Submission of the Ontario Human Rights Commission to the Transportation Standards Review Committee regarding the Initial Proposed Transportation Accessibility Standard

August 31, 2007

This Submission is in response to the Accessibility Directorate of Ontario's *Initial Proposed Transportation Accessibility Standard ("Transportation Standard")*.

The Ontario Human Rights Commission ("Commission") commends the Ministry for establishing the Transportation Accessibility Standards Development Committee to develop the *Transportation Standard under the Accessibility for Ontarians with Disabilities Act, 2005* ("AODA") and for this initiative to provide feedback on the *Transportation Standard*. The Commission understands that the final Transportation Standard will be submitted to the Minister of Community and Social Services and the Minister Responsible for Ontarians with Disabilities with the ultimate goal of having all or parts of the *Transportation Standard* adopted in regulation under the AODA.

The Commission believes that strong standards under the AODA can lead to significant improvements in the lives of Ontarians with disabilities and is pleased to provide input into such standards.

On March 31, 2004, the Commission made a submission regarding the Consultations to Strengthen the *Ontarians with Disabilities Act, 2001*, S.O. 2001, c. 32 ("*ODA*") in which it made a number of recommendations to make the legislation more effective ("Appendix A"). The lack of explicit harmonization between the *Code* and the *ODA* was a key issue for the Commission in 2004 and continues to be an area of significant concern in the *Transportation Standard*.

The Commission has grave concerns with significant aspects of the *Transportation Standard*. In a number of areas, the standard falls far short of human rights standards, not only failing to make progress towards equality for persons with disabilities, but regressing on gains previously made. The Commission urges the Committee to significantly revise the *Transportation Standard* in order to bring it into alignment with human rights standards and the purposes of the AODA. The Commission will consider taking further steps pursuant to its powers under the Ontario *Human Rights Code* ("the *Code*") should the standard not be significantly strengthened prior to adoption into regulation.

Human Rights and Public Transportation

Public transportation – or the lack of it – touches the lives of thousands of Ontarians in profound ways. Access to transportation can make the difference in access to work or education. It also has major consequences for those who need to get to health care and other essential government services. For many, it

makes the difference between isolation and loneliness, and full participation in the life of their communities. Without accessible transportation, employment, education, and community life remain out of reach for many, and potential contributions to the community are lost. Access to equal, dignified transportation is fundamental to the achievement of equality for persons with disabilities. For this reason, the Commission views this *Transportation Standard* as of fundamental importance.

Persons with disabilities have a human right to adequate, dignified public transportation services on an equal basis. Section 1 of the *Code* guarantees the right to equal treatment with respect to services, including transportation, without discrimination on the basis of disability. A failure to provide equal access to transportation services is a violation of the *Code* and can be the subject of a human rights complaint. In two recent human rights complaints, the Human Rights Tribunal of Ontario ("HRTO") determined that the failure of the Toronto Transit Commission to provide audible announcements of stops on its subway system, and on streetcars and busses, violated the human rights of persons with visual impairments.[1] The only available defence to such discrimination is showing that providing access or services would constitute undue hardship having regard to cost, outside sources of funding, or health and safety factors. The Commission's *Policy and Guidelines on Disability and the Duty to Accommodate*[2] ("*Disability Policy*") makes it clear that the standard for undue hardship is a high one. The onus of proof will be on the service provider, and it must provide evidence that is objective, real, direct, and, in the case of cost, quantifiable. For costs to amount to undue hardship, they must be so substantial that they would alter the essential nature of the business, or so significant that they would substantially affect its viability.

The Supreme Court of Canada has noted the need to "fine-tune" society so that its structures and assumptions do not exclude persons with disabilities from participation in society[3] and has affirmed that standards should be designed to reflect all members of society, unless to do so would be impossible without imposing undue hardship.[4] The Commission's *Disability Policy* and relevant case law make it clear that services should be made accessible through inclusive design choices at the outset. Where barriers already exist, steps should be taken to remove them, unless to do so would cause undue hardship. Organizations should understand and be aware of the possibility that barriers exist within their services, and actively seek to identify and remove them. In a recent Supreme Court of Canada decision, the Court upheld an order of the Canadian Transportation Agency that Via Rail modify newly purchased rail cars to make them accessible for persons using personal wheelchairs, despite the argument of the transportation provider that this would significantly add to the cost of the rail cars.[5]

The Commission has undertaken significant work to outline the human rights responsibilities of transit providers, and to promote and enforce greater

accessibility in transit services. In 1999, the Commission undertook a survey of Ontario's public transit providers, in order to obtain information about the status of accessible transit in Ontario, and to identify key issues. The survey revealed that, while significant efforts had been undertaken to improve the accessibility of transit services across the province, much remained to be done. There were significant gaps in the accessibility of conventional transit systems in Ontario, and persons using specialized transit services experienced major discrepancies in service levels across the province, including inequitable eligibility criteria, fees, and geographic limitations. In some cases, persons with certain types of disabilities, such as persons with mental disabilities or temporary disabilities, were unable to access either the conventional or the specialized transit system.

The Commission followed up the survey with a *Discussion Paper on Accessible Transit Services in Ontario*[6], released in February 2001. The Discussion Paper identified a number of key issues, and solicited written submissions from interested parties. In early 2002, the Commission released its Consultation Report, *Human Rights and Public Transit Services in Ontario*[7], based on the submissions it received, and an updated survey of transit service providers. Beyond identifying issues surrounding accessible public transportation and the human rights principles that apply, the Report suggested ways to move the issue of accessible public transportation forward. The Commission believes that the achievement of equality for persons with disabilities in access to transportation services requires the adoption of clear, enforceable, legislated standards; the provision by government of sufficient funding for accessible transit; and a commitment by transit providers to complying with the requirements and principles of the *Code*. In particular, the Commission recommended that transit providers:

1. Set as a goal full integration and accessibility of services;
2. Design inclusively when developing new policies, procedures, or programs, when creating new services, or building, renovating or purchasing new buildings or capital equipment;
3. Develop and maintain plans to achieve full integration and accessibility;
4. Ensure that the process of planning for and implementing accessibility is respectful of the dignity of persons with varying types of disabilities, older persons, and families with young children; and
5. Take all steps short of undue hardship to achieve integration and maximum accessibility.

It is the Commission's position that, at minimum, the *Transportation Standard* should ensure that transportation providers meet the above five standards, which are based on fundamental human rights law, and developed through public consultation.

Unfortunately, the *Transportation Standard* falls short of these requirements in a number of significant areas:

- Transit providers can provide "equivalent" services as an alternative to a fully accessible transit system, rather than as an additional accommodation for persons whose disabilities bar them from using even the most accessible integrated system;
- Transportation providers are permitted to continue to make non-inclusive design choices;
- The standard sets only weak requirements for barrier review and removal with respect to inaccessible conveyances;
- The standards for accommodation of the needs of transit users with disabilities are not consistent with the requirements of the *Code*; and
- The timelines and requirements for standards are not consistent with the undue hardship standard.

The Relationship of the Code *and the AODA*

The Commission believes that it is essential that the AODA be interpreted, and standards under it developed, in a manner harmonious with the *Code*.

The *Code* is quasi-constitutional law, which binds the Crown and prevails over any other Act or regulation, unless the act or regulation specifically provides that it is to apply despite the *Code*.[8] The AODA in fact specifically states "if a provision of this Act, of an accessibility standard or of any other regulation conflicts with a provision of any other Act or regulation, the provision that provides the highest level of accessibility for persons with disabilities with respect to goods, services, facilities, employment, accommodation, buildings, structures or premises shall prevail."[9] The *Code* therefore clearly has primacy over the AODA and any standards developed under it.

The AODA and the *Code* share significant common purpose: to permit persons with disabilities to enjoy equal opportunity and to participate fully in the life of the province. The AODA provides a mechanism through which organizations can bring themselves into compliance with the *Code*. The provisions and principles of the *Code*, including the undue hardship standard, continue to apply, and compliance with the accessibility standards and regulations under the AODA does not constitute a defence to a human rights complaint under the *Code*.

It is the Commission's experience that, where there are overlapping pieces of legislation, it is to the benefit of all parties to ensure that the interpretation and application of the legislation is harmonized. The Commission has heard repeatedly from employers and service providers that it is frustrating, confusing and inefficient to be confronted with multiple standards with respect to the same issue. For example, where accessibility standards under *Ontario Building Code* are not in harmony with those under the *Code*, service providers must seek information regarding two quite separate sets of standards in order to ensure that

their new building or renovation is in compliance with the law. Service providers may frequently find themselves inadvertently in non-compliance, and may face human rights complaints as a result.

Because the standards set out under the AODA, including the *Transportation Standard*, are detailed and specific, if AODA standards are not harmonized with the *Code* there is a significant likelihood that organizations complying in good faith with AODA standards will find themselves afoul of the requirements of the *Code*, and the subject of human rights complaints. If standards set under the AODA are substantially lower than the requirements of the *Code*, the AODA may, ironically, act as an unintended barrier to the achievement of equality by persons with disabilities.

In its decision in *Via Rail,* the Supreme Court of Canada commented on the Canadian Transportation Agency's interpretation of the accessibility requirements of its own guiding legislation, the *Canada Transportation Act*. The Court stated that it was the Agency's obligation "to interpret and apply the *Canada Transportation Act* in a manner consistent with the purpose and provisions of human rights legislation. This means identifying and remedying undue obstacles for persons with disabilities in the transportation context in a manner that is consistent with the approach for identifying and remedying discrimination under human rights law."[10] The Agency, in applying its legislation and assessing the accessibility requirements for Via Rail services, was obliged to apply the human rights standard of accommodation to the point of undue hardship. Similarly, the requirements of the AODA must be interpreted and applied in a manner consistent with the provisions of the *Code*. This includes the development of standards under the AODA.

The Preface to the *Transportation Standard* indicates that the requirements are a baseline, and encourages service providers to exceed the minimum requirements. As well, the standards require that vehicles conform to all applicable legislation and regulations, which necessarily includes the *Code*. However, the *Code* is not specifically referenced, either as one of the pieces of legislation with which compliance is required, or elsewhere within the document and the requirements set out in the standard are not harmonized with those of the *Code*. In fact, some of the provisions of the *Transportation Standard* set requirements significantly below those of the *Code*. The Commission is concerned that these provisions of the *Transportation Standard* will set back the progress towards equality of persons with disabilities.

The Commission has powers under section 29 of the *Code* to conduct public inquiries and has, in the past, used similar powers to conduct broad public consultations or inquiries on issues affecting persons with disabilities, and to issue reports that identify barriers affecting persons with disabilities and make recommendations for action. The Commission also has broad powers to initiate complaints (or to file applications, as will be the terminology under recent

amendments to the *Code*) against organizations, including government, who fail to meet the principles and standards set out in the *Code*. Should the *Transportation Standard* be adopted into regulation without addressing the Commission's concerns, the Commission will consider exercising either of these powers as part of its public interest mandate.

The Proposed Transportation Standard

The Commission welcomes the development of the *Transportation Standard*. The Commission heard strongly during the transit consultations that real progress in transit accessibility was unlikely without consistent standards, and that for maximum effectiveness, these standards should be legislated, enforceable, and have clear timelines. The *Transportation Standard* is a key step in the development of accessible transportation services, and has the capacity to ensure real and substantial improvements in the lives of persons with disabilities.

The Commission recognizes that almost all of the key accessibility areas raised with the Commission during the transit consultation are considered in the *Transportation Standard*. The development of standards and timelines for such aspects of specialized transit systems as fare equality, eligibility for services, trip restrictions and reservation systems is important. The Commission is pleased to see that the *Transportation Standard* address issues faced by students with disabilities in accessing school transportation services.

However, as is further detailed below, the Commission has a number of significant concerns with respect to the *Transportation Standard*.

Barrier Review and Requirements for New Conveyances

Most of the accessibility requirements outlined in the *Transportation Standard* for conveyances on fixed route passenger transportation services apply only to new conveyances (see, for example, the standards for step surfaces, grab bars and handholds, floor surfaces, accessible aisles, allocated spaces for mobility aids, seating space for personal care attendants and service animals, stop request controls, indicators, emergency response controls, and lighting and colour contrasting). That is, almost all of the standards related to the barriers that persons with disabilities will experience on conveyances are dealt with only with respect to new conveyances. Standard 5.33 does require transportation providers to "establish and maintain a policy that details how the transportation provider considers opportunities to improve accessibility features of long-life equipment"; however, this vague provision essentially leaves barrier removal on existing conveyances to the discretion of transportation providers. It requires only the development of a policy for considering opportunities for barrier removal, rather than actual barrier removal. Further, such a policy need not be drafted until three years after the standards are adopted into regulation.

Compounding the problem, a "new conveyance" is defined as "a conveyance that is offered for sale or lease after manufacture without any prior use". In other

words, accessibility requirements apply, not to new *purchases*, but to new *vehicles*. There is nothing preventing transportation providers from purchasing inaccessible second-hand vehicles, and then not retrofitting them in any way for accessibility. This approach was specifically rejected by the Supreme Court of Canada in the *Via Rail* case. In that case, Via Rail purchased 139 rails cars that were no longer required for service through the Channel Tunnel. The rail cars, although very cost appropriate for Via Rail, were inaccessible for persons using personal wheelchairs. Via Rail did not plan extensive accessibility retrofits for the rail cars. The Canadian Transportation Agency, upheld by the Supreme Court of Canada, found that this was a violation of Via Rail's duty to accommodate persons with disabilities to the point of undue hardship, and required Via Rail to retrofit the rail cars to meet accessibility standards.[11]

Further, the standards for new conveyances do not commence for three to eight years after they are adopted in regulation. Transportation providers, under these standards, can continue to purchase inaccessible new conveyances for a period of several years.

Given the very long life span of most transportation vehicles, these standards potentially defer full accessibility for persons with disabilities for a very lengthy period. During the transit consultation, the Commission heard that reliance on procurement policies in favour of accessible vehicles would produce results only slowly, due to the high cost of purchasing accessible vehicles and the long life span of this equipment: for example, there were municipalities in which over half of the bus fleet was over 25 years old.[12]

It is the Commission's position that it is a violation of the *Code* for transportation providers to purchase and put into use inaccessible new conveyances. Further, the *Code* requires transportation providers to take concrete steps to address barriers on existing vehicles. The *Disability Policy* makes it clear that transportation providers, like all service providers, are obliged to design for inclusion, and to actively identify and remove barriers for persons with disabilities, up to the point of undue hardship.

The Commission is gravely concerned by these provisions of the *Transportation Standard* and strongly urges the Committee to revisit them.

Alternative Services

The *Disability Policy* requires that, where the most appropriate (most inclusive, dignified) accommodation would result in undue hardship, service providers must consider and implement alternative, interim or phased-in accommodation.

The *Transportation Standard* contemplates the provision of "alternative services" on a temporary basis. Alternative services are temporary accommodations, that will approach the desired result until the barrier is removed or an equivalent service is put into place.

The only standard that appears to specifically contemplate alternative services is standard 5.11, which deals with fare payment and ticket validation equipment. Under the standard, this equipment must be accessible within 18 years. Where this equipment is not yet accessible, alternative services must be put into place; however, this is not required for a period of three years. In other words, it is acceptable, under this standard, for transportation providers to provide no access, even on a next-best option basis, for fare payment and ticket validation for three years after the standard is adopted. Under the *Code*, if it would cause undue hardship to provide fully accessible fare payment and ticket validation equipment, the transportation provider would be required to *immediately* consider and if possible implement alternative, or interim accommodations.

As well, given the lengthy implementation timeframes for most of the standards, it is notable that this appears to be the only circumstance in which the *Transportation Standard* requires providers to search for, and implement, alternative or interim accommodations. Where full equality is being deferred for up to 18 years, the *Code* clearly requires interim accommodations to be made, unless to do so would cause undue hardship.

Equivalent Services

The *Transportation Standard* envisions "accessible public transit services" as including a variety of options (or "family of services"), including to-the-door, community busses, and accessible fixed route services. The standard specifically allows for "equivalent services", meaning services that have similar or identical results. The *Transportation Standard* details accessibility requirements specific to each type of transportation service, i.e., streetcars, subways, transit busses etc., but does not set forth an overall requirement that the service of public transportation be accessible.

The *Disability Policy* emphasizes the right to full participation and integration as part of the right to equality of persons with disabilities. The *Disability Policy* recognizes that equality may at times require differential treatment that does not offend the individual's dignity; however, segregated treatment in services for persons with disabilities is less dignified and is unacceptable, unless it can be shown that integrated treatment would pose undue hardship or that segregation is the only way to achieve equality. The Supreme Court of Canada, in the *Via Rail* case, has affirmed the right of persons with disabilities to integrated access to transportation services:

"It is the rail service itself that is to be accessible, not alternative transportation services such as taxis. Persons with disabilities are entitled to ride with other passengers, not consigned to separate facilities. Likewise, the fact that there are accessible trains travelling along some routes does not justify inaccessible trains on others. It is the global network of rail services that should be accessible."[13]

In the context of public transit, the Commission has applied this principle to state that the accessibility of the conventional transit system is essential, even where excellent specialized services are available. There will always be individuals who will be unable to use even the most accessible conventional transit system, and for these, the duty to accommodate requires that transit services provide specialized transit systems that provide dignified services to a level comparable with that of the conventional system. However, the existence of a specialized transit system, no matter how excellent, does not obviate the duty of transit providers to ensure the maximum accessibility, short of undue hardship, of the conventional transit system.

Implementation Timelines and Undue Hardship

The Commission recognizes that low levels of public funding for transit are a major contributor to the slow progress of transit systems towards full accessibility. Transit providers are hampered in their efforts by a lack of resources. This is a reality that must be acknowledged in setting standards for accessibility.

That said, the *Code* requires service providers to accommodate the needs of persons with disabilities up to the point of undue hardship, taking into account the factors of cost, outside sources of funding, and health and safety. The Supreme Court of Canada has held that the undue hardship standard, developed by that Court, is the universal approach that should be used throughout Canada when looking at the obligation on respondents to accommodate persons with disabilities,[14] and has warned that "one must be wary of putting too low a value on accommodating the disabled. It is all too easy to cite increased cost as a reason for refusing to accord the disabled equal treatment."[15] As the Court noted in *Via Rail*, "[T]o find that an obstacle denying access to transportation services is justified, therefore, no reasonable alternative to burdening persons with disabilities must exist." [16] The appropriate timeline for implementation of accessibility initiatives is set by the undue hardship standard. The Commission is concerned that many of the timelines set out in the *Transportation Standard* are not consistent with the undue hardship standard.

A number of the provisions of the *Transportation Standard* set the requirements on transportation providers significantly lower than the undue hardship standard. For example, in standard 5.25.1, which deals with location of personal care attendants, the transportation provider must provide seating for personal care attendants on all new conveyances *where possible*. Similar language is used in standard 5.26.1 dealing with the location of service animals. In standard 5.32, transportation providers must take *"reasonable steps"* to inform and accommodate persons with disabilities where there are planned or unanticipated service disruptions. In standard 6.6, which relates to pick up times, transportation service providers must notify passengers with reservations of delays "where possible and practical".

Most of the standards set lengthy implementation timelines of from three to 18 years. Some accessibility improvements will require substantial investment of resources, and significant timelines are understandable (although it is notable that transportation providers have in a very significant number of areas been given the maximum possible implementation time, given the AODA's target date of full accessibility by January 1, 2025). However, in a number of cases, it is not at all clear why it should take years to implement relatively simple steps. For example, it is not clear why it should require three years to ensure that vehicles display international symbols of access, ensure that accessibility-related equipment is maintained consistent with the manufacturer's specifications, mark courtesy seating as close as possible to the entrance door, provide basic information related to the availability of accessibility-related features and equipment, or to provide accessibility-related training to employees and volunteers.

The timelines for some standards are clearly not consistent with the undue hardship standard. For example, in *Lepofsky v. Toronto Transit Commission*, the HRTO found that there was no cost or significant health and safety risk associated with bus and streetcars drivers announcing stops, and ordered the Toronto Transit Commission to commence announcements within *thirty days* of the decision.[17] By contrast, standard 5.28, which deals with onboard announcements of stops and connections, does not come into effect until three years following the adoption of the standard into regulation, and standard 5.17, which deals with pre-boarding announcements, does not in some cases come into effect for *eighteen years*. Transportation providers that delay the provision of onboard announcements for years are clearly in violation of the *Code*. This standard will almost inevitably result in human rights complaints against transportation providers, including potential Commission initiated complaints.

Standard 6.9 deals with eligibility for "accessible public transit services" to individuals whose disabilities prevent them from using fixed route public transit. The standard requires that the transportation consider an individual eligible for accessible public transit services if their disability prevents them permanently, temporarily, or consistently from using fixed route services. However, this standard does not come into effect for a period of 8 years after the standard is adopted into regulation. In *Human Rights and Public Transit Services in Ontario*, the Commission stated that "Where individuals are unable, because of their disabilities or because of the non-inclusive design of many older transit system, to access conventional transit systems, transit service providers have a duty to accommodate these needs, up to the point of undue hardship".[18] It is the position of the Commission that specialized transit is a form of accommodation that can be required to meet the duty to accommodate under the *Code*. It is unacceptable, and a clear violation of the *Code*, to permit a situation where a person with a disability has access to neither the conventional system, nor the specialized system, particularly over a period of many years.

Clarity and Specificity of Standards

A key role of standards is to provide certainty and clarity, both for transportation providers and for customers. The Commission has called for standards that are clear, enforceable, and comprehensive, and include timelines, performance measures, and accountability structures. The Commission has concerns with the *Transportation Standard* in this regard.

A number of the proposed standards are vague, and leave much to the discretion of transportation providers. For example, Standard 4, with respect to training, states that training must be provided "as necessary and as appropriate", and includes no accountability framework to ensure the effectiveness of training. Similarly, in section 6.2.5 dealing with performance measures, no specific requirements are set out regarding how the performance measures will be established and monitored. Section 6.9.2 provides that one of the criteria for eligibility for access to specialized transit services is whether the person's disability prevents the use of fixed route public transit; however, no provisions or guidelines are set out for determining whether this criteria has been met. This type of vague, discretionary language leaves it open to service providers to engage inadequate or discriminatory practices.

Companions

Standard 6.13 deals with accompaniment by companions on specialized transit services, and states that "The transportation provider may allow companions to travel with an eligible passenger if space is available and will not result in the denial of service to other eligible passengers". The implementation timeline for this standard is three years after adoption into regulation.

The disability community raised this issue with the Commission, both during the transit consultation, and during the Commission's more recent consultation on discrimination on the basis of family status. Persons with disabilities are also often parents and caregivers. As such, they are protected against discrimination on the basis of both family status and disability. Since specialized transportation providers will only rarely permit a parent with a disability to travel with a child, a parent with a disability may face significant obstacles in, for example, dropping a child off at daycare and then continuing on to an appointment or workplace.[19] This may violate a transportation service providers duty to accommodate the needs of persons identified by family status.

Conclusion

The Commission's work on disability has made it clear that government, institutions, and private sector organizations need to work together proactively to create a province that allows all its citizens, including those with disabilities, to contribute and participate fully. Legislation, regulations, guidelines and standards can be used as tools to enhance equality for persons protected by *Code* grounds - or they may be used to create barriers to equal access and perpetuate barriers.

The Commission is concerned that the *Transportation Standard*, as it stands, is a barrier to progress towards equality in transportation services. The proposed standard allows transportation providers to continue to create new barriers, and sets only weak requirements for the removal of existing barriers. The equality rights of persons with disabilities are deferred into an unacceptably distant future.

In order for the AODA to achieve its purpose of achieving accessibility for persons with disabilities, it is essential that the standards, and eventually regulations, under the AODA be harmonized with the *Code*. Specifically, the standards must clearly provide for inclusion and integration of persons with disabilities, ensure that no new barriers are created for persons with disabilities and that existing barriers are removed, and highlight that appropriate accommodation must be provided subject to the undue hardship standard.

The Commission would like to offer its ongoing support to the Committee and the Honourable Madeleine Meilleur, Minister of Community and Social Services and Minister Responsible for Ontarians with Disabilities in this process.

By working co-operatively and in consultation, an appropriate degree of harmonization between *Code* requirements and the standards and regulations under the AODA can be achieved. It is hoped that in future, as our society continues to age and greater numbers of people exhibit varying degrees of ability, issues of accessibility will not have to continue to be dealt with one human rights complaint at a time. Further, it is the Commission's desire to avoid having to take further steps, such as conducting a public inquiry or initiating a formal complaint (or application), in order to address any problems arising out of the lack of harmonization with the *Code*.

In keeping with the Commission's commitment to public accountability and its duties in serving the people of Ontario, this Submission will be made public.

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[1] In *Ontario Human Rights Commission v. Toronto Transit Commission*, 2005 HRTO 36, (September 29, 2005), the HRTO ruled that the TTC had a duty to accommodate visually impaired riders on its subway system by announcing stops. In the very recent *Lepofsky v. Toronto Transit Commission*, 2007 HRTO 23, (July 26, 2007), a similar ruling was made with respect to busses and streetcars.
[2] Ontario Human Rights Commission, 2001, available online at www.ohrc.on.ca. This *Policy* provides a detailed analysis of the undue hardship standard.
[3] Eaton v. Brant County Board of Education, [1997] 1 S.C.R. 241 at para 67.
[4] *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 at para 68.
[5] Council of Canadians with Disabilities v. Via Rail , 2007 SCC 15 [hereinafter Via Rail]
[6] Ontario Human Rights Commission, January 2001, available online at www.ohrc.on.ca
[7] Ontario Human Rights Commission, March 2002, available online at www.ohrc.on.ca
[8] Ontario *Human Rights Code*, R.S.O. 1990, c. H.9, s. 47(2)
[9] Accessibility for Ontarians with Disabilities Act, S.O. 2005, c. 11, s. 38
[10] *Supra*, note 5 at para 117.
[11] *Supra,* note 5.

[12] *Supra*, note 7 at page 15.
[13] *Via Rail, supra* note 5 at para. 175-176.
[14] British Columbia (Public Service Employee Relations Commission) v. BCGSEU, [1999] 3 S.C.R. 3 ("Meiorin") and British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights), [1999] 3 S.C.R. 868 ("Grismer")
[15] *Grismer, ibid.*, at para.41.
[16] *Via Rail*, *supra* note 5 at para.129.
[17] *Lepofsky v. Toronto Transit Commission*, *supra* note 1 at para. 12.
[18] *Supra*, note 7 at page 17.
[19] Ontario Human Rights Commission, *The Cost of Caring: Report on the Consultation on Discrimination on the Basis of Family Status*, November 2006, at page 62; also see *Human Rights and Public Transit Services in Ontario, supra* note 7 at page. 21.