

LDAO Public Policy Manual 2002

Section S: Human Rights and Disability Issues

The policies in this section relate to the need to maintain, enforce and enhance legislative protection for people with learning disabilities and to ensure that all people have equitable access to services in Ontario.

Policies

- S1 Human Rights I
- S2 Human Rights II
- S3 Ontarians with Disabilities Act
- S4 Aboriginal Services
- S5 Multiculturalism
- S6 Provision of Equitable and Accessible Services
- S7 Employment Equity

Policy S1 – Human Rights I

LDAO advocates the use and enforcement of the Ontario Human Rights Code and the Canadian Charter of Rights and Freedoms to ensure equity and access for and accommodation of individuals with learning disabilities.

Rationale

Both the OHRC and the Charter prohibit discrimination on the basis of a disability, which includes a learning disability. In the OHRC, learning disability is included directly under the definition of “handicap”, while in the Charter it is included under the more generic term “mental disability”.

References

- OHRC, 1981
- Canadian Charter of Rights and Freedoms, 1982
- Report of the Interministerial Working Group on Learning Disabilities, 1992

Policy S2 – Human Rights II

LDAO advocates that the Ontario Government strongly enhance the capacity of the Ontario Human Rights Commission to carry out its mandate, including, but not limited to, the provision of additional staffing, funding and the development of the anticipated Guidelines for the Accommodation of Persons with Disabilities within the educational system.

Rationale

In Canada, the Canadian Charter of Rights and Freedoms and the Provincial Human Rights Codes, which derive their mandate from the Charter, provide the requisite legislative support for all disadvantaged or vulnerable populations, including protection from discrimination and the right to have access to special programs, developed to ameliorate an innate disadvantage. In this way, persons with disabilities are included under the same umbrella of protection as racial and linguistic minorities as well as the members of other protected groups. From time to time there has been discussion in Ontario to introduce legislation which focuses exclusively on persons with disabilities, outside the more generic human and civil rights legislation.

Individuals promoting this form of specialized legislation look to similar legislation in other countries, such as the Americans with Disabilities Act and the Disability Discrimination Acts in the UK and Australia. While LDAO has generally supported such legislation, (see policy S3), it is becoming increasingly clear that these disability-specific laws allow for significant discrimination against persons with learning disabilities, especially in the areas of post-secondary education and the licensing of professions. Whereas for physical and sensory disabilities there is no debate about the disability and its impact on the individual's capacity to carry out certain specified tasks, the application of the "average person standard" (otherwise qualified) as opposed to either an equivalent peer group (e.g., other medical students) or intra-individual discrepancies, is frequently used against persons with learning disabilities who are looking for accommodations or access to disability specific supports and resources. Such discrimination is not prevalent to the same degree in the area of employment, although it sometimes arises when the individual relies on certain forms of accommodation, e.g., the use of Ritalin for those who have ADHD.

For these reasons, LDAO has focussed its attention on strengthening the Human Rights Commission as the means of assuring the requisite accommodations for persons with learning disabilities.

References

Americans with Disabilities Act (US), 1990

Individuals with Disabilities Education Act (US), 1997

Bill 168, 1994

LDAO response to Bill 168, 1994

Report of the Interministerial Working Group on Learning Disabilities, 1992

Response to the consultation document on an Ontarians with Disabilities Act, LDAO, 1998 and 2001

Policy S3 – Ontarians with Disabilities Act*

*The Accessibility for Ontarians with Disabilities Act was enacted in 2005 and replaces the ODA.

LDAO advocates that the Government of Ontario enact a strong, effective and meaningful Ontarians with Disabilities Act which reflects the principles set out in the LDAO response to the consultation on the Ontarians with Disabilities Act.

LDAO further advocates that in addition to these principles the Ontarians with Disabilities Act address all items outstanding from the 1992 Report of the Interministerial Working Group on Learning Disabilities.

Rationale

People with learning disabilities face significant barriers in society. The 1992 Report of the Interministerial Working Group on Learning Disabilities identified that people with learning disabilities face significant discrimination.

Current human rights legislation and the work of the Human Rights Commission are of significant assistance but do not go far enough to protect the rights and interests of individuals with disabilities.

The American experience with specific legislation (notably, the Americans with Disabilities Act and the Individuals with Disabilities Education Act) has shown that such specific legislation makes a significant difference to the lives of people with disabilities. However, it is also clear that such legislation must have mandatory requirements and meaningful consequences for non-compliance.

LDAO considers that the Ontarians with Disabilities Act ("ODA") should encompass the following principles:

- the definition of disabilities used should be the definition contained in the Ontario Human Rights Code (“OHRC”)
- the goal of the legislation must be to prevent and eliminate discrimination against persons with all disabilities, including so-called “invisible” disabilities as learning disabilities and focus on the needs of persons with disabilities of all ages
- the legislation must complement and supplement the OHRC, such that its requirements supersede other more general legislative initiatives, which may be in conflict with the ODA or enable persons or organizations to contravene the ODA
- the legislation must spell out in detail the government’s and society’s expectations in terms of access to goods, services and facilities by persons with all disabilities and the accommodation of all persons with disabilities, as mandated by the OHRC
- the legislation must ensure that access to funding, assessments, accommodation and supports is based upon identified need and not the definition of a particular disability or disability group, as is so often the case now
- the legislation must spell out the expectation that individuals and organizations must comply with their mandated obligations relating to providing goods, services and supports to persons with disabilities
- the legislation should offer significant financial incentives, where appropriate, to private and public sector organizations and also spell out clearly the consequences of non-compliance with the mandate and regulations of the ODA, once it has been proclaimed
- the legislation must mandate the introduction of significant initiatives in public education and the creation of enhanced public awareness relating to all disabilities, especially those that are invisible disabilities and/or disabilities that are not readily recognized and/or accepted by many persons
- the legislation must apply equally in all parts of Ontario and cover all the service areas listed above
- the legislation must set out a process for promoting and supporting enhanced accountability for all current legislation, including the Education Act, Mental Health Act, Social Assistance Reform Act, which offer services, support, funding and protection to persons with disabilities
- the legislation must include a process for improving services to persons with disabilities by mandating certain services and supports, which are currently optional. An example may be the mandating of mental health services for children and the inclusion and recognition of disabilities within the mental health services provided to adults
- the legislation must also provide a process for dealing with current inequities in terms of funding and access, such as the denial of the Ontario Disability Bursary to students within postsecondary education who are not eligible for the Ontario Student Assistance Plan and the denial of assistive devices funding to all persons with learning disabilities, regardless of their needs. Regrettably, neither the recently introduced version of the Ontarians with Disabilities Act (November 5, 2001) or its predecessors have met any of the above criteria.

References

Americans with Disabilities Act (US), 1990
Individuals with Disabilities Education Act (US), 1997
Bill 168, 1994
LDAO response to Bill 168, 1994
Report of the Interministerial Working Group on Learning Disabilities, 1992
Response to the consultation document on an Ontarians with Disabilities Act, LDAO, 1998 and 2001

Policy S4 – Aboriginal Services

LDAO advocates that efforts be made to improve the provision of services for individuals with learning disabilities in Aboriginal communities.

Rationale

Learning disabilities occur in all populations. Many people of Aboriginal background who have learning disabilities are not identified and thus do not receive services. When individuals have been identified, services must be provided in such a way as to not jeopardize the person's ties to their community or culture.

Aboriginal educational and support services personnel and band council members should be provided with training to facilitate recognition of learning disabilities and to explain the importance of providing help and services to those who have learning disabilities.

References

Response to consultation on common curriculum, LDAO, 1994

Policy S5 – Multicultural Services

LDAO advocates that efforts be made to improve the provision of services for individuals with learning disabilities within the diverse multicultural communities of Ontario.

Rationale

Learning disabilities occur in individuals of all ethnic, racial, linguistic and religious groups. Therefore, all individuals with learning disabilities living in Ontario must be assured an equal right of access to the services, supports and accommodations that are needed to meet their rights and to allow them to participate equitably in society.

References

Ontario Human Rights Code, 1981
Canadian Charter of Rights and Freedoms, 1982
Report of the Interministerial Working Group on Learning Disabilities, Government of Ontario, 1992

Policy S6 – Provision of Equitable and Accessible Services

LDAO advocates the provision of equitable and accessible services for all people with learning disabilities and their families. LDAO advocates the elimination of all systemic barriers, including differentiation based on ethnic, racial, linguistic, religious or socio-economic or other grounds as prohibited in Ontario and Federal human rights legislation. LDAO has adopted policies to ensure that no such discrimination occurs in the work, information and services provided by LDAO, its affiliates and personnel.

Rationale

Learning disabilities occur in individuals of all ethnic, racial, linguistic and religious groups. All people must have equal right of access to the programs and services available to people with learning disabilities.

References

OHRC

Canadian Charter of Rights and Freedoms, 1982

Correspondence with Ministry of Education, LDAO, 1990-1995

See also: Access Policy

Policy S7 – Employment Equity

LDAO advocates the introduction of legislation that promotes the principles of employment equity for persons with disabilities in the Province of Ontario.

Rationale

Employment equity is defined as a comprehensive process adopted to ensure equitable representation of designated groups throughout the workforce and to remedy and prevent the effects of intentional and/or systemic discrimination in employment. The Federal Employment Equity Act (Bill C 61) has not achieved these goals for persons with disabilities. It was anticipated that the previous Ontario Employment Equity Act would have done so. This Act was repealed in 1995 and currently employers are “encouraged” to implement employment equity initiative voluntarily, because it is the right thing to do. However, the experience of many people with learning disabilities indicates that this is not happening.

References

Response to the consultation on an Ontarians with Disabilities Act, LDAO, 1998

Letter to the Ministry of Citizenship, 1995

Brief on employment equity to the Ontario government, LDAO, 1993

Report of the Interministerial Working Group on Learning Disabilities, 1992