

**Submission of the Ontario Human Rights Commission  
concerning barrier-free access requirements in the Ontario  
Building Code**

**March 1, 2002**

This submission is in response to the Ministry of Municipal Affairs and Housing's (MAH) public consultation on the accessibility provisions of the Ontario *Building Code* (the "*Building Code*").

The Commission commends MAH for undertaking this very timely initiative, especially in light of the recent passage of the *Ontarians with Disabilities Act, 2001* (the "*ODA*"). It has become increasingly clear to the Commission that the barrier-free requirements in the current *Building Code* have not been sufficient to achieve the degree of integration and full participation for persons with disabilities that is intended by the Ontario *Human Rights Code* (the "*Human Rights Code*"). Indeed, persons with disabilities, and others who can benefit from increased accessibility such as older persons and persons with young children, continue to face significant barriers accessing facilities and services in Ontario. Moreover, those responsible for providing access often rely only on the requirements of the *Building Code* without due consideration of their obligations under the *Human Rights Code*. It is therefore hoped that a revised *Building Code*, in particular one that reflects human rights-based notions of accessibility, will better achieve what most of us take for granted, namely the opportunity to fully participate in and contribute to the development and well-being of this province.

It is the Commission's view that a revision to the *Building Code* represents an opportunity for MAH to translate several important developments in the field of disability rights into concrete results that can immediately begin to benefit the people of Ontario. The Commission's recent *Policy and Guidelines on Disability and the Duty to Accommodate*, the newly enacted *ODA*, and the government's Vision Statement *Independence and Opportunity: Ontario's Vision for Persons with Disabilities* all demonstrate our collective commitment to "move steadily towards a province in which no new barriers to persons with disabilities are created and existing ones are removed." There is perhaps no better way to ensure that no new barriers are created in the design and construction of new buildings in Ontario, and in renovation to existing buildings, than to create as progressive a *Building Code* as is possible.

This submission endeavours to respond to the specific questions posed in MAH's Consultation Paper based on the human rights principles which should guide any undertaking of *Building Code* reform as well as to raise any other issues of concern to the Commission. As the Commission does not have expertise in specific barrier-free requirements, the submission does not purport to set out specific standards and requirements, although those we are aware of will be mentioned.

## **REQUIREMENTS FOR ACCESSIBILITY IN THE *HUMAN RIGHTS CODE***

Section 1 of the *Human Rights Code* states that every person in Ontario has the right to equal treatment with respect to goods, services and facilities, without discrimination because of disability. Sections 2 and 5 provide the same right to equal treatment in housing and employment respectively.

The *Human Rights Code* therefore creates a right to accessible workplaces, housing, public transit, hospitals, libraries, restaurants, shops, hotels, movie theatres etc. and places a positive obligation on businesses operating in Ontario to make their facilities accessible. A failure to provide equal access to a facility, including housing or a workplace, or equal treatment in a service constitutes a violation of the *Code* and can be the subject of a human rights complaint to the Commission (see for example, *Turnbull v. Famous Players Inc.* (2001), C.H.R.R. Doc. 01-183 (Ont. Bd Inq.)). 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* (the "*Disability Policy*") sets out what may be considered in determining whether cost or health and safety risks represent an undue hardship.

The Commission's *Disability Policy* and relevant case law make it clear that facilities 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.

*Accommodation with dignity is part of a broader principle, namely, that our society should be structured and designed for inclusiveness. This principle, which is sometimes referred to as integration, emphasizes barrier-free design and equal participation of persons with varying levels of ability. Integration is also much more cost effective than building parallel service systems, although it is inevitable that there will be times when parallel services are the only option. Inclusive design and integration are also preferable to "modification of rules" or "barrier removal", terms that, although popular, assume that the status quo (usually designed by able bodied persons) simply needs an adjustment to render it acceptable. In fact, inclusive design may involve an entirely different approach. It is based on positive steps needed to ensure equal participation for those who have experienced historical disadvantage and exclusion from society's benefits.<sup>1</sup>*

As explained in the Commission's *Disability Policy*, 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

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<sup>1</sup>Ontario Human Rights Commission, *Policy and Guidelines on Disability and the Duty to Accommodate*, published in *Human Rights Policy in Ontario*, 3<sup>rd</sup> ed. (Toronto: CCH, 2001) at 200. The *Disability Policy* is also available on the Commission's Web site: <http://www.ohrc.on.ca>.

and has affirmed that standards should be designed to reflect all members of society, insofar as this is reasonably possible (see section 3.1.3(a) of *Disability Policy*).

## **THE RELATIONSHIP BETWEEN THE *HUMAN RIGHTS CODE* AND THE *BUILDING CODE***

Consideration of the interaction between the *Human Rights Code* and the *Building Code* is important for two reasons. The first reason is that the *Human Rights Code* applies to the *Building Code* itself and inconsistencies between them may form the basis of a human rights complaint against MAH itself. The second reason is that despite the fact that the *Human Rights Code* applies to facilities and services that fall under the *Building Code*, most businesses, designers and builders<sup>2</sup> are aware only of the requirements of the *Building Code* and not the parallel, and often higher obligations mandated by the *Human Rights Code*. Accordingly, if they comply only with the requirements of the *Building Code*, they may be vulnerable to a human rights complaint to the extent that their premises continue to fall short of the requirements of the *Human Rights Code*. What follows in this section is a more detailed explanation of each of these considerations.

### **Human Rights Code Prevails Over Building Code**

The *Human Rights Code* is a 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 *Human Rights Code* (section 47). The Commission has specifically been entrusted with responsibility for examining any statute or regulation, and any program or policy made by or under a statute and for making recommendations on any provision, program or policy that is, in its opinion, inconsistent with the intent of the *Human Rights Code*. This submission represents an example of the Commission exercising this power of review and recommendation.

Section 29 also gives the Commission the power to conduct investigations into potential human rights issues and encourage steps to address them before they become the subject matter of a formal complaint of discrimination to the Commission.

The Commission has the power to initiate formal complaints against any entity that it believes has infringed any right under the *Human Rights Code* (section 32). If the Commission's investigation reveals that the procedure is appropriate

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<sup>2</sup>Hereinafter all persons responsible for accessibility in pursuant to the *Human Rights Code* will be referred to as "businesses". However, please note that all types of organizations including private sector, public sector and not-for-profit are covered by the *Human Rights Code*.

and that the evidence warrants it, the Commission can refer the complaint to a hearing before a Board of Inquiry (section 36). The Board of Inquiry has the power to order broad remedies to achieve compliance with the *Human Rights Code* (section 41). Therefore, the *Human Rights Code's* primacy over the *Building Code* allows a member of the public, or even the Commission itself, to file a complaint challenging the *Building Code*, its application and its enforcement. For example, the Commission was told, during its province-wide consultation on age discrimination, that the relevant authorities do not enforce the requirements for assistive listening devices as contained in section 3.8.3.7 of the *Building Code*. This could become the subject matter of a complaint.

Revisions to the *Building Code* which achieve the highest attainable standards, reflect the best principles of accessibility and barrier-free design and promote compliance with the requirements of the *Human Rights Code* would be consistent with the government's support for the Commission's *Policy and Guidelines on Disability and the Duty to Accommodate*, the passage of the ODA, and the promulgation of the *Independence and Opportunity Vision Statement*.

### Harmonizing *Human Rights Code* and *Building Code* Requirements

Reliance on relevant building codes has been clearly rejected as a defence to a complaint of discrimination under the *Human Rights Code*. In *Quesnel v. London Educational Health Centre* (1995), 28 C.H.R.R. D/474 an Ontario Board of Inquiry stated:

*With respect to the personal respondent's contention that he complied with local building codes, it is sufficient to note that s. 47(2) establishes the supremacy of the Code over any other Act or Regulation which would allow for a contravention of Part I rights. Compliance with building codes does not, in itself, justify a breach of human rights legislation.*

As MAH may be aware, in March 2001 when the Commission launched its *Disability Policy*, Chief Commissioner Keith Norton announced that the Commission would be approaching businesses to assess the accessibility of services and facilities for persons with disabilities. Accordingly, in May 2001, the Commission surveyed 29 major restaurant chains in Ontario. The results of the survey overwhelmingly indicate that restaurants are setting their standards for accessibility based only on the *Building Code* that was in effect at the time of construction or renovation. The survey responses reveal a low level of understanding of, and compliance with, the requirements of the *Human Rights Code* and the principles espoused in the Commission's *Disability Policy*. This has also been the Commission's general observation based on questions received from businesses and complaints filed.

As some businesses may be unfamiliar with their obligations under the *Human Rights Code*, they may be under the incorrect impression that by complying only

with *Building Code* requirements, they have met all their legal obligations. To the extent that a revised *Building Code* reflects requirements in the *Human Rights Code*, this is more likely to be the case and it will be much easier for businesses to ascertain their responsibilities vis-à-vis accessibility. Conversely, if *Building Code* requirements do not take human rights obligations into account, businesses may be more likely to face human rights complaints. Harmonization of *Building Code* with *Human Rights Code* requirements is therefore consistent with the goals of *Building Code* reform, such as greater certainty and streamlining. Indeed, other jurisdictions such as Australia are engaging in extensive research and consultation to harmonize anti-discrimination laws with building codes.

## **PRIORITIES FOR CHANGE TO THE CURRENT *BUILDING CODE***

The Commission recognizes that incremental change is often necessary to achieve the goal of full accessibility. It is the Commission's view that the current *Building Code* requirements for Barrier-Free Design provide a solid basis upon which to build and improve.

The Commission's review of the current *Building Code* indicates that, applying the principles contained in the *Human Rights Code*, it can be improved upon in several ways:

### **1. Requirements Should be Inclusive to Greatest Extent Possible**

In its current form, the *Building Code* sets out general standards to achieve its objectives of safety, health and protection of buildings.<sup>3</sup> The requirements for the objective of accessibility are mostly set out in section 3.8 of the *Building Code*, **Barrier-Free Design**. However, as discussed earlier, the preferred approach to accessibility is to, as much as is possible, design basic standards so that they are inclusive of all members of society. Unless there is no other alternative, parallel systems for those with disabilities are to be avoided.

At the same time, it is commonly known that it is much easier and less expensive to design a facility to be accessible in the first place, than it is to retrofit an inaccessible facility later on. While at present it may appear that only certain areas need to be made accessible, in future it may be the case that more areas need to be accessed (for example, by an employee who develops a disability). Every new building that is constructed in Ontario should achieve the highest degree of accessibility possible at the outset, to avoid problems later on.

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<sup>3</sup>As defined in Ontario Ministry of Municipal Affairs and Housing, *Objective-Based Codes: A Consultation on the Proposed Objectives, Structure and Cycle of the National and Ontario Building Codes* (Consultation: October 16, 2000 to January 15, 2001).

The foregoing means that **basic** requirements in the *Building Code* should, to the greatest extent possible, incorporate the best principles of barrier-free design, rather than setting standards that are not accessible and creating separate requirements for barrier-free paths of travel. Exceptions to this approach should be as circumscribed as possible.

By way of example, rather than having an inaccessible standard for the width of doors and then specifying, in a separate section of the *Building Code*, a different width for doors that are within barrier-free paths of travel, the goal should be to design all doors in newly constructed buildings to accommodate wheelchairs. This sends the message that persons with disabilities are as much a part of society as everyone else, not that they are somehow different from the “norm”, requiring a separate list of rules to give them access. Apart from the important affirmation of dignity, this approach is the only way to achieve the goal of allowing persons with disabilities to access services and facilities on equal terms with others.

In addition, allowing exceptions to the requirements for the provision of a barrier-free path of travel based on whether a floor is serviced by an elevator is very problematic (as in section 3.8.2.1). It appears that there is no requirement that builders install elevators to normally occupied floor areas. This means that builders can choose to make floors inaccessible by not installing an elevator and then are not required to comply with the requirements for barrier-free paths of travel. This approach is not consistent with inclusive design and permits buildings to be constructed in a manner that can exclude persons with disabilities from areas that everyone else is able to access. A revised *Building Code* should require all floors which are normally occupied to be accessible to persons with disabilities and should require installation of an elevator, if necessary.

### **Usability in a way that Achieves Substantive Equality vs. Technical Compliance**

“Barrier-free” is defined in the *Building Code* as meaning that a building and its facilities can be approached, entered and used by persons with physical or sensory disabilities. However, these requirements can mean many different things. For example, if a ramp goes directly from the street to the front door and lets the visitor off near the elevator, visitors with and without wheelchairs will be able to reach their destination in about the same time. However, using a ramp which is at the back of the building will take a visitor in a wheelchair longer than one without a wheelchair and will be less pleasant and convenient. Therefore, usability should not just be a matter of whether or not it is *possible* for persons with disabilities to perform tasks but also a matter of how dignified, easy and fast it is for them to do so. The human rights principle of substantive equality, which strives for equal rights and opportunities and the recognition of the dignity and worth of every person, requires this type of understanding of usability.

However, it is not clear that the provisions of the *Building Code* result in this type of usability for persons with disabilities. It appears possible to achieve technical compliance with the *Building Code* without achieving substantive equality. For example, while there is a requirement that a minimum number of spaces should be designated for wheelchair use in theatres, auditoria *etc.*, there is little guidance as to where they should be located. They could therefore be placed in a manner that would not provide equal access to persons using a wheelchair.<sup>4</sup> Persons with disabilities should have a similar choice to other individuals and a failure to provide such choice could result in a human rights complaint.<sup>5</sup> By way of comparison, the American *Uniform Federal Accessibility Standards* prescribe that wheelchair areas are to be an integral part of a seating plan, shall be dispersed throughout the seating area and shall be located to provide lines of sight comparable to those for all viewing areas. Such a standard is consistent with notions of substantive equality and much less likely to prompt a human rights complaint. More will be said about the American standards later in this submission.

Experts in this field report examples of buildings that may comply with the technical requirements of the *Building Code* but that do not provide equal access to persons with disabilities.<sup>6</sup> The Commission would strongly urge MAH to consult with such experts who can provide specific examples of this. Further, the Commission would recommend that every accessibility requirement in the *Building Code* be carefully reviewed to ensure that it truly does result in equal access. Guiding principles in such a review should consider whether the requirement allows the person with a disability access that ensures equality of outcome (this is “substantive accessibility”), whether the requirement results in approximately equal levels of convenience and whether the dignity of the person is respected. If further detail is required to ensure these goals are met, it should be provided in the revised *Building Code*.

To illustrate by example, the current *Building Code* appears to simply require that a certain number of pedestrian entrances to every building be barrier-free. However, it would be preferable to specify that the main entrances must be barrier-free. This prevents technical compliance by simply making the service entrance accessible. From a human rights perspective, such a means of entry in

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<sup>4</sup>The Commission understands that this is a particular problem in newer movie theatres that use stadium-style seating as there tends to be only one viewing location offered which is too close to the screen.

<sup>5</sup>In *Saskatchewan (Human Rights Commission) v. Canadian Odeon Theatres Ltd.* (1985), 18 D.L.R. (4<sup>th</sup>) 93, 6 C.H.R.R. D/2682 (Sask. C.A.), leave to appeal refused, [1985] 1 S.C.R. vi, the Court found that the failure of the theatre to provide a person with a disability a choice of place from which to view a film comparable to that offered to the general public was discriminatory.

<sup>6</sup>For example, at a recent seminar, Ron Wickman, an architect, presented a workshop entitled *Meeting the Building Code, but not Really!* in which he identified examples of buildings that clearly meet barrier-free design standards in building codes, yet in a way that is far removed from the idea of easy access (Inclusion by Design – Planning the Barrier-Free World, June 1-5, 2001, Montreal).

a newly constructed building would be unacceptable as it does not allow the person with a disability to enter the building with the same degree of convenience and dignity that is afforded to others.

Finally, it should be noted that in reviewing requirements to ensure they truly provide equal access, there is a wealth of information available on best practices in barrier-free design that can be relied upon (see below).

### **More Requirements for Non-Mobility Disabilities**

The *Building Code*'s definition of "barrier-free" refers to persons with physical and sensory disabilities. The recognition of sensory disabilities in the current *Building Code* is a progressive step forward. The Commission believes that this provides a basis for further improvements on requirements for non-mobility related disabilities. Persons with other forms of disability such as mental disorders, learning disabilities *etc.* benefit from current barrier-free requirements and may have additional needs which can be addressed in a revised *Building Code*. For example, directional indicators for elevators and exits may be of assistance to persons who have memory disorders.

Therefore, to ensure completeness and consistency with other laws in Ontario, the Commission suggests incorporating the definition of disability as set out in the *ODA* and the *Human Rights Code* into the definition of "barrier-free" and considering ways to add standards that will benefit people with a broader range of disabilities.

Persons with sensory disabilities may find they face fewer barriers in gaining access to buildings but face greater obstacles getting the information they need to use the building safely and conveniently. Tactile signage is not required in the current *Building Code*, thereby presenting a barrier to persons with low vision in matters as basic as finding the correct floor on an elevator and entering the right washroom. Alarm systems do not appear to require visual as well as auditory signals, thereby increasing the danger to persons who are deaf, deafened or hard of hearing in the event of an emergency. The Canadian Hearing Society has indicated that, according to Statistics Canada, in 2001 there were 1.47 million Ontarians over age 65 with hearing loss and by 2026 that number will have reached 2.9 million. This figure does not even include those under 65 with hearing disabilities, but nevertheless represents a significant proportion of Ontario's population. These demographics demonstrate the importance of addressing sensory disabilities fully in a revised *Building Code*.

Conveniences that are taken for granted, such as pay telephones, may not be available to persons with sensory disabilities. Therefore requirements such as TTYs or phones with volume controls should be considered.



The requirement in section 3.8.3.7 for Assistive Listening Devices can be supplemented as a result of advances in technology. For example, rear view captioning for persons with hearing disabilities and descriptive video service for visually impaired persons is now available for movie theatres.

There are a growing number of people who are sensitive to chemicals and therefore, any standards that will reduce or eliminate chemical sensitivity reactions are welcome (please see Australian Human Rights and Equal Opportunity Commission, *Advisory Notes on [Access to Premises](#)*. Signage and directional indicators for exits, elevators *etc.* located at eye level are helpful for persons with memory disabilities, those with low vision and even for others in the public at large.

The Commission recommends that MAH consider researching and, if possible, incorporating advances in technology in all areas in a revised *Building Code*. As well, the greatest consideration possible should be given to incorporating standards that would benefit a wider variety of disabilities.

### **Standards should be More Comprehensive**

While there are some specific standards required in the current *Building Code* for specialized facilities such as rapid transit systems and swimming pools, the Commission is of the view that more specific requirements are needed for these systems and for other types of services and facilities that are frequently accessed by the public. Transit providers have actually indicated to the Commission a desire for more guidance for building transit facilities than is currently available. At present, fast food restaurants in Ontario can construct service counters at a height that poses a barrier to persons using a wheelchair. By way of contrast, the American *Uniform Federal Accessibility Standards* prescribe more detailed and specific requirements for cafeterias and restaurants such as the amount of accessible seating and how it should be distributed, height of food service areas *etc.*

Furthermore, it appears that a more comprehensive set of standards would be beneficial to all facilities. For example, there could be requirements for better signage in buildings. Moreover, the specific requirements for signs should be prescriptive. This relates back to the section above which describes the need for true usability and substantive accessibility. By providing greater detail, there is more likelihood that designs will achieve more than just technical compliance without meaningful access. It will also provide greater certainty to those responsible for construction that they have taken the right steps to achieve accessibility.

### **Stronger Provisions Regarding Upkeep and Renovation**

As explained in the section outlining the requirements for accessibility in the *Human Rights Code*, a building that has no intention to renovate and no plans to achieve accessibility may be the subject of a complaint under the *Human Rights Code*. Furthermore, where a renovation is undertaken it may not be necessary to address accessibility under the *Building Code* but there may be an obligation to do so under the *Human Rights Code*.

The Commission recognizes the difficulty that businesses that own, or operate in, older facilities sometimes face in achieving accessibility. Renovations may sometimes seem too costly or not worth pursuing if a location is not very profitable or there are plans to relocate in future. Businesses that complied with older building codes that did not require barrier-free design can be understandably frustrated to learn the *Human Rights Code* still requires them to take steps to achieve accessibility in these premises, subject only to the undue hardship standard.

Once again, to ensure greater harmonization between *Building Code* and *Human Rights Code* requirements, the Commission urges MAH to broaden the circumstances in which retrofitting is mandated. It is the Commission's understanding that at present, where a renovation takes place, meeting the requirements of section 3.8 is only necessary in certain circumstances, based on the 'system' being renovated. Only the system that is being renovated need be brought up to accessibility standards, and then only if the building itself can be accessed. If the building is made accessible because of renovations to entrances, other systems do not have to be renovated. It is the Commission's view that in order to better reflect the requirements of the *Human Rights Code*, a substantial renovation of a building should incorporate steps to achieve accessibility, up to the point of undue hardship. The goal of equality cannot be achieved if the *Building Code* permits significant renovations to improve the aesthetics or usability of a building without requiring steps to achieve accessibility. Further, the 'system' method of retrofitting is illogical insofar as it requires a building to make the entrance accessible but not the doors, washrooms *etc.*

Finally, the Commission wishes to note that a fairly common problem is the failure to keep required equipment and structures well maintained and ready for use. For instance, if an elevator is broken and not repaired promptly, it may mean the difference between attending and missing a critical doctor's appointment. Therefore, the *Building Code* should not just mandate barrier-free construction but also should require that these structures or equipment be properly maintained. It may be appropriate to consider a complaint mechanism if barrier-free requirements are allowed to fall into disrepair or are not appropriately maintained.

### **Better Enforcement**

The Commission has been advised of problems with the enforcement of *Building Code* standards. The Commission's June 2001 consultation report *Time for Action: Advancing Human Rights for Older Ontarians* states:

*The Commission was very concerned to learn that the standards for barrier-free design that are already contained in the Building Code Act, 1992 are often not met by builders or enforced by inspectors. For example, the Commission was told that the requirement in section 3.8.3.7 of O. Reg. 403/97 [i.e. the Building Code] that classrooms, auditoria, meeting rooms and theatres "shall be equipped with assistive listening systems" is rarely adhered to. The Building Code Act, 1992 itself could be improved by addressing additional elements of barrier-free design.<sup>7</sup>*

Failures to enforce all aspects of the barrier-free requirements are extremely problematic and can even result in human rights complaints, made by a member of the public or initiated by the Commission, against those responsible for enforcement. The Commission therefore strongly recommends that MAH ensure rigorous training for those responsible for approving building plans and for *Building Code* enforcement, as well as the strongest possible measures to ensure that no barrier-free requirement is overlooked in the approval or inspection process.

Finally, effective communication of barrier-free requirements is essential. The specific requirements and also the guiding principles should be explained. This will help to ensure that builders will be able to achieve not just technical compliance but substantive accessibility as described above. It may even be appropriate to consider informing *Building Code* users of the fact that the *Human Rights Code* also applies to them.<sup>8</sup> A strong public commitment to this initiative, including appropriate training, implementation and ultimately evaluation, will demonstrate the importance of achieving equality for persons with disabilities.

## **CONSIDERATIONS FOR AN OBJECTIVE BASED *BUILDING CODE***

In addition to providing feedback on the current *Building Code*, the Commission wishes to take this opportunity to provide comment on MAH's proposal regarding moving towards an objective based *Building Code*.

The Commission is supportive of innovation and creativity in achieving the goal of accessibility. However, the Commission is concerned that use of objective

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<sup>7</sup>Ontario Human Rights Commission, *Time for Action: Advancing Human Rights for Older Ontarians* (Toronto: Queen's Printer, June 2001), also available on Commission's Web site: <http://www.ohrc.on.ca>.

<sup>8</sup>For example, a note could be placed on MAH's Web site, along with a link to the Commission's Web site.

based requirements not result in lesser standards being met than as contained in the prescriptive requirements of the *Building Code*.

The particular objectives with respect to accessibility as set out in the MAH consultation paper *Objective-Based Codes: A Consultation on the Proposed Objectives, Structure and Cycle of the National and Ontario Building Codes* are:

**Objective: Accessibility:** *To reduce the probability that a person with a physical or sensory limitation will be unacceptably impeded in the access to or use of the building or its facilities as a result of the design or construction of the building.*

**Sub-objective: Barrier-Free Path of Travel:** *To reduce the probability that a person with a physical or sensory limitation will be unacceptably impeded in the access to or circulation within a building as a result of the design and construction of the building.*

**Sub-objective: Barrier-Free Facilities:** *To reduce the probability that a person with a physical or sensory limitation will be unacceptably impeded in the use of the facilities in a building as a result of the design and construction of the building.*

These stated objectives leave a significant amount of room for interpretation and in the Commission's view set the threshold for accessibility too low. In particular, reference to persons being "**unacceptably** impeded" is problematic, as it appears to allow some degree of impediment based on a highly subjective determination of what is acceptable.

Also, the terminology of "reducing probability" falls far short of the standard in the *Human Rights Code* namely, accommodation to the point of undue hardship.

Once again, the objective refers only to physical and sensory disabilities instead of the whole range of disabilities that result in barriers to accessing buildings in Ontario.

Overall, the stated objectives do not appear to reflect the principles of substantive equality (*i.e.* equality of outcome), full integration and participation and dignity. They are framed in the negative, outlining what should be avoided, rather than creating positive obligations for the degree of accessibility that must be achieved. For all of the foregoing reasons, they appear to fall short of the requirements of the *Human Rights Code* of accommodation up to the point of undue hardship and the principles espoused in the Commission's *Disability Policy*. Therefore, the Commission submits that these objectives either be revised to better reflect the requirements of substantive equality, or that the requirements for barrier-free design remain prescriptive in nature (or that they be set as a minimum standard which those who wish to use innovative design are only permitted to exceed).

## EXAMPLES OF APPROACHES IN OTHER BUILDING CODES

The Consultation Paper asks if there are accessibility requirements in other jurisdictions' building codes that could be adopted in Ontario. The Commission does not have expertise in this issue but would suggest a careful review of all available standards such as building codes of other jurisdictions, the American *Uniform Federal Accessibility Standards (UFAS)* under the *Architectural Barriers Act*, the *Americans with Disabilities Act Accessibility Guidelines (ADAAG)*, the Australian *Advisory notes on [Access to Premises](#)*. The *UFAS* and [ADAAG](#) appear to be particularly detailed and seem to espouse many of the principles discussed in this submission.

As well, there are numerous experts in Canada who have given consideration to best practices in building design. The Universal Design Institute offers several resources, as well as links to other sources of information (please see <http://www.arch.umanitoba.ca/cibfd/>). Betty Dion Enterprises Ltd publishes *Universal Design – An International Best Practices Guide* (please see <http://www.bdel.ca/UDBPGuide.htm>). The Commission hopes that MAH will be able to avail itself of the wealth of expertise and information available before finalizing any revisions to the *Building Code*.

## CONCLUSION

The Commission's recent work on disability and on aging have made it clear that revisions to the *Building Code* are essential to fulfilling the vision for independence and opportunity for persons with disabilities, a vision expressed both by the Commission and the government. In fact, in *Time for Action: Advancing Human Rights for Older Ontarians* the Commission recommended:

*THAT the provincial government enact legislation that will set minimum standards for accessibility for persons with disabilities, including older persons.*

*THAT the Ontario Building Code Act, 1992 be amended to incorporate the best principles of barrier-free design.*

A revised *Building Code* is perhaps the most direct way to ensure that no new barriers to persons with disabilities are created. It can also, along with other mechanisms such as human rights complaints, address existing barriers to accessing facilities and services in Ontario. It is therefore critical that MAH's initiative to make changes to the barrier-free requirements of the *Building Code* strives to achieve the highest possible standards. The Commission hopes that this submission has identified some of the priorities for change as well as explained the human rights principles that should be reflected in a revised *Building Code*.

The Commission would like to offer its ongoing support to MAH in this process. It is hoped that by working co-operatively and in consultation, an appropriate degree of harmonization between *Human Rights Code* requirements and a revised *Building Code* 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. It is also the Commission's desire to avoid receiving or initiating a complaint against MAH or other responsible entities as a result of the *Building Code* or its enforcement.

The Commission would further request that MAH keep the Commission apprised of future steps being taken with regard to this initiative.

The Commission hopes that this submission will be helpful to MAH in this process. 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.