

# **Legislative Toolkit for Accessibility**



May 5, 2010

# LEGISLATION TOOLKIT

## Background

There are 3 levels of government in Canada – federal, provincial and municipal. The Parliament of Canada and the legislatures of the provinces have the power to make law. Municipalities under the powers delegated to them by the provinces pass by-laws. The federal and provincial governments enact statutes and regulations while the municipal governments enact by-laws.

**Legislation** is a collection of statutes, regulations and by-laws. This term encompasses both Acts enacted by the Legislature and regulations made by a person or body whose authority to make them is set out in an Act.

A **statute** is a law or act which expresses the will of a legislature or Parliament (the Federal or Provincial government). The terms "statute" and "Act" are interchangeable.

A **regulation** is a statutory instrument made in the exercise of a legislative power conferred by or under an Act of Parliament. A regulation deals with topics related to the Act under which it is made; the purpose of a regulation is to provide details to give effect to the policy established by the Act. The process for amending a regulation is usually shorter than the process for amending an Act.

A **by-law** is a law which a municipality makes.

## Underlying Law

- 1) The ***Constitution Act, 1867*** established the division of powers between the Parliament of Canada (section 91) and the legislatures of the provinces (section 92)
- 2) The ***Canadian Charter of Rights and Freedoms*** is a bill of rights and entrenched in the *Constitution*. It provides that persons with disabilities are equal before and under the law and have the right to the equal protection and benefit of the law.
- 3) The ***Canadian Human Rights Act*** is a federal statute enacted to ensure equal opportunity and prevent discrimination based on a set of prohibited grounds, including gender, disability and ethnicity. The Act applies throughout Canada but only to federally regulated activities as set out in section 91 of the *Constitution Act, 1867*.
- 4) The ***Ontario Human Rights Code*** is a provincial statute enacted to ensure equality and prevent discrimination based on a set of prohibited grounds, including ethnicity, gender, sexual orientation, disability and age. The Code applies in Ontario and only to provincially regulated activities as set out in section 92 of the *Constitution Act, 1867*.

**NOTE:** Federal legislation can be viewed at <http://laws.justice.gc.ca>

## **Specific Provincial Accessibility Legislation**

1) The ***Ontarians with Disabilities Act, 2001*** (the “ODA”) remains in force and requires public sector organizations, including the City of Oshawa, to (i) prepare annual accessibility plans; and (ii) make them available to the public.

2) The ***Accessibility for Ontarians with Disabilities Act, 2005*** (the “AODA”) sets out the roadmap to make Ontario accessible by 2025. Under this Act, accessibility standards are being developed and implemented to break down barriers in the areas of customer service, information and communication, employment, transportation and the built environment

The accessibility standards are the rules that businesses and organizations in Ontario will have to follow to identify, remove and prevent barriers to accessibility.

The first standard to come into effect is the “Accessibility Standards for Customer Service” (Ontario Regulation 429/07). Ontario is also developing standards in the areas of:

- i) built environment (buildings and other structures);
- ii) employment;
- iii) information and communications; and
- iv) transportation.

**NOTE:** The Ministry of Community and Social Services, which is the provincial ministry for, among other legislation, the ODA and the AODA can be accessed online at <http://www.mcscs.gov.on.ca>.

## **Other Applicable Provincial Legislation**

1) The ***Municipal Act, 2001*** is a provincial statute that provides the broad authority under which municipalities operate.

The powers of a municipality must be exercised by its council. A municipal power, including a municipality’s capacity, rights, powers and privileges, must be exercised by by-law unless the municipality is specifically authorized to do otherwise.

Part II, specifically section 9, 10 and 11, of the Act sets out the general powers of municipalities and Part III of the Act sets out the powers of municipalities related to specific “spheres of jurisdiction” such as waste management and animals. Sections 10 and 11 of the Act specifically permit municipalities to pass by-laws with respect to business licensing. Part IV of the Act sets out the specific rules for the passing of licensing by-laws.

The following is a list of some of the City’s current by-laws that may pertain to accessibility:

<b>By-law</b>	<b>Application/Use</b>
By-law 76-2006 “Adequate Heat”	General standards for heat in rental premises.
By-law 136-2006 “Boulevard”	General standards for boulevard use/maintenance.
By-law 126-75 “Council Procedure”	Procedure for Council and Committee meetings.
By-Law 125-2005 “Licensing”	Business regulation of certain types of business.
By-Law 127-2007 “Lot Maintenance”	Cleanliness of property/maintenance of lots.
By-law 147-2007 as amended by 40-2009 “Notice”	When and how notice is given for Council and Committee meetings.
By-Law 17-2010 “Purchasing”	Purchase of services and supplies for the City.
By-Law 14-2010 “Responsible Pet Owners”	Regulation of pet owners and their pets.
By-Law 101-79 “Snow and Ice Removal”	Removal of Ice and Snow from City sidewalks, streets, etc.
By-Law 50-2003 “Taxicab Licensing”	Licensing of taxicab owners, drivers and brokers, including regulation of accessible taxi cabs.
By-Law 113-2008 “Waste Collection”	Standards for waste collection.

On a go-forward basis, the City may consider issues surrounding:

1. Enforcement;
2. Health and safety; and
3. Meeting, notice and publication methods.

<b>NOTE:</b> City of Oshawa by-laws can be viewed at <a href="http://www.oshawa.ca">http://www.oshawa.ca</a>
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2) The **Planning Act** sets out the ground rules for land use planning in Ontario. It describes how land uses may be controlled, and who may control them.

Section 2(h.1) of the Act identifies “the accessibility for persons with disabilities to all facilities, services and matters to which the Act applies” as a “matter of provincial interest”.

Section 41 of the Act pertains to site plan control areas and section 41(4)2(f) permits the municipality to require drawings that sufficiently display “facilities designed to have regard for accessibility for persons with disabilities” with respect to commercial and industrial uses and for residential uses with more than 24 units.

Section 51 of the Act pertains to subdivisions and section 51(24) of the Act requires that in considering a draft plan of subdivision, regard shall be had to accessibility for persons with disabilities.

The City’s Official Plan (OP) sets out the City’s long-term objectives and current policies with respect to planning.

The City’s zoning by-law (By-law 60-94) is used by a municipality to regulate the use of land. It is also the primary tool for implementing the objectives of the City’s OP.

The City may also use Community Improvement Plans (CIPs) to:

1. focus public attention on local priorities and municipal initiatives;
2. target areas in transition or in need of repair, rehabilitation and redevelopment;
3. facilitate and encourage community change in a co-ordinated manner; and
4. stimulate private sector investment through municipal incentive-based programs.

Currently the City has 4 CIPs in place:

1. Brownfields Renaissance Community Improvement Plan
2. Central Business District Community Improvement Plan
3. Simcoe Street South Renaissance Community Improvement Plan
4. Downtown Shoulder Area Renaissance Community Improvement Plan

On a go-forward basis, the City may consider:

1. Continuing to utilize Site Plan Control with respect to accessibility;
2. Incorporate stronger policies related to accessibility into the City’s OP;
3. Continue to include requirements for accessibility plans in CIPs and other development projects.

3) The **Building Code Act, 1992** (BCA) is the legislative framework governing the construction, renovation and change of use of buildings. The Building Code (Ontario Regulation 350/06) is a regulation under the BCA and establishes detailed technical and administrative requirements as well as minimum standards of general application for the construction of buildings in Ontario. The BCA establishes a number of “purposes” of the Building Code, including health and safety, fire protection, resource conservation (including energy and water conservation), environmental integrity and accessibility.

The property standards provisions of the BCA provide a framework for municipalities to require that buildings, structures and the surrounding lands and vacant property be maintained or improved, on an ongoing basis, to standards set out in by-laws. Property standards do not relate to the construction of new buildings or structures or renovations or repairs to them; rather these standards relate to existing buildings and structures and the property upon which they are situated.

Section 15(3) of the BCA permits the municipality to pass a by-law with respect to property standards. Oshawa By-law 1-2002 is the City’s Property Standards By-law passed pursuant to section 15(3) of the Act.

Table 2.2.1.1 in Ontario Regulation 350/06 to the BCA addresses the following:

Accessibility	OA	An <i>objective</i> of this Code is to limit the probability that, as a result of the design or <i>construction</i> of a <i>building</i> , a person with a physical or sensory disability will be unacceptably impeded from accessing or using the <i>building</i> or its facilities.
Accessibility — Barrier-free Path of Travel	OA1	An <i>objective</i> of this Code is to limit the probability that, as a result of the design or <i>construction</i> of a <i>building</i> , a person with a physical or sensory disability will be unacceptably impeded from accessing the <i>building</i> or circulating within it.
Accessibility — Barrier-free Facilities	OA2	An <i>objective</i> of this Code is to limit the probability that, as a result of the design or <i>construction</i> of a <i>building</i> , a person with a physical or sensory disability will be unacceptably impeded from using the <i>building’s</i> facilities.

As well, section 3.8 of Ontario Regulation 350/06 to the BCA addresses “Barrier-Free Design”.

4) Part III (section 26 through 30) of the **Highway Traffic Act** deals with accessible parking permits. Accessible parking permits (APP) are issued to individuals and entitle the vehicle in which it is displayed to be parked in a designated accessible parking space.

There are also 2 regulations enacted under the *Highway Traffic Act*, Ontario Regulation 629 “Vehicles for the Transportation of Physically Disabled Passengers” and Ontario Regulation 581 “Accessible Parking for Persons with Disabilities”.

Sections 100 through 102 of the *Municipal Act, 2001* set out municipalities' authority with respect to parking in the municipalities but not on highways.

Pursuant to its authority under the *Municipal Act, 2001* the City has enacted By-law 79-99 "Traffic By-law", including Schedule XXI "Accessible Parking".

The City has also implemented By-law 97-2009, as amended, which regulates parking in certain prohibited areas.

<b>NOTE:</b> Provincial legislation can be viewed at <a href="http://www.e-laws.gov.on.ca">http://www.e-laws.gov.on.ca</a>
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### **GENERAL**

On a go-forward basis, staff, in consultation with the OAAC, should review the Legislation Toolkit for items to include in the Accessibility Plans to be approved by City Council.

**Schedule “A”**

The following chart comprises legislation that may affect individuals with accessibility concerns and is included at this time for information purposes:

<b>Legislation</b>	<b>Application</b>
Services and Supports to Promote the Social Inclusion of Persons with Developmental Disabilities Act, 2008	Not Yet in Force.
Election Act, R.S.O. 1990, c. E.6 ss. 55 and 55.1	Election Accessibility.
Assessment Act Section 3(22)	Provides for exemptions from property taxation where improvements, alterations or additions to existing homes or designated portions of new homes are made or built to accommodate persons with disabilities who would otherwise require care in an institution.
The Blind Persons’ Rights Act	Prohibits discrimination in services, accommodation, facilities or occupancy against blind persons using guide dogs and prohibits persons who are not blind from using white canes. Compliance with O. Reg. 429/07 requires a policy regarding Service Animals.
The Ontario Disability Support Program Act, 1997 O. Reg. 223/98	Provides a separate income and employment support program for eligible persons with disabilities. Removes persons with disabilities from the welfare system and provides them with assistance that recognizes their unique needs. Oshawa residents who are enrolled in the ODSP automatically qualify for the Recreation Access Membership Program (RAMP). Family members of RAMP members (who qualify under ODSP) are eligible to receive similar discounts.
Municipal Elections Act, 1996	Regard must be had for voters with disability when choosing polling station
Election Finances Act	Campaign expenses incurred by candidate with disability specifically related to disability.
Municipal Freedom of Information and Protection of Privacy Act	Section 47(1)(a.1) (not yet in force) will permit Minister to make regulations requiring head of institution to assist persons with disabilities with making requests under MFIPPA.