

Ontario Human
Rights Commission

Commission ontarienne
des droits de la personne



Policy on ableism and discrimination based on disability

**Launch – ARCH Disability Law AGM
September 29, 2016**

**Speaking notes –
Chief Commissioner Renu Mandhane**

Check against delivery

Introduction

- It is a pleasure to join you tonight to celebrate Arch Disability Law's accomplishments and launch the Ontario Human Rights Commission's updated Disability policy, a policy that we are very proud of and very happy to share with you.
- Before I continue, I wish to acknowledge that Toronto lies within the traditional lands of the Anishinaabe Peoples, and is a sacred gathering place of the many Indigenous peoples of Turtle Island.
- I also wish to recognize the long history of First Nations and Métis Peoples in Ontario, and show respect today to the Mississaugas of New Credit.

Strategic planning

- After being appointed Chief Commissioner last November, one of my first commitments was to hear directly from Ontarians about their vision for human rights into the future, and their expectations of the Commission over the next five years.
- This work is ongoing, and we are hoping to launch a new strategic plan before the end of the year.
- Over the past six months, we have consulted with nearly 300 individuals representing over 80 community groups, including Arch Disability Law.
- We heard remarkable consensus on the key issues facing our community, on areas like the justice system and policing and issues faced by Indigenous communities.
- We also heard loud and clear that we need to continue to work on existing and emerging issues faced by people with disabilities, especially in the education and employment sectors.

Why launch at ARCH?

- We also heard that community wanted to see more of the Commission – that we needed to be *more* present – in the media, online, and mostly importantly in community spaces.
- I first got to know Robert Lattanzio, the Executive Director of ARCH, in a small-town airport lounge.
- We were both travelling home from a conference and ended up spending a few hours talking about my work and his.
- H talked passionately about the people that ARCH serves.
- I can recall that conversation today, even though it was years ago.
- That is the power of “real engagement” – it outlasts tweets and even policies.
- It is real and authentic and resonates because of its humanity.
- And that why we are trying to create opportunities for real dialogue with the people who are at the core of our mandate.
- We’re also looking for ways to continue and grow our valued partnerships with disability experts and organizations – like ARCH.
- That’s why I am so excited about tonight.
- This is the first time we have launched a policy at a community agency.
- I hope it signals an approach that situates the Commission in the community that it serves, and I thank ARCH for being open to us being a part of their AGM.

A look at history

- I'd like to start by looking at history from a different perspective – through the experiences of people with disabilities in our society.
- In Canada and across the world, people with disabilities have long experienced abuse, neglect, exclusion, marginalization and discrimination.
- This negative treatment has included immigration restrictions and involuntary sterilization, not to mention inappropriate and harmful institutionalization and exclusion from employment, housing and educational opportunities.
- This unfortunate part of Canada's history has continuing effects today.
- People with disabilities describe ongoing negative experiences due to ableist attitudes and behaviours.
- The Law Commission of Canada has defined ableism as:
 - “a belief system analogous to racism, sexism or ageism, that sees people with disabilities as being less worthy of respect and consideration, less able to contribute and participate, or of less inherent value than others.”
- Ableist attitudes are often based on the view that disability is an “anomaly to normalcy,” rather than an inherent and expected variation in the human condition.
- Ableism may be conscious or unconscious, and may be embedded in institutions, systems or the broader culture of a society. It can be expressed in paternalistic and patronizing behaviour toward people with disabilities.

- Ableism is of great concern because it can significantly limit the opportunities of people with disabilities and reduce their inclusion in the life of their communities.

Original disability policy

- The Commission released its original Disability policy in 2001.
- That policy detailed a rigorous standard for interpreting “undue hardship” under the *Code*.
- It set out three principles of accommodation: respect for dignity, individualized accommodation, and integration and full participation.
- It broke new ground when it advanced the position that an employer’s duty to accommodate included a responsibility to consider alternative work arrangements for people with disabilities.
- That policy has been cited and followed by many human rights legal decision-makers and has guided employers, housing providers and service-providers across Ontario in their day-to-day operations.

What’s different

- Our new and updated *Policy on ableism and discrimination based on disability*, builds on the strength of our original Disability policy, while adding to its effectiveness by incorporating 15 years of case law developments, new international human rights standards, and evolving social science research.
- The policy is a new and revamped statement from the Commission on how the Ontario *Human Rights Code* protects people with disabilities from discrimination and harassment.

- While the original policy focused mainly on employment, the new policy expands its scope to include case law and examples from the housing and services sectors, in addition to employment.
- The policy clearly sets out how organizations can comply with their legal responsibilities under the *Code*, including preventing and addressing discrimination and harassment, and taking all required steps to accommodate people with disabilities to the point of undue hardship.

Gains, but barriers persist

- People with disabilities have made some significant gains in recent years.
- For example, we now have the *Accessibility for Ontarians with Disabilities Act*, and in 2010, Canada ratified the United Nations' *Convention on the Rights of Persons with Disabilities*.
- But even with these new rules in place – serious barriers to equality continue to exist throughout society.
- Ontarians with disabilities continue to have lower educational achievement levels and a higher unemployment rate.
- They are also more likely to have low incomes, and are less likely to live in adequate, affordable housing.
- And disability continues to be the most cited ground of discrimination in claims made to the Human Rights Tribunal of Ontario.

Time for an updated policy

- These are just a few of the factors that led us to update our disability policy, to make sure it contained up-to-date tools for employers, housing providers, service providers, other responsible parties, and for our partners in the community.
- Our policies aim to bring to life the rights protected in the *Code*.
- Our new *Policy on ableism and discrimination based on disability*, helps to clarify the law, and offers guidance and best practices to help organizations respond to discrimination and prevent it from happening in the future.
- They represent our best advice and interpretation of the spirit of the *Code*, and form the basis of our education and outreach efforts.
- They are also considered by the Human Rights Tribunal of Ontario, and other tribunals and courts, and are often applied to the facts of their cases and quoted in their decisions.

What's in the policy

- The *Policy on ableism and discrimination based on disability* provides updated, practical guidance on the legal rights and responsibilities set out in the *Code* as they relate to the ground of disability.
- It looks at the evolving legal definition of disability, to reflect the changes in what is considered a disability.
- Conditions that were not previously recognized as disabilities in the past now are, such as multiple chemical sensitivities and food-related anaphylaxis.

- The policy recognizes the unique experience of people who face discrimination based on disability combined with other *Code* grounds, such as age, sex, sexual orientation, race, etc.
- The policy clarifies what medical information can and can't be asked for when a person makes an accommodation request.
- It clearly states that employers, housing and service providers have a duty to inquire if they think someone may need an accommodation based on a disability, even if the person hasn't made a specific request.
- With reference to recent case law, the policy also provides updated guidance on:
 - The right to be free from reprisal ("payback") for exercising one's rights under the *Code*
 - The different ways that discrimination can happen
 - All aspects of the duty to accommodate
 - An organization's responsibility to prevent and eliminate discrimination, including the need to design its environment, policies and programs inclusively
 - And the test for undue hardship, which – as we state clearly – should involve looking *only* at costs, outside sources of funding, and health and safety considerations, the 3 factors set out in the *Code*

Adding to the case law

- There have been many important legal decisions that have helped advance the rights of people with disabilities, and have helped inform our updated policy.
- Nobody knows this better than the lawyers at ARCH, who for 36 years have been the leading experts in disability law in Ontario.

- You have a long history of important systemic victories – several of which are cited in our policy.
- One really important example is the Supreme Court of Canada’s decision in *Moore vs. British Columbia*.
- That case involved a student who alleged discrimination in education services because he was not given appropriate accommodation for his severe dyslexia.
- The Commission and the Canadian Association for Community Living, represented by ARCH, were among the many groups that intervened.
- The Commission argued that the area of “services” in human rights codes should be given a broad interpretation and that to prove discrimination, people who need accommodation because of a disability do not have to show they were treated worse than people with other disability needs.
- Due to the able advocacy of ARCH lawyers, in its 2012 decision, the Court adopted our arguments and found that Jeffrey Moore was entitled to meaningful access to the same education all students are entitled to.
- To prove discrimination, he did not have to compare his accommodation with that of other students with disabilities, but instead compare it to the services received by all students.
- The Court also confirmed the duty to accommodate to the point of undue hardship.
- It found that Jeffrey Moore was not given equal access to the education system.

- Without having considered the alternatives for managing its finances while still providing accommodation for students with disabilities, the school board was not able to show that it met the undue hardship standard.
- It is our hope and intention that the updated Policy will continue to help advance the rights of people with disabilities, both in and out of court.

Supplementary products

- To support our updated policy, we have also prepared handouts that are geared to employers, housing providers and service providers.
- Copies of these three handouts, along with an updated general brochure, are available for you tonight.

Concluding comments

- To conclude, the OHRC's *Policy on ableism and discrimination based on disability* is intended to provide updated, clear, user-friendly guidance on how to assess, handle and resolve human rights matters related to disability.
- Our goal is to continue to provide a common vocabulary and an effective resource to help all of us recognize and advance human rights and responsibilities when disability is involved.
- We could only achieve this goal by connecting and consulting with the leaders in the disability community – including ARCH Disability Law Centre – and people with lived experience.
- We are grateful to ARCH and broader community.
- You have continued to share your expertise and experience, your successes and your challenges.

- By doing this, you have helped us to strengthen, expand and reinforce an important resource for overcoming discrimination for every Ontarian with a disability.
- Thank you.
- I now invite you to ask some questions, and I ask Cherie Robertson to join me.
- Cherie is a Senior Policy Analyst at the Commission, and the author of the new policy.