

Business Law

FOCUS

Ramping up accessibility compliance



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With budgets as tight as skinny jeans these days, many organizations may find it a burden to set aside resources to better accommodate workers and customers with disabilities.

But an economic case can be made for such an initiative: the disability market—currently, about 4.4 million Canadians and expected to grow as the population ages—represents a tremendous opportunity.

Besides good business sense, in Ontario there is a legal obligation to make premises and practices more accessible. The new year ushered in the deadline for compliance for 360,000 private sector and non-profit organizations, including law firms, to comply with the Customer Service Standard under the *Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, c. 11*.

Under the Act, Ontario became the first Canadian jurisdiction to legislate a proactive accessibility regime. To achieve the goal of an accessible Ontario by 2025, the Act mandates standards in five areas: customer service, employment, information and communications, transportation and built environment.

The Customer Service Standard was enacted as O. Reg. 429/07 on Jan. 1, 2008. The standards for employment, information and communications and transportation were consolidated in one regulation—the Integrated Accessibility Standards Regulation, O. Reg. 191/11—which came



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into force on July 1, 2011. Certain requirements of the Employment Standard and Transportation Standard (e.g. developing emergency response information for employees with disabilities) have a compliance deadline of Jan. 1, 2012, with the rest to be phased in between now and 2021.

The Customer Service Standard and the Integrated Accessibility Standards apply to designated public sector organizations and every other person or organization that provides goods, services or facilities to the public or other third parties that have at least one employee in Ontario.

The Customer Service Standard contains 11 standards that apply to all organizations and additional requirements for organizations with 20 or more employees. When determining employee count, all full-time, part-time, seasonal and contract employees must be tallied.

Generally speaking, organizations must:

- Establish policies, practices and procedures on providing goods or services to people with disabilities.
- Have a policy about the use of assistive devices by people with disabilities.
- Communicate with a person with a disability in a manner that accounts for his/her disability.
- Let people with disabilities bring their service animals onto the parts of the premises open to the public or other third parties except where the animal is otherwise excluded by law.
- Let people know ahead of time what, if any, admission fee will be charged for a support person.
- Let the public know when facilities or services that people with disabilities usually use are temporarily unavailable.
- Ensure that staff receives training on how to serve people with disabilities.

■ Implement a process to receive and respond to feedback.

Organizations with 20 or more employees must also document their policies, practices and procedures in writing, make them available and, if requested, provide them in an accessible format. They must also file compliance reports with the Ontario government. There is no word yet about how the government will audit the reports submitted. Nonetheless, it is prudent for an organization to record such activities.

The Built Environment Standard has yet to become law. The final draft shows it will include changes to the Ontario Building Code and areas that the code does not cover (e.g. amusement parks, playgrounds, recreational trails). Significantly, it will apply only to new construction and major renovations and will not require retrofits, nor will it address single-family homes.

Under the *Accessibility for Ontarians with Disabilities Act*, penalties for non-compliance range from \$200 to \$2,000 for individuals and unincorporated associations, and \$500 to \$15,000 for corporations.

The Licence Appeal Tribunal is charged with hearing appeals from enforcement action, whether a compliance order or a monetary penalty. Those who disobey an order to comply, fail to pay the monetary penalty or furnish misleading information in a compliance report can be prosecuted and fined—up to \$50,000 a day for an individual and \$100,000 a day for a corporation. The government has indicated that it will resort to penalties only after all compliance assistance efforts have been exhausted.

According to the latest (2006) Statistic Canada survey, 1.85 mil-

lion Ontarians are among the 4.4 million Canadians who have a disability of some kind. The figures are bound to climb as the population ages because disability tends to increase with age. Seniors and people with disabilities will soon constitute 20 to 25 per cent of the Canadian recreation, retail, entertainment, workplace and housing marketplaces. Add to this their extended networks (relatives, friends, colleagues, care providers, etc.) and it becomes clear that the disability market boasts enormous opportunity. Businesses that move swiftly to implement accessible features and customer service practices will be poised to capitalize on this opportunity.

There is also a compelling argument for hiring people with disabilities. Having a diverse workforce can attract a broader customer base and boost corporate image. People with disabilities have unique experiences and insights that can bring innovation to product and service development and enhance work culture. Studies have shown that employees with disabilities have less absenteeism, better retention rates, equal or higher performance ratings and are more loyal to their companies than able-bodied employees. Contrary to common conception, the cost of accommodating employees with disabilities is minimal—56 per cent of accommodations cost nothing, while the rest typically cost \$500, according to a U.S. Department of Labour report. This pales in comparison to the prospective payoff in productivity, innovation and market share. ■

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What keeps franchisors up at night?

Legendary American tycoon J. Paul Getty once said: "In times of rapid change, experience could be your worst enemy."

That may be true in how we use technology, but it can't be said for what franchising is all about. In fact, franchising generally thrives on the tried and true, replication of the past is at its very heart—be it the "proven formula" for success or the actual product or service that is being sold.

Still, the franchising business can't help escape the fact that change is inevitable, whether it's the way we communicate—from customer to franchisee to franchisor and back down the chain—



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or the modern methods for inventory control, advertising and marketing.

So what about change is keeping franchisors up at night? The simple answer is how rapidly things are changing.

To meet this challenge, franchisors must increase their ability to detect and react to changes, amass sufficient capital to keep up with change and deliver solutions to

their franchisees to help them cope with rapid change. Franchisors are increasingly challenged by the rate of change in their customer's preferences and buying habits.

Complicating things further is the reality that franchisees are not employees and a franchisor cannot expect to simply require franchisees to implement change, no matter how compelling it may be to change. With these thoughts in mind, the following is a discussion of some of the greatest challenges confronting franchisors.

Economics

Tight credit for prospective franchisees buying franchises and

the impact of economies in crisis make it very difficult for franchisees and their franchisors to grow and prosper. These developments affect everything from business planning, to franchise sales, to earnings projections and product pricing.

Interestingly, as credit has dried up in the U.S., more U.S. franchisors have decided to expand their systems to Canada, where credit has still been available to prospective franchisees, although with more difficulty than in the past.

Regardless of how smart we are or how solid our business concept is, we are all vulnerable to the downturns in the national and international economies. Franchis-

ors have the added burden of their franchisees looking to them for answers, both short- and long-term, when sometimes there is no answer other than slight tinkering and lots of patience.

Politics

The history of legislative oversight for franchising has been long and arduous, to say the least. In Ontario, it came to the fore in the 1971 Grange report on franchising, which was later taken up by NDP member Mel Swart in the early 80s. But it wasn't until his party assumed power in the early 90s that things got serious. Following

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