legislation. However, the Council is also mindful of the successes and challenges experienced in other jurisdictions that have developed a legislative strategy to removing barriers. Manitoba should not look to re-invent the wheel, but should also be sensitive to the unique characteristics of our province.

The Council's first task is to provide recommendations to the Minister on the enactment of accessibility legislation, and other policy objectives the Council determined would move the province toward greater accessibility for all Manitobans. This report outlines these initial recommendations, which are being submitted one year after the Council's establishment.

Consultations

In the 2009 discussion paper, *Opening Doors: Manitoba's Commitment to Persons with Disabilities*, the Government first identified accessibility legislation as one of the options to advance the rights of persons disabled by barriers. In consultations across the province, significant support was expressed for accessibility legislation.

Development began in earnest in late 2010 with *The Discussion Paper for Made-in-Manitoba Accessibility Legislation*. More than 100 individuals and/or organizations submitted written or electronic responses to the discussion paper, again largely supportive. At the same time, the Minister responsible for Persons with Disabilities, the Honourable Jennifer Howard, selected stakeholders to serve as an eleven-member Advisory Committee to provide input and advice on the structure and content of accessibility legislation. The enactment of *The Accessibility Advisory Council Act* was the result of these recommendations.

In May 2012, *The Accessibility Advisory Council Discussion Paper on Accessibility Legislation* was released. The discussion paper outlined options the Accessibility Advisory Council is considering for proposed legislation and the standards that would be established under the Act. It also served as the basis of a broad consultation on May 8, 2012. More than 150 people attended the event, which was also webcast, allowing individuals not able to attend the meeting in person to view the event and offer their comments. A significant number of written and electronic submissions have also been forwarded to the Council by individuals and organizations expressing their thoughts on accessibility legislation and the initial proposals set out in the discussion paper.

The Council appreciates the time, energy and thought that went into the responses it received through public consultations. The Accessibility Advisory Council has considered all the feedback it has received, which has served to inform this report. This is the first step in a long process that aims to bring about the transformative changes first stated in the policy document, *Full Citizenship*, back in 2001;

Our government and our society have been challenged: we must re-make our institutions in a way that allows people with disabilities to fully participate in our society. Our challenge is to become a more inclusive society, so that all Manitobans can enjoy the rights, and exercise the responsibilities, of citizenship.

Legislative Recommendations

1. Preamble

1a The preamble should acknowledge Canadian commitments under the United Nations Convention on the Rights of Persons with Disabilities and the *Canadian Charter of Rights and Freedoms*.

1b Rather than singling out youth or seniors, the preamble should acknowledge that most Manitobans confront barriers to accessibility at some point in their lives and that achieving accessibility will improve the health, independence and social inclusion of persons disabled by barriers across their lifespan. This legislation will therefore benefit all Manitobans.

1c The preamble should recognize the historical exclusion of persons with disabilities in our society by the construction of barriers of all kinds, and the value of the ongoing efforts of persons with disabilities and their organizations in removing these barriers.

1d Accessibility barriers are costly to our province; to persons with disabilities, their families and friends, and to all Manitobans. These costs represent the lost opportunities and contributions that result from barriers to full inclusion.

1e Finally, it should conclude that a systemic and proactive approach for identifying, and removing barriers should be established in legislation to complement *The Manitoba Human Rights Code* in ensuring accessibility for Manitobans.

Comment: The Council, along with the majority of parties who prepared feedback on the discussion paper, recommended strong, powerful and positive language be used in the preamble. The preamble should set the tone of the Act and reflect the government's commitment to the identification and removal of barriers to full accessibility for all Manitobans.

2. Definitions

2a The act should define a barrier as anything that interacts with an impairment in a way that may hinder the person's full and effective participation in society on an equal basis with others. Impairments may include long-term physical, mental, intellectual, invisible, episodic or sensory impairments.

Comment: This act should have a paramount focus on the barriers to full accessibility, rather than disability. This definition is intended to embody an inclusive, broad meaning of impairment, extending for example, to sometimes overlooked impairments, such as environmental sensitivities.

2b The examples of barriers listed in *The Accessibility Advisory Council Act* should be maintained (physical, architectural, information and communications, attitudinal, technological and barriers perpetuated by policies and practices).

2c The term "organization" should be defined to mean any organization in the public or private sector including the government and any board, commission, or agency of the government; any corporation, agency, board, commission, authority or other entity established under an Act; an unincorporated association, partnership, sole proprietorship or trade union; and any other type of entity prescribed in a regulation.

Comment: This definition of organization includes municipal governments, which must comply with accessibility standards and other applicable requirements under the act. The Council has considered requiring municipal governments to form committees to advise on accessibility standards implementation and compliance in their communities. However, the Council has heard persuasive submissions from municipalities to the effect that local governments should be able to determine their own process on how best to comply with accessibility standards in their communities.

Therefore, municipalities will not be singled out by being required to form prescribed accessibility committees, but will be required to comply with accessibility standards as best suits their organization.

3. Purpose

3a The purpose of the act should be to ensure accessibility by preventing and removing barriers that disable people with respect to the general systems of society, including, but not limited to: education and training, employment, transportation, information and communications, the delivery and receipt of goods and services, and the design, operation and management of the built environment.

Comment: The purpose of this act is intended to be broad and comprehensive, applying to more than the specific areas listed in the recommendation. Diverse matters, such as health services and housing may eventually be addressed as access issues under this act by means of regulatory or program initiatives. The formal purpose of the act should also lend itself to broad interpretation in recognition of the evolving nature of access and barriers and the need for flexible application. Barriers to accessibility evolve with changing demographics, lifestyles, needs and technologies. The Council recognizes that the rights of citizens to accessibility will change over time, and the purpose should reflect this.

Building codes do not typically regulate the space outside. The codes generally do not apply to sidewalks, curbs, roadways, parks, and many other aspects that we design and construct. Rather than identifying buildings, facilities, premises and structures, the terminology should be the “built environment,” as it is broad enough to cover everything that we as humans have changed beyond the design presented by the natural environment.

4. Advisory Council

4a The Accessibility Advisory Council should be continued under the new act. Provisions from *The Accessibility Advisory Council Act* on the appointment of Council members, composition of the Council, and the establishment of committees (sec.4-7) should be maintained, with the following changes:

- i) There should be a requirement for the Council to include representatives from "organizations of persons disabled by barriers" rather than "organizations for persons disabled by barriers."

Comment: Disability culture places great importance on self-representation; the word mark of the Council of Canadians with Disabilities, for example, is “A Voice of Our Own,” and the international rallying cry of the disability movement is “Nothing About Us, Without Us.” This recommendation is intended to ensure that “organizations of persons with disabilities” are represented on the Council. It is not intended to prevent “organizations for persons with disabilities” from being represented.

- ii) Committees established by the Council should have accountability measures similar to the following:
 - Where a committee is appointed, the Council shall provide the committee with written terms of reference including the mandate of the committee, the work to be undertaken, timelines for completing the work and accountability requirements.
 - In addition to any requirements set out in the terms of reference, Committees shall provide quarterly written reports to the Council.

- Committees shall provide the Council with a written report detailing the results of its work and any recommendations thereto. The Council shall consider this report and determine its appropriate disposition.
- Where needed, the Council shall provide committees with guidance and support.
- Where reasonable, the Council may disband any committee it has appointed.
- The Council shall provide regular reports to the Minister on the work of the Committees.

Comment: Committees of persons with disabilities, affected stakeholders and technical experts will be established to develop accessibility standards for the consideration of the Council. Standard development will be a collaborative effort and committees will involve those most affected by the proposed standard. Committees can also be created to provide any other requisite advice to the Council.

Standard development committees should be directly accountable to the Council to better ensure harmonization across standard areas and improved coordination between committees. The need for greater harmonization among committees was a major finding from the independent review of Ontario's *Accessibility for Ontarians with Disabilities Act*.

4b Sections from *The Accessibility Advisory Council Act* regarding the mandate of the Council (sec. 7-9) should also be incorporated into the new act, with the following changes:

- i) The consultation requirements should be amended to be consistent with the above recommendation by making reference to "organizations of persons disabled by barriers" rather than "organizations for persons disabled by barriers".
- ii) Following the Council's recommendations being made public, the period for public comment should be amended to 60 days or any longer time period specified by the Minister, from the current time period of 45 days. This would be consistent with the period for public comment recommended in the standard development process set out below.

4c In carrying out its mandate, the Council should continue to be guided by the four principles articulated in *The Accessibility Advisory Council Act*: Access, Equality, Universal Design and Systemic Responsibility.

5. Accessibility Standards

5a The act should provide for the establishment of accessibility standards by regulation. Standards should set out measures, policies, practices, or other requirements for identifying and removing barriers, and preventing barriers from being established. Standards should require a person or organization that is subject to the standard to implement those requirements within the time periods specified in the standard.

5b Standards may be developed in areas including, but not limited to: education and training, employment, transportation, information and communications, the delivery and receipt of goods and services, and the design, operation and management of the built environment.

5c The act should not exempt any sector or activity from being subject to an accessibility standard. However, in certain circumstances, it may be reasonable for regulations to permit a class in a sector or activity to be exempt from complying with the requirements of a specific standard.

5d Persons or organizations made subject to the standard should be clearly identified and will be expected to comply with the requirements of that standard.

5e This legislation should allow standards to group persons or organizations, or the buildings, activities and operations under their control, into classes according to certain characteristics. These characteristics can include their size, amount of revenue, number of employees and sphere of activity.

Comment: Some requirements contained in a standard, such as filing reports or keeping other documentation on hand, will be applied differently to organizations depending on size and resources. Small businesses and organizations should focus on improving accessibility without being overburdened with administrative requirements.

5f The legislation should, in the development of standards, also allow for the definition of a class to be adjusted to include or exclude a specific person or organization based on criteria unique to that person, organization or activity.

5g The act should state that, in the development of standards, any person or organization may be subject to more than one accessibility standard, and that an accessibility standard may be general or specific in its application and may be limited as to time and place.

6. Standard Development Process

6a Accessibility standards should be recommended for enactment only after the Minister has received the recommendations of the Council.

6b The Minister, on advice from the Council, should prepare terms of reference for each proposed accessibility standard along the following lines:

- i. Persons or organizations to be made subject to the standard should be clearly identified in the terms of reference for the development of a new standard.
- ii. The terms of reference for the development of the standard should be given to the Council and made available to the public by posting it electronically, or by other means to ensure the information is accessible, including alternate formats.
- iii. The Council, on receiving the terms of reference for a proposed accessibility standard from the Minister, should consider and make recommendations to the Minister on:
 - the accessibility objectives of the standard;
 - the activity, undertaking and sector to which the standard relates;
 - the measures, policies, practices or other requirements that should be implemented, including how they should be implemented and by whom; and

- the timeframe for the implementation of the standard's requirements.
- iv. The Council should be required to submit the recommendations for a new accessibility standard to the Minister within the time specified by the Minister.

6c When recommending time frames for the implementation of an accessibility standard, the Council should be required to consider:

- i. the nature of the barriers that the standard is intended to identify, prevent or remove;
- ii. the cost and level of technical complexity associated with implementing the standard; and
- iii. any other matter referred to in the terms of reference.

6d In developing an accessibility standard, the act should require the Council to consult with: persons disabled by barriers or representative organizations of persons disabled by barriers; the Manitoba Human Rights Commission; representatives of the sectors or organizations that may be subjected to the proposed accessibility standard; and representatives of the provincial and local government that have responsibilities or are related to the sector or classes of persons or organizations to be subjected to the proposed accessibility standard.

Comment: The commitment to make Manitoba accessible must be shared by all sectors of society – governments, businesses and public services. The final design of accessibility standards will be guided by what is heard through consultations.

6e The act should call on the Council to achieve consensus among its members in regard to recommendations, but may allow for separate recommendations by one or more members if consensus cannot be achieved.

6f This legislation should require the Minister to make available to the public the Council's recommendations and the proposed accessibility standard, by posting them electronically and by other means to ensure information accessibility, including alternate formats.

6g The act should allow persons to submit comments about the proposed standard to the Minister within 60 days after a proposed accessibility standard is made available to the public, or within any other longer time period specified by the Minister. The Minister should then consult with the Council in regard to any comments received from the public about the proposed accessibility standard, and thereafter the proposed accessibility standard may be revised.

6h The act should require that each accessibility standard be reviewed within five years of enactment, and every five years thereafter, by having the Council examine the accessibility objectives and the measures, policies, practices and other requirements in the standard. The review should also examine how well and by whom they are being implemented, after which the Council may develop recommendations to update the standard and submit these to the Minister.

Comment: Since standards may deal with areas where rapidly changing technologies have an effect on accessibility, such as communication and information technology, standards should be reviewed regularly and updated if required.

6i The act should complete the process of accessibility standard development by enabling the Minister to withdraw the terms of reference that have been provided to the Council, after which the Council must cease its activities in regard to that standard.

7. Compliance

7a The act should require that, where specified in the regulations, persons and organizations prepare and file an accessibility report containing the prescribed information regarding accessibility and the prevention and removal of barriers. These reports should be prepared in a format prescribed by the minister.

Comment: Specific requirements for reporting and documenting compliance would be contained in the standards. As stated in Section 5e, a standard may impose different requirements or exemptions for documenting compliance depending on the size, nature and other characteristics of the obligated organization. For example, smaller businesses and organizations may be exempt from preparing and filing reports to avoid an undue paper burden.

7b The act should require a person or organization subject to an accessibility standard to comply with the standard within the time specified in the standard.

7c Nothing in this act should diminish the obligations of a person or organization with respect to *The Manitoba Human Rights Code*. Nothing in the act or standards should prevent an individual from pursuing a complaint with the Manitoba Human Rights Commission, or from otherwise exercising his or her rights under *The Human Rights Code*.

Comment: Section 58 of *The Human Rights Code* states: “Unless expressly provided otherwise, herein or in another Act of the Legislature, the substantive rights and obligations in this Code are paramount over the substantive rights and obligations in every other Act of the legislature, whether enacted before or after this Code.”

7d The new legislation should specify that a person or organization who fails to file an accessibility report, or furnishes false or misleading information in an accessibility report, or fails to comply with an accessibility standard is guilty of an offense.

7e The legislation should specify that if an organization, including a corporation, willfully commits an offense under this act, that a director, officer, employee, or agent of the organization who has authorized, permitted or acquiesced in the commission of the offense is also guilty of an offense, whether or not the organization has been prosecuted or convicted.

7f The new legislation should also provide that for offenses under the act, on summary conviction, a person would be liable for a fine of not more than \$25,000.

Comment: This stated level of fine is consistent with those provided for under other Acts. Prosecution is the most serious form of punishment for contraventions of the Act. While it is recognized that compliance should ideally be voluntary, and achieved through means such as public education and community outreach. It is also recognized that there should be the ability to prosecute where there are flagrant breaches of the Act. The decision and authority to prosecute a contravention of any legislation rests with the Attorney General of Manitoba.

7g The Minister should be enabled to appoint a Director to administer this act. This Director should in turn be enabled to appoint staff from his or her department, or from another department under an agreement, as inspectors responsible for enforcing this act.

7h Wherever possible, the Minister should be enabled to use existing provincial inspection and enforcement mechanisms to enforce the standards developed under this act. The Minister should also be enabled to establish a centralized compliance unit under the supervision of the Director. This unit would be responsible for promoting compliance with the act, receiving complaints and inquiries, and overseeing inspection and enforcement activities.

7i Compliance should be attained through a system of graduated enforcement, involving the use of education and outreach, Director's orders and finally penalties. The act should provide for the establishment of administrative penalties by regulation for failing to comply with an accessibility standard or other requirements contained in the act.

Comment: Public consultations clearly communicated the need to balance outreach and communication with sufficient penalties to deter organizations from failing to comply with the act and standards.

8. Mandate of the Minister

8a The act should provide a mandate for the Minister of achieving accessibility for persons who are disabled by barriers by:

- i. establishing and overseeing the development and implementation of accessibility standards necessary to achieve accessibility;
- ii. facilitating the integration of applicable accessibility standards into the activities of government and persons and organizations; and
- iii. ensuring that persons and organizations that may be made subject to accessibility standards are consulted in the development of those standards.

8b The Minister should prepare an annual report on the activities undertaken in administering the act in the past year within six months after that year has ended, and to table this report in the legislative assembly within that six-month period if the assembly is sitting, or, if it is not sitting, shortly after the next sitting begins.

9. Review

9a This act should require an independent review of the act within four years after it comes into force by a person appointed by the Minister. The review should determine the effectiveness of this act, the accessibility standards and the other regulations made under this act and to report on his or her findings to the Minister.

9b The person who is appointed by the Minister to undertake the independent review of this act should be required to consult with the public and, in particular, with persons who are disabled by barriers and organizations of persons who are disabled by barriers.

9c The new legislation should require that the report prepared upon the independent review of the act be made public, by being tabled by the Minister in the legislative assembly within a specified time after receiving the report. If the assembly is not sitting at the time of receipt, the report should be tabled within a specified time after the next sitting of the assembly begins.

9d The new act should require that within five years after a report was last tabled by the Minister in the assembly, the Minister must appoint a person who is to undertake a further independent review of the effectiveness of this act and the regulations.

Policy Recommendations

1. Grants, Awards and Third Party Agreements

The Manitoba Government should ensure that public money spent for public purposes equally benefits persons with disabilities and does not create further barriers. This should be accomplished by undertaking to review policies and develop guidelines on grants, awards and third party agreements.

Comment: As part of the existing *Accessibility Advisory Council Act*, a committee has been established to develop accessibility guidelines for government procurement.

2. Resources for Disability Organizations involved in Standard Development

Persons with disabilities and their representative organizations who are part of a standard development committee should be resourced, as needed, to enable their fair and equal participation in the development of accessibility standards. These resources could be used to fund research activity so that participants are informed on the key issues under discussion. Resources can also be used to fund community consultations undertaken by organizations of persons with disabilities during the process of standard development.

Conclusion

The main goal of accessibility legislation is to prevent barriers from existing by working with public and private sectors on long-range plans to ensure accessibility. The introduction of legislation will lay out a plan to achieve accessibility and serve as an important step in the vision of a fully accessible society. Accessibility legislation will provide tangible benefits to all Manitobans, and build on other efforts to make Manitoba more accessible by ensuring that appropriate services and programs are available. The recommendations that the Council has forwarded will create crucial elements essential to accessibility legislation:

- A process to develop clear, specific and achievable goals
- Accessibility standards for both the private and public sectors
- Persons with disabilities and other stakeholders affected by the legislation, such as businesses and municipalities, play a central role in the development of legislation
- Guarantees contained in the human rights codes are not affected in any way
- Regular review of the progress made

The Council has considered all submissions received to date. Many of the recommendations provided apply to the standard development process. Those recommendations have been set aside in a separate file for guidance and reference when committees are established to develop accessibility standards in the designated areas. From our consultation and submission process, the development of a customer service standard appears to be a priority.

In closing, the Council would like to thank the Minister responsible for Persons with Disabilities, the Honourable Jennifer Howard, for the opportunity to serve the government with this important initiative. The Council understands the responsibilities it has been given, and has worked collectively, with the community, to provide recommendations we believe will deliver legislation designed to create greater accessibility and a more inclusive province for all Manitobans.