

From: [david.lepofsky](mailto:david.lepofsky@...)
Sent: 2022/05/01 7:05 PM
To: Urquhart, Chandra <Chandra.Urquhart@brampton.ca>
Subject: [EXTERNAL]please share with your ,Accessibility Advisory Committee members

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Accessibility for Ontarians with Disabilities Act Alliance Update

United for a Barrier-Free Society for All People with Disabilities

Web: www.aodaalliance.org

Email: aodafeedback@gmail.com

Twitter: @aodaalliance

Facebook: www.facebook.com/aodaalliance/

Help Ensure a Strong Voice for People with Disabilities at the Local Level -- Action Tips for Municipal Accessibility Advisory Committees and School Boards' Special Education Advisory Committees

April 26, 2022

SUMMARY

People with disabilities need to use every available avenue to advocate for accessibility and inclusion in society. That is why we are increasingly concerned about unfair barriers that can obstruct people with disabilities when they try to raise their issues before advisory committees that are supposed to be strong voices for disability issues.

The Accessibility for Ontarians with Disabilities Act requires every Ontario municipality with at least 10,000 residents to appoint an Accessibility Advisory Committee (AAC) to give advice on disability accessibility issues to the municipality. As well, regulations under Ontario's Education Act require every school board to appoint a Special Education Advisory Committee (SEAC) to advise the school board on the needs of students with special education needs.

We need these advisory committees to be a strong voice on disability issues. AACs and SEACs only give advice. Cities and school boards do not have to follow that advice or give reasons for refusing to do so.

We are troubled by barriers that can impede the work of AACs or SEACs. Some of these barriers come from staff of some cities or school boards. We have no way of knowing how often these issues arise. However, we have received enough feedback about them that we feel it necessary to address it.

We want members of AACs and SEACs to know about these barriers, and how to fight back against them. This Update gives members of AACs and SEACs practical tips on how to give as strong a voice as possible to disability issues. We identify seven areas of concern and then provide a fuller explanation for each point below. In summary, here is what all members of AACs and SEACs should know:

1. AACs and SEACs should set their own meeting agendas! Don't let city staff or school board staff set their advisory committee's agenda or tell them what topics are "in order."
2. Members of AACs and SEACs must remain free to also be disability advocates in private and public.
3. Inaccessible virtual meeting platforms and application forms are not allowed.
4. Public deputations to an advisory committee should not be artificially limited to five minutes.
5. Municipal and school board bylaws cannot hog-tie the work of an AAC or SEAC.
6. Members of the public are free to talk to or exchange emails with advisory committee members about accessibility issues, including those on the advisory committee's agenda.
7. AACs and SEACs have an absolute right to have their recommendations and advice shared directly with all the city council or school board trustees whom they are appointed to advise, and not just to a sub-committee.

Please share this Update with members of the AAC and SEAC in your community. Urge your member of city council and school board trustee to read this and to send it to all members of their AAC or SEAC.

We point out areas of concern. We know that there are municipal staff and school board officials who want to achieve accessibility for people with disabilities and who don't want to create barriers to the work of AACs or SEACs. Send them this update, so it can equip them to do the right thing and to help root out these bureaucratic barriers.

Later this year Ontario holds elections for city council and school board trustees. Let's be sure candidates know about these problems.

We need the Ontario Government to help root out these recurring barriers. The Ministry of Municipal Affairs should hold a virtual conference for AAC members, as it did years ago. The Ministry of Education should do the same for SEAC members. Using Zoom, this can be done at very low cost. We would be happy to help. Among other things, those conferences can address these barriers.

Send us feedback. Let us know about experiences you have witnessed in this area. Write us at aodafeedback@gmail.com

MORE DETAILS

1. AACs and SEACs Should Set Their Own Meeting Agendas! Don't Let City Staff or School Board Staff Set Their Advisory Committee's Agenda or Tell Them What Topics are "In Order"

It is essential for each AAC and each SEAC to set its own agendas for its own meetings. City or school board staff should not set or in any way control their agendas.

In parts of Ontario, school board staff set the agenda for SEAC meetings, and city staff set AAC meeting agendas. Where city or school board staff do this, they control what issues the SEAC or AAC can talk about. To take away control of these meeting agendas from people with disabilities is to let the bureaucratic tail wrongly wag the dog. It can lead an Advisory Committee to devote scarce meeting time to issues that are less important from the disability perspective, while precluding consideration of issues that members of the disability community consider more important. It can tie up an advisory committee with unimportant busy work while serious new disability barriers fester.

Nothing in the AODA or the Education Act's SEAC regulations lets city or school board staff control meeting agendas. For city staff to block or impede an AAC from formulating and giving advice on an accessibility issue that the AAC or any of its members wish to pursue flies in the face of the AODA's provisions establishing the mandate of Accessibility Advisory Committees.

Similarly, city or school board staff have no authority to dictate to an AAC or SEAC what advice they can give or what motions they can pass. Once an AAC or SEAC has passed a motion setting out the advisory committee's advice or recommendations, city or school board staff must pass it along to the city council or the board of trustees, as the case may be. Staff cannot prevent an AAC or SEAC motion from being communicated directly to the city council members or school board trustees to whom the advisory committee is giving advice.

We received information about one AAC that passed a motion opposing the use of electric scooters as endangering people with disabilities and others. We were told that city staff refused to pass this on to their city council because the city council had already voted to conduct an e-scooter pilot. We cannot investigate what happened in that instance but can emphasize that city staff cannot rule out of order a motion that an AAC has passed.

In another incident, during a Brampton Accessibility Advisory Committee meeting that AODA Alliance Chair David Lepofsky attended, something similar occurred. The Brampton Accessibility Advisory Committee was discussing whether to make any recommendations on whether Brampton should conduct an e-scooter pilot project. A Brampton City staff official told the AAC that Brampton's City Council had already approved an e-scooter pilot, wrongly conveying the signal that it was already a "done deal" that could not be addressed by the AAC. Acting on this, Brampton's AAC did not discuss whether to pass any recommendations as to whether Brampton should conduct a pilot with e-scooters.

City staff have no authority to impede an Accessibility Advisory Committee from giving whatever advice the AAC wishes on an accessibility issue. Even if a city council has approved an e-scooter pilot project, it is open to an AAC to pass recommendations at any time it wishes on the topic. Making this worse, the Brampton City staff report that preceded the Brampton City Council vote that authorized an e-scooter pilot did not tell city councillors that e-scooters have endangered people with disabilities and others where they are allowed. It is wrong for City staff to withhold such important information from a city council and later to lead an Accessibility Advisory Committee to wrongly believe that it is too late for the AAC to make any recommendations on whether to conduct an e-scooter pilot.

It is not for city staff or other public officials to dictate to an AAC or SEAC what topics or motions are "in order." If city staff or other public officials offer their views on which topics are "in order" it is open to the advisory committee to thank them for their advice but choose not to be governed by it.

2. Members of AACs and SEACs Must Remain Free to Also Be Disability Advocates in Private and Public

We have heard from members of more than one Accessibility Advisory Committee that city staff led them to understand that while serving on a municipal Accessibility Advisory Committee they may not also be "advocates." Some were led to think that this means they are somehow restricted from talking to the media or otherwise engaging in public advocacy on disability issues, including on municipal accessibility issues. While we cannot investigate and verify these incidents, the fact that we have heard this from more than one AAC is a concern.

It is our position that any member of a municipal Accessibility Advisory Committee or a Special Education Advisory Committee is completely free to speak publicly on disability accessibility issues including issues that have come or may come before their advisory committee, including talking to the media if they wish. They can do so in private or in public, during formal advisory committee meetings or on their own time.

Canada is a democracy. Section 2(b) of the Canadian Charter of Rights and Freedoms guarantees the freedom of opinion and expression. It provides:

"2. Everyone has the following fundamental freedoms:...

(b) freedom of thought belief opinion and expression including freedom of the press and other media of communication;"

If any city staff have told AAC members this in the past, they should immediately stop doing so. No city staff or other public official can stop a member of an AAC or SEAC from publicly saying whatever they wish, on the grounds that they are barred from doing so due to being a member of that advisory committee. The Charter of Rights is part of the supreme law of Canada. Public servants, including city and school board staff, must obey it.

We also debunk any suggestion that there is somehow a difference here between being an "advisor" on the one hand and being an "advocate" on the other. Were any public official to claim that a member of a publicly appointed advisory committee must thereby not be an "advocate", this attempts to silence them or to truncate their voice. The disability community needs more advocates, not fewer. We cannot afford to have any of them silenced.

Such a claim by city staff would fly in the face of the purposes for AACs and SEACs. The most qualified people to serve on those committees are those who will vigorously speak up (i.e., advocate) for the accessibility needs of people with disabilities and who have actively done so in the past. Members of these advisory committees are volunteers. They should not be asked to surrender their disability advocacy at the door.

Moreover, what a member of one of these advisory committees does on their own time is none of the business of city staff or other public officials. These advisory committees do not make public policy or decide on anyone's rights or responsibilities. They give advice and feedback on disability issues.

There is no conflict here between advising and advocating. The AODA Alliance has played a major role in advocating for accessibility for people with disabilities. We are also regularly called upon for advice by governments and others.

If any city staff or other public officials try to tell members of an AAC or SEAC that they may not be advocates or that they may not engage in public or private advocacy for people with disabilities these public officials should be immediately and publicly identified and called out for such misconduct. We ask that the AODA Alliance be notified. You can write us at aodafeedback@gmail.com

3. Inaccessible Virtual Meeting Platforms and Application Forms Are Not Allowed

City staff and school board officials must ensure that all proceedings of AACs and SEACs are fully accessible to people with disabilities. This is a basic requirement of the Charter of Rights, the Ontario Human Rights Code and the Accessibility for Ontarians with Disabilities Act. We should not even have to address it here. However, regrettably, we must!

For example, all documents shared at an AAC or SEAC meeting should be in accessible formats. All virtual meetings should be conducted through the most accessible virtual meeting platforms. This must be said because too many times accessibility is not ensured.

Too often since the start of the pandemic, some AAC or SEAC virtual meetings have been conducted on inaccessible virtual meeting platforms. Several municipalities seem quite stuck on using Webex. Webex still has real accessibility problems, even though it is better than it was at the start of the pandemic. At meetings of more than one AAC, the AODA Alliance has raised accessibility objections to Webex only to hear that the advisory committee itself has raised the same objection with city staff to no avail. The widely used Zoom platform is known to be far easier to use and far more accessible. Webex should certainly not be used.

Time and again, city staff require a person to fill out a pdf application form in order to request a chance to make a deputation or presentation to an AAC. At times these forms turn out to require little if any more information than the applicant has already sent to the city staff in an email. PDF format is widely known to be replete with accessibility problems.

As one illustration the AODA Alliance has asked to speak to the Mississauga Accessibility Advisory Committee about e-scooters. City staff sent a pdf application form. When asked to be provided an accessible application such as in MS Word the Mississauga city staff member who is supporting their AAC forwarded this on to their city's accessibility officials. The fact that a frontline city staff member working with an AAC knows so little about accessible documents in 2022 illustrates the problem.

Under the Education Act's SEAC regulations, the school board is required to consult its SEAC on its budget for students with special education needs. The Toronto District School Board's SEAC has several times been given inaccessible pdf documents by the school board's senior budget officials, despite that SEAC's repeated objections to pdf on accessibility grounds.

4. Public Deputations to an Advisory Committee Should Not Be Artificially Limited to Five Minutes

If a member of the public or community organization comes to speak to an AAC or SEAC on an issue of concern, some of these advisory committees allow them only five minutes to speak. After that the presenter can speak longer only if they are asked questions by members of the advisory committee. If there are no questions five minutes is all they get.

This arbitrary practice appears to come from the rules or practices of municipal some council committees or school board committees, and not from the members of the advisory committees themselves. This unnecessary practice can hurt rather than help the advisory committee. From the AODA Alliance's experience, it can be impossible to jam all the important information into five minutes. We have resorted to planting questions with some friendly committee members, in order to expand our presentation time.

When a member of the public takes the time to come to an AAC or SEAC meeting to make a presentation (often called a deputation or delegation), the advisory committee should insist on being far more flexible about the amount of time they give the presenter to speak. They should do so having regard to how many speakers they have and how full their agenda is for that meeting. They should not be artificially bound to a arbitrary five-minute rule for deputations. Here again, the advisory committee should run its own meetings as it wishes.

We don't suggest that any speaker should always get all the time they want. Some might drone on forever. However, a five-minute rule is far too restrictive.

Some AACs and SEACs are commendably far more flexible and give speakers the time they need to present. This is the practice that all should follow.

5. Municipal and School Board Bylaws Cannot Hog-Tie an AAC or SEAC's Work

If city staff or other public officials tell an advisory committee that the city or school board has bylaws on how meetings must be conducted, we encourage the advisory committee not to let its meetings be improperly controlled in that way. City or school board bylaws cannot override the AODA's provisions governing the Accessibility Advisory Committee or provincial regulations governing a SEAC.

We have just encountered an illustration of this. Mississauga is considering whether to permit e-scooters. The AODA Alliance has asked to present to its Accessibility Advisory Committee, in opposition to e-scooters. We also want to present to the committee of Mississauga City Council that will consider the e-scooters issue. In both Toronto and Ottawa, the AODA Alliance was able to present to the AAC and then to the committee of city councillors that were considering the e-scooters issue.

However, we are not allowed to speak to both groups in Mississauga. We have to choose whether we want to speak to the AAC or the committee of city council, but not both. City staff have stated that a city bylaw forces us to choose one or the other.

This is a totally unfair choice. We want to speak to the AAC to try to get its support. However, the AAC only gives advice. It does not decide. We want to speak to the city council committee, because it decides the ultimate question for practical purposes whether e-scooters will be allowed. In Mississauga, the e-scooters issue goes to a committee made up of all city council members. If we don't go to the AAC, we risk the AAC giving advice without the benefit of our input. If we only go to the AAC, we don't get a chance to speak to all the elected city council members who have the ultimate say.

The force and effect of this arbitrary city bylaw is to force community groups like ours to have to make this unfair choice. It can deprive the AAC of needed input to ensure its recommendations are as strong for people with disabilities as possible. Especially in a municipal government system that gives so much sway to city staff, often working behind closed doors, this runs contrary to the aims of the AODA's provisions that create the AAC.

6. Members of the Public Are Free to Talk to or Exchange Emails with Advisory Committee Members About Accessibility Issues Including Those on the Advisory Committee's Agenda

Members of an AAC or SEAC should consider themselves free to speak or exchange emails at any time with any member of the public they wish about topics that are coming up or may come up before their advisory committee. These advisory committees are not like a judge, who cannot speak outside court to the parties about their case before that judge. We had an occasion where a member of an AAC refused to speak to AODA Alliance Chair David Lepofsky about a topic that was to come up before the AAC, claiming that they can only discuss this topic during an open AAC meeting. A chair of another advisory committee directed members of that committee that they are not to discuss the business of the SEAC in emails. Nothing in the AODA or Ontario regulations that create SEACS permit any such restrictions.

7. AACs and SEACs Have an Absolute Right to Have their Recommendations and Advice Shared Directly with The City Council or School Board Trustees Whom They are Appointed to Advise, and Not Just a Sub-Committee.

When an AAC or SEAC passes a motion setting out its advice or recommendations, city or school board staff must transmit that motion and advice/recommendation directly to all the elected officials they are appointed to advise. In the case of an AAC, their motion must be shared directly with the mayor and all city council members. In the case of a SEAC, it must be transmitted formally to the entire board of trustees. This motion and advice/recommendations should be formally tabled at an on-the-record meeting of the city council or school trustees as the case may be. These advisory committees should insist on this and accept nothing less.

In some communities, this does not happen. Instead, the AAC's or SEACs advice is formally transmitted by staff only to a subcommittee of the city council or school board. That subcommittee typically does not include all of the elected city council members or school trustees. If the subcommittee does not decide to approve the advisory recommendation, then it dies there and may not be placed on the agenda of the full city council or school board to consider.

That common practice flies in the face of the laws that mandate these advisory committees. Here again, a city's or school board's bylaws or procedural practices cannot trump a provincial statute or regulation such as the AODA or the Education Act regulations that create SEACs.