

Submission to the
Standing Committee on Finance and Economic Affairs
With Respect to Bill 125:
Ontarians with Disabilities Act, 2001

Presented by
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THE CANADIAN HEARING SOCIETY 

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 27 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 |

In general, CHS is pleased that the government is moving forward with Bill 125, *Ontarians with Disabilities Act* as introduced by Minister of Citizenship Cam Jackson. 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.

For the public consultation process to be accessible, the government needs to understand that deaf, deafened and hard of hearing consumers require more lead time to contact, arrange and confirm support services, such as sign language interpreters and real-time captioners. These support services enable deaf, deafened and hard of hearing people to prepare their submissions and presentations and to express their ideas in their own language or by a means accessible to them. Limited literacy levels mean that some consumers require more time to read and understand Bill 125.

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 125. The recommendations we put forth in this paper support those contained in position papers being sent to the standing committee on Bill 125 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.

Legal Developments

Supreme Court of Canada, October 1997. In *Eldridge v. British Columbia* the Court ruled unanimously that Deaf Canadians are entitled to equal access and equal benefit under the Human Rights Code. *All services, funded directly or indirectly by government must be equally accessible and of equal benefit to deaf, deafened and hard of hearing Canadians, as they are to hearing Canadians.* The principle that discrimination can accrue from a failure to take positive steps to ensure that disadvantaged groups benefit equally from services offered to the general public is accepted in the human rights field.

Tax Court of Canada, September 2000. In an out-of-court settlement, 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. This policy also confirms that the needs of persons with disabilities must be accommodated if we are to ensure equal participation for everyone within our society. A fundamental human right is acknowledged with this policy: *Access to justice is not the exclusive prerogative of able-bodied Canadians, but of all Canadians.*

Ontario Human Rights Commission's New 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.

Even with these landmark cases and policies, individuals continue to shoulder the responsibility to fight for their rights if a school, hospital, business or government department does not provide access. It is costly in time, money and human dignity to take every violation before the Human Rights Commission on a case-by-case basis.

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 125, more businesses, employers and able-bodied people understand the barriers faced by people with disabilities, then these groups should willingly support an *Ontarians with Disabilities Act* with a stronger and more specific enforcement mechanism.

Positive Aspects of Bill 125

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 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 establish the Accessibility Directorate of Ontario within the Ministry of Citizenship and the Accessibility Advisory Council of Ontario to advise government. These two organizations will be responsible for programming and partnerships, and will develop a public education campaign to overcome attitudinal barriers.
- It is helpful to encourage the active participation of various sectors in the creation of accessibility standards.

Concerns with Bill 125

CHS believes that unless changes are made before third reading, Bill 125 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.

Unfortunately, Bill 125 does not address the establishment of new legal procedures or enforcement mechanisms requiring all sectors to comply with a duty to accommodate. The implementation of Bill 125 is based mostly on voluntary measures.

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 125 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 voluntary measures.

Barriers Facing Deaf, Deafened and Hard of Hearing Consumers

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.
- A Ministry of Education letter of September 6, 2001, advised CHS that the Ministry 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.
- 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.

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

voluntary measures outlined in Bill 125 will make any difference in the lives of our consumers.

The wording in Bill 125 is filled with qualifiers, such as “with regard to”, “where technically feasible”, and “guidelines are not regulations”. Even the word “plan” in the phrase “accessibility plan” implies something that will not necessarily be implemented.

Bill 125, as it currently stands, has no teeth and 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 Quebecoise 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 125 will go the same route – quickly passed, then quickly forgotten.

Bill 125 places far too much emphasis on building design 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 and real-time captioners.

In turn, the provision of human services requires setting standards for professional qualifications and service delivery models. Currently, no such standards exist. Bill 125 needs to specify in more detail how the standards for qualifications and service delivery models will be established and monitored. For Bill 125 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. 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.

The needs of our consumers will get lost if left in the current general sections of Bill 125 under goods and services. Our consumers are not buying widgets or employing people from a large unskilled labour pool.

Recommendations

CHS strongly recommends that the Bill 125, *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.
2. Require barriers to be identified, removed and prevented within specific time frames.

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.
4. Strengthen provisions seeking to prevent new barriers from being created with taxpayers' money.
5. Establish a truly effective consultative and inclusive process for regulation-making and setting standards, which ensure the disability community a voice in these important decisions.
6. Establish effective ways to enforce the legislation.
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 125 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 regulations following from the *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 cultural and disability sensitive training that informs service providers and employers of the legal rights of deaf, deafened and hard of hearing persons.
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 and effective *Ontarians with Disabilities Act* immediately. However, our experience indicates that voluntary measures do not work. The legislation needs to have authority and be suitably funded so that proper systems can be set up to monitor and enforce the legislation.

Bill 125 will clearly be inadequate unless amendments as recommended by the ODA Committee are made before third reading. Bill 125 falls significantly short of what is needed to remove and prevent barriers across Ontario. *The Ontarians with Disabilities Act* must establish standards for provincial and municipal governments, the broader public sector and the private sector to end intentional or unintentional practices of discrimination against persons with disabilities, including children and seniors.