

The Customer Service Development Committee

Initial Recommendations for a Proposed
Customer Service Standard to the
Minister responsible for Persons with Disabilities

October 3, 2014

Introduction

The Accessibility for Manitobans Act received Royal Assent and became law on December 5, 2013. The purpose of the legislation is to provide a clear and proactive process for the identification, prevention and removal of barriers that prevent a significant per cent of the population from full participation.

The AMA will accomplish this by developing accessibility standards with respect to customer service, information and communication, transportation, employment and the built environment. The former Minister responsible for Persons with Disabilities (Minister), the Honourable Jennifer Howard, has identified customer service as the first priority area for standard development. Customer Service is a smart, strategic starting point for standards because it addresses the need for change in three primary areas: attitudes, knowledge and basic practice.

The Accessibility Advisory Council has the responsibility under the Act to make recommendations to the Minister regarding the development of accessibility standards. It is made up of 11 members with diverse backgrounds and experience, including representatives of organizations of persons with disabilities, business, municipalities and other organizations.

As customer service is the first standard to be developed, the Minister agreed that the Council should assume the role of the Customer Service Standard Development Committee (Committee) to ensure a consistent application of the legislation and a consistent understanding of stakeholder interests.

The Committee has been meeting regularly since February 2014. Meeting summaries have been provided to the public on the government's website. The ideas, questions and concerns of stakeholders were considered in the preparation of this Proposed Customer Service Standard for the Minister's review and consideration.

Defining Customer Service

Accessing goods or services is an activity that most of us take for granted, yet it can present significant challenges for the province's 200,000 persons disabled by barriers.

Barriers are obstacles. Barriers to accessible customer service are obstacles that make it difficult - sometimes impossible - for people disabled by these obstacles from doing regular things like shopping, going to restaurants or attending school.

Barriers do not provide benefits to society. These barriers are not created out of necessity, but rather because of a lack of understanding and appreciation of the significance these obstacles play in the daily life of many individuals. These barriers create significant and unnecessary costs – to persons disabled by barriers, to their family and friends, to their communities, and to the overall economy. With appropriate training and planning, barriers can be avoided or eliminated.

Apart from obvious physical obstacles, there are often non-physical, invisible or non-evident barriers that compound this difficulty. Unintentionally, providers of goods or services may create barriers based on their attitudes or lack of awareness that adversely affect a large number of people attempting to access their goods or services. This Standard strives to provide greater awareness and understanding of the various service needs of persons disabled by barriers and what can be done to reduce or eliminate such barriers. It can be as easy as asking “How can I help?” and making small changes to how services are provided.

The customer service standard focuses on policies, training and good communication practices that can address the lack of knowledge about persons disabled by barriers, lack of knowledge of human rights, and the significant under-estimation of the current and latent economic contributions of persons disabled by barriers as customers and producers.

The strength of the proposed customer service standard is the breadth of its application. It is proposed that it will apply to all providers of goods and services across the public, private and not-for-profit sectors. The standard will require accessible business practices, as well as progress in attitudes and knowledge across all sectors.

Standard Development

Accessibility standards are the building blocks of real, measurable and effective changes to accessibility. *The Accessibility of Manitobans Act* enables the development of standards set out in regulations to the Act. Such standards establish clear requirements for persons and organizations that have a responsibility to eliminate barriers under the Act. The purpose of standards is to implement measures, policies and practices to identify, prevent and remove barriers within the time periods specified in the standard.

As noted repeatedly from the outset of this process, the Accessibility Advisory Council is committed to developing a Made-in-Manitoba approach to accessibility legislation and standards established under the Act. However, in developing such an approach, the Council considered and learned from the successes and challenges experienced by other jurisdictions, such as Ontario, regarding the implementation of legislative strategies for removing barriers. The proposed customer service standard is considered from a Manitoba perspective. It builds on the requirements of the *Human Rights Code of Manitoba* by setting out a specific process for removing and preventing barriers to accessible customer service.

In April 2014, the Committee released the *Discussion Paper on an Initial Proposed Customer Service Standard*. It was prepared 60 days before public consultations to allow sufficient time for stakeholders to consider responses. The discussion paper was a starting point for the development of a proposed customer service standard, and also served as the basis of a broad consultation on June 17-18, 2014.

More than 150 people attended the two day 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 by individuals and organizations expressing their thoughts on the initial proposed customer service standard set out in the discussion paper.

The Committee appreciates the time, energy and thought that went into the responses it received through public consultations. It has considered all the feedback it has received, which has served to inform this report. The development of a Customer Service Standard is an important step in creating greater accessibility and a more inclusive province for all Manitobans.

Customer Service Standard Recommendations

1. Purpose and Application

1(1) This Regulation establishes accessibility standards for customer service and it applies to all organizations (public, private, non-profit) that provide goods or services either directly to the public or to other organizations in Manitoba and that have one or more employees in Manitoba.

1(2) In this Regulation

“every government agency” means every department of the Government of Manitoba, every municipality and any board, commission, association, agency, or similar body, whether incorporated or unincorporated, all the members of which, or all the members of the board of management, board of directors or governing board of which, are appointed by an Act of the Legislature or by the Lieutenant Governor in Council, as per Section 1 of *The Financial Administration Act*;

“provider of goods or services” means a person or organization to whom this Regulation applies.

Comment: By adopting “every government agency” from *The Financial Administration Act*, the Committee is attempting to capture as broad a public sector as possible. The Committee feels public sector organizations have a responsibility to provide leadership in this area and ensure customer service is delivered in a fully accessible manner that the public it serves rightfully deserves.

2. Effective Dates

2. The accessibility standard for customer service shall apply to the following bodies in the timelines below:

- The Government of Manitoba one year after the standard becomes a regulation;
- Every government agency, as described in *The Financial Administration Act*, two years after the standard becomes a regulation; and,
- All private and non-profit organizations three years after the standard becomes a regulation.

Comment: The discussion paper proposed two different target dates for when organizations would be required to comply with the standard. The Government of Manitoba and all government agencies would be obligated to comply one year after the standard is made into a regulation, and all other organizations would have two years.

However, the Committee heard strong arguments during the public consultation process that extensions would support the effective and successful implementation of the customer service standard. The new dates for compliance would ensure that the Government of Manitoba demonstrate strong leadership in meeting the requirements. It would also provide the Government with sufficient time to promote a clear understanding to external parties and the general public about the strengths of accessibility legislation and the standards contained within.

3. Establishment of Policies, Practices and Procedures

3(1) Every provider of goods or services shall establish policies, practices and procedures governing the provision of its goods or services to people disabled by barriers. The provider must set up policies that:

- uphold the duty to accommodate as defined by human rights legislation;
- identify, remove and prevent barriers to accessible customer service;
- support the use of assistive devices by persons disabled by barriers; and,
- provide equivalent and inclusive customer service.

Comment: In many instances, achieving the removal of barriers and the fulfillment of equality for people disabled by barriers requires additional proactive measures. Under human rights law, this concept is understood as the duty to accommodate. In 1999, the Supreme Court of Canada handed down two decisions that made it clear that both employers and service-providers alike have a duty to remove barriers by providing reasonable accommodation.

This means developing workplace and service delivery standards that are inclusive of all persons, or where such standards are not possible, establishing alternate methods of accomplishing work or providing a service. An employer or service-provider does not have to provide accommodation where they can demonstrate that the accommodation solution required would create an undue hardship.

(2) Policies, practices and procedures developed by every provider of goods or services are consistent with the principles of:

- **Access:** Persons should have barrier-free access to places, events and other functions that are generally available in the community.
- **Equality:** Persons should have barrier-free access to those things that will give them equality of outcome and opportunity.
- **Universal design:** Access should be provided in a manner that does not establish or perpetuate differences based a person's disability.

- **Systemic responsibility:** The responsibility to prevent and remove barriers rests with the person or organization that is responsible for establishing or perpetuating the barrier.

Comment: *The Accessibility for Manitobans Act* recognizes these four principles in achieving accessibility and notes that these should guide all persons and organizations with responsibilities created under the Act. These principles should apply broadly to every party with a duty under the Act and the standards that are created.

3(3) The provision of goods or services to persons disabled by barriers must provide the same means of use for all users unless an alternate measure is necessary, whether temporarily or on a permanent basis, to enable a person disabled by barriers to obtain, use or benefit from the goods or service.

3(4) Where providers of goods or services have equipment or devices as a means of access available on the premises to the provision of goods or services to a person disabled by barriers, such as an elevator or accessible washroom, they must ensure these are available for use in the intended purpose.

3(5) Every provider of goods or services must communicate with a person disabled by barriers in a manner that takes into account his or her disability.

3(6) Every government agency and every other provider of goods or services with 20 or more employees must:

- Document in writing all their policies, practices and procedures for providing accessible customer service for persons disabled by barriers; and,
- Let customers know that these documents are available upon request.

Comment: This section is the first of the proposed customer service standard that address differential requirements based on the size of the organization. The proposed standard requires the same level of service to all obligated organizations. The difference is that larger organizations will be required to formally document policies and to advise customers that these are available upon request.

Statistics Canada estimated that a total of more than 36,000 private and not-for-profit organizations operated in Manitoba with at least one employee in 2011. Of these, more than 5,000 or 14.2 per cent have 20 or more employees. The Committee supports 20 or more employees serving as the threshold organizations are required to meet for the documentation requirements proposed in the standard.

4. Use of Support Persons

4(1) This section applies if goods or services are provided to members of the public or other third parties at premises owned or operated by the provider of goods or services and if the public or third parties have access to the premises.

Comment: The customer service standard also applies to persons or organizations that make goods or services available to other third parties – other businesses, the government or other organizations. This includes consultants, manufacturers and wholesalers, as well as providers of other business and professional services. Under the customer service standard, providers of goods or services to third parties must comply with the same requirements as the providers who serve the public.

A wholesale manufacturer who conducts business with other businesses and not directly to the public is an example of a third party. Business 2 Business organizations need to consider the businesses that they deal with as customers for the purpose of compliance with the proposed customer service standard.

4(2) Persons disabled by barriers may be accompanied by a support person when accessing goods or services on parts of the premises open to the public or other third parties and have access to the support person at all times on the premises.

4(3) Every organization that provides goods or services must let people know ahead of time what, if any, admission will be charged for a support person if an organization charges an admission fee.

Comment: The Committee received feedback from stakeholders recommending that the standard prohibit service-providers from charging a fee for support persons. The Committee consulted with the Manitoba Human Rights Commission to determine if such a provision was in keeping with human rights law. While such a prohibition may help to remove barriers, it may also undermine the human rights concept of “reasonable accommodation”. Reasonable accommodation requires service-providers to remove barriers up to the point of undue hardship. There may be situations where the waiving of a fee for a support person could form an undue hardship for a service-provider. The Committee believes that the Standard should comply with human rights law. For this reason it has not accepted the proposed recommendation regarding the prohibition of charging admission fees for support persons.

4(4) Every government agency and every other provider of goods or services with 20 or more employees must:

- Have a document or documents that include policies, practices and procedures on support persons; and,
- Let the customers know that these documents are available upon request.

In this section,

“support person” means, in relation to a person disabled by barriers, another person who accompanies him or her in order to help with communication, mobility, personal care or medical needs or with access to goods or services.

5. Use of Service Animals

5(1) This section applies if goods or services are provided to members of the public or other third parties at premises owned or operated by the provider of goods or services and if the public or third parties have access to the premises.

5(2) If a person disabled by barriers is accompanied by a service animal, the provider of goods or services shall reasonably accommodate that person and his/her service animal short of undue hardship in accordance with human rights legislation.

5(3) Every government agency and every other provider of goods or services with 20 or more employees must:

- Have a document or documents that include policies, practices and procedures on service animals; and,
- Let the customers know that these documents are available upon request.

In this section, “service animal” means an animal that has been trained to provide assistance to a person with a disability that relates to that person's disability, as per The Manitoba Human Rights Code.

Comment: Dogs tend to be the most common form of service animals used by persons disabled by barriers. While dogs have provided guiding services for blind persons for several years, the types of services performed by service dogs and the number of persons disabled by barriers who can benefit from such dogs has significantly increased in Manitoba. The use of service animals in public places is a new and emerging access issue.

Based on consultations held by the Manitoba Human Rights Commission with stakeholders and the many inquiries it receives on this issue, it is clear that further education and guidance is needed regarding the right of persons disabled by barriers to access public places accompanied by their service dogs. It is expected that the Manitoba Human Rights Commission will provide additional advice and direction on this access issue in the near future, which can then be used as a supplement to this Customer Service Regulation.

6. Notice of Temporary Disruption

6(1) Provider of goods or services must let the public know when facilities or services that people disabled by barriers usually use to access their goods or services are temporarily unavailable.

6(2) The notice should include reasons for the disruption, how long it may last, and alternate facilities or services, if any, that are available.

6(3) The notice should be prominently displayed on the premises, on the provider's website, if any, or other reasonable methods.

6(4) Every government agency and every other organization of goods or services with 20 or more employees must:

- Prepare a document that includes the steps to take when there is a temporary disruption in services or facilities; and,
- Let the customers know that these documents are available upon request.

7. Training for Staff, etc.

7(1) Every provider of goods or services shall ensure that the following persons receive training about the provision of its goods or services to persons disabled by barriers.

1. Every person who deals with members of the public or other third parties on behalf of the provider, whether the person does so as an employee, agent, volunteer or otherwise.

2. Every person who participates in developing the provider's policies, practices and procedures governing the provision of goods or services to members of the public or other third parties.

Comment: Effective training is critical to achieving the purpose of the customer service standard. The discussion paper of the customer service standard released in April as part of the public consultation process had training extending to all employees and volunteers of an organization. In retrospect, and in listening to the extensive discussion at the public consultations, the Committee agrees this provision was premature.

The narrower scope of training of customer service will ensure that training is provided in a focused manner to those who interact with the public, and those who develop policies, practices and procedures governing the provision of a provider's good or services. The Committee believes a broader scope of training, encompassing all employees and volunteers of an organization, would be better realized when additional standards are established and greater public awareness to promote the Act has been undertaken.

7(2) Training must include a review of *The Manitoba Human Rights Code*, *The Accessibility for Manitobans Act*, requirements of the customer service regulation, and:

- How to interact and communicate with persons disabled by barriers;
- How to interact with persons disabled by barriers who use an assistive device or require the assistance of a service animal or the assistance of a support person;
- How to use equipment or devices available on the premises or otherwise provided by the provider that may help with the provision of goods or services to persons disabled by barriers; and,
- What to do if a person disabled by barriers is having difficulty accessing goods or services.

7(3) Training must occur as soon as reasonably possible.

7(4) Training must be provided on an on-going basis on any changes to the policies, practices and procedures governing the provision of goods or services to persons disabled by barriers.

7(5) Every government agency and every other provider of goods or services with 20 or employees must:

- Prepare a document describing the training policy, content of the training, and when the training was provided.

8. Feedback Process for Providers of Goods or Services

8(1) Every provider of goods or services must set up a process to receive and respond to feedback, including what actions will be taken on any complaints, and must make the information about the feedback process available to the public.

8(2) The feedback process must allow feedback to be given in person, by telephone, in writing, or any other electronic means.

8(3) The feedback process must state the actions to be taken if a complaint is received.

8(4) Every government agency and every other provider of goods or services with 20 or more employees must:

- Prepare a document describing the feedback process; and,
- Let customers know that these documents are available upon request.

9. Notice of Availability of Documents

9(1) Every government agency and every other provider of goods or services with 20 or more employees must:

- Notify customers that documents required by the customer service standard are available upon request.

9(2) The notice must be prominently displayed on the premises, on the provider's website, if any, or any other reasonable method.

10. Format of Documents

10(1) If a provider of goods or services is required by Sections 3-8 of this Regulation to give a copy of a document to a person disabled by barriers, the provider shall give the person the document, or the information contained in the document, in an agreed upon format by the person disabled by barriers and the provider of goods or services.

10(2) Every provider of goods or services obligated to provide information in an accessible format shall do so at no cost to the person disabled by barriers and within a reasonable time after the person requests it.

11. Compliance

11. Every provider of goods or services subject to this Regulation implements these requirements within the timeline specified in the standard in accordance with the Compliance and Enforcement Sections 20-32 of *The Accessibility for Manitobans Act*.

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 standards, the building blocks of the legislation, moves Manitoba into the next phase of achieving accessibility by setting out clear requirements for persons and organizations that have a responsibility under the Act. The Committee believes that the proposed customer service standard it has prepared and submitted to the government will address barriers in the area of customer service in Manitoba and help deliver on the commitment to create a more inclusive province for all Manitobans.

The Committee has considered all the submissions received to date. The input we have received from individuals and stakeholders has gone a long way to improving the customer service standard first proposed by the Committee in April. From our consultation and submission process, one common message has been abundantly clear: education will be a key component in moving forward with accessibility legislation. It will ensure greater public awareness of the benefits of full accessibility and create a clear understanding of the obligations individuals and organizations will have under standards established by the Act.

In closing, the Committee would like to thank the Government of Manitoba for the opportunity to serve the government with this important initiative. This standard alone will not eliminate every barrier, but it will create a more accessible customer service environment in Manitoba. Collaboration is a hallmark of Manitoba and this shared approach will guide our efforts to achieve full accessibility for all Manitobans. The government looks forward to working with all Manitobans in making the vision of an inclusive society a reality.