Accessibility Obligations and Upcoming Deadlines for Federally-Regulated Entities

By June 1, 2023, most larger federally-regulated entities (i.e. those with 100 or more employees) will be required to publish their initial Accessibility Plan in accordance with the requirements set out in the *Accessible Canada Act* ("ACA").

As previously reported in our practical advice for all federally-regulated employers and the telecommunications and broadcasting industries specifically, the ACA created an accessibility regulatory regime designed to remove barriers to accessibility in seven key areas. The regime includes separate and overlapping sets of regulations issued by the Governor in Council ("GC Regulations"), which apply to most federally-regulated entities, the Canadian Transportation Agency ("CTA Regulations"), which apply to entities regulated under the *Canada Transportation Act*, and the Canadian Radio-television and Telecommunications Commission ("CRTC Regulations"), which apply specifically to entities that are regulated under the *Broadcasting Act* and *Telecommunications Act.*

The requirements of the ACA are complex and often confusing to many federally-regulated entities. We have produced this timely reminder that focuses on the upcoming requirements and deadline for entities to publish their Feedback Process and initial Accessibility Plan.

The Feedback Process

Larger regulated entities that are subject to the CRTC Regulations were required to publish a Feedback Process on June 1, 2022 in order to obtain feedback on accessibility barriers from employees and members of the public in advance of creating their initial Accessibility Plan. For smaller CRTC regulated entities (i.e. those with between 10 and 99 employees) and for larger federally-regulated entities in other sectors with 100 or more employees, a Feedback Process is required by June 1, 2023. A federally-regulated entity's Feedback Process must be published on its website and is the mechanism through which it receives feedback form its employees and members of the public on barriers to accessibility.

The Initial Accessibility Plan

The most substantial obligation under the GC Regulations, CTA Regulations and CRTC Regulations is the requirement to prepare, publish and regularly update an

Accessibility Plan based on consultations with persons with disabilities.

Generally, the Accessibility Plan must demonstrate how the entity is taking steps to identify, remove, and prevent barriers to accessibility. Among other things, the regulations require that entities include the following in their Accessibility Plans:

- Information regarding how employees, clients, members of the public and others can contact the entity;
- Information regarding how the entity consulted with persons with disabilities in the preparation of the Accessibility Plan; and
- The entity's policies, programs, practices and services in relation to the identification and removal of barriers, and prevention of new barriers in the areas required by the Act.

In addition to these requirements, Employment and Social Development Canada has recommended additional items to be included in an organization's Accessibility Plan, which are set out in our prior bulletin.

Each of the GC Regulations, CTA Regulations and CRTC Regulations set the same deadline by which an entity must publish its initial Accessibility Plan: private sector entities with 100 or more employees must publish their initial Accessibility Plans by June 1, 2023. Private sector entities with between 10 and 99 employees must publish their initial Accessibility Plans by June 1, 2024. Following the publication of the initial Accessibility Plan, federally-regulated entities will be required to publish progress reports in each of the next two calendar years (i.e. June 2024 and June 2025 for entities with 100 or more employees, and June 2025 and June 2026 for entities with 10 to 99 employees) and update their Accessibility Plans by the end of the third year (June 2026 or June 2027, respectively).

Federally-regulated entities with dual accessibility obligations under the GC Regulations and either the CRTC Regulations or the CTA Regulations will have to prepare an initial Accessibility Plan that meets the requirements of both sets of regulations.

Penalties for Non-Compliance

The risk of negative consequences for failing to publish an initial Accessibility Plan is real. Apart from reputational harm stemming from non-compliance, the penalties for non-compliance range from $250 to $250,0000. These penalties depend on the classification of the violation (ranging from minor to very serious); the entity's prior history of notices of violations, warnings or penalties; and the size of the entity, among other factors. Given that there is an obligation to consult with persons with disabilities in the preparation of an entity's Accessibility Plan, federally-regulated employers with more than 100 employees should start working on their Accessibility Plans as soon as possible to allow time for such consultations in advance of the June 1, 2023 deadline.

If you have any questions regarding the ACA or require assistance in creating your company's Accessibility Plan, please contact the authors of this bulletin or your regular Fasken lawyer.

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