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Commission

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Human Rights, Disability and Accessibility Issues Regarding Visual Fire Alarms for People who are Deaf and Hard of Hearing

The *Human Rights Code*, disability and accessibility

The Ontario *Human Rights Code* has prohibited discrimination on the basis of disability for 25 years. Persons with disabilities have the right to equal treatment in accessing services such as those provided by restaurants, shops, hotels, movie theatres and other public places. Businesses have an obligation to make their facilities accessible. A failure to provide persons with disabilities equal access to a facility or equal treatment in a service would constitute discrimination under the *Code* and can be the subject of a human rights complaint. A hotel would have to demonstrate, as a defence to such discrimination, that providing access or accommodating services would amount to undue hardship with regard to cost, outside sources of funding, or health and safety.

The OHRC's *Policy and Guidelines on Disability and the Duty to Accommodate* make it clear that services and facilities must be built or adapted to accommodate individuals with disabilities in a way that promotes their integration and full participation. When constructing new buildings, undertaking renovations, setting up new policies and procedures, and offering new services, design choices should be made that do not create barriers for persons with disabilities. Where barriers exist, whether physical, attitudinal or systemic, organizations should actively identify and remove them. Where immediate barrier removal would cause undue hardship, interim or next-best measures should be put in place until more ideal solutions can be attained or phased-in, where possible.

The Need for Visual Fire Alarms

The seriousness of provisions relating to fire safety is reflected in the fact that between 100 and 200 people die from fire in Ontario each year. According to the Canadian Hearing Society (CHS), almost 25 percent of adult Canadians report having some hearing loss (CHS Awareness Survey 2002), although closer to 10 percent of people actually identify themselves as culturally Deaf, oral deaf, deafened, or hard of hearing. Health Canada confirms that approximately 10 percent of the general population has a significant hearing problem. Many seniors require visual fire alarms, whether in seniors' buildings or in private dwellings. Statistics show that as many as 40 percent of our seniors are deaf or hard of hearing. According to Statistics Canada, in 2001 there were 1.47 million Ontarians over age 65 with hearing loss, expected to double by 2026. Also, at least 80 percent of the elderly in nursing homes have impaired hearing.

The *Accessibility for Ontarians with Disabilities Act*

With the recent passage of the *Accessibility for Ontarians with Disabilities Act (AODA)*, 2005, accessibility issues are now governed by complementary aspects of the Ontario *Human Rights Code*, the *AODA*, the *Ontario Building Code* and, in the case of existing buildings, the *Ontario Fire Code*.

The *AODA* aims to make Ontario accessible to all people through the development, implementation and enforcement of new accessibility standards for goods, services, facilities, accommodation, employment, buildings, structures and premises by 2025. Committees have been struck to develop standards in five key areas, beginning with new accessible customer

service regulations, which came into force on January 1, 2008. A proposed transportation standard has now received public comment, while committees developing the accessible information and communications, built environment and employment standards began meeting last year and will post drafts for public review within 18 months. Public bodies must continue to meet obligations under the *Ontarians with Disabilities Act, 2001* (until they are repealed and replaced by standards under the new *Act*).

The Accessible Built Environment Standards Development Committee will consider access to, from and within buildings and outdoor street spaces, including business, industrial and multi-residential occupancies, hotels, motels, theatres, recreational facilities and transportation infrastructure, in developing a standard geared to identify and remove barriers for persons with a range of disabilities. It will build on existing domestic and international legislative and regulatory frameworks and best practices, including the *Building Code* and other *AODA* standards as well as public input, and technical, economic and other factors.

Although the *AODA* provisions have a phased-in timetable for implementation, the *Human Rights Code* has primacy over other law, and failure to provide for accessibility in the short term can result in a human rights complaint. Even when enacted, new accessibility standards are still subject to the primacy of *Human Rights Code* standards and requirements, which may be higher. For details on the *AODA*, please see www.mcass.gov.on.ca/accessibility/index.html.

The Ontario Fire Code and Ontario Building Code

Although the *Building Code* now requires visual fire alarms and emergency notification systems in public hallways of most **new buildings**, such as arenas, stadiums, hospitals, apartment dwellings, business offices and theatres, as well as the seating areas of theatres, operas, entertainment facilities and at least **10% of the sleeping quarters of motels and hotels**, such provisions **do not apply to existing buildings**: these are still covered by the *Fire Code*, which has not specified requirements for visual alarms. Among *Fire Code* requirements are emergency procedures for “evacuating occupants, including special provisions for persons requiring assistance.” Both codes require owners to establish fire safety management plans to be approved by the local fire or building department and implemented by trained hotel supervisors and staff as well as annual fire safety plan and training reviews. As with the *AODA* and other provincial laws, the *Human Rights Code* also has primacy over both the *Fire Code* and *Building Code*.

Unfortunately, many businesses may be under the incorrect impression that by complying with the *Fire Code* and *Building Code* they are meeting all of their legal obligations. Others have expressed frustration around the confusion caused by discrepancies between these laws and the *Human Rights Code*. This may have the unintended effect of reinforcing existing barriers for persons with disabilities. The Commission has expressed concerns about the *Building Code* in a number of ways over the years, including submissions on strengthening the *Building Code* and the *Ontarians with Disabilities Act*, as well as discussion papers and reports on restaurant accessibility, family status, housing and age discrimination against older persons.

Programs to assist commercial owners in meeting accessibility requirements

Government and private sector programs are available to assist hotels and other commercial building owners and operators to meet appropriate safety standards for individuals with disabilities.

Under the **Income Tax Act**, 20(1) (qq) and 20(1) (rr), the federal government allows businesses and commercial building owners to deduct costs to install prescribed disability-related devices or equipment, including visual fire alarms. For further information, visit the Canada Revenue Agency Website: www.cra-arc.gc.ca/menu.html.

Through the **EnAbling Change Program**, the **Accessibility Directorate** of the Ontario Ministry of Community and Social Services partners with organizations playing a leadership role in identifying, removing and preventing barriers for people with disabilities. One example is the **Hospitality Accessibility Checklist** developed by the **Greater Toronto Hotel Association** to ensure hotels provide safe services to guests with disabilities. The checklist is featured on the association Website along with a comprehensive list of resources, suppliers and products to assist hotels in meeting accessibility requirements. Guests can also use the checklist to question potential hotel accommodations for suitability. Sample questions include:

“B.14 Fire & Life Safety

- Is there an established Fire Policy and Fire Safety Plan for the evacuation of people with disabilities from all floors?
- Are the main exit routes and exit doors accessible to and useable by persons using wheelchairs or other mobility aids?
- Do the main exit routes and doors lead to safe, level exterior areas large enough to comfortably accommodate three or more persons using wheelchairs?
- Have safe interior areas-of-refuge or alternative horizontal routes to other separate, safe areas of the building, been provided for disabled persons in case of fire?
- Have exit instructions in accessible suites been printed in large text, and mounted in an accessible, highly visible location in each suite?
- Are audible and fire alarm signals located close to exit doors?
- Do fire alarms have both a visual and an audible signal? a) in all public areas of the building (e.g.: corridors, assembly areas, etc.)? b) in all accessible guest suites?
- Are the exit signs: a) readily visible from all locations, by both seated and standing persons? b) at a constant height throughout the building?
- For persons who have hearing limitations, have vibrating pagers been made available to alert them when a fire alarm is activated?”

Another EnAbling Change project is a free on-line course entitled, “Accessibility: Its Impact On Small and Medium Sized Business,” developed by Social and Enterprise Development Innovations (SEDI) and the Ontario Association of Community Futures Development Corporations. The course is designed to help businesses get ready to meet the new AODA Customer Service Standards by increasing knowledge and awareness of accessibility issues and standards, how best to serve the needs of clients who have a disability, and how a lack of accessibility impacts on business. It also provides resources and tools such as an accessibility audit and customer service action plan for implementing standards, and compliance requirements and penalties for non-compliance. For more information, visit: www.cfdlearn.ca/accessiblebiz4pwd.

Bill 14

On December 13, 2007, Bill 14, the *Fire Protection Statute Law Amendment Act, 2007*, a Private Member’s bill addressing the need for interconnected fire alarms and non-combustible fire escapes in multi-unit buildings, passed Second Reading and was referred to the Standing Committee on Justice Policy. If passed into law, the Bill would amend the *Building Code* and *Fire Code* to help ensure fires serious enough to reach building common areas would set off alarms to alert the whole building. In its submission, the Canadian Hearing Society

recommended that the Bill specify that these alarms include strobe or other visual devices for deaf and hard of hearing individuals to be connected into individual units of those persons requiring them.

Canadian Hearing Society

The Canadian Hearing Society recently issued its *Position Paper on Alarms and Emergency Notification Systems* underscoring the importance of accessible safety features for deaf and hard-of-hearing individuals where they live. It points out that current Ontario law does not require, nor address who is responsible for the cost or installation of, visual fire alarms and/or notification systems *within* individual apartment units, new condominium units or new homes. According to CHS, the cost of such devices is not covered in private dwellings under the provincial Assistive Devices Program. Landlords are not specifically required to provide visual fire alarms for their culturally Deaf, oral deaf, deafened and hard of hearing residents nor are homebuilders required to install such devices into new homes or condominium units for buyers requiring them.

For more information, please visit:

www.chs.ca/info/publicaffairs/pdf/CHSPositionOnAlarmsNotification.pdf.

Property Tax Deduction

Following the May 11, 2007 Superior Court of Justice decision *Fusca v. Municipal Property Assessment Corporation*, a deaf or hard of hearing person can claim a reduction in property taxes for a visual alarm system. If the fire alarm was installed during construction, the assessed property value and tax will automatically be reduced by 10% annually. For an existing home, the ongoing assessment reduction will equal the cost of the fire alarm and installation.

See the court case at:

www.canlii.org/en/on/onsc/doc/2007/2007canlii16630/2007canlii16630.html. For how to apply, go to: www.mpac.ca/pages_english/procedures/procedure_senior_and_disabled_tax_relief.asp.

The authority is granted by section 3(1), line 22 of the Ontario *Assessment Act*.