May 5, 2009

The Honourable Madeleine Meilleur
Minister of Community and Social Services
80 Grosvenor Street, 6th Floor
Toronto Ontario
M7A 1E9

Dear Minister Meilleur:

RE: Feedback on the Employment Accessibility Initial Proposed Standard

I am writing to you on behalf of The Corporation of the City of London ("Corporation") in response to the Employment Accessibility Initial Proposed Standard as released for public review on February 17, 2009. The Corporation continues to support the ideals and objectives of the Accessibility for Ontarians with Disabilities Act, 2005 (AODA). We are confident that our shared commitment with the Ministry of Community and Social Services will ensure a more inclusive, accessible Ontario in the future.

We appreciate the leadership that the Ministry has taken in providing a consultative process through a public review of each of the AODA standards. The Corporation has been actively interested and engaged in the standard development process, and we are pleased to have this opportunity to provide direct feedback on the Employment Accessibility Initial Proposed Standard.

The Corporation employs over 3,200 people, excluding the employees of our agencies, boards and commissions, making us the sixth largest employer in our community of nearly 400,000. We are committed to providing an inclusive accessible workplace which enables all of our staff to serve the public through their job to the best of their abilities. We currently provide many individualized accommodations and supports to our employees, and will continue to do so in the future. We wholeheartedly support the intent of this standard in making the workplace more accessible for everyone.

Employment Accessibility Initial Proposed Standard

The proposed standard holds as its objective "the prevention, identification and removal of barriers across all stages of the employment life cycle for a person with disabilities." Many of the proposed requirements are good human resources practices already ongoing at the Corporation. We are particularly supportive that the Employment Accessibility Initial Proposed Standard generally speaking is consistent with the Ontario Human Rights Code (OHRC), and promotes accommodation having regard to "undue hardship" considerations. We also support that the proposed standard excludes responsibility for independent contractors and unpaid volunteers.

Although on balance the Corporation supports the intent of the Employment Accessibility Initial Proposed Standard, there are a number of aspects with which we have concerns:

- The proposed standard has a number of requirements which reference the Information and Communications Standard. As indicated in our February 2009 letter, we have serious concerns about the financial and operational impact of the proposed Information and Communications Standard as released for public review. Given that this standard has not been finalized, it is impossible for the City of London to estimate the financial impact or feasibility of these requirements in the proposed employment standard or to develop comprehensive plans for compliance. Accordingly, we recommend
that an additional public consultation process be provided before the proposed Employment Accessibility Initial Proposed Standard and the revised Information and Communications Standard be finalized, similar to the quasi public review period provided for final proposed Transportation Standard. This additional consultation would allow stakeholders the opportunity to provide further comment taking into consideration the cumulative impact of the standards.

- The proposed standard requires employers to identify “essential duties” for each vacant position. As an organization with over 3,000 employees in several hundred positions and seven distinct employee groups, this requirement has unique implications for our workplace and would not assist in the accommodation process. As an employer, we recognize the need to accommodate employees and that an examination of the essential duties of a position is required as a part of the accommodation process. We believe, however, that this analysis should be done at the time the accommodation arises and not in advance as this may inadvertently create a barrier to accommodation, thus working against the stated objective of this proposed standard. We strongly recommend that the analysis of essential duties should occur when the need for an accommodation arises.

- The proposed standard provides only one class for all public sector organizations, and requires these organizations – regardless of whether they have ten or ten thousand employees – to comply within the same period. The Corporation provides support to several local boards and commissions, ranging from less than 15 to several hundred employees. Small public employers will have the same implementation challenges as would small private sector organizations as many have limited if any human resources capacity. Accordingly, we believe the standard should create different classes for public sector organizations based on number of employees.

- We do not concur with the conclusions in the Deloitte costing report prepared for the Standard Development Committee which estimated that the $650 million compliance cost could be easily accommodated by shifting the focus or priorities of human resource staff. There appears to have been no consideration of the existing legislative and contractual requirements, as well as the financial constraints, facing human resources departments. We urge the Committee to recognize that the $650 million is a real cost that will have to be absorbed or funded in some way. This is particularly important amid the current economic climate which already threatens the sustainability of services. Additionally, we have concerns that the $650 million cost estimate is significantly lower than the actual cost which will be incurred. We recommend that a second independent financial and feasibility analysis be conducted in effort to ensure the Committee receives an accurate analysis prior to making any final decisions.

We are pleased to have the opportunity to provide these and other comments in more detail in response to the six questions posed on the Ministry of Community and Social Services website (see attached Appendix A). Given the significance of this standard to the Corporation, we request that an additional opportunity to provide feedback be provided once the draft legislation has been developed.

Recommendations for the AODA Standard Development Process

As noted in earlier correspondence, the Corporation is very concerned with the fragmented approach to the development and implementation of the AODA standards. We would like to take this opportunity to offer the following recommendations.

First, we firmly believe that all standards under the AODA need to be harmonized, prior to becoming regulation. The current approach creates unnecessary confusion and limits the ability of organizations to develop holistic accessibility implementation
plans. As an example, the City of London has already spent over $80,000 just in preparation for the staff training required under the Customer Service Standard. This cost does not include overtime costs for replacement staff, costs of trainers, refreshments, space rentals, or the lost productivity from taking over 3000 staff away from their jobs. We anticipate that other standards, including the employment standard, will place additional training requirements on organizations once promulgated. Additionally, given that all standards have policy requirements, there is bound to be unnecessary overlap and duplication. Requirements which cross AODA standards should be consolidated to allow organizations to make better use of already constrained resources. Furthermore, the lack of harmonization may create frustration and resistance to compliance. Specifically, we recommend that all standards under the AODA need to be harmonized prior to becoming regulation, specifically requiring:

- That draft standards should not be finalized until a common framework and set of definitions has been established;
- Given that the standards have linked requirements, that compliance dates should also be linked and aligned; and,
- That the cumulative financial impact of all standards needs to be more thoroughly assessed and considered, particularly in determining compliance dates.

Second, similar to the harmonization of all AODA standards, the standards also need to be harmonized with related existing legislative requirements. As noted in the attached document, we are concerned with how this proposed standard will interact with the Ontario Human Rights Code and existing legislation pertaining to essential services personnel. Reconciliation of competing requirements should not be left to the judicial process subsequent to the standards being legislated. This would create the potential for a multiplicity of legal proceedings and inconsistent results on accommodation issues which, rather than assisting in the development of sound accommodation practices in employment, may have the unintended effect of creating confusion around such issues. The need for harmonization is consistent with the objective of the provincial government’s “Open for Business” initiative which is intended to eliminate obsolete, duplicate, contradictory and/or competing requirements in provincial regulations.

Third, the process for assessing compliance needs to be defined and communicated as soon as possible, and prior to the standards coming into force. The deadline for compliance with the Customer Service Standard for public sector organizations is January 1, 2010, and to date, no details regarding how compliance is determined have been provided by the Ministry.

Finally, we appreciate that the AODA envisions a fully accessible Ontario by 2025. This timeframe allows for a phase-in of incremental improvements which would provide organizations the opportunity to fiscally plan for implementation in a responsible and sustainable manner. Should organizations be forced to meet unreasonably aggressive compliance timelines in several AODA standards, it will result in a degradation of other services. We appreciate that this is not the intention of the AODA, and for this reason, strongly recommend that the compliance dates for all draft standards are harmonized over a reasonable phase-in period.

Thank you for the opportunity to submit feedback on the Employment Accessibility Initial Proposed Standard. We trust our comments and recommendations will be considered and look forward to a resulting standard that comprehensively addresses accessible employment in Ontario.

Sincerely,

Anne Marie DeCicco-Best
Mayor
City of London
cc. Chris Bentley, MPP - London West
Deb Matthews, MPP - London North Centre
Khalil Ramal, MPP - London-Fanshawe
Steve Peters, MPP - Elgin-Middlesex-London
Dwight Duncan, Ontario Minister of Finance and Minister of Revenue
Jim Watson, Ontario Minister of Municipal Affairs and Housing
Accessibility Directorate of Ontario
Association of Municipalities of Ontario
Association of Municipal Clerks and Treasurers of Ontario
Grant Hopcroft, Director, Intergovernmental and Community Liaison
1. How will the proposed standard help to improve accessibility for people with disabilities?

The proposed standard will ensure that organizations in Ontario develop the necessary policy and procedural framework to prevent, identify and remove barriers across all stages of the employment lifecycle for a person with disabilities. Generally, the Corporation of the City of London (the "Corporation") supports the intent of the proposed standard as it seeks to further the accessibility of employment for all Ontarians. We also support that this proposed standard raises awareness for the importance of accessible employment.

2. What do you like or dislike about the proposed standard?

Generally, the Corporation believes that the proposed standard represents progress towards achieving accessible employment in Ontario. We particularly like the following aspects of the draft standard:

a) Promotes accommodation to the point of undue hardship.

The Corporation supports the Standard Development Committee in proposing a standard which promotes accommodation having regard to the undue hardship considerations as reflected under the OHRC.

b) Excludes independent contractors and volunteers.

The draft standard focuses on an employer's responsibilities for ensuring accessibility in the workplace for paid employees. The City of London supports this scope and the exclusion of independent contractors and volunteers.

We dislike the following aspects of the draft standard:

a) Reference to the Information and Communications Standard.

One of our most serious concerns with the Employment Accessibility Initial Proposed Standard is the reference to the Accessible Information and Communications Standard. Section 5.9 requires that individual accommodation plans, employee orientation materials, performance management processes, career development and advancement opportunities, return to work procedures, redeployment procedures, separation or termination information, and emergency and public safety information be in formats or methods compliant with the Information and Communications Standard.

In the Corporation's response to the proposed Information and Communications Standard, we indicated our concerns about the significant financial and operational impact of the draft standard as released for public review. Given that this standard has not been finalized, it is impossible for the Corporation to estimate the financial impact or feasibility of these requirements. Furthermore, this hinders our ability to develop comprehensive plans for compliance with all AODA standards. This challenge highlights the need for harmonization between all AODA standards, prior to the standards becoming legislation. Compliance timeframes should be reflective of the cumulative impact of all of the standards; otherwise, impractical expectations could contribute to a degradation of services and the creation of unnecessary barriers.
b) Requires the identification of "essential duties" for vacant positions.

The proposed standard requires employers to identify "essential duties" for each vacant position. As an organization with over 3,000 employees in several hundred positions and seven distinct employee groups, this requirement has unique implications for our workplace and would not assist in the accommodation process. As an employer, we recognize the need to accommodate employees and that an examination of the essential duties of a position is required as a part of the accommodation process. We believe, however, that this analysis should be done at the time the accommodation arises and not in advance.

Over time the essential duties of jobs may change. Generally speaking, job duties may be impacted by new technologies, as well as licensing and regulatory requirements changes. As a result, an analysis of the essential duties of a job in 2009 may no longer be valid in 2011. It is quite possible that reliance on outdated essential duties analysis might inadvertently create a barrier to accommodation, thus working against the stated objective of this proposed standard.

This requirement is arguably inflexible and has the potential to "carve in stone" the essential duties of a position and prevents or limits the flexibility of employers to work on individualized accommodation plans. We strongly recommend that the analysis of essential duties should occur when the need for an accommodation arises.

c) Places all public sector organizations into one class.

The Corporation provides support to several local boards and commissions including the London Public Library, Museum London, the London Transit Commission, Tourism London, Covent Garden Market, the London Economic Development Corporation, the London Police Service, the Middlesex-London Health Unit, the London Convention Centre, and three conservation authorities. These public organizations range in size from having less than 15 employees to having several hundred employees. Small public employers will have the same implementation challenges as would small private sector organizations as many have limited, if any, human resources capacity.

The proposed standard provides five separate classes for private sector organizations based on number of employees, offering longer implementation periods for small employers. The proposed standard provides only one class for all public sector organizations, and requires these organizations – regardless of whether they have ten or ten thousand employees – to comply within the same period. We recommend that the Standard Development Committee separate public sector organizations into separate classes based on number of employees to provide small public employers with an appropriate amount of time to ensure compliance.

d) Costing Report identified no cost for compliance.

We do not concur with the conclusions in the Deloitte costing report prepared for the Standard Development Committee which estimated that the $650 million compliance cost could be easily accommodated by shifting the focus or priorities of human resource staff. There appears to be no consideration of the existing legislative and contractual requirements, as well as financial constraints, facing human resources departments. We urge the Committee to recognize that the $650 million is a real cost that will have to be absorbed or funded in some way. This is particularly important amid the current economic climate which already threatens the sustainability of services. Additionally, we have concerns that the $650 million compliance cost estimate is significantly lower than the actual cost which will be incurred. We recommend that a second independent financial and feasibility analysis be conducted in an effort to ensure the Committee receives accurate information prior to making any final decisions.
e) Lack of harmonization between AODA standards.

As noted in earlier correspondence, the Corporation is very concerned with the fragmented approach to the development and implementation of the AODA standards. We would like to take this opportunity to offer the following recommendations.

First, we firmly believe that all standards under the AODA need to be harmonized, preferably prior to becoming regulation. The current approach creates unnecessary confusion and limits the ability of organizations to develop holistic accessibility implementation plans. Specifically, we recommend that all standards under the AODA need to be harmonized prior to becoming regulation, specifically requiring:

- That draft standards should not be finalized until a common framework and set of definitions has been established;
- Given that the standards have linked requirements, that compliance dates should also be linked and aligned; and,
- That the cumulative financial impact of all standards be more thoroughly considered, particularly in determining compliance dates.

Second, similar to the harmonization of all AODA standards, the standards also need to be harmonized with related existing legislative requirements. As noted in the attached document, we are concerned with how this proposed standard will interact with the Ontario Human Rights Code and existing legislation pertaining to essential services personnel. Reconciliation of competing requirements should not be left to the judicial process subsequent to the standards being legislated. This would create the potential for a multiplicity of legal proceedings and inconsistent results on accommodation issues which, rather than assisting in the development of sound accommodation practices in employment, may have the unintended effect of creating confusion around such issues. The need for harmonization is consistent with the objective of the provincial government's "Open for Business" initiative which is intended to eliminate obsolete, duplicate, contradictory and/or competing requirements in provincial regulations.

Third, the process for assessing compliance needs to be defined and communicated as soon as possible, and prior to the standards coming into force. The deadline for compliance with the Customer Service Standard for public sector organizations is January 1, 2010, and to date, no details regarding how compliance is determined have been provided by the Ministry.

Finally, we appreciate that the AODA envisions a fully accessible Ontario by 2025. This timeframe allows for a phase-in of incremental improvements which should provide organizations the opportunity to fiscally plan for implementation in a responsible and sustainable manner. Should organizations be forced to meet unreasonably aggressive compliance timelines in several AODA standards, it will result in a degradation of other services. We appreciate that this is not the intention of the Ministry, and for this reason, strongly recommend that the compliance dates for all draft standards are harmonized over a reasonable phase-in period.

3. Is the proposed standard clear and understandable?

Generally we find the flow of the standard to be logical by addressing each aspect of the employment life cycle in a generally chronological order. The requirements are written in relatively easily understood language and strike a balance between allowing flexibility in the way the requirement may be attained and still providing meaningful objectives. However, there are a number of areas of the proposed standard which are unclear. The Corporation requests that the Committee give consideration to the following areas:
a) Conflicting legislation

The Corporation has over 400 firefighters and 800 police officers working in our city. Employers of emergency services personnel are required to comply with various additional pieces of employment related legislation including the Fire Protection and Prevention Act and the Police Services Act. The interaction between these existing legislative requirements and the AODA employment standard requires further consideration from the committee. We recommend that the committee consults with the legal staff at the relevant professional associations prior to making final determinations to ensure that any unnecessary conflicts are resolved.

b) Training for staff

Section 3.4 states, "Organizations shall provide disability awareness training as specified in the Customer Service Standard for all employees." The section furthers, however, that employees shall be given additional specific training based on duties and area of responsibility, but is not clear on specifically what this requirement entails. We anticipate that other AODA standards may have training requirements as well. The City of London has already spent over $80,000 just in preparation for the staff training required by the Customer Service Standard. This cost does not include overtime costs for replacement staff, trainer costs, refreshment expenses space rentals, or the lost productivity from taking over 3000 staff away from their jobs. We anticipate that other standards, including the employment standard, will place additional training requirements on organizations once promulgated. Requirements which cross AODA standards should be consolidated to allow organizations to make better use of already constrained resources. We recommend that all training requirements in future standards should be consolidated to allow employers to comply with all accessibility related training requirements simultaneously. Streamlining this process will decrease costs, increase effectiveness, and dramatically improve the ability of employers to meet training requirements.

c) Terms and Definitions

There are a number of terms that require more clarity. For example, in the return to work section of the proposed standard, the term "equivalent work" is introduced. The term is not defined in the draft standard or in related case law. We recommend that the term "suitable work" be used as it is used in the Workplace Safety and Insurance Act. Section 5.1 requires that individual accommodation plans shall consider input from "medical and/or other experts" although what constitutes an "other expert" is not defined. We recommend that further clarification is provided to prevent confusion. Furthermore, definitions such as "inclusive design" ought to be tailored to be suitable in the employment context as the current definition is more reflective of the built environment interpretation. Finally, terms and definitions which appear in the definition section and not elsewhere should be deleted.

4. What are your views about the scope and application of the proposed standard?

The Corporation generally agrees with the scope and application of the proposed standard. We are particularly supportive that the proposed standard excludes the responsibility for independent contractors and volunteers. We appreciate that the long term objective of the proposed standard is to prevent, identify and remove barriers across all stages of the employment life cycle for persons with disabilities.
5. What will be some of the potential positive or negative effects on your organization?

The Corporation believes that there will be both positive and negative effects should this draft standard as written become law. One positive effect is that the proposed standard will ensure that organizations in Ontario develop a consistent procedural framework to prevent, identify and remove barriers across all stages of the employment lifecycle for a person with disabilities. The Corporation is committed to providing an inclusive accessible workplace which enables all of our staff to serve the public through their job to the best of their abilities. The employment standard, once law, will confirm our strong human resources program which supports people with disabilities. Another positive effect is that the standard, once law, will make employment more accessible for the many members of our community who work in public, private and non-profit environments.

The negative effects of the draft standard on our organization will be the additional incurred costs associated with implementation. As noted, we anticipate that a major portion of these costs will be due to the cross referencing with the Information and Communications Standard. Our comments regarding defining “essential duties” for each position and the duplication in training efforts are also serious concerns. This again highlights the need for harmonization between the AODA standards to ensure that all organizations in Ontario, in lieu of any financial support from the provincial government, can properly plan for the cumulative impact of AODA implementation in a responsible and sustainable way.

6. Are the requirements of the proposed standard appropriate in terms of scope, application, technical feasibility and timelines for implementation?

As noted above, the City of London generally agrees with the scope of the proposed standard. It is difficult to comment on the technical feasibility and application without a better sense of how the proposed standard will be enforced and without a full understanding of the impact of all of the AODA standards. We recommend that this standard be released for a second public review period once it has been drafted as legislation to allow employers to provide a more thorough analysis of the application, technical feasibility and timelines.