

Submission to the  
Standing Committee on Social Policy  
With Respect to Bill 118: Accessibility for  
Ontarians with Disabilities Act, 2004

Presented by  
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## Introduction

The Canadian Hearing Society (CHS) is a non-profit charitable organization incorporated in 1940. We provide services that enhance the independence of deaf, deafened and hard of hearing people, and encourage prevention of hearing loss. CHS strives to develop high quality and cost-effective services in consultation with national, provincial, regional and local consumer groups and individuals. Through its 29 offices in Ontario, CHS provides services to the one in ten people who experience hearing loss or deafness.

Since 1994, CHS has submitted several briefs on the topic of an Ontarians with Disabilities Act. They are:

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| December 1994 | Submission to the Standing Committee on Justice on Bill 168, a Proposed Ontarians with Disabilities Act, which former NDP MPP Gary Malkowski introduced into the Legislature as a private member's bill. |
| August 1998   | Response to the Ministry of Citizenship's Discussion Paper: Preventing and Removing Barriers for Ontarians with Disabilities.  |
| March 2000    | Submission in Response to the Ontarians with Disabilities Act Consultation Tour hosted by MPP Steve Peters, Liberal Disabilities Critic  |
| November 2001 | Submission in Response to the Standing Committee on Finance and Economy with respect to Bill 125: Ontarians with Disabilities Act  |

In general, CHS is pleased that the government is moving forward with Bill 118, *Accessibility for Ontarians with Disabilities Act* as introduced by Minister of Citizenship Dr. Marie Bountrogianni. However, we have several concerns about specific wording in the Bill, as well as the limited time frame in which it is being processed through the Legislature.

The Canadian Hearing Society is a member of the Ontarians with Disabilities Act (ODA) Committee. We wholeheartedly endorse the ODA Committee's submission on Bill 118. The recommendations we put forth in this paper support those contained in position papers being sent to the standing committee on Bill 118 by the ODA Committee. Our recommendations in this paper, however, will focus specifically on the needs of persons who are deaf, deafened and hard of hearing.

## Introduction to Our Brief

CHS has prepared this brief to assist the Standing Committee in its deliberations. We are pleased that the government is moving forward with Bill 118. It is our hope that your consultations, and the policy decisions that will eventually result from them, will serve to help all persons with disabilities, including deaf, deafened and hard of hearing persons, while also increasing public awareness about the stereotypes and negative attitudes associated with deaf, deafened and hard of hearing issues.

## Background Statistics

- Almost 1 in 4 Canadian adults report having some degree of hearing loss (CHS Awareness Survey, October 2001).
- An estimated 135,000 Ontarians between the age of 16 and 65 are deaf, deafened or Hard-of-Hearing. Of this number, 36% have difficulty hearing a group setting, 39% have difficulty hearing one-to-one, and 25% are completely unable to hear (Ontario Ministry of Education and Training, 1998).

## Issues and Challenges in Early Education and Intervention

- Ontario Cultural Society of the Deaf's ASL and Literacy Consultants Services funded by Ministry of Citizenship, Immigration and Youth and Children Infant Hearing Program reported that in many cases, parents in the Infant Hearing Program come to the family support worker with a bias built towards spoken language. (0 % of Deaf children have hearing parents and their parents initially want their children to be like them and use spoken language. Many parents and professionals view sign language as option. Much education is required to ensure that parents understand that sign language (ASL or LSQ in Ontario) is their child's right-not an option only. Their child is visual and by communicating with their child in ASL, their child has full access to language immediately—just as hearing children have full access with spoken language. In reality, in addition to the inherent bias of parents, some parents have in fact requested ASL and Early Literacy Consultant Services and been denied that right or been misinformed or misguided for a variety of reasons.
- The three cochlear implant teams funded by Ministry of Health in Ontario require families to provide Auditory Verbal therapy (AVT) for their child as a condition of acceptance for their child to have a cochlear implant. They are prohibited from providing ASL as an option for their child while involved in AVT. Ontario's "options" policy for parents of Deaf children therefore becomes a moot point in these cases. If a family is interested in a cochlear implant for their young Deaf child in the IHP program and they simultaneously want ASL exposure for their child (the dual approach, would normally be an option for IHP families), IHP will not fund the ASL services. Ontario Cultural Society of the Deaf, the Ontario Association of the Deaf, Silient Voice for Deaf Children and their Families, Bob Rumball Centre for the Deaf

and the Canadian Hearing Society have grave concerns that this is clearly language discrimination that accompanies the cochlear implant protocol in Ontario, that concerns us.

- Results of an Ontario study by Akamatsu, Musselman and Zweibel (2000), demonstrated that 93% of Deaf children were initially enrolled in auditory oral programs. By preschool, 67% were educated orally, by elementary, 58% were educated orally and by adolescence only 31% were educated orally. This demonstrates a 62% shift from oral to signing programs for Deaf children between the early preschool years and adolescence. This highlights the probable inappropriate early placement of Deaf children away from signing program in the province.
- The Canadian Association of Speech-Language Pathologists Association's cochlear implant position statement reflects the early nature of cochlear implant research. Policies prohibiting ASL exposure post implant during AVT therapy is absolutely unwarranted, discriminatory and to the detriment of Deaf children
- Ministry of Citizenship, Immigration and Youth and Children 's Infant Hearing Program will discontinue in spring, 2005 funding for supporting infrastructure for ASL service in Ontario. This would ensure continued quality of ASL service, coordination of programs, ongoing training and expansion of resource materials.
- Ministry of Health, Ministry of Health and Ministry of Citizenship, Immigration and Children and Youth adopt policies that continue to make inappropriate referrals and often ignore late identification for those deaf and hard of hearing children who are not succeeding with spoken language due to lack of establishing need for criteria success in spoken language and a transition plan for those deaf and hard of hearing children who are not succeeding in acquiring spoken language

## Issues and Challenges in Secondary and Post-Secondary Education

- Deaf, deafened and hard of hearing secondary and post-secondary students face systemic barriers daily (e.g., no/limited accessible resources, teaching materials or supports in ASL; shortage of sign-language interpreters and computerized note takers/real-time captioners).
- Systemically imposed isolation and barriers to participation are key human rights themes for deaf and hard of hearing post-secondary students. Isolation is the result of unaccommodated communication and language needs. An inability to participate is the reality. Systemic discrimination against deaf, deafened and hard of hearing post-secondary students creates complex quality-of-life issues. Only deliberate pro-active modification in communication practices, supported by policy, can address the potentially devastating reality of disempowerment, and isolation created by society.

- Serious attitudinal barriers are evident in expectations, perceptions, beliefs and behaviours of staff at Office for Persons with Disabilities and post secondary educators regarding the academic ability and capabilities of deaf, deafened and hard of hearing post-secondary students. *This is an example of audism, a term referring to prejudice or discrimination against deaf people and people with hearing loss (Bauman, 2004).*
- Literacy practitioners and post-secondary educators are generally not knowledgeable with respect to the learning styles and specialized instructional needs of deaf, deafened and hard of hearing post-secondary students.<sup>1</sup>
- Understaffing and inaccessible communication at the Office for Persons with Disabilities at colleges and universities is common (i.e., difficulties booking sign language interpreters; staff without expertise on the needs of deaf, deafened and hard of hearing post-secondary students).
- MTCU colleges and universities lack provincial standards for sign language interpreters and computerized note takers/real-time captioners in post-secondary education settings.
- There are serious gaps in specialized career support and employment services for deaf, deafened and hard of hearing high school and post-secondary students:
  - there are few accessible career support and consultation services available to deaf, deafened and hard of hearing high school and post-secondary students to help them make informed choices about post-secondary training and education, or help them make the transition from one educational level to the next
  - these students are not eligible to receive career and employment services provided by the Canadian Hearing Society, yet most college and university student career and employment placement centres are not accessible to these students
  - many educational support service providers are under-trained with respect to the unique needs of deaf, deafened and hard of hearing post-secondary students who as a result, often receive inadequate career guidance
  - deaf, deafened and hard of hearing students need - and have the right to - accessible, timely, accurate and unbiased information about available education and training options.

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<sup>1</sup> Learning styles among deaf students differ from those of hearing students; which in turn differ from those of students who are hard of hearing (e.g., Land, Stinson, Kavanaugh, Liu & Basile, 1999; Schroedel, Watson, Ashmore & Rodriguez (2003).

- The literacy level of the Ontario deaf, deafened or hard of hearing population falls below that of their hearing counterparts. In particular, 52% have a low level of skills in document literacy, compared to 38% of the general population. Literacy ranges widely depending on the level of hearing loss: those with partial hearing loss have a somewhat lower incidence of low literacy (33%) than the Ontario average, while those completely unable to hear have a much higher incidence (71%) (Ontario Ministry of Education and Training, 1998).
- The following levels of education have been reported for "persons who are unable to hear in one-person conversations" (Statistics Canada, 1992):
  - less than grade 8 52.0 %
  - secondary 24.4 %
  - certificate/diploma 13.1%
  - post-sec. 7.9 %
  - university degree 1.7 %
- A serious decline has also been identified in the enrollment of deaf and hard of hearing Canadians at post-secondary educational institutions due to multiple barriers including reduced government funding (Canadian Hearing Society, 2004).
- Post-secondary education is crucial to the deaf, deafened and hard of hearing community. Dr. Carol Musselman of the Ontario Institute for Studies in Education at the University of Toronto put it well in a 1998 letter to then Minister of Education and Training David Johnson:
 

*“D/deaf and hard of hearing individuals are disadvantaged educationally and vocationally. Information from Statistics Canada shows that few D/deaf and hard of hearing individuals complete secondary or post-secondary education. For example, only 3.1% attain a university degree, compared to 10.2% of the non-disabled population, a figure which falls to 1.7% among those who are profoundly deaf. It is thus not surprising that labour force is only 52% compared to 77.9% for non-disabled peers. In addition to the human cost, the inability of D/deaf and hard of hearing individuals to fully participate in society incurs a social cost in the form of decreased productivity and the need for additional social welfare and mental health services.”*
- A significant number of students are not completing their post-secondary education. In March 2003, Dr. Marcia Kolvitz, Associate Director, Center on Deafness, The University of Tennessee, citing research on attrition rate for deaf post-secondary students in the United States (Rawlings, Karchmer & DeCaro, 1988) at a presentation to CHS stated: *“Our greatest concern is the attrition rate for deaf, deafened and hard of hearing post-secondary students in the United States.”* The statistics speak for themselves:
  - 58% (Hearing) vs. 66% (Deaf) withdrawal rate at 2 year colleges
  - 30% (Hearing) vs. 72% (Deaf) withdrawal rate at 4 year colleges

- Changing admission requirements prevent deaf and hard of hearing students from entering teacher-training programs in the education of the deaf and hard of hearing. For example, deaf candidates with degrees from foreign or out-of-province schools must obtain a Bachelor of Education degree from a university in their own province, even though these institutions are not accessible to deaf and hard of hearing students.
- Deaf, deafened and hard of hearing people generally lack accessible lifelong learning opportunities.

## Issues and Challenges in Employment

- Numerous studies have revealed serious levels of unemployment and under-employment among deaf, deafened and hard-of-hearing Canadians, and have shed light on the significant employability obstacles they face (e.g., Hansen, 1999; Mills, 2002).
- Although there are no clear estimates of the rate of unemployment among the hard of hearing in Canada, among the deaf, one study conducted estimated the unemployment rate to be an astonishing 38%. Furthermore, this same study reported that among the deaf who are employed, almost two-thirds are under-employed (Roots & Kerr, 1998).
- Deaf people are underrepresented in professional and administrative occupations and are generally found in entry-level, unskilled or semi-skilled positions that pay low wages, offer few benefits, provide little job security and have little potential for advancement (Roots & Kerr, 1998).
- Deaf and hard of hearing individuals are not only less likely to be employed but they earn less on the average than other Ontarians. This finding reflects their older age profile, their relatively low level of education, and their low literacy levels (Ontario Ministry of Education and Training, 1998).
- Currently, large numbers of deaf and hard of hearing youth receive income maintenance. Unemployment of young deaf adults appears to be increasing: 24% of deaf youth in one study were still unemployed 3-4 years after completing high school (Canadian Hearing Society, 2004).
- Several additional barriers compound the above, including a lack of access to extensive and appropriate employment and training opportunities, a lack of understanding of deafness among employers, as well as employer expectations, perceptions, beliefs, and patterns of behaviour toward deaf employees and job seekers (e.g., Mills, 2002; Roots & Kerr, 1998; Hansen, 1999).

- A landmark study, *Living with disability in Canada: An economic portrait*, prepared for Office for Disability Issues, Human Resources Skills Development Canada (Fawcett, 1996) reported that labour force participation<sup>2</sup> decreases with increased severity of any disability, regardless of the capacity affected (e.g., mobility, vision, hearing, etc.). Fawcett further points out that the severity of any one disability is increased when it is experienced in combination with another. In fact, 40% of deaf or Hard of Hearing individuals aged 16 to 65 report eye trouble, a speech disability, or a learning disability (compared to 15% among all Ontarians).<sup>3</sup> Although individuals with mild hearing loss have a high rate of labour force participation (79.6%), this drops dramatically to 28.5% for individuals experiencing severe hearing loss. ***Extrapolating from the figures above, these estimates document a colossal and needless waste of potential and lost benefit, both to the thousands of those affected, and society as a whole.***

## Issues and Challenges in Hearing Health Care

- At the current time, appropriate access to services for people with hearing loss is fragmented, costly and difficult to access.
  - Ear nose and throat doctors (ENTs), audiologists, hearing aid dispensers, and hearing care counselors each generally operate out of different locations with different funding systems and fee schedules requiring consumers with a hearing loss to make multiple visits often over an extended period of time.
  - There is a critical shortage of audiologists and because they are not publicly funded, even those few must spend some of their time dispensing hearing aids to be financially viable.
  - At the same time hearing aid dispensers threaten to assume some of audiologists' traditional duties coming close to encroaching on the controlled act of "dispensing a hearing aid", an act put in place to protect the public.
  - Combined, these factors have made the system extremely fragmented, divisive and highly competitive, creating delays and confusion for consumers who must navigate a complicated web of professionals and funding issues.
- Given the Ministry's desire to make the health care system integrated, person-centred and community-based, we believe a new approach is required.

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<sup>2</sup> Labour force participants are those who were either employed or unemployed but actively seeking work. Some individuals are out of the paid labour force simply because they have given up trying to find employment. These are people who want to participate in the labour force, but they have become so discouraged by not finding a job that instead of remaining unemployed over a long period, they drop out of the labour force altogether.

<sup>3</sup> The incidence of a learning disability is highest among ages 16 to 45 (36%) (See also Mauk and Mauk, 1998).

- Effective communication and accessibility for all consumers is identified in the Ministry's principles and is a right as established by the Supreme Court of Canada's Eldridge decision in 1997. Being able to communicate your symptoms or medical history and being able to understand what is being said by doctors and nurses is the absolute cornerstone of health care. Without clear communication there can be no care.
- CHS has worked closely with the Ministry of Health to improve accessibility for Deaf consumers in hospitals across the province through an after-hours emergency interpreting service and soon we will be piloting a video conference version. These are significant steps in improving accessibility to Deaf consumers.
- But there is a long way to go. Deaf consumers still need more access to sign-language interpreting during non-emergency appointments and most significantly, the quite different needs of deafened and hard of hearing people have not yet been addressed. Rather than using sign language interpreters as Deaf people do, deafened and hard of hearing individuals generally speak/voice for themselves but rely on a notetaker (a service provider who writes down key points in the conversation) or a real-time captioner (a service provider who captions every word) to understand what is being said to them. These accommodations however, are not currently being made.

## Other Barriers Facing Deaf, Deafened and Hard of Hearing People

Violations of basic human rights are rampant throughout the Ontario government. Very few in the Ontario government accept responsibility for providing our consumers with access. For example:

- Staff of Ontario Works and the Ontario Disability Support Program continue to instruct deaf, deafened and hard of hearing consumers to arrange to have their own interpreters. Neither program will cover the cost of interpreters for consumers who need communication assistance to understand and complete the application process.
- Staff of provincial and municipal government offices are not sensitive to the needs of people with hearing loss and do not provide alternatives to voice mail and voice recordings of information at points of entry to services.
- Minister of Training, Colleges, and Universities Dianne Cunningham in her letter of September, 20, 2000, to CHS stated that her Ministry has no legal authority to require private vocational schools to provide sign language interpreters and real-time captioners, free of charge, to their student-clients.
- A November 8, 2001, letter from the Ministry of Health and Long-Term Care regarding the Back on Track program for drivers convicted of drinking and driving stated that no government money would go into funding the program. Deaf and hard of hearing consumers are responsible for the cost of sign language interpreters when attending the program.

- A June 6, 2001, e-mail message from the Office of the Speaker advised CHS employee Gary Malkowski that the provision of sign language interpreters and real-time captioners for a meeting of the Ontario Association of Former Parliamentarians was entirely the responsibility of the Association, even though this body is funded by the Board of Internal Economy under the direction of the Office of the Speaker.
- Deaf, deafened and hard of hearing consumers across Ontario continue to be denied access to MPPs' constituency and Queen's Park offices. Most of these offices do not have TTYs nor do they provide sign language interpreters or real-time captioning for constituents who need these services in order to communicate with their elected representatives. Letters to the Speaker have raised these issues but, to date, they remain unresolved.
- On November 26, 2001, the Divisional Court of the Ministry of Attorney General failed to provide sign language interpreters for applicants and deaf and hard of hearing members of the public so they could follow the Court's proceedings regarding the Ministry of Health's decision to delist audiological services, which in itself discriminates against deaf, deafened and hard of hearing consumers.
- Ministry of Education is not responsible for setting standards for sign language interpreters or criteria for minimum qualifications of interpreters in elementary, secondary, and post-secondary educational settings. Furthermore, the Ministry is not responsible for setting standards for sign language competency and communication skills for teachers of the deaf at Provincial Schools for the Deaf and School Boards' Special Education or Deaf Education programs.
- The Ontario College of Teachers, Provincial Schools for the Deaf, and School Boards, set no standards for sign language competency and communication skills required by teachers of deaf students employed by Provincial Schools for the Deaf and School Boards, or student teachers enrolled in the Ontario Teacher Preparation Program for Education of the Deaf and Hard of Hearing.
- The Ministry of Education appears to lack leadership in taking the position that the Ministry is responsible for setting standards for:
  - ASL/LSQ competency and communication skills for teachers of the deaf employed by both Provincial Schools for the Deaf and School Boards
  - Minimum qualifications for interpreters in elementary, secondary and post-secondary educational settings
- Ministry of Citizenship, Immigration, Children and Youth is not responsible for setting communication protocols and transition planning to identify risks and limitations for those deaf and hard of hearing infants and children who are not succeeding with spoken language

- Ministry of Citizenship, Immigration, Children and Youth adopts a policy that parents of deaf children are not able to obtain American Sign Language or Langue des signes quebecoise services for their children with cochlear implants in Ontario
- Municipal Elections Act and the Ontarians with Disabilities Act are silent as these requirements and accommodations for persons with disabilities at municipal election campaign offices, local candidates debates and barrier-free municipal election campaign activities. Some mayoral and councilor candidates have informed us that they are not responsible to make accommodation provisions due to lack of regulations in the Municipal Election Act and the Ontarians with Disabilities Act.
- Articles on Police Officers Acquitted of Beating Deaf and Black man circulated in Toronto Star, The Globe and Mail, National Post and Toronto Sun today, the Canadian Hearing Society sent a letter dated October 14, 2004 to Ministers of Citizenship, Community Safety & Attorney General to express our concerns regarding specifically to a lack of appropriate and professional communication access provision to ensure that police, judges, crown lawyers and staff in ministries justice and legal systems receive professional and accurate information about evidences provided by victims and witnesses who are deaf, deafened and hard of hearing individuals
- Unfortunately, communication access provision was not handled professionally and properly by police services, judges, crown lawyers and staff in ministries justice and correctional services. Furthermore, some deaf, deafened and hard of hearing individuals with visible minorities such as several deaf, deafened and hard of hearing individuals, including racial individuals who are deaf, are victims of police service and justice systems that did not provide them with appropriate and professional communication access services that hinder them from conveying professional and accurate information about evidences to ensure that police officers, justice officials, crown and correctional services receive professional information about evidences.
- Several deaf, deafened and hard of hearing individuals have filed complaints with the Ontario Human Rights Commission due to the fact is that Driving Education and Road Safety Education programs that are regulated by Ministry of Transportation are not accessible to deaf, deafened and hard of hearing individuals. These programs are provided by private and non-profit organizations which they are not accessible driving education classes and driver safety education programs to deaf, deafened and hard of hearing individuals due to lack of funding provided by Ministry of Transportation, private and non-profit driving education and road safety education organizations for communication access accommodations as required by deaf, deafened and hard of hearing.

Ministry of Housing Municipal Affairs's Ontario Building Code violations are commonplace throughout the Ontario government. Few politicians and bureaucrats accept responsibility for providing access to our consumers. For example:

- TTYs and amplified telephones for deaf, deafened and hard of hearing callers are often not available in hospitals, nursing homes, and other public and private buildings such as public housing, motels, hotels, and government offices.
- TTYs have been installed in many government offices; however, frequently individual employees are not trained in their use. We often find that the devices are disconnected or are unused by new staff who do not know their purpose.
- TTYs and amplified telephones are rarely installed in public telephone booths in public buildings. This hinders deaf, deafened and hard of hearing callers in reporting emergency situations or potentially harmful incidents.
- FM, infra-red and audio loop sound amplification systems are not available in most public places. These systems assist people with hearing loss by bridging the sound to the individual's ear, helping to overcome problems of distance and background noise with which hearing aids cannot cope.
- Typically, there are no visual fire alarms and emergency alerting systems for deaf, deafened and hard of hearing callers or respondents in public housing, nursing homes, apartments, condominiums, and municipal and provincial buildings.
- There is a lack of visual alerting devices for deaf, deafened and hard of hearing seniors and vulnerable persons that would control strangers or guests from entering nursing homes, public housing, apartments and condominium buildings.
- Most buildings lack public announcement systems for alerting deaf, deafened and hard of hearing persons to emergency situations, such as fires, floods, and violent crimes.
- Property managers and service providers in Ontario buildings are often insensitive to the needs of deaf, deafened and hard of hearing consumers. These needs include auxiliary aids at events held in public places and special accommodation in hospitals, nursing homes, public housing, hospitality industry, municipal and provincial buildings, including the provision of TTYs, flashing alarms, permanent signage and adequate sound buffers.
- Few facilities will go to the expense of providing anti-static treatment to their carpets or increasing air humidity, both of which would help to reduce the electrical interference that adversely affects wearers of hearing aids and cochlear implants.
- There is a lack of appropriate or clear lighting in public places, especially in theatres, lecture halls and other places of assembly where deaf, deafened and hard of hearing persons depend on good lighting to facilitate speech reading and signing.

- Most movie theatres lack rear window captioning in their screening auditoriums, thereby effectively denying deaf, deafened and hard of hearing moviegoers access to this form of entertainment.

***Considerable information is available on barrier-free design to accommodate people with disabilities. However, very little of this material deals with the design needs of people who are deaf, deafened and hard of hearing. For example, intercom entry systems are frequently mentioned as a useful accommodation for people with mobility disabilities without any acknowledgement that such systems pose a barrier to deaf, deafened and hard of hearing persons.***

Clearly, every corner of your government is denying any responsibility for providing deaf, deafened and hard of hearing Ontarians with access to essential publicly funded services. We think it is naïve and/or misleading for your government to suggest that the 20 years of planned measures outlined in Bill 118 will make any difference in the lives of our consumers.

The wording in Bill 118 is filled with qualifiers, such as “with regard to”, “where technically feasible”, and “guidelines nor regulations are in the bill”. Even the word “plan” in the phrase “accessibility plan” implies something that will not necessarily be implemented enforceably.

Bill 118, as it currently stands, has no guarantee that it will move forward after being enacted. So much depends on the regulations to support this Bill, but there is no commitment to write regulations by a specified date. Our consumers are skeptical because of their experience with Bill 4 passed in 1993 that recognized American Sign Language and La langue des signes Quebécoise as official languages of instruction in the school system. Regulations for Bill 4 have yet to be written, so the Bill has made no difference in the lives of deaf, deafened and hard of hearing Ontarians. Our consumers worry that Bill 118 will go the same route – quickly passed, then quickly forgotten.

***Bill 118 places far too much emphasis on building design, transportation and capital projects. The authors of the Bill clearly have a limited perspective on the disabled community. Not all disabled people have mobility problems and use wheelchairs. For deaf, deafened and hard of hearing Ontarians, accessibility means the provision of human services like sign language interpreters, deaf interpreters intervenors and real-time captioners.***

In turn, the provision of human services requires setting standards for developing and expanding a pool of skilled sign language interpreters and real-time captioners regionally and provincially as well for professional qualifications and service delivery models. Currently, no such standards exist. Bill 118 needs to specify in more detail how the standards for expanding accommodation resources such as sign language interpreters and real-time captioners, qualifications and service delivery models will be established and monitored. For Bill 118 to be silent on this issue is like having a Health Act that makes no mention of the College of Physicians and Surgeons and how health care will be

delivered and funded for patients/clients with disabilities, including deaf, deafened and hard of hearing patients/clients. Or, it's like an Education Act that makes no reference to the Ontario College of Teachers and how education will be delivered and funded for students with disabilities, including deaf, deafened and hard of hearing learners.

The needs of our consumers will get lost if left in the current general sections of Bill 118 under goods and services. Our consumers are not buying widgets or employing people from a large unskilled labour pool.

## Legal Developments in Accessibility

Even with landmark decisions such as *Eldridge*<sup>4</sup> and the out-of-court settlement between Simser and the Tax Court of Canada<sup>5</sup>, deaf, deafened and hard of hearing students still bear sole responsibility to fight for their right to access if provincial schools and school boards fail to comply. This is costly in time, money and dignity. CHS strongly supports amendments to the *Ontario Human Rights Code* that will identify students with disabilities, including deaf, deafened and hard of hearing students as a discriminated-against group and strengthen enforcement mechanisms related to their protection. The existing legislation is insufficient in this regard.

**Ontario Human Rights Commission's Policy and Guidelines on Disability and the Duty to Accommodate, November 2000.** Accommodation with dignity is part of a broader principle, namely, that our society should be structured and designed for inclusiveness. This is to ensure equal participation for those who have experienced a disadvantage from society's benefits. The duty to accommodate persons with disabilities means accommodation must be provided in a manner that respects the dignity of the person, meets the individual's needs, promotes integration and full participation and ensures confidentiality.

**Ontario Human Rights Commission's New Policy and Guidelines, November 2004.** Once a disability-related need has been identified, or a case of discrimination has been established, education providers have a duty to accommodate the needs of students with disabilities, unless to do so would cause undue hardship. Accommodation is a means of preventing and removing barriers that impede students with disabilities from participating

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<sup>4</sup> In October of 1999 the Supreme Court of Canada ruled unanimously that the failure to provide sign language interpretation in the delivery of health care services where it is necessary for effective communication violated the *Charter of Rights* of Deaf Canadians. In its landmark decision in *Eldridge vs B.C.*, the court also made it clear that the government cannot escape its obligations even when it delegates the delivery of its most important programs, such as health care, to non-governmental bodies not usually subject to the Charter.

<sup>5</sup> In the Fall of 2000, CHS together with the Canadian Hard of Hearing Association and the Canadian Association of the Deaf, served as an intervenor in a case deaf lawyer Scott Simser planned to take before the Canadian Human Rights Commission against the Tax Court of Canada. Negotiations resulted in a mutually satisfactory out-of-court settlement. On September 5, 2000, the Tax Court announced a landmark policy that acknowledges and accepts responsibility for arranging and paying for accommodation for deaf, deafened and hard of hearing lawyers, articling students and any parties they represent.

fully in the educational environment. Accommodation involves three principles: dignity, individualization and inclusion.

The World Federation of the Deaf is a membership of United Nations and its position statement on Vision and Goals for Access to Adult Education for Deaf People indicates:

*Adult education policies must take full account of individual differences and situations. The importance of Sign Language and involvement of Deaf people as resources in adult education programmes must be recognized. Provision should be made to ensure that all Deaf adult students have access to education 1) in their native Sign Language; 2) in special classes with other Deaf students; and 3) at all levels of education, as appropriate. Deaf people should be involved in planning, implementing and evaluating adult programmes to ensure appropriateness, relevancy and quality.*

This statement is supported by Gallaudet University's Declaration on Adult with Special Learning Needs (1987), the United Nations Standard Rules on Equalization of Opportunities for Persons with Disabilities (1994), the UNESCO Salamanca Statement on special needs education (1994) and the UNESCO Hamburg Statement on Adult Education Rights (1997).

***The Government has the legal obligation to ensure that for education, literacy, post-secondary education, skill training, career support, employment services, public services and workplace are accessible to individuals who are deaf, deafened and deafened, and in compliance with the Canadian Charter Rights and Freedoms, the Ontario Human Rights Code and the Ontarians with Disabilities Act.***

We need to do better as a society to remove and prevent barriers for people with disabilities. If, as the government points out in Bill 118, more businesses, employers and able-bodied people understand the barriers faced by people with disabilities, then these groups should willingly support an *Accessibility for Ontarians with Disabilities Act* with a stronger and more specific enforcement mechanism.

#### Positive Aspects of Bill 118

There is much that is valuable in this Bill. We commend the government for addressing the extremely important issues of accessibility for persons with disabilities, including those who are deaf, deafened and hard of hearing. For example:

- It is helpful to require government ministries to develop and enforce annual accessibility plans to address the identification, removal and prevention of barriers for deaf, deafened and hard of hearing persons in legislation, policies, programs, practices and services. Accessibility plans will be made public.
- It is helpful to have “strong enforcement mechanisms” for the standards for accessibility and the time frames for meeting them

- It is helpful to apply all sectors, including the private sector.
- It is helpful to encourage the active participation of various sectors in the creation of accessibility standards. Municipal accessibility advisory committees will continue to advise Town and City Councils about the requirements and implementation of accessibility standards and the preparation of accessibility reports among their other functions as stated in the proposed legislation. Incentive agreements may be made with persons or organizations which exceed one or more of the requirements of the accessibility standards

## Concerns with Bill 118

CHS believes that unless changes are made before third reading, Bill 118 will fall significantly short of what is needed to *identify, prevent, and remove barriers* in Ontario, including the Ontario Public Service, municipalities, the broader public sector and the private sector. Therefore it needs to include funding for accommodation resource development, quality assurance for accommodation service providers, regulated compliance-fines, anti-ableism education and anti-discrimination training, requiring the inclusion of budgets for provisions for accommodation for persons with disabilities, in constituency offices for MPPs, mayors, and town/city councilors as well for Queen's park offices, municipal process and provincial parliamentary procedures, public hearings, and consultation meeting that should be amended in the Bill-not in regulations in response to the Accessibility for Ontarians with Disabilities Act-Bill 118.

There are absences for accommodation provisions for persons with disabilities in the Municipal Election Act, the Ontario Election, the Ontarians with Disabilities Act and proposed Accessibility for Ontarians with Disabilities Act as we need to include accommodations provisions for persons with disabilities for election campaign activities, including offices and election debates as well as for municipal and provincial candidates with disabilities and volunteers with disabilities.

There is no indication that any government funding will be available to help pay accessibility. Larger businesses may be able to absorb costs in a phase-in approach but small businesses, non-profit groups, places of worships and some municipalities will face greater financial challenges.

Unfortunately, Bill 118 does not address the establishment of quality assurance standards and resource development for accommodation service providers such as sign language interpreters, deaf interpreters, real-time captioners and intervenors, for the deaf-blind. Furthermore, it does not include anti-ableism/anti-audism education and training (anti-discrimination against persons with disabilities, including deaf, deafened and hard of hearing)

In addition, proposed Accessibility for Ontarians with Disabilities Act, does not address to include funding for technical and human supports, including expanding the pool of human resources (i.e. ASL/LSQ interpreters, real time captioners, deaf interpreters,

intervenor for the deaf-blind, personal attendants, etc), and providing training. Also, there is no mention for funding provision for low budget non-profit organizations and limited budget municipalities to make services and programs accessible as well as for accommodation provisions for customers and employees with disabilities, including deaf, deafened and hard of hearing employees and customers.

Without amendments, this Bill is, at best, a missed opportunity. At worst, it will create new barriers and will be costly in time, money and human dignity for persons with disabilities and for taxpayers.

Clearly, Bill 118 falls far short of what the Supreme Court of Canada had in mind when it ruled in the Eldridge case in 1997. Four years later, the deaf, deafened and hard of hearing communities we serve are asking: Why haven't things changed? Why haven't governments recognized the Eldridge decision and changed their laws and policies accordingly? Do we have to litigate the same principle again and again, government by government and program by program? Do we have to keep lobbying governments to respect principles clearly set out by the Supreme Court? CHS does not have the answers to these questions. The Government of Ontario has the responsibility to provide the answers. It is time government responded with more than just rhetoric and 20 years of planned measures.

## Recommendations

CHS strongly recommends that the Bill 118, *Accessibility for Ontarians With Disabilities Act*, be amended to include the following:

1. Expressly state that a purpose of the Act is to achieve a barrier-free Ontario with its timelines within 15 years instead 20 years.
2. Require barriers to be identified, removed and prevented in compliance with the Supreme Court of Canada decisions, and Ontario Human Rights Code.
3. Ensure that the Bill extends requirements for barrier removal and prevention to the Ontario Public Service, municipalities, the broader public sector, the private sector and to legislative and constituency offices of MPPs and Mr. Speaker's office as well for Agencies, Boards and Commissions offices.
4. Strengthen provisions seeking to prevent new barriers, including all proposed government bills, resolutions and private member bills being reviewed by leaders of House of all parties in the House from being created with taxpayers' money.
5. Establish a truly effective consultative and inclusive process for amendment-making and setting standards for accommodation service development and quality assurance for accommodation service providers, which ensure the disability community a voice in these important decisions in the bill—not in the regulations of the Bill 118

6. Establish effective ways to enforce the legislation by making following amendments to include funding for low budget non-profit organizations and limited budget municipalities to make services and program accessible as well as for accommodation provisions for customers and employees with disabilities, including deaf, deafened and hard of hearing; compliance-fines; accommodation resource development; quality assurance for accommodation service providers; anti-ableism education/anti-discrimination training mandatory for employers and public services and accommodation provision mandatory for offices of MPPs, Mr. Speaker, councilors, the clerks, and offices of Appointments, Boards and Commissions in the Bill 118
7. Strengthen the provincial advisory council and the municipal advisory committee, so that they have teeth, are accountable to the disability community and cannot be ignored.
8. Enforce Bill 118 to comply with the equality decisions of the Supreme Court of Canada, i.e., the Eldridge, Meiorin and Grismer decisions.
9. Endorse the proposed amendments of the ODA Committee.

Furthermore, CHS recommends that amendments following from the *Accessibility for Ontarians with Disabilities Act* include the following practical suggestions:

1. Establish and implement an action plan to remove existing barriers and to prevent the creation of new barriers in offices of public services and offices of employers for deaf, deafened and hard of hearing staff and consumers.
2. Implement awareness training, including anti-ableism/anti-audism and anti-discrimination training that informs service providers and employers of the legal rights of deaf, deafened and hard of hearing persons. Police enforcement officials, police services, judges, crown lawyers and staff in ministries justice and correctional services should be mandated to undergo awareness training in anti-racism, anti-ableism, anti-audism and anti-discrimination
3. Hire accommodation coordinators where a need to serve deaf, deafened, and hard of hearing people is identified.
4. Have employers implement procedures to accommodate all employees who are deaf, deafened or hard of hearing.
5. Ensure prompt availability of qualified sign language interpreters and captioners for deaf, deafened and hard of hearing persons.
6. Become familiar with and use appropriate terminology to describe disabilities including hearing loss and deafness.

7. Contact consumer organizations such as the Ontario Association of the Deaf, the Canadian Association of the Deaf, and the Canadian Hard of Hearing Association, and service agencies such as The Canadian Hearing Society for the provision of cultural sensitivity training, purchase of sign language interpreter services and other communication supports and devices, and consultation on policy developments.

## Conclusion

CHS strongly endorses the need for establishing a strong, enforceable and effective *Accessibility for Ontarians with Disabilities Act* immediately. However, wthe Bill 118 needs to include enforcement mechanism, quality assurance and resource development of accommodation service providers measures. The legislation needs to have authority and be suitably funded so that proper systems can be set up to monitor and enforce this legislation.

Bill 118 will clearly be inadequate unless amendments, as recommended by the ODA Committee are made before third reading. Bill 118 falls significantly short of what is needed to remove and prevent barriers across Ontario. *The Accessibility for Ontarians with Disabilities Act* must establish standards for provincial and municipal governments, the broader public sector and the private sector, in order to end practices of discrimination against persons with disabilities, including children and seniors.