



Response to the Proposed Integrated Accessibility Regulation under the *Accessibility for Ontarians with Disabilities Act*

A joint submission from
Canadian Mental Health Association Ontario and
Schizophrenia Society of Ontario

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Preface

The Canadian Mental Health Association, Ontario (CMHA Ontario) and the Schizophrenia Society of Ontario (SSO) are not-for-profit, charitable, provincial mental health organizations committed to improving the quality of life for people with mental illnesses and their families.

CMHA Ontario has a mission to develop and provide public policy advice that promotes mental health and improves the lives of people living with a mental illness. CMHA Ontario participated in the *Accessibility for Ontarians with Disabilities Act (AODA)* review process, and articulated the need to include non-visible disabilities, including mental illnesses, in the AODA standards and regulations.

SSO has a mission to improve the quality of life of people affected by schizophrenia and psychosis through education, support programs, public policy and research. Reaching over 30,000 people each year, SSO is the largest organization representing people affected by schizophrenia in Ontario.

Introduction

CMHA Ontario and SSO applaud the government's commitment to enhance accessibility through the AODA. We welcome this opportunity to provide input on the Proposed Integrated Accessibility Regulation (IAR) which harmonizes the AODA standards for information and communications, employment and transportation into a single regulation.

Individuals living with a mental illness face unique human rights issues and multiple barriers as a result of their illness. They also often fall through the cracks in the health care system, and face barriers to accessing the social determinants of health. Through the AODA, the government has the opportunity to protect the rights of individuals with mental illnesses by addressing the overt and systemic discrimination that Ontarians with mental illnesses face on a daily basis.

Proposed IAR: the impact on individuals with mental illnesses

While the proposed IAR will help to facilitate improved accessibility of persons with disabilities in Ontario, there are several issues that remain unaddressed with respect to individuals with mental illnesses.

IAR should include a social disability perspective

CMHA Ontario and SSO are concerned that the IAR has not been developed from a true social disability perspective; therefore it is inadequate in promoting equity for persons with mental illnesses and other non-visible disabilities in all aspects of society. Our organizations view disability as a social pathology, rather than an individual pathology. The social disability

perspective, which includes the environmental approach and the rights-outcome approach, focuses on how social, political, economic and environmental structures can oppress and discriminate against people with disabilities, including individuals with mental illnesses. The environmental approach contends that disability is the result of society's failure to accommodate people with disabilities in terms of developing adequate public policies to ensure full participation in physical and social environments. The rights-outcome approach focuses on promoting equity for all persons with disabilities. The proposed IAR provisions address barriers once they have been identified by persons with disabilities; yet, the IAR does not provide proactive measures to prevent or anticipate the creation of barriers before they occur. A comprehensive social disability framework should be integrated into the IAR.

Non-visible disabilities should be explicitly addressed

CMHA Ontario and SSO are concerned that non-visible disabilities, including mental illnesses, have not been explicitly addressed within the AODA; as a result, the accommodation of individuals with mental health disabilities through the IAR is compromised. In order to ensure that the accessibility needs of those with mental health disabilities are met, a standardized working definition of "mental disorder" would need to be included in the AODA. While "mental disorder" is included both in the definition of "disability" under the AODA and as a prohibited grounds of discrimination under the *Ontario Human Rights Code*, the term is not clearly defined in either piece of legislation. A working definition of the term "mental disorder" should be developed to more effectively operationalize both the Code and the AODA to reflect the needs and concerns of people with mental health disabilities. A standardized working definition would also provide a common language that service providers and policy makers can use when working with and advocating for individuals with mental disorders. A social disability approach should be utilized when developing this definition so that the term "mental disorder" is inclusive of all individuals with diagnosed and/or undiagnosed mental health conditions. The definition should also ensure that individuals living with mental illnesses have the right to choose whether to self-disclose and self-identify as having a mental disorder.

Volunteers should be included in the IAR

Access to employment is an important part of the recovery process. For many individuals with mental health conditions, volunteer work is often the entry point into the workforce. Our organizations are concerned that the accommodation of individuals with mental health disabilities is further compromised by excluding volunteers and only including paid employees under the AODA and proposed IAR. The exclusion of volunteers is contrary to the accessibility requirements in the *Ontario Human Rights Code*. Section 5 of the Code states, "Every person has a right to equal treatment with respect to employment without discrimination..." According to the Ontario Human Rights Commission, this statement should be interpreted to protect anyone in a work-like context. This includes family members, volunteers and others who work without a salary to gain employment experience, such as students on a practicum or individuals who are being mentored. Expanding the accessibility requirements to include unpaid individuals is especially important for those with mental health conditions.

Attitudinal barriers and stigma should be addressed in the IAR

While the IAR addresses physical barriers faced by persons with disabilities, true accessibility requires a focus on attitudinal barriers as well. Stigma is a significant attitudinal barrier that restricts opportunities for people with mental illnesses to fully participate in society. We are concerned that despite recommendations in our prior submissions, the AODA and subsequently the IAR is still primarily focused on reducing visible barriers, regardless of the nature of the disability.

Dedicated funding and shorter timelines are needed to ensure compliance

Our organizations share concerns related to the implementation of the AODA standards and regulations. First, we are concerned that in the absence of dedicated funding, organizations may claim undue hardship, and thus fail to meet compliance requirements. We therefore recommend that dedicated funding be made available to support organizations to meet AODA compliance standards. Secondly, we are concerned that the implementation period and timelines currently proposed are too lengthy, and that this will result in a lack of momentum. We recommend that the timelines for complying with the AODA standards and regulations should be substantially reduced.

Proposed IAR Provisions: concerns with the proposed regulation

In addition to the overarching issues noted above, we have further concerns related to specific provisions of the proposed IAR.

Part A: General Requirements

- ***Organizations of all sizes should be required to comply with all obligations under the AODA standards and regulations, especially Part C: Accessible Employment Requirements.*** While the AODA and the *Ontario Human Rights Code* apply to all individuals and organizations in Ontario, the IAR states that private and not-for-profit organizations with 1 to 49 employees are exempt from compliance reporting, developing written policies, developing accessibility plans and developing accessible websites, and that they are not required to comply with documentation requirements under Part C: Accessible Employment Requirements. More than 1.5 million Ontario workers are employed in workplaces of this size, including a significant number of persons with disabilities, one third of whom are employed in workplaces with fewer than twenty employees.
- ***In order to ensure consistency across the province, provincial standards are needed that define the content and delivery of all training with regards to the AODA standards and regulations.*** Although the IAR states that “All employees, volunteers, persons who provide services on behalf of an organization and persons who participate in developing the policies, practices and procedures of an organization, will be required to be trained on the requirements of the accessibility standards,” there are no provincial standards for the content

of this type of training. Comprehensive anti-stigma training on the accommodation of persons with mental health disabilities should also be specified in AODA training standards.

- ***In order to ensure that the established AODA obligations are enforced, the Compliance Enforcement Initiatives should include rigorous independent oversight and monitoring of AODA compliance.*** The Proposed Compliance Enforcement Initiatives under the IAR are inadequate. For example, under the proposed regulations, organizations are responsible for supervising their own compliance with the AODA standards. Specifically, organizations are required to send their accessibility reports to the Director, a Ministry appointed official responsible for monitoring compliance and enforcement. Although the AODA provides for “inspections”, it is unclear when an inspection is to be initiated and to whom the certified inspectors are to report.
- ***A complaints procedure process that includes a step-by-step guide to filing complaints, a mechanism for tracking data about such complaints and an appeals process should be developed as part of the AODA and the IAR. This complaints procedure must be accessible to the individual who is lodging a complaint.*** The Feedback Process requirement does not include a process for individuals to file complaints against organizations that have not complied with AODA standards and regulations; it is unclear whether complainants must contact the Director responsible for IAR Compliance Enforcement Initiatives, or whether they must go forward to the Human Rights Tribunal of Ontario.

Part B: Accessible Information and Communications Requirements

- ***Organizations that are required to comply with the AODA and IAR should be supplied with a plain language version of the standards and regulations.*** CMHA Ontario and SSO support plain language practices that increase readability, comprehension and use of information by the reader. A plain language version of the standards and regulations will ensure that organizations understand how to remove barriers pertaining to information and communication with employees, other organizations, service recipients and the general public. A plain language document will also enable persons with a disability to understand their rights under these standards.

Part C: Accessible Employment Requirements

- ***The IAR should apply to all paid employees and unpaid volunteers to ensure optimal inclusion of people with mental health disabilities.*** The current compliance requirements apply to recruitment, hiring and retention of persons in paid employment, including full-time, part-time, or apprenticeships. As stated above, we are concerned that the IAR does not apply to unpaid positions, including volunteer placements, co-op placements and other unpaid employment or student placement situations.
- ***Organizations should be required to take pro-active measures to survey their workplace for barriers, to remove existing barriers and to anticipate and prevent future barriers.*** The proposed IAR addresses the employer’s duty to accommodate workers and job

applicants with disabilities. For example, the IAR currently states that “All obligated organizations will be required to inform employees on how they support employees with disabilities in the workplace, including, without being limited to, how they will provide job accommodations for employees with disabilities, on request.” This requirement places the onus on the individual with a disability to identify potential barriers and request the necessary accommodation. This requirement may result in additional barriers for people with mental illnesses and other non-visible disabilities who may not feel safe or comfortable in disclosing their disability. Rather than providing this information on request, the onus should be placed on employers to provide accommodation policies to all current and potential employees.

CMHA Ontario and SSO welcome the opportunity to collaborate with the Ministry of Community and Social Services to advance the rights of all Ontarians with disabilities, including individuals with mental illnesses.

For further discussion, please contact:

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