



**Ontario Social Action Committee, Ontario Division
Multiple Sclerosis Society of Canada**

**Response to:
Discussion Paper on
Accessible Transit Services in Ontario
Ontario Human Rights Commission**

June 28, 2001

Introduction:

The Multiple Sclerosis Society of Canada, Ontario Division, commends the Ontario Human Rights Commission (OHRC) for its commitment to promoting equal opportunity for people with disabilities through its Discussion Paper on Accessible Transit Services in Ontario.

Founded in 1948, the MS Society of Canada is the only national voluntary organization in Canada that supports both MS research and services for people with MS and their families. The mission of the MS Society of Canada is to be a leader in finding a cure for multiple sclerosis and enabling people affected by MS to enhance their quality of life. The Ontario Division was established in 1962 to provide services and programs for people with MS and their families in the province of Ontario.

Multiple sclerosis (MS) is a chronic, progressive disease of the central nervous system which affects an estimated 12,000 people in Ontario. The causes of MS are unknown, but research indicates that some combination of genetic and environmental factors is responsible. There is no known cure, nor is there a treatment that offers adequate symptomatic relief. Only now are treatments available that appear to slow down or alter the course of the disease offering new hope to people with MS. The nature of MS is highly variable, and the disease course is unpredictable, commonly characterized by exacerbations and remissions, and an unknown rate of progression.

People with multiple sclerosis (MS) in Ontario continue to face a startling array of recurring barriers to employment, education and transportation. The

lack of adequate, comfortable and accessible transportation and accessible work places has contributed to an unemployment rate among people with MS that is much higher than the norm. As a result, Ontario loses skills, revenue and creativity. This highlights the fact that legislating the inclusion of people with disabilities in society should be done not only because it is the right thing to do morally, but also because it makes good economic sense. We must use resources to help people participate in the community rather than to exclude them.

People with MS want to be able to assume the full rights of citizenship. They want the right to contribute back to the community. They want provincial leadership on the development of an Ontarians with Disabilities Act (ODA) that provides the environment where participation is the norm. We are still dealing with an underlying attitude which devalues people with disabilities and their contribution to society. We need the OHRC and a strong ODA to educate the public. We welcome this opportunity to provide our comments on behalf of an estimated 12,000 people in Ontario who have MS.

Accessible Transit and Human Rights

Human Rights Law places a legal duty on all transit providers to ensure transit systems are accessible to all who need it (unless it is impossible for reasons of undue cost, health or safety factors). It creates a right to accommodation with dignity. The obligation to accommodate is not a voluntary exercise, it is a legal duty. The Multiple Sclerosis Society of Canada, Ontario Division, is pleased that the OHRC has publicly stated that public transit is part of the infrastructure which provides access to basic goods and services, as well as to social and economic activities. Public transit is a "service" within the meaning of Section 1 of the Code. The duty to accommodate persons with disabilities is located in section 11 and 17 of the Code and upheld under section 15 of the Canadian Charter of Rights and Freedoms.

We are pleased the OHRC has recognized that public transit is an essential service. It follows that because some people cannot use conventional public transit due to disability, infirmity or having small children, accessible public transit is also essential. Inclusive transportation can be accomplished by making conventional transit more accessible, creating community buses and service routes as well as creating an alternative system (paratransit). We

fully support an integrated conventional system as it serves more people, without having to qualify or pay a registration fee. We commend those municipalities that have forged ahead and planned for complete inclusion. We are also very pleased that the OHRC recognizes that a parallel system will always be necessary for those who will always need extra help and others who need help at certain times, such as during inclement weather.

Jurisdiction and Administration:

Some areas of the province have several authorities with jurisdiction over a single area, for example Ottawa and the greater Toronto area. Authorities should be required to put the rider first and agree upon a way to deliver the customers safely to their destination. Crossing boundaries may mean being discharged on the side of a busy road and left to cross on their own or be taken off a van and left to be picked by a van of an adjoining municipality. This should not be allowed. Those involved must seek out other municipalities who have resolved similar situations and implement that formula before a rider is hurt or killed.

Demographics and planning tools:

We applaud the Supreme Court of Canada 's recognition in *Eldridge* that public authorities are required to take positive steps to ensure that disadvantaged groups benefit equally from services offered to the general public. With baby boomers aging, the number of riders needing both an accessible conventional system and paratransit will increase, making the need for well-planned accessible transit even more urgent. The OHRC noted that plans must be made and kept up-to-date and should include clear goals and current plans to achieve a highly integrated conventional system and a specialized system.

The MS Society is pleased the OHRC points out that under the Code persons with disabilities, older persons, students and families with small children, and those with temporary disabilities have a right to equal treatment in the provision of public transit. We are delighted the OHRC pointed out that human rights laws create a right to accommodation with dignity. This duty is not a voluntary or temporary one; it is an ongoing legal duty under ss. 1, 11 and 17 of the Code. Accountability must be built into the annual business planning process with performance measures approved by the governing body. Clear timelines for implementation must be included.

Funding for Accessible Transit:

Historically, the Government of Ontario contributed to the funding of municipal transit. By 1999, all funding for transit became a municipal responsibility. If public transit is to become inclusive across the province as the Code stipulates, the provincial government must contribute to the funding. Municipalities with dominant industries that go in boom/bust cycles, may have to downsize their transit systems if the province does not have a support plan in place to cover expenses during a recession. It is important that municipalities have assistance funding their accessible transit systems so that the level of service allows riders freedom to move around the community just like their fellow citizens.

Accessible Public Transit:

Work should continue to make regular public transit (buses, subways and streetcars) more accessible to people who are disabled. Low floor buses, buses equipped with ramps, elevators in subway stations, etc., need to receive priority attention. A large number of people who are disabled either permanently or temporarily will be able to have their transit needs met by regular transit system if adjustments are made to accommodate their needs. However, we also recognize that accessible public transit will not be usable by many people who are disabled, including some who have multiple sclerosis.

Paratransit:

Paratransit is a segregated service mostly for the use of mobility impaired individuals. Usually the municipality contracts out the service. The contractor uses specialized accessible vans or mini-vans on a pre-booked schedule. Sometimes partnerships or subcontracts with taxi companies or other companies with accessible vans, carry out the contract. We are pleased the OHRC has noted the varying eligibility criteria across the province raises human rights issues. Some systems allow those who are cognitively impaired to use the system only under certain circumstances, such as to attend workshops.

At present there are many attributes of the paratransit system that are not user friendly. Paratransit can be very late picking up riders with no consequences, while if riders are more than five minutes late, the vehicle

leaves without the rider. Riders are at times required to remain on the vehicle as the driver completes the scheduled route for more than 80 minutes with no consequences to the contractor. One remedy for many of these issues might be an effective Ontarians with Disabilities Act.

Ontarians with Disabilities Act (ODA):

The OHRC points out that the Code and the Charter set out equality rights and rights to equal opportunities, services and facilities. With respect to transit services, there are no specific standards to address barrier removal or service levels for conventional or paratransit services. This proposed legislation would make accessibility a top priority in every aspect of public life. It should allow people accommodation with dignity with respect to work, education, basic goods and services and facilities to the point of undue hardship.

In 1995 the Ontario government undertook to enact an Ontarians with Disabilities Act. The intended ODA should:

require the providers of goods, services and facilities to the public to ensure that their goods, services and facilities are fully usable by persons with disabilities, and that they are designed to reasonably accommodate the needs of persons with disabilities...(p)roviders of these goods, services and facilities should be required to devise and implement detailed plans to remove existing barriers within legislated timetables.

An effective ODA represents an important step toward developing a new law that could make Ontario closer to a model society for people with disabilities. The requirements under the ODA should supercede all other legislation. Changes to funding structures and decisions about who pays for certain services should not change the basic principle that barriers must be removed that prevent inclusion of all citizens in all aspects of society. Timelines must be reasonable so that the cost to those responsible is balanced with the cost to the individual who is being excluded.

Some existing problems:

An Ontarians with Disabilities Act could address some inequities such as "comparable service". The question of "comparable service" was addressed

in the Americans with Disabilities Act which found that such a service should emulate the conventional service as closely as possible including:

- Comparable hours of service
- Comparable fares
- Comparable geographic area served
- No prioritizing of trips
- Comparable waiting times
- Comparable levels of service

Application of the first four points varies considerably in Ontario depending on which municipality a person lives and how much funding is available. The goal of comparable waiting times for people who are mobility disadvantaged does not come close to those enjoyed by people who can use the conventional system. Comparable levels of service must include the concept of a comparable safe and healthy ride. This last point is illustrated more fully below:

1. Conventional buses have a functioning shock absorbent system that gives riders a fairly smooth ride. Some paratransit systems have heavy-duty shocks or poorly functioning ones that give a very bumpy ride. To have the vehicles acceptable for as many persons with disabilities as possible, the ride must be as "soft as possible". Many people with disabilities have acquired osteoporosis from being in a wheelchair for many years. This means their brittle bones can suffer stress fractures from a rough vehicle ride. Air shocks and an improved suspension as well as prudent driving techniques would improve the softness of the ride.
2. Air conditioned ride available on most low-floor accessible conventional buses: Many riders' health would benefit from having a cool environment on the paratransit vans. For example those with heart or lung disease as well as most with multiple sclerosis and some with muscular dystrophy would benefit. This requires the air conditioning unit (A/C) to be turned on at least 20 minutes before a client in need of cool air is picked up; in addition the unit must be in working condition.
3. Insisting that persons on mobility devices ride backwards on accessible buses must be discontinued. It is undignified, nauseating

and causes up to five regular passengers to move to allow the riders to orient themselves backwards.

4. Drop offs where a person requests should be allowed. Request stops are permitted on many conventional systems, but disallowed on some paratransit systems. Drivers must not forsake passengers requests for the sake of a schedule.
5. There can be better use of companies with ramp or lift-equipped taxis and other types of vehicles in partnership arrangements.
6. Better portability of visitor use should be allowed. Some systems require more than just a registration number from their home system.
7. Better scheduling of routes is a must to prevent lengthy times spent on paratransit vehicles.
8. Discontinue penalties for cancellations/no shows close to booked time as imposed by some paratransit systems.

Conclusions:

The Ontario Social Action Committee, Multiple Sclerosis Society of Canada, Ontario Division, commends the Ontario Human Rights Commission for its commitment to promoting equal opportunity for people with disabilities. The OHRC has emphasized that public transit providers have a legal obligation to accommodate the needs of their riders on the grounds of disability, age and family status.

The OHRC recognizes that by applying *Eldridge* and the human rights principle of integration and respect for dignity, the goal of all transit systems should be to integrate its riders with disabilities into both an accessible public system and a paratransit system for those who are unable to use accessible public transit. We are pleased the OHRC agrees parallel systems should provide service in a manner that is least intrusive and most respects dignity.

The establishment of truly accessible public transit and paratransit systems will enhance the opportunity for people with disabilities to participate fully

in their communities. Lack of accessibility in public transit systems creates barriers for people who are disabled that do not exist for the able-bodied population. While able-bodied people have the right to decide at the last minute to participate in a community activity or be on-call for work, this option does not exist for people who are disabled who must rely on paratransit as it currently exists. Changes should and must be made to allow all people to participate on an equal basis.

It is our hope that the public transit providers will be proactive and endorse the opinions of the OHRC and begin implementation now. We thank the Ontario Human Rights Commission for the opportunity to provide comments on behalf of those with multiple sclerosis in Ontario.

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