

Disability Accommodation Mandates

Various persons or entities are required, up to the point of undue hardship, to provide accommodations for those with special needs. The mandates to provide such accommodations can be found within statutes such as the *Human Rights Code*, [R.S.O. 1990, c. H.19](#) (the "*Code*"), the *Accessibility for Ontarians With Disabilities Act, 2005*, [S.O. 2005, Chapter 11](#) (the "*AODA*"), as well as the common law decisions applicable thereto.

While private businesses may be subject of the requirement to accommodate, larger corporations whose point of "undue hardship" as well as government facilities, especially those controlled by municipalities, are commonly within the concern of accessibility issue based cases. It appears that municipal governments are often challenged to accommodate whereas municipalities are presumed, or at least perceived, to have the deep taxpayer pockets required, and the responsibility, to ensure accessibility to municipal properties and services by spreading out the cost of accommodation among the taxpayer base. These costs of accommodation may involve removal of barriers that might otherwise impede access to municipal facilities such as the lowering of curbs or installation of ramps all as necessary to enable wheelchair access to playgrounds, parks, sidewalks, buildings, to the installation of 'chirping' traffic lights, or braille signage, for the benefit of the visually impaired, among other things. As an example of alleged failures to accommodate, among other things, within the case of *Sprenger v. Gananoque (Town)*, [2019 HRTO 354](#) it was alleged that:

[5] In the Application, the applicant made a number of allegations of discrimination and reprisal, which I have summarized:

1. On July 5, 2016, the respondent dissolved the Town's Accessibility Advisory Committee, of which the applicant was a member.



2. In 2015, the Accessibility Advisory Committee had made recommendations with respect to accessible parking plans for the town. The respondent failed to implement them as agreed.

3. In September 2015, the respondent offered training on the *Accessibility for Ontarians with Disabilities Act, 2005, [SO 2005, c 11](#)* ("AODA") to members of the Town Council, some staff and committee members. The applicant alleges that the training took place in a location which was not accessible and was not offered to volunteers of all of the committees of the Council.

4. On November 16, 2016, the applicant contacted the Town Clerk inquiring about the town's process for public consultation requirements under the *AODA*. She was advised it hadn't been updated since the *AODA* came into force.

5. The applicant alleges that on numerous occasions throughout 2017 the Chief Building Inspector approved building or renovation projects which were not compliant with the *AODA*.

6. The applicant alleges that a community garden was built in the spring of 2016 without any consultation of the Accessibility Advisory Committee. A second community garden was approved in 2017, regarding which the applicant was consulted. She alleges that insufficient public consultation was undertaken.

7. The applicant alleges that throughout 2016 and 2017 a number of parks were developed or redeveloped that did not comply with the *AODA*.

8. In her application the applicant indicated that in the summer and fall of 2016, several new sidewalks were completed. The applicant alleges that these sidewalks are not compliant with the *AODA* and that the respondent has not been responsive to her concerns.



a. The side walk on Henrietta Street has no depressed curb or ramping to allow the applicant access to it with her walker. The applicant raised her concern by email on June 19, 2017 and received a response on July 6, 2017 that the matter was put on the Town's Accessibility Action Plan.

b. In her reply to the respondent's request for a summary hearing, the respondent indicated that the Victoria Street sidewalk was ongoing in the spring of 2017. She alleges that the sidewalk has curb ramping at every driveway, giving the sidewalk a "roller coaster effect". She alleges that it is difficult for her to navigate and results in muscle fatigue, spasms and chronic pain.

9. The applicant alleges that a new shuttle began operating on June 29, 2017. On July 1 and 3, 2017, the applicant asked bus drivers what accommodation was available for mobility issues and they were not aware of any. The applicant brought her concerns to the respondent. She alleges that there were many days she wishes to take the bus but did not because she was aware that no accommodation would be available.

10. Renovations were being made to the Town Hall. The plan was made available to the public for viewing in September 2016. In December of the same year the plan was finalized. In July 2017, the Planning Advisory Committee held a meeting open to the public, at which the plan was revealed and the public was invited to comment. The applicant had been consulted on the design in a private meeting that took place the day prior to the Planning Advisory Committee meeting. When she spoke at the Planning Advisory Committee meeting, she was asked to stop speaking. She alleges she was called a pest and not allowed to speak about the accessible features she would require following the renovations. She alleges that the Accessibility Report which was presented at the meeting was referred to as the "infamous report". The applicant indicated at the combined hearing that she had access to an audio recording of the meeting.



11. Following the Planning Advisory Committee meeting, the applicant filed a Code of Conduct complaint. The respondent approved an investigation by the Town's Integrity Officer, into the treatment she received during the meeting. The Integrity Officer delivered a report on November 7, 2017 to the Town Council meeting. A motion was passed at the meeting to create a policy entitled the Managing Unreasonable Customer Behaviour Policy. The applicant alleges that the creation of the policy was a reprisal for her complaint relating to her treatment at the Planning Advisory Committee.

12. The applicant alleges that a ramp was installed on a beach to allow wheelchair access to the water. The idea was brought forward in early 2016 and installation was completed in August of 2017. The applicant alleges that the ramp was poorly designed based on its intended purpose and that there was a lack of meaningful consultation as decisions were being made with respect to the ramp.

13. On September 10, 2017, a police officer came to the applicant's home. The applicant alleges that he was at her home because she had visited the water access ramp at the beach on September 4, 2017, and sent an email to the respondent on September 6, 2017 indicating that she believed the ramp to be unsafe. She alleges he stated: "I understand that you advocate for accessibility; because of this and other incidents you need to stop."

14. Sometime after July 18, 2017, the applicant sent an email to the respondent requesting when she would receive a response to a letter she had previously sent. The email was forwarded, and the applicant was copied, with the comment "see below really". The applicant alleges that this comment is a reprisal.

Standing Concerns (right to claim)

While the *Sprenger* case alleged a plethora of concerns, it is notable, and important to bear in mind by any persons seeking to bring an Application, that many of the allegations were systemic in nature rather than specific violations in the rights of Ms. Sprenger. Whereas the Human Rights Tribunal of Ontario (HRTTO) is empowered with the mandate to address remedy requests for individuals whose rights may be adversely affected, the HRTTO is without a mandate to address

systemic complaints; and accordingly, Ms. Sprenger was without standing on the aspects of the Application that raised systemic issues rather than issues directly faced by Ms. Sprenger. Specifically, the HRTO stated:

[10] Many of the alleged incidents raise issues of systemic discrimination and contain no allegation that the applicant has personally experienced any adverse treatment. The Tribunal has held that an individual must allege an infringement of their own rights under the *Code* and not an application that she or he believes to be in the public interest. See *Carasco v. University of Windsor*, [2012 HRTO 195](#) (CanLII); *Freitag v. Penetanguishene (Town)*, [2015 HRTO 1275](#) (CanLII).

[11] Specifically allegations numbered 1, 2, 3, 4, 5, 6, 7 and 12 (as set out above) did not contain any allegations of adverse treatment of the applicant. I find these allegations must be dismissed as having no reasonable prospect of success.

Furthermore, while both the *Code* and the *AODA* may prescribe accommodation requirements, the HRTO is empowered only to address concerns arising out of the *Code*; and accordingly, violations of the *AODA* are beyond the review of, and redress by, the HRTO:

[12] Similarly, many of the allegations detail incidents in which the respondent has allegedly failed to properly interpret the *AODA*. The Tribunal has held that it does not have the jurisdiction to address alleged violations of the *AODA*. See *Clipperton-Boyer v. McDonalds Restaurants of Canada Limited*, [2016 HRTO 967](#) (CanLII); *Bishop v. Hamilton Entertainment and Convention Facilities Inc.*, [2012 HRTO 708](#) (CanLII).

[13] The applicant did not made any submissions as to how these allegations have any reasonable prospect of success in light of the Tribunal's jurisprudence. Allegations 3, 4, 5, 7 and 8 above, to the extent that they raise issues of non-compliance with the *AODA* are dismissed as having no reasonable prospect of success.

Summary Comment

Within the interim *Sprenger* decision as cited above, many of the allegations were dismissed as seeking systemic redress rather than redress for violations of Ms. Sprenger as well as seeking redress for violations of the *AODA* rather than violations of the *Code*. The apparent 'take away' lesson is to recognize that while accommodations failings may occur, the HRTO is without empowerment to address any and all allegations, even certain allegations that may be founded and deserving of attention (by another authority).

