



SUBMISSION OF ARCH DISABILITY LAW CENTRE

on the

**Initial Recommendations for Review of the AODA Employment Accessibility
Standard**

July 27, 2018

ARCH Disability Law Centre

Tel.: (416) 482-8255 Toll-free: 1-866-482-2724

TTY: (416) 482-1254 Toll-free: 1-866-482-2728

Fax: (416) 482-2981 Toll-free: 1-866-881-2723

www.archdisabilitylaw.ca

INDEX

I. ABOUT ARCH.....	6
II. ARCH AND ACCESSIBILITY TO EMPLOYMENT	6
III. UNITED NATIONS <i>CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES</i>	7
IV. THE MORAN REPORT	10
V. PROPOSED REVISIONS TO THE EMPLOYMENT STANDARD.....	12
VI. ENFORCEMENT AND COMPLIANCE	21
VII. CONCLUSION	22

Executive Summary

1. The government of Ontario should explicitly acknowledge its commitment to the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD) in each of the *Accessibility for Ontarians with Disabilities Act* (AODA) Standards and in their implementation. A recommendation on this issue from this Standards Development Committee (SDC) will be an important incentive for the government to act.
2. The mandate of each SDC, and importantly for this submission, the Employment Standard Development Committee, must consider ways to further the various purposes of the CRPD when reviewing Standards.
3. The government of Ontario, through its SDCs, must consider the diversity of persons with disabilities and ensure flexibility in Standards that will promote universal accessibility for each Ontarian with a disability.
4. The government of Ontario publicly commit to eradicating poverty. A recommendation from this SDC as part of a commitment to accessible employment would incentivize the government to act.
5. The government of Ontario will ensure accessibility for persons with disabilities to the physical, social, economic and cultural environment through the various AODA Standards.
6. The government of Ontario, through this SDC, must make all employers aware of its commitment to accessible employment for Ontarians with a diversity of disabilities.
7. The SDC must undertake a rigorous review of each and every aspect of the work cycle and ask how the Standard can be revised to ensure that the rights of persons with disabilities to employment are fostered. The SDC must provide recommendations that will significantly improve all facets of the employment cycle to guarantee that Ontario will meet its accessibility goals before 2015.

8. The Government of Ontario itself, through a recommendation of this SDC, must commit to the employment of persons with disabilities in the public sector. This will demonstrate the government's full commitment to accessibility.
9. The SDC consider recommending special programs as per Ontario's *Human Rights Code* (Code), incentives and other measures to encourage employers to actively advertise for, and hire, persons with disabilities.
10. The SDC recommend measures that will promote work experience for persons with disabilities in the open labour market.
11. The SDC recommend vocational and professional rehabilitation measures, job retention and return to work programs for persons with disabilities.
12. The Preamble be amended to ensure that employers take specific and proactive measures to ensure that its objectives are realized, and in particular, that employers take express action to identify, remove and prevent barriers to accessible employment at each stage of the employment cycle.
13. The Employment Standard must clearly direct employers that simply because an Employment Standard is met does not ensure that an organization will be in compliance with its duty to individually accommodate under the Code.
14. Disability is an evolving concept and not a static one. Recognition of the evolving nature of disability must be woven throughout all sections of the Employment Standard. Employers must be aware of their duty to accommodate and must understand that providing accessible employment and accommodations is an on-going requirement.
15. A broad and inclusive definition of employee be adopted to ensure that all employment relationships are consistent with obligations under the Code. Volunteers must be included in that definition.
16. The AODA should extend the definition of "employer" to include those who hire volunteers. The government must ensure that there are measures in place so that employers do not exploit volunteers with disabilities.
17. The definition of employee under the Standard must also include contractors or independent contractors.

18. The government must establish a job hub and/or access centre. This would allow employers to advertise that they are looking to hire people with disabilities. It would also allow people with disabilities to find employment that best suits their strengths, talents and interests. This information must be provided in a clear, inclusive and accessible format to reach persons with diverse disabilities.
19. Where employers have websites, they must post their required policies, practices and job advertisements in an accessible and inclusive format.
20. Applicants must be advised that accommodations are provided during the interview process, as well as throughout the course of employment.
21. The government should audit employers and consult with persons with disabilities to determine the type and frequency of barriers to employment at the recruitment stage.
22. The SDC should make specific recommendations addressing the removal of these barriers.
23. Employers must make it clear that accommodation is not a barrier in the hiring and recruitment process. An employer should advertise that if accommodations are required, they will be provided. This includes providing information about whom to contact with any such requests.
24. Employers must undertake training about how attitudinal barriers can impact the hiring process, and how to address behaviors that may negatively affect disclosure of disability or requests for accommodation.
25. After an applicant has been offered a job, employers should initiate the accommodation process. This demonstrates that an employer will provide accommodations and alleviate any anxiety about disclosure. It would also go some way to showing that the workplace is an inclusive one, and set an example for other employees.
26. Section 27 of the Employment Standard should remain as written. All Employers must post emergency policies and procedures in the workplace that will detail how to work with employees with disabilities to ensure their safety.

27. Employers must engage employees in the accommodation process to craft an individualized accommodation plan. A centralized portal for accommodation plans could serve as a starting point for how to accommodate but it must be clear that employers must design an individualized accommodation plan appropriate for each employee with a disability.

28. The right to have disability related supports and services must be communicated to all employees and potential employees in accessible formats.

29. Employers must be trained on how to have open, honest and transparent communication with an employee returning from work after an absence. This could involve preparing a new accommodation plan. It could also include a shift in the employee's duties.

30. An employer must be sensitive to the changing needs of employees with disabilities throughout the employment cycle and must promote a healthy and safe workplace for employees to return to. This could mean addressing any concerns of other employees and demonstrating that the employer is dedicated to making sure each and every employee in his/her workplace is productive to the degree that they can be.

31. The government of Ontario introduce compliance and enforcement mechanisms in line with the obligations addressed in the AODA and its Standards. There must be a forum where individuals can file complaints about lack of accessibility in Ontario, and where there is accountability and redress. Recommendations to this effect from this SDC would incentivize government action.

I. ABOUT ARCH

ARCH Disability Law Centre is a specialty legal clinic that practices exclusively in disability rights law. ARCH is dedicated to defending and advancing the equality rights, entitlements, fundamental freedoms and inclusion of persons with disabilities in Ontario. In order to carry out its mandate, ARCH provides a range of legal services directly to persons with disabilities in Ontario, including summary advice and referral services. Through this service, ARCH provides basic legal information and summary legal advice on certain disability-related areas of law to persons with disabilities from across Ontario. ARCH also represents persons with disabilities and disability rights organizations in precedent setting cases at various provincial and federal tribunals, including the Human Rights Tribunal of Ontario, the Canadian Human Rights Commission, the Canadian Human Rights Tribunal, the Canadian Transportation Agency as well as appellate courts, including the Court of Appeal for Ontario, the Federal Court and Federal Court of Appeal, and the Supreme Court of Canada. ARCH has an extensive law reform practice, working on a variety of initiatives related to advancing the rights of persons with disabilities. ARCH provides public legal education to disability communities, and conducts community development projects to support our law reform work. More information about our work is available on our website: www.archdisabilitylaw.ca ARCH is primarily funded by Legal Aid Ontario, as well as other funding sources.

II. ARCH AND ACCESSIBILITY TO EMPLOYMENT

In order for people with disabilities to participate fully in our society, accessible employment is a fundamental necessity. Employment that is accessible provides people with disabilities not only with an income, but also an essential source of personal dignity and self-worth. In the same way that accessible employment opportunities can remove barriers for persons with disabilities, inaccessible employment can contribute to the isolation and poverty of an individual. ARCH's work includes a variety of employment-related disability law issues, including calls from persons with disabilities who are denied appropriate accommodations, and in particular: finding a job; the notice of a job opportunity; and during the hiring process; human rights claims based on

disability and employment; and submissions to government bodies on employment related issues, such as the *Accessibility for Ontarians with Disabilities Act* (AODA) and the *Employment Standards Act*.

ARCH was a partner in a consultation project funded by the Government of Canada to assist in the development of the Federal legislation related to disability and accessibility. The results showed the same concerns. Denial of appropriate accommodations in employment and barriers to employment was one of the key issues raised. A summary of the government's consultations and findings is available at:
<http://sci-can.ca/canadian-access-inclusion-project/consultationworkshop-reports>

Our experience, from listening to and working with persons with disabilities is that they want to work. Persistent barriers to finding a job that is both available and accessible continue to exist. This problem is exacerbated for persons with disabilities who live in rural, remote and northern communities, where location itself is an important obstacle.

Given this background, ARCH is well positioned to provide comments on the 2018 Initial Recommendations Report to the 2011 Employment Accessibility Standard under the AODA.

Our silence on any aspect of the Standard should not be interpreted as agreement with it.

III. UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The government of Ontario must comply with Canada's international obligations under the *Convention on the Rights of Persons with Disabilities* (CRPD). Canada ratified the CRPD in March 2010, obliging the federal and provincial governments to implement the rights contained in it.

The CRPD Preamble affirms the **rights** of persons with disabilities and respect for their inherent dignity and inalienable entitlements. In particular, paragraph (e) specifically adopts a social model of disability that recognizes disability is an evolving concept. Moreover, disability results from the interaction between persons with disabilities and attitudinal and environmental barriers that hinder their full participation in society. Ontario is required to implement measures that will eradicate attitudinal and environmental barriers. We ask the SDC to consider this obligation throughout their Proposed Revisions to the Employment Standard, and to the government of Ontario generally.

ARCH recommends:

1. The government of Ontario should explicitly acknowledge its commitment to the CRPD in each of the AODA Standards and in their implementation. A recommendation on this issue from this Standards Development Committee (SDC) will be an important incentive for the government to act.
2. The mandate of each SDC, and importantly for this submission, the Employment Standard Development Committee, must consider ways to further the various purposes of the CRPD when reviewing Standards.
3. The government of Ontario, through its SDCs, must consider the diversity of persons with disabilities and ensure flexibility in Standards that will promote universal accessibility for each Ontarian with a disability.

Subsection (t) of the CRPD Preamble is also significant. It recognizes that:

“... the majority of persons with disabilities live in conditions of poverty, and in this regard recognizing the critical need to address the negative impact of poverty on persons with disabilities.”

ARCH therefore recommends that:

4. The government of Ontario publicly commit to eradicating poverty. A recommendation from this SDC as part of a commitment to accessible employment, would incentivize the government to act.
5. The government of Ontario will ensure accessibility for persons with disabilities to the physical, social, economic and cultural environment through the various AODA Standards.

Article 3 of the CRPD describes the principles that inform the operation of the CRPD. The language of this Article specifically includes accessibility as a formal principle.

The commitment to accessibility is bolstered in Article 9, which explicitly speaks to the identification and removal of barriers to workplaces. This includes minimum standards and guidelines for the accessibility of facilities and services. Most importantly, this Article also applies to private entities, like employers, who offer services to the public.

ARCH therefore recommends that:

6. The government of Ontario, through this SDC, must make all employers aware of its commitment to accessible employment for Ontarians with a diversity of disabilities.

Article 27 of the CRPD expressly declares the right of persons with disabilities to employment and work. This Article prohibits discrimination on the basis of disability in all aspects of the work cycle, including recruitment, hiring and employment, continuance of employment, career advancement and healthy and safe working conditions. It requires that assistance be given to persons with disabilities to find, obtain, maintain and return to, employment.

ARCH recommends that:

7. The SDC must undertake a rigorous review of each and every aspect of the work cycle and ask how the Standard can be revised to ensure that the rights of persons with disabilities to employment are fostered. The SDC must provide recommendations that will significantly improve all facets of the employment cycle to guarantee that Ontario will meet its accessibility goals before 2025.

ARCH makes this submission because, in our view, the Proposed Revisions to the Employment Standard fall short of mandating accessible employment services in Ontario. The government of Ontario, the Accessibility Directorate and the SDC should carefully review the CRPD, and in particular, the Articles we reference, to guide its recommendations on the Employment Standard. If accessibility is looked at through the lens of the CRPD, Ontario's obligations will be better reflected throughout the Employment Standard.

ARCH therefore recommends that:

8. The Government of Ontario itself, through a recommendation of this SDC, must commit to the employment of persons with disabilities in the public sector. This will demonstrate the government's full commitment to accessibility.
9. The SDC consider recommending affirmative action programs, incentives and other measures to encourage employers to actively advertise for, and hire, persons with disabilities.
10. The SDC recommend measures that will promote work experience for persons with disabilities in the open labour market.
11. The SDC recommend vocational and professional rehabilitation measures, and job retention and return to work programs for persons with disabilities.

IV. THE MORAN REPORT

ARCH submits that it is critical for the government, the Accessibility Directorate and the SDC to be alive to, and seek to implement, the recommendations from the Report of the

Second Independent Review of the AODA conducted by Mayo Moran. This Report was released in 2014, after extensive consultations that included businesses, employers, persons with disabilities and the organizations that support them, along with many others.

The Report stated that the SDCs should undertake a rigorous analysis of each Standard as it comes up for review. It noted that if the goal of the AODA is to be realized, proactive change is necessary to achieve large scale change in the every day lives of Ontarians with disabilities. This must be coupled with significant awareness raising for all Ontarians, and in particular, employers and potential and current employees, to combat attitudinal barriers and to promote a shared understanding of what an accessible Ontario will look like. ARCH is concerned that the Proposed Revisions to the Employment Accessibility Standard make it unlikely that accessible employment will be fully realized by 2025.

The Moran Report highlighted that barriers to employment were the most important and consistent issues raised during the consultations. This is because employment is key to lifting persons with disabilities out of poverty, increasing quality of life and enhancing dignity. Ms. Moran stated that if an accessible Ontario is to be achieved by 2025, serious gaps and deficiencies in the Standard need to be addressed now.

Specifically, the Report notes that the Employment Standard does not cover those who are not in paid employment. It does not address measures to promote the employment of persons with disabilities. The Standard does not speak to ways for persons with disabilities to let employers know that they are seeking jobs and what their qualifications are, nor do they establish a means where employers can look for candidates with disabilities. Moreover, she observed that the exemptions and exceptions to the Employment Standard are too broad.

ARCH recommends that the SDC take note of these issues and ensure that they are addressed in any recommended amendments to the current Standard. We offer

recommendations on each Proposed Revision to the Employment Standard below. We conclude with observations about compliance and enforcement.

V. PROPOSED REVISIONS TO THE EMPLOYMENT STANDARD

One of the tasks set for the SDC is to “revise the measures, policies, practices and requirements to be implemented on or before January 1, 2025, and the time frame for their implementation”. Ontario is now more than halfway to the target date for an accessible Ontario. During this round of reviews, the Employment Standard must be thoroughly questioned to determine whether it will get Ontario to its goal of accessible employment on time. Overall, ARCH is concerned that the initial Proposed Revisions to the Employment Standard are not proactive enough to ensure an accessible Ontario by 2025. The SDC must ask itself what additional measures are necessary to ensure accessible workplaces for Ontarians with disabilities before 2025. The SDC has a real opportunity in its proposed revisions to make sure that employers are on the right path to providing accessible employment. By the time of the next review it will be too late for meaningful change to take place.

i) Preamble

In the Preamble, the SDC has recommended a change to the long-term objectives of the Employment Standard. ARCH commends the SDC for recognizing that the import of the Employment Standard is to “identify, remove and prevent barriers at all stages of employment”. This goal is consistent with Article 9 of the CRPD. This objective is also more straightforward, and demands action be taken to achieve it. The previous objective was merely to “set out policies, procedures and requirements”. However, the Standard itself stops short of telling employers what identifiable steps they need to take to accomplish this objective.

ARCH recommends that:

12. The Preamble be amended to ensure that employers take specific and proactive measures to ensure that its objectives are realized, and in particular, that employers

take express action to identify, remove and prevent barriers to accessible employment at each stage of the employment cycle.

ii) SDC Recommendation 1: Relationship Between the AODA and Ontario's Human Rights Code

A key concern identified in the Moran Report was confusion about whether meeting an Accessibility Standard was enough to discharge obligations under Ontario's *Human Rights Code (Code)*. The SDC addresses this issue by asking the government and the Ontario Human Rights Commission to meet, review, strengthen guidelines and clarify the differences between the AODA and the *Code*. Given that this issue has been identified since the AODA's inception, it should not take an additional two years for the government to remedy this concern. Indeed, ARCH raised this problem in its 2009 submissions to the Employment Accessibility Standard. The government and the Commission should be addressing this matter as soon as possible. To complete this objective two years from now is neither timely nor helpful.

Additionally, there must be a recognition that disability is an evolving concept and not a static one. The evolving nature of disability must be woven throughout all sections of the Employment Standard. This is important so that employers understand that multiple and different accommodations may be required throughout the course of employment.

ARCH recommends that:

The Ontario government and the Ontario Human Rights Commission meet promptly to clarify the differences between the AODA and the *Code*. This information must be provided to all employers **and** employees in Ontario. Compliance with *Code* obligations must also form part of any Proposed Revisions to the Employment Standard.

13. The Employment Standard must clearly tell employers that simply because an Employment Standard is met **does not** ensure that an organization will be in compliance with its duty to individually accommodate under the *Code*.

14. Disability is an evolving concept and not a static one. Recognition of the evolving nature of disability must be woven throughout all sections of the Employment Standard. Employers must be aware of their duty to accommodate and must understand that providing accessible employment and accommodations is an on-going requirement.

iii) SDC Recommendation 2: Scope and Interpretation

In our 2009 Employment Standards submissions, ARCH recommended that all employment-like relationships be subject to the Standard. Recommendation 2 merely states that a definition of “employee” be included and applied consistently throughout the Integrated Accessibility Standards Regulations. ARCH is concerned that no guidance is provided on who is covered by the Standard.

In order to remove as many barriers as possible for people with disabilities, the definition of employee must have a broad scope, in keeping with the *Code*. All employment and employment-like relationships should be subject to the Standard, including independent contractors and volunteers. The SDC dismissed the idea of volunteer positions being covered by the Standard. There are at least six reasons that the definition of “employee” be extended employment to cover volunteers with disabilities.

First, and of critical importance, is that revisions to the *Employment Standards Act* require that the true nature of an employment relationship be considered. Is a volunteer really a volunteer, or they being classified as one to avoid the statutory benefits available under the ESA? Is someone really an “independent contractor” or does the nature of their work make them more like an employee? There is a new onus on an employer to prove that someone is not an employee. If a person is misclassified, an employer could be prosecuted for trying to avoid providing minimum statutory benefits by misnaming someone who is performing a job for them.

Second, persons with disabilities may volunteer for positions in order to gain experience. Volunteering may also provide access to vocational training. For some people with disabilities, as with everyone entering the workforce, volunteering can be an important first step toward paid employment.

Third, people with disabilities may be required to volunteer as a condition imposed by where they stay or the benefits they receive. The objective of the Standard must be to make employment-like relationships accessible in as broad and meaningful way as possible.

Fourth, volunteering fosters inclusion and participation in the community.

Fifth, it is important to have standards in place for volunteers because of the risk that employers might take advantage of volunteers. There must be clear guidelines in place so that volunteers can access workplaces and work-like settings and be appropriately accommodated. This is already an obligation under the *Code*. The AODA can provide no less.

Finally, there is no all-encompassing or consistent definition of employee throughout employment related legislation. This is why any definition in the AODA that refers to an employee must be broad and defined to ensure the Standard is consistently applied and promotes accessibility for persons with disabilities in general, and provides the highest level of rights and standards afforded by any relevant legislation.

ARCH recommends that:

15. A broad and inclusive definition of employee be adopted to ensure that all employment relationships are consistent with obligations under the *Code*.

Volunteers must be included in that definition.

16. The AODA should extend the definition of “employer” to include those who hire volunteers. The government must ensure that there are measures in place so that employers do not exploit volunteers with disabilities.

The definition of who is an employee must also include contractors or independent contractors. Persons with disabilities may find themselves in precarious employment, or employed as independent contractors to avoid other legislated employment protections.

17. The definition of employee under the Standard must also include contractors or independent contractors.

iv) SDC Recommendation 3: Recruitment, General

ARCH is pleased that the SDC has recommended an amendment to the Employment Standard expanding notice requirements to include the provision of accommodation to employees during the application and hiring process. Both employers and potential employees should be aware of the *Code's* requirement that accommodation be routinely available during hiring practices as well as throughout the employment cycle.

The Moran Report stated that having a “job hub” or access centre where employees could look for employment that meets their qualifications, or where employers could advertise positions, would be helpful. ARCH recommends that the SDC amend the Standard to include the government’s obligation to implement this initiative. Promoting employment opportunities for persons with disabilities is a critical first step to accessible employment.

The CRPD, at Article 21, guarantees access to information in a variety of formats, and the Employment Standard should explicitly require this.

ARCH recommends that:

18. The government must establish a job hub and/or access centre. This would allow employers to advertise that they are looking to hire people with disabilities. It would also allow people with disabilities to find employment that best suits their

strengths, talents and interests. This information must be provided in a clear, inclusive and accessible format to reach persons with diverse disabilities.

19. Where employers have websites, they must post their required policies, practices and job advertisements in an accessible and inclusive format.

20. Applicants must be advised that accommodations are provided during the interview process, as well as throughout the course of employment.

v) SDC Recommendation 4: Recruitment, Assessment or Selection Process

ARCH supports any recommendation that provides job applicants with improved information and advice about their entitlement to accommodation throughout the employment cycle. In addition, making materials available to employers about how to make the entire hiring process, including job advertisements, more accessible, is important. This should also include information about how employers can make their employees feel more comfortable making accommodation requests. However, this is already an employer obligation under the *Code*. Therefore, giving the government two years to accomplish this recommendation is unnecessary.

ARCH recommends that:

21. The government should audit employers and consult with persons with disabilities to determine the type and frequency of barriers to employment at the recruitment stage.

22. The SDC should make specific recommendations addressing the removal of these barriers.

23. Employers must make it clear that accommodation is not a barrier in the hiring and recruitment process. An employer should advertise that if accommodations are

required, they will be provided. This includes providing information about whom to contact with any such requests.

24. Employers must undertake training about how attitudinal barriers can impact the hiring process, and how to address behaviors that may negatively affect disclosure of disability or requests for accommodation.

vi) SDC Recommendation 5: Notice to Successful Applicants

ARCH agrees that it is important for employers and candidates/employees to know when, and how, to have open conversations about accommodation supports. However, providing appropriate accommodation is already a requirement under the *Code*. This recommendation should be immediately implemented to ensure that all parties have accurate and timely information about the accommodation process and discussing an accommodation plan. Moreover, employers must understand that they have a duty to inquire into and investigate accommodation needs of employees under the *Code*.

Attitudinal barriers are the most difficult to address. ARCH recommends that the government look into why these obstacles persist and implement concrete plans to achieve a cultural shift and eradicate attitudinal barriers.

ARCH recommends that:

25. After an applicant has been offered a job, employers should initiate the accommodation process. This demonstrates that an employer will provide accommodations and alleviate any anxiety about disclosure. It would also go some way to showing that the workplace is an inclusive one, and set an example for other employees.

The government must inquire into why barriers and obstacles persist in workplaces and implement concrete plans to achieve a cultural shift and eradicate attitudinal barriers.

vii) SDC Recommendation 6: Emergency Response Information

The SDC is recommending that “individualized” be deleted from emergency response information. It is proposing that any individualized emergency requirements be part of an accommodation plan.

ARCH expresses serious concern with this recommendation. An accommodation plan is a confidential document that other employees do not have access to. As a result, other employees will not know how to respond to the needs of a person with a disability during an emergency. This is particularly the case when employees are concerned for their own safety. Nonetheless, privacy and confidentiality must be adhered to within emergency response information, including only relevant and necessary information. A protocol must be adopted in each workplace setting out employee responsibilities in the case of an emergency.

ARCH’s second concern is that should an emergency occur, a workplace would not be adequately prepared to address what should happen unless emergency procedures or requirements are an integral part of the overall workplace response.

ARCH recommends that:

26. Section 27 of the Employment Standard should remain as written.

All Employers must post emergency policies and procedures in the workplace that will detail how to work with employees with disabilities to ensure their safety.

viii) SDC Recommendation 7: Individualized Accommodation Plans

ARCH commends the SDC for recognizing the significance of individualized accommodation plans. However, the crux of an accommodation plan is that it is unique and individualized to each employee. The accommodation plan must also be responsive to the particular job an employee performs and the work context they are in. Therefore, while a centralized portal for accommodation plans may be a guide or

resource for employers, it cannot replace the important discussions that must occur between employers and employees to develop an appropriate accommodation plan. This must be emphasized on any website that is established.

Individualized accommodation plans are already a requirement under the *Code*. Therefore, giving the government two years to improve information to employers is too long.

The government should also be tasked with ensuring that there is information widely available for potential or current employees so they know they have a right to an accommodation plan tailored to their unique needs.

ARCH recommends that:

27. Employers must engage employees in the accommodation process to craft an individualized accommodation plan. A centralized portal for accommodation plans could serve as a starting point for how to accommodate but it must be clear that employers must design an individualized accommodation plan for each employee with a disability.

28. The right to have disability related supports and services must be communicated to all employees and potential employees in accessible formats.

ix) Recommendation 8: Monitoring the Return to Work Process

ARCH is pleased to read that many employers already have a return to work process developed to accommodate disability-related and other leaves. However, ARCH recommends that the Standard capture the evolving nature of disability and return to work practices and policies. Employers must continue to learn about how to have open and honest communication with employees returning to work from disability or other workplace leaves.

The SDC noted the importance of performance management, career development and redeployment for employees with disabilities. The SDC also recognized the need for a broader cultural change within an employment setting.

ARCH recommends that these issues be further developed in the present Proposed Revisions to the Employment Standard. If Ontario waits for another five years to recommend changes, there will be no opportunity to ensure that Ontario's employment sector will be accessible by 2025. The SDC must be satisfied that revisions are incorporated now to meet the pressing accessibility goals of the AODA. If amendments or changes are required by the time of the next review, there will already be a foundation on which to build them.

ARCH recommends:

29. Employers must be trained on how to have open, honest and transparent communication with an employee returning from work after an absence. This could involve preparing a new accommodation plan. It could also include a shift in the employee's duties.

30. An employer must be sensitive to the changing needs of employees with disabilities throughout the employment cycle and must promote a healthy and safe workplace for employees to return to. This could mean addressing any concerns of other employees and demonstrating that the employer is dedicated to making sure each and every employee in his/her workplace is productive to the degree that they can be.

VI. ENFORCEMENT AND COMPLIANCE

The predominant complaint heard during the Moran Review is the decided lack of enforcement and compliance measures contained in the AODA. The government must address this deficiency promptly so that the AODA has accountability built into it.

Legislation that does not provide any remedies for its breach does not hold anyone accountable. Lack of accountability means there is no incentive to act.

ARCH recommends that:

31. The government of Ontario introduce compliance and enforcement mechanisms in line with the obligations addressed in the AODA and its Standards. There must be a forum where individuals can file complaints about lack of accessibility in Ontario, and where there is accountability and redress.

Recommendations to this effect from this SDC would incentivize government action.

VII. CONCLUSION

Low employment rates contribute to persons with disabilities being overrepresented amongst the homeless population. The relationship between low employment rates and poverty rates of persons with disabilities reveals that removing accessibility barriers for those already in the workforce, while commendable, will not achieve full employment accessibility by 2025.

Ontario's accessible Employment Standard must also include persons with disabilities who are further marginalized because they live in rural, remote or northern communities. Accessibility throughout Ontario is the goal, and where someone lives may mean that additional measures must be taken to ensure accessible employment.

Employees are less likely to require accommodation in a workplace where barriers have already been identified and removed. Therefore, both employers and employees should continue to receive training with respect to the identification and removal of barriers in the workplace.

In addition, the SDC must make the identification and removal of barriers its focal point. This approach is more consistent with the aim of making workplaces more accessible

for people with disabilities and also ensures greater compliance with the governing statute, the *Accessibility for Ontarians with Disabilities Act*.

It must also be made clear in the Standard that at each stage of the employment cycle, barrier identification and removal is critical. The Standard must provide a process that organizations can use to identify and remove barriers, as well as a mechanism to ensure that new barriers are not created.

ARCH thanks the SDC for an opportunity to comment on the Initial Recommendations Report. We would welcome an opportunity to discuss these submissions with you further.