



May 22, 2009

Accessibility Directorate of Ontario
Outreach and Compliance Branch
Ministry of Community and Social Services
777 Bay Street, Suite 601
Toronto ON Canada
M7A 2J4

TO WHOM IT MAY CONCERN:

RE: Ontario Society of Occupational Therapists' Response to the AODA Draft Employment Standard Review, May 2009

The Ontario Society of Occupational Therapists (OSOT) is pleased to see that a proposed accessible employment standard has been developed under the Accessibility for Ontarians with Disabilities Act (AODA 2005). This is an important step towards improving access to employment for persons with disabilities. Ontario occupational therapists have an interest in this standard and wish to provide feedback to contribute to the development of a standard that serves to ensure that persons with disabilities experience equal opportunities in the work place. We fully support all efforts to improve accessibility in the work place and ensure that persons with disabilities can fully participate in and contribute to the social and economic fabric of society. Occupational therapists understand that work is an essential part of an individual's activities of daily living and contributes to self image and self sufficiency for all individuals. The ability to equally participate in meaningful and productive work allows individuals with disabilities the same privileges and opportunities as other working Ontarians.

We feel the proposed accessible employment standard is very thorough. We like how it includes requirements to prevent and remove barriers for people with disabilities in the workplace across all stages of the employment life cycle, from recruitment to separation/termination. The standard goes a long way to promote innovative and inclusive practices in recruitment, hiring, and retention accommodations. We feel this standard is an important step towards changing attitudes about the potential of persons with disabilities in the work place.

However, we have some concerns regarding the scope of the proposed accessible employment standard and some suggestions to further strengthen its potential to improve accessibility in the workplace for all Ontarians.

OSOT understands that the Ontario Human Rights Code (OHRC) , 1990 has been in place and is the prevailing law according to the OHRC. With this in mind we are concerned that when two different laws address the same issue it may be confusing to the employer attempting to implement these standards. We believe that the AODA should reference the OHRC sections and guidelines so that there is limited confusion about which regulations to follow. OHRC has provided guidelines for many of the areas outlined and these should be used as part of the standard (see <http://www.ohrc.on.ca/en/resources/Policies/PolicyDisAccom2?page=PolicyDisAccom2-Contents.html>).

OSOT has reviewed both pieces of legislation and the guidance documents and we believe that many of the principles are similar and therefore it is important to ensure that there are no conflicting regulations. We have worked with employees with work-related injuries through the WSIB and find that the regulations in the WSIA do at times conflict with the OHRC and make it complex for employers to determine the prevailing law.

With this in mind we ask as well; **Who will enforce the AODA regulations?**

- We believe that one of the issues that needs to be clarified is, which law prevails and what enforcement agencies would monitor compliance and enforce penalties? We would encourage this clarification as with the new AODA regulations, employers can be held accountable to two different systems and this confusion may in turn lead to frustration instead of a culture of inclusion.
- Recently, case law has confirmed that the OHRC penalties can be enforced in any court or arbitration system to prevent the ability to have several complaints or claims filed on the same situation.
- We know that the OHR Commission has recently reviewed its approach to the acceptance of claims and have found that there is a backlog of complaints within the system. We recommend that any enforcement system be simple, effective and have decision making power which will encourage employers to comply instead of large drawn out processes for resolution in which changes in employer actions are not enforced but only penalties given. We know that with the OHRC that the complaint may take upwards of 4-5 years to settle and in this process the employee remains embroiled in the dispute without resolution. We recommend a more cost effective and time efficient approach which will allow the employer and employee the opportunity to resolve the claim earlier.

We understand that this proposed regulation will address both high level and individual level remedies and solutions. This is important, as we would recommend an enforcement system which involves an internal responsibility system in the workplace instead of merely policy and procedure. This will more likely lead to a cultural shift of inclusion instead of a system which penalizes the employer for processes not in place.

Classes of Obligated Organizations:

With the OHRC there is no defined class of obligated organization and it is assumed that ALL employers would comply with this legislation already in place. We are confused as to why there is a delay in implementation of many of these standards where they are already assumed to be in place under OHRC. In OH&S Act the classification considers all employers with more than 20 employees. We would suggest that this be a more

appropriate classification system than the outline provided, which is complex and potentially subject to misinterpretation. We would support the differentiation between private, public and not for profit.

Compliance Timelines

- Given the existence of the OHRC, there is a sense that several of the requirements are things that employers should already be complying with or they are not difficult to accomplish. We question why there is such a lengthy time line for compliance and that the size of the organization should not reduce compliance needs when it pertains to the basic issues such as hiring policies, etc.
- The specific timeline for emergency and public safety information should be immediate for all classes as this is essential in preventing workplace injury and illness. If the employee with a disability does not receive accessible training in WHMIS, workplace health and safety procedures and emergency evacuation immediately on hire there is a significant risk to the employee.

OVERALL COMMENTS:

- A. We are concerned that organizations would be able to comply with this employment standard without actually improving access to employment for persons with disabilities. It is a challenge to ensure that "A culture of inclusion for persons with disabilities within the work place is advanced". We propose several adjustments to the standard which may better lead to a culture of inclusion:
 - a. We strongly suggest that the enforcement of this legislation not include a "quota-based" system of reporting. This has been used in previous legislations and has unfortunately become ineffective in changing the culture of the organization. Instead it has developed a level of reporting which does not symbolize this culture of inclusion but merely provides numbers. Most employers can report in a quota system without actually improving access to employment for persons with disabilities. Enforcement through reporting or demonstration of compliance through paperwork will make the system unwieldy and will not, in fact, improve inclusion.
 - b. As noted above, we would suggest that the enforcement process and standards lead to an internal responsibility system which would support all layers of the organization being responsible and involved in the inclusion process. This is the model which is used with the OH&S Act and one in which most employers would be familiar. Employers with more than 20 employees will already have internal committees with management and employee representatives that could be utilized to develop the internal responsibility system. We would recommend that there be representative with disabilities also on the committee to support the regulations.
 - c. Although we agree that training is probably the most effective means of achieving progress in the area of culture shift, we would like to see more details regarding the content of this training.

- i. Who would provide this training? We would suggest that it involve persons with disabilities, who may be able to provide insight to the trainee on issues which may not otherwise be readily recognizable
 - ii. What would be the minimum content? We would suggest that instead of training only on the standards that the content includes some sensitivity training and knowledge base that allow individuals to understand the needs of individuals with disabilities. We would also suggest that it include practical strategies and actions that would allow the trainee to have the “how tos” of implementation.
 - iii. Could there be some kind of a standard process to assist in developing and administering this training? In this regard, we believe that occupational therapists have unique set of skills and expertise that could contribute to the development and implementation of such training
- B. We are concerned that this standard does not include volunteer work or internships (such as student placements). We feel that these obligations and requirements should be extended to students and volunteers. Volunteer work and student internships are often critical components of career development. Facing barriers as a volunteer or intern can restrict opportunities for paid employment among persons with disabilities. Many individuals with disabilities may be able to demonstrate their abilities in these types of placements and thus improve the potential for future employment. Many individuals with disabilities who have never had paid employment may use this opportunity to understand the work, develop work specific skill sets and be able to better be prepared for workplace expectations.
- C. We believe the employee training outlined in the proposed standard is very important for improving accessibility in the work place and increasing job opportunities for persons with disabilities. However, we are concern that many organizations will struggle with the amount of time required to train and support persons with disabilities in the work place. We would like to see further government involvement in developing training programs that will meet the needs of organizations. Pre-employment training programs supported by employers would be recommended to ensure appropriate job fit and accommodation measures are put into place on employment. Provision of government incentives and funding would encourage employers to provide this opportunity.
- D. We believe that some narrative examples might be helpful in terms of helping organizations move forward with implementing the requirements under this proposed standard. This might be especially helpful in the case of conditions such as mental illnesses which remain poorly understood. Specifically, providing examples of good accessible employment policy statements, accessible employment policies, suitable employee training, and return to work procedures might be particularly helpful. Providing examples of individual accommodation plans for employees with mental illnesses would also clarify expectations and help organizations better respond to the requirements of the standard. We again recommend the use of the guidelines in place under the OHRC to avoid conflicting messaging.

- E. We think that it is important to outline specific indicators of progress for organizations to target as they move towards accessible employment in order to provide clear expectations and guidance. We would like to see further clarification about how the indicators of progress will be monitored. We believe that the use of the internal responsibility system will allow the employer to set internal goalposts and indicators for their program against a standard. We do not encourage reporting based on quotas or based on a global indicator, as each employer will have varying levels of capability and knowledge. We recommend the use of a report card based system which is similar to the workwell audit process used by WSIB. This then provides an opportunity of measurements and improvement for all employers. In this regard, materials could be developed to help organizations understand their responsibilities and how steps towards increased accessibility will ultimately improve productivity, recruitment and retention of their workforce.
- F. We believe that employers should be required to break down job duties into components that include the physical, cognitive and affective requirements. This requirement could increase clarity and expectations for potential applicants. If organizations are able to better understand the requirements of the job and focus on functional and skill set capabilities instead of on disabilities, they will be more likely to comply with greater authenticity. We are concerned that the standards focus on disability rather than on ability. If employers are provided with an understanding of functional abilities required to achieve the outcome of the job instead of how the job is done, they will be able to better look for accommodations. Providing examples of ways to accommodate individuals and available accommodation supports/tools will allow an employer to be better prepared to include individuals with disabilities in the workplace.
- G. We have some specific concerns with respect to the standards. OSOT recommends that the following changes be considered:
- a. **Posting job ads:** The standard speaks to using organizations identified as a resource for disabled persons. How will that organization be identified for the employer? What criteria will be used? In jurisdictions such as Italy this standard is in place but yet there is a limited number of agencies in place to fill this need. When posting the job as, employers will need to understand how many organizations they should post with, will one be sufficient and how are the organizations determined? This standard should be more clearly defined.
 - b. **Performance Management:** Performance management is the key to any employment setting. The employee and the employer need to have well outlined expectations of job performance. We recommend that these expectations then include any alteration required as part of the accommodation plan to allow the manager to manage performance. We recommend that the entire standard be based on functional capabilities and documented accommodations, and that performance management should then be consistent with the entire workplace population. For example, if an individual is having difficulty with attendance, the employer should consider any accommodations in place or required prior to considering this as a performance management issue. If an employee is not able to maintain certain production levels it should be clearly outlined

if the accommodations in place impact productivity. Employers need to be able to ensure that they can continue to provide performance management of all employees but each performance plan will need to consider the accommodations required for an individual with disabilities. We recommend that managers receive training on how to manage individuals with specific accommodation needs which impact performance.

- c. **Return to Work – non WSIB:** We are concerned that this standard delineates work and non work related disabilities. We are unsure why this is separated out. We believe that this standard should be consistent for all disabilities regardless of the cause. We recognize that there is a WSIB system in place but this should not impede that legislation. We believe that separation tends to promote continuance of two tiered system determined by cause of injury. We advocate for a more universal approach to all disabilities. Under this standard the compliance timelines seem to be in conflict with OHRC. As all organizations should comply already with OHRC why does this standard preclude employers with fewer than 50 employees?
- d. **Redeployment:** During redeployment it is easy to pigeon hole an individual who is already accommodated in a position and not consider accommodation in a new position. We suggest that with redeployment should be equalized with all employees by looking at career goals, aptitudes and transferrable skill sets. The main concern with redeployment is that accommodation should be considered second to job availability, transferrable skills and career aptitudes. This is the main concept in the OHRC and should therefore be supported here.
- e. **Providing Individual Accommodation Plans for Employees; We** agree that there should be documentation of individual accommodation plans and that these should be updated as accommodation needs change. We are concerned with the wording on page 13 and would suggest the following change from “(b)consider input, as appropriate, from workplace, medical and/or other experts” to “(b) consider input, as appropriate, from worker, workplace, health care professional and /or others with expertise in function and accommodations”. In most accommodation situations the medical professional has limited understanding of accommodation needs and this would be better provided by the employee or a professional with expertise in accommodation. Again, the use of the term “medical” refocuses the issues on diagnosis and not on function. It is more appropriate to have professionals who understand function and the workplace accommodation issues perform such services. Occupational therapists are used in many organizations for this role and are well suited for these situations. We recommend provision of examples of individual accommodation plans so that an employer understands the components that are required and how often this should be reviewed or changed.
- f. **Roles and responsibilities:** We would also support outlining roles and responsibilities in the individual accommodation plan similar to those outlined by OHRC (<http://www.ohrc.on.ca/en/resources/Policies/PolicyDisAccom2?page=PolicyDisAccom2-THE.html>). The inclusion of the roles identifies that this is

a process which is collaborative with involvement of all of the workplace parties.

3.4 Duties and Responsibilities in the Accommodation Process

The accommodation process is a shared responsibility. Everyone involved should co-operatively engage in the process, share information, and avail themselves of potential accommodation solutions.

The person with a disability is required to:

- *advise the accommodation provider of the disability (although the accommodation provider does not generally have the right to know what the disability is);*
- *make her or his needs known to the best of his or her ability, preferably in writing, in order that the person responsible for accommodation may make the requested accommodation;*
- *answer questions or provide information regarding relevant restrictions or limitations, including information from health care professionals, where appropriate, and as needed;*
- *participate in discussions regarding possible accommodation solutions;*
- *co-operate with any experts whose assistance is required to manage the accommodation process or when information is required that is unavailable to the person with a disability;*
- *meet agreed-upon performance and job standards once accommodation is provided;*
- *work with the accommodation provider on an ongoing basis to manage the accommodation process; and*
- *Discuss his or her disability only with persons who need to know. This may include the supervisor, a union representative or human rights staff.*

The employer is required to:

- *accept the employee's request for accommodation in good faith, unless there are legitimate reasons for acting otherwise;*
- *obtain expert opinion or advice where needed;*
- *take an active role in ensuring that alternative approaches and possible accommodation solutions are investigated, and canvass various forms of possible accommodation and alternative solutions, as part of the duty to accommodate;*
- *keep a record of the accommodation request and action taken;*
- *maintain confidentiality;*
- *limit requests for information to those reasonably related to the nature of the limitation or restriction so as to be able to respond to the accommodation request;*
- *grant accommodation requests in a timely manner, to the point of undue hardship, even when the request for accommodation does not use any specific formal language; and*

- *Bear the cost of any required medical information or documentation. For example, doctors' notes and letters setting out accommodation needs, should be paid for by the employer.*

Unions and professional associations are required to:

- *take an active role as partners in the accommodation process;*
- *share joint responsibility with the employer to facilitate accommodation;*
and
- *support accommodation measures irrespective of collective agreements, unless to do so would create undue hardship*

OSOT continues to support development of this standard to ensure inclusion of individuals with disabilities in employment. We strongly encourage the use of preset OHRC documents and standards in order to avoid confusion. We also strongly encourage provision of tools and guidance documents for employers to use as templates for many of the requirements.

OSOT is thankful for the work of the Committee to date with a difficult topic and would be available to expand upon or provide additional feedback in the future in order to support employment of individuals with disabilities. As occupational therapists we have the skill set to assist employers and their employees in this process and look forward to the opportunity to work with the workplace parties to support this goal.

Sincerely,

A handwritten signature in black ink that reads "Christie Brenchley". The signature is written in a cursive, flowing style.

Christie Brenchley
Executive Director