

# Compliance With AODA Does Not Necessarily Insulate Employers From Human Rights Liability



Since the adoption of the Accessibility of Ontarians with Disabilities Act, 2005 (“AODA”), many employers have raised questions of whether compliance with AODA also satisfies its duty to accommodate employees to the point of undue hardship under the Human Rights Code (“Code”). The short answer to this question is “No”. While the Human Rights Tribunal (“Tribunal”) has determined that it does not oversee compliance with AODA, the Human Rights Commission has confirmed on its website that AODA does not supplant the Code, and compliance with one does not necessarily mean compliance with the other.

Four recent decisions from the Tribunal have confirmed that employers and service-providers who fail to accommodate the needs of its customers and employers will still be subject to human rights liability if they fail to accommodate the accessibility needs of persons with a disability to the point of undue hardship. In the cases outlined below, service-providers and employers were required to pay significant damages notwithstanding the fact that steps were taken to accommodate the needs of the person with a disability:

- In *Thai v. Hing Loong Investments Ltd.* 2011 HRT0 2227, the entrance to a store was not accessible to the Applicant who used a scooter. The Tribunal awarded \$2,500 in general damages, and required the store owner to undergo online human rights training, and to review the Human Rights Commission Policy and Guidelines on the Duty to Accommodate.
- In *Wozenilek v. 7-Eleven Canada Inc.*, 2010 HRT0 407, the Applicant who was in a wheelchair was a regular customer of a 7-Eleven store in the Toronto area. The Applicant repeatedly requested that 7-Eleven make the store accessible to him by installing an automatic door. The store attempted to accommodate his needs by offering to provide him with a cell phone, or by installing a buzzer that would serve to notify the employee of his arrival

in order to permit him to gain entrance to the store. The Applicant rejected this form of accommodation on the basis that it would be inconvenient to the employee who would be working. After a two year delay in responding to the Applicant, an automatic door was finally installed at a cost of \$5,000. Notwithstanding the fact that the automatic door was eventually installed, the Tribunal awarded \$6,000 for injury to his feelings, dignity and self-respect on account of 7-Eleven's delay in responding to the accommodation needs of the Applicant.

- In *Austin v. Clayton Lakeside-Beaton Inc.*, 2011 HRT0 31, part of a public campground site was inaccessible to the Applicant (a store, washroom and public telephone). In an attempt to accommodate the Applicant, the campground operators offered to install a bell that the Applicant could ring from the bottom of the stairs of the store. The clerk was then supposed to come out, find out what the Applicant wanted and bring the items to him. The Applicant complained that he frequently had to wait for the store clerk to serve him. As a result, the campground hired a contractor to install a ramp to the store, but the Applicant still found the ramp to be ineffective. The Applicant further asserted that the community washrooms were not accessible. The measures taken by the campground to accommodate the needs of the Applicant were found to fall short of its obligation to accommodate to the point of undue hardship, and as such, it was required to pay \$15,225 for injury to the Applicant's dignity, feelings and self-respect. It was further directed to provide accessible washrooms.
- In *Palangio v. Cochrane (Town)*, 2011 HRT0 1491, the Applicant alleged that the Town discriminated against him in employment on the basis of his disability when they failed to accommodate his hearing impairment needs during Town Council meetings. In particular, the Applicant alleges that the Town refused to install a speaker system to allow him to record Council Chambers Town Hall meetings. In an attempt to accommodate the Applicant's needs, the Town provided the Applicant with headphones and ear buds to be able to hear, follow and participate in the Council meetings. Although this was provided, the Applicant complained that he still was unable to hear certain portions of the Council meeting, and was often embarrassed when he had to ask various Council members to repeat statements. The Tribunal found that the Town failed in its duty to accommodate the Applicant to the point of undue hardship, and awarded the Applicant \$10,000 for loss of dignity, and the injury to his feelings arising from his right to be free from discrimination on the basis of his disability.

The above cases serve as a stark reminder to employers and service-providers that the duty to accommodate an individual's disability to the point of undue hardship under the Code continues to exist, and it is still open to customers and employees to file a human rights complaint if they feel that there are accessibility barriers that are present that prevent them from accessing goods and services. While AODA sets out a legislated "minimum floor" of requirements employers and organizations are expected to adhere to, it does not replace the onerous requirements that exist under the Code to accommodate a person with a disability to the point of undue hardship.



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