

Employer Attitudes Towards Disability in the Workplace: A Descriptive Study of the  
Policy Environment

By

Anna E. Murray

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## **Abstract**

*Purpose:* The purpose of this thesis was to: a) describe the current context of Ontario's employment policies by conducting a policy analysis to understand the ways in which the Ontario Human Rights Code, the Labour Relations Act, and Accessibility for Ontarians with Disabilities Act (AODA) function together to provide a framework for action to guide employer attitudes towards disabilities in the private sector of Ontario, and b) investigate employer knowledge/understanding and application of these three policies in the Ontario private sector by conducting interviews.

*Methods:* To perform the policy analysis, relevant documents were systematically collected and qualitatively analyzed. In addition to the policy analysis, semi-structured interviews were conducted with three employers to investigate the policy knowledge and application in the workplace.

*Results:* From the policy analysis, ten themes arose: anti-discrimination and accommodation, the individual complaint system of the Ontario Human Rights Code, the need for government participation, education, and awareness in the AODA, the application of the Labour Relations Act, required employer knowledge of the three Ontario policies, minority group treatment of people with disabilities in policy, the collectivist responsibility under the AODA, the definition of disability, the impact of the definition of disability on employers, and the cost of accommodation. The themes arising from employer interviews were: view of disability, knowledge and application of the three policies, the "fit" of a prospective employee, the importance of a human resources department, and the presence of accessibility in the workplace.

*Summary:* Together, the three policies addressed anti-discrimination in the workplace for employees with disabilities by mandating reasonable accommodation for all. Under the AODA, standards of accommodation were established and enforced through random government inspections, and under the Ontario Human Rights Code, accommodation challenges were addressed by a case-by-case method. Employers must be privy to the responsibility to provide accommodations for people with disabilities, as the enforcement mechanisms differ. In reality, there is a large variance in the application of the central policies, and employers without a human resources department appear to understand fewer details of the policy requirements. This understanding did not appear to impede accommodation for employees with disabilities.

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## Table of Contents

ABSTRACT.....	i
ACKNOWLEDGEMENTS.....	iii
TABLE OF CONTENTS.....	iv
CHAPTER 1: INTRODUCTION.....	1
1.1 The Importance of Employment.....	1
1.2 What is Employment Equity and Anti-Discrimination.....	1
1.3 The Need for Employment Equity and Anti-Discrimination in Ontario.....	2
1.4 Policy as a Remedy to Discrimination.....	3
1.5 Ontario’s Employment Equity Framework.....	4
1.6 Research Question.....	6
1.7 Overview of Thesis.....	6
CHAPTER 2: LITERATURE REVIEW.....	8
2.1 History of Employment Equity Efforts in Ontario and Canada.....	9
2.1.1 The Labour Relations Act.....	9
2.1.2 Canadian Charter of Rights and Freedoms.....	11
2.1.3 The Ontario Human Rights Code.....	13
2.1.4 Abella Report and the Employment Equity Act.....	15
2.1.5 AODA.....	16
2.2 The Current Role of Federal Employment Equity Policies.....	19
2.2.1 The Canadian Charter of Rights and Freedoms.....	19
2.2.2 The Employment Equity Act.....	20
2.2.3 The Roles of the Canadian Charter of Rights and Freedoms and the Employment Equity Act.....	21
2.3 Current Policy Context for People with Disabilities.....	22
2.4 Purpose of Research.....	31
CHAPTER 3: THE POLICY ANALYSIS.....	33
3.1 Policy Analysis Methodology.....	35
3.1.1 Reasons for Document and Policy Analysis.....	35
3.1.2 Process of Data Collection.....	36

3.1.3 Sampling Strategy.....	40
3.1.4 Collection Site.....	41
3.1.5 Relevancy of Documents Collected.....	43
3.1.6 Data Analysis.....	44
3.1.7 Establishing Trustworthiness.....	45
3.2 The Policy Analysis Findings.....	46
3.2.1 Anti-Discrimination and Accommodation.....	47
3.2.2 The Individual Complaint System of the Ontario Human Rights Code.....	53
3.2.3 The Need for Government Participation, Education, and Awareness of the AODA.....	54
3.2.4 The Application of the Labour Relations Act.....	58
3.2.5 Required Employer Knowledge of the Interaction of Ontario Policies.....	59
3.2.6 Minority Group Treatment of People With Disabilities in Policy.....	61
3.2.7 The Collectivist Responsibility Under the AODA.....	64
3.2.8 The Definition of Disability.....	65
3.2.9 The Impact of the Definition of Disability on Employers.....	69
3.2.10 The Cost of Accommodation.....	70
<b>CHAPTER 4: ACTUALIZATION OF THE POLICIES IN THREE EMPLOYMENT SETTINGS.....</b>	<b>73</b>
4.1 Interview Methodology.....	73
4.1.1 Objectives.....	73
4.1.2 Sample.....	74
4.1.3 Setting.....	74
4.1.4 Recruitment.....	75
4.1.5 Data Collection and Analysis.....	75
4.1.6 Establishing Trustworthiness.....	78
4.2 Findings from the Interview.....	79
4.2.1 The Participants.....	79
4.2.2 View of Disability.....	81

4.2.3 Knowledge and Application of the Three Policies.....	82
4.2.4 The “Fit” of Prospective Employees.....	85
4.2.5 The Role of Human Resources Departments.....	85
4.2.6 The Presence of Accessibility.....	87
4.2.7 Summary of Results.....	89
CHAPTER 5: DISCUSSION AND CONCLUSIONS.....	91
5.1 Discussion of Findings.....	91
5.1.1 What do the three key Ontario policies provide together in the way of framework to guide employer attitudes towards persons with disabilities in the Ontario private sector?.....	91
5.1.2 To what extent are private sector employers in Ontario aware of these three central policies, and how do these employers apply these policies in their work setting in order to ensure employment equity for employees with visible disabilities?.....	99
5.2 Limitations of the Study.....	103
5.3 Future Research Directions.....	105
5.4 Conclusions.....	106
Reference List.....	108
Appendix A: Information Pamphlet.....	119
Appendix B: Letter of Information/Consent.....	120
Appendix C: All Collected Documents .....	122
Appendix D: Documents Used for Analysis.....	134
Appendix E: Queen’s General Research Ethics Board Approval .....	138

## **Chapter 1: Introduction**

### **1.1 The Importance of Employment**

Employment is a central occupation in the lives of most adults, providing several benefits for those involved. It allows a person to financially support him/herself, build self-worth and satisfaction as his/her skills and talents are put to good use, and promotes feelings of inclusion as a useful member of society by providing both meaning and purpose; in addition, it can help a person build personal relationships with coworkers (CAOT, 2002; Latessa, 2012). Employment as a central occupation can also provide a person with the ability to exert control over his/her aspirations, particularly if the employment opportunities are favorable (CAOT, 2002; Hammel, 2004). Unfortunately for people with disabilities, the labor market and the workplace have been structured to disadvantage such individuals, often leading to the inability for people with disabilities to secure meaningful employment, despite their desire to do so (Boyce et al., 2008). Ultimately, people with disabilities have been denied a form of control over their own lives, and are unable to access the benefits of employment, due to certain forms of discrimination (Beer, 2010; Boyce et al., 2008).

### **1.2 What is Employment Equity and Anti-Discrimination?**

In order to remedy discrimination of people with disabilities in the workplace, the government has designed policies that provide anti-discrimination and employment equity. Since these terms will be used throughout the paper, they will be described to facilitate understanding. Employment equity, a uniquely Canadian term coined by Justice Rosalie Abella, refers to treating people in all workplace processes with fairness and



impartiality; specifically the four identified groups of visible minorities, women, aboriginals, and people with disabilities. According to this principle, no person shall be denied employment opportunities or benefits for reasons that are unrelated to their inherent abilities (Cardillo, 1993). Employment equity is a product of discrimination prevention. Discrimination in Ontario legislation refers to not individually assessing a person's strengths and capabilities, making a stereotype assumption based on the presumed traits, and/or excluding persons or imposing certain burdens (Ontario Human Rights Commission, 2012). Therefore, discrimination prevention, or anti-discrimination legislation, works to reduce discrimination in Canada, and to provide fair opportunities to all people. Employment equity is a facet of discrimination prevention, which addresses fairness in the workplace.

### **1.3 The Need for Employment Equity and Anti-Discrimination in Ontario**

There is a distinct requirement for employment equity and anti-discrimination legislation in Ontario. According to the Participation and Activity Limitations Survey (PALS) performed in 2001, 1.8 million people in Ontario are directly affected by disability, which translates to 15.5% of the population (Onley, 2014). Given these numbers, people with disabilities form the largest single minority in the province (Beer, 2010; Onley, 2014). People with disabilities as a group also experience the highest rate of unemployment in our province, with an unemployment rate of more than 50%. With unemployment rates being so high, people with disabilities have become increasingly concerned with discrimination experienced in the workplace, since this is a group that has strengths and capabilities to work at higher rates than suggested by the present number

(Onley, 2014). As a reflection of this concern, on average, 30-50% of the human rights complaints filed with the Ontario Human Rights Commission in 2009 were related to disability, with discrimination in the workplace being cited as the main reason for the complaints (Ontario Human Rights Commission, 2009b). While certain forms of accessibility, such as physical accessibility in the form of ramps, automatic doors, and parking spots, have been addressed over the past decade, unemployment rates have remained unchanged. David Onley, Ontario's first Lieutenant Governor with a disability, states that the reason that unemployment and underemployment of people with disabilities persists is the presence of attitudinal barriers in the workplace, specifically that of employers (Onley, 2014). There is still much progress that needs to be made, as people with disabilities continue to experience attitudinal barriers despite the existence of anti-discrimination policies (Beer, 2010). According to the literature, there are two categories of attitudes: personal and societal. Daruwalla & Darcy (2005) distinguish personal attitudes from societal attitudes in that personal attitudes are the beliefs, thoughts, and feelings that influence a person's behavioural tendencies, while societal attitudes are beliefs that are cultivated and influenced by governing bodies, culture, and history (Brostrand, 2006; Daruwalla & Darcy, 2005). Societal attitudes resulting from the current political framework may not necessarily reflect the personal attitudes held by an individual.

#### **1.4 Policy as a Remedy to Discrimination**

A policy is a plan of action that is devised by federal or provincial governments that sets clear rules and boundaries as to how people should act, and to guide the delivery

of programs or services (Jongbloed, 2003). Employment equity and anti-discrimination policies have been created to amend historical wrongs by having all employers provide equity in the workplace for all people with disabilities who have the capacity and desire to be part of the workforce by identifying and removing barriers that may impact their ability to participate (Beer, 2010). While policies dictate the way people should act in society, they are also influenced by societal values, and therefore the way an issue is viewed by society provides an implicit prescription for the contents of policy (Jongbloed, 2003). Policy and societal values are intricately linked to one another. Based on the anti-discrimination policy in Ontario, it is clear that “we all agree that discrimination against people with disabilities is wrong; accessibility for people with disabilities is right” (Beer, 2010, p. 3). Since people with disabilities continue to be unemployed and underemployed, there is a gap that exists between the values upheld by policy, and the outcome of policy.

### **1.5 Ontario’s Employment Equity Framework**

Today, Ontario lacks unified legislation to ensure barrier identification and removal for people with disabilities, and instead relies on the presence of multiple pieces to create a policy framework, each applicable in different areas (Cornish, 2009). Three particular pieces have been identified as being important to barrier identification and removal in the private sector workplace for people with disabilities. First, the Ontario Human Rights Code currently mandates barrier removal in the workplace for people with disabilities, and is enforced by a complaints based system, in which individuals submit their complaints to the Ontario Human Rights Commission (Ontario Human Rights Commission, 2009b). Second, the Accessibility for Ontarians with Disabilities Act

(AODA) has been newly created, and acts as a guide in barrier identification and removal in various sectors, including the workplace, by creating accessibility standards. It is enforceable through monetary penalties, and compliance is monitored by annual reports and random inspections (Beer, 2010). Finally, the Labour Relations Act is applicable only in unionized workplaces, and facilitates collective bargaining in which the union and the employer negotiate accessibility. Discrepancies between the collective agreement and the workplace reality can be filed with the Ontario Labor Relations Board (Ontario Labour Relations Board, 2008). While the policies all have the same goal of eradicating discrimination to ensure equity in Ontario workplaces, compliance with one piece of policy does not necessarily entail compliance with the other pieces of policy (Beer, 2010). Therefore, the current framework requires that employers hold knowledge of various pieces of the different policies in order to ensure equality in the workplace as mandated by the law.

These aforementioned policies apply to both the public and private sectors; however, only the private sector will be investigated in this thesis. The reason for this is that the Ontario public sector is mandated by an additional policy called the Employment Equity Act. Within this act, employers are required to collect information in the workplace to provide data on the representation of people with disabilities, women, visible minorities, and aboriginals; analyze underrepresentation; identify any barriers to employment; and prepare plans to eliminate these barriers. Additionally, information is collected on the labor market availability, and the representation numbers are compared to those of availability. While the Employment Equity Act will be described in greater depth in Chapter 2, it is important to note that it provides for a clear form of

documentation as to the representation of people with disabilities in the public workforce; the private workforce has no such legislation (Human Resources and Skill Development Canada, 2011). Instead, the three policies in question collectively mandate employment equity and anti-discrimination in the private sector. However, none of these pieces require documentation of workplace representation, labour force availability, or the formulation of hiring strategies based on these numbers. For this reason, the way in which these policies function in the Ontario private workforce will be investigated, as there is much variance in hiring and retention strategies (Beer, 2010).

## **1.6 Research Question**

The following research questions will guide the research study:

1. What do the three key Ontario policies together provide in the way of framework to guide employer attitudes towards persons with disabilities in the Ontario private sector?
2. To what extent are private sector employers in Ontario aware of these three central policies, and how do these employers apply these policies in their work setting in order to ensure employment equity for employees with visible disabilities?

## **1.7 Overview of the Thesis**

Chapter 2 of this thesis provides a review of the literature relating to the historical efforts of employment equity in Ontario, through the Labour Relations Act, the Canadian Charter of Rights and Freedoms, the Ontario Human Rights Code, the Employment

Equity Act, and the AODA, along with a description of their current roles. Next, an overview of current literature regarding people with disabilities in the workplace will be presented, including research on the perspective of people with disabilities regarding barriers in the workplace, and perspectives of employers as to their attitudes towards people with disabilities in the workplace. Chapter 3 describes the methodological framework for the policy analysis and answers the question: What do the three key Ontario policies together provide in the way of framework to guide employer attitudes towards persons with disabilities in the Ontario private sector? Chapter 4 describes the methodological framework and findings of the interviews with employers in the Ontario private sector to answer the question: To what extent are private sector employers in Ontario aware of these three central policies, and how do these employers apply these policies in their work setting in order to ensure employment equity for employees with visible disabilities? Chapter 5 provides a discussion of the results from the policy analysis and interviews, including the limitations of the study and future directions.

## **Chapter 2: Literature Review**

The current chapter provides a review of the literature pertaining to the anti-discrimination and employment equity efforts that have been made in Canadian and Ontarian legislation to increase the representation of people with disabilities in the workplace, and the way in which unemployment, underemployment, and attitudinal barriers continue to exist, despite efforts of policymakers. The first section provides a historical account of the legislative efforts made in Canada and Ontario to ensure employment equity between post First World War (WWI) and the present. The five policies discussed in this section are the Labour Relations Act, the Canadian Charter of Rights and Freedoms, the Ontario Human Rights Code, the Employment Equity Act, and the AODA. It is important to understand the evolution of policy in Ontario and Canada to understand our current policy context.

Second, the current function of the Canadian Charter of Rights and Freedoms and the Employment Equity Act will be described. These two policies function on the federal level, and work at the national level to impact employment equity in each province, including in Ontario. The way in which they interact with the Ontario Human Rights Code, the AODA, and the Labour Relations Act will be described.

The third section of this literature review provides a snapshot of the lives of people with disabilities today living in Ontario based on the PALS statistics from 2001, focusing specifically on employment and income rates. This section will discuss the fact that people with disabilities continue to experience underemployment and unemployment when compared to people without disabilities, despite the legislation in place. PALS is the most current national report presenting statistics on the severity of physical and

mental limitations in Canada, the use of specialized equipment, barriers to employment and education, accommodation, transportation, and leisure (Statistics Canada, 2001).

The final section will discuss attitudinal barriers that people with disabilities encounter in the workplace, and the findings of studies in which this phenomenon has been investigated. This section will demonstrate the need to describe the framework of action to guide attitudes of employers as they relate to current policy in the province of Ontario.

## **2.1 History of Employment Equity Efforts in Ontario and Canada**

In this section, the history of policy efforts in Canada will be outlined, as it is important in understanding the social and historical context under which the three key policies were created. This will be done in order to help the reader understand the current impact and relation to employment equity and anti-discrimination (Walt et al., 2008). Each of the five described pieces was developed for different reasons and within different time periods, which is the reason why each is explained individually in this chapter.

### *2.1.1 The Labour Relations Act*

Labour law, an umbrella term used to describe legislation related to unions, workplace health and safety, and employment standards, was the first type of legislation that was introduced in Canada in which the wellbeing of people in the workplace was addressed (Adams, 1995). Labour relations, a segment of labour law, aims to facilitate the process of collective bargaining, whereby representatives of an employer and a trade union come to a collective agreement as to terms and conditions of the workplace



environment (Ministry of Labour, 2011). Policies that addressed collective bargaining began to appear in prosperous industrialized countries internationally between World War I (WWI) and World War II (WWII), and became crucial tools in encouraging peaceful work environments (International Labour Organization, 2004). Ontario took note of the movement towards collective bargaining, and in 1943, the Conservative government created the Collective Bargaining Act. The creation of this act was the Ontario government's first attempt to mandate compulsory collective bargaining in unionized workplaces (Ontario Labour Relations Board, 2011). During Ontario's 1943 provincial election, part of the Conservative platform included a promise to improve the labour programs in Ontario, and in 1950 George Drew officially presented the Labour Relations Act, in which the creation of unions and the process of collective bargaining were permitted in a limited capacity, as unions were only permitted to organize, bargain, and strike under restricted circumstances. The Labour Relations Act replaced the Collective Bargaining Act (Smith, 2008). The unions that were part of the Canadian Congress of Labour (CCL) lobbied the government to increase union security by lifting these restrictions on unions to organize, bargain, and strike to enhance fair employment conditions. The provincial government, however, did not make any changes to the legislation (Smith, 2008).

In 1956, the Ontario Federation of Labour was created by the CCL. This body lobbied the Ontario government, requesting a revision to the existing Act. In response, Premier Leslie Frost announced in 1957 that the Labour Relations Act would be officially reviewed, and the Select Committee of the Legislature was created to do so. The Committee was composed of eight members of the Conservative party, two members of

the Liberal party, and one member of the Cooperative Commonwealth Federation (Smith, 2008). The committee received over 5000 letters from employers and union members voicing their opinions about the content of the Labour Relations Act. By July 10, 1958, the Committee had come to a resolution, in which 51 of the proposed changes were recommended. Governmental members reviewed the recommendations, and on October 22, 1960 the Labour Relations Act was officially amended. The new legislation held two main goals: a structured process to settle industrial disputes, and the increased regulation of trade union duties (Smith, 2008). With the amendment of the Labour Relations Act, collective bargaining was reinstated. Today, this is seen as anti-discrimination for people with disabilities in unionized workplaces because it provides a platform by which people with disabilities have the right to demand unique accommodations in the workplace through the collective bargaining process.

### *2.1.2 Canadian Charter of Rights and Freedoms*

During WWII, Canada was a country in which discrimination of minority groups co-existed with the desire for equality (Howe, 1991). According to Howe (1991), Canadian troops were fighting discrimination overseas, while at home, Japanese from western Canada were being interned in camps; Jews and blacks were being discriminated against in the workplace; aboriginal people were denied access to veterans' benefits; and women were being paid less than men for the same job. The creation of human rights legislation to protect against discrimination of minority groups occurred internationally after WWII. The United Nations (UN) was formed in 1945 in response to the atrocities of the war, the Holocaust, and the rise of totalitarianism (Sharpe and Roach, 2009). Fifty

countries signed onto the UN Charter, thereby committing themselves to the protection of human rights and peace internationally. In 1948, the first human rights charter was actualized: the United Nations' Universal Declaration of Human Rights (Declaration). In Canada, both provincial and federal governments began to draft anti-discrimination legislation (Sharpe and Roach, 2009).

In response to Canada's commitment to the UN and human rights legislation, the federal government began drafting the Canadian Bill of Rights (Bill). This was based on the work of the British theorist A.V. Dicey, who constructed a theory called "the rule of law" which was based on three principles, the second of which being "equality before the law" (Constitutional Law Group, 2010). This principle was incorporated into the Bill as a fundamental freedom in Section 1(b). "Equality before the law" meant that every person was subject to the law, regardless of rank, which meant that governments were also subject to the law (Hogg, 2010). On August 10, 1960, John Diefenbaker enacted the Bill. The equality rights that were found within the Bill extended to protection from discrimination based on race, national origin, colour, religion and/or sex. Disability was not included in the provisions of the Bill. Over the years following its enactment, the Bill was subject to much criticism. The Bill was applicable only to federal laws. Further, the Bill was an ordinary act of Parliament and not part of a constitution and therefore, it could be amended or repealed at any point (Hogg, 2010; Sharpe and Roach, 2009). Also, it was argued in the *R v. Drybones* case that discrimination could exist within policy, and the Bill provided no way for policy to be assessed or amended (Hogg, 2010).

In October 1980, Prime Minister Pierre Elliott Trudeau announced that the drafting of a new charter had commenced in order to address the shortcomings of the Bill.

The process began with the creation of a Joint Committee of Parliament (Sharpe and Roach, 2009). The committee, composed of MPs and Senators, was responsible for listening to various advocacy groups present their requests as to what they would like to see in the charter. Disability advocacy groups participated in this process. After this process, points made by the different groups were taken into consideration by the drafters, and incorporated to the extent that the drafters saw fit. In November of 1981, nine out of the ten provinces agreed to the provisions of the Canadian Charter of Rights and Freedoms; Quebec dissented (Sharpe and Roach, 2009). This led to the enactment of the Constitution Act, 1982, in which the Canadian Charter of Rights and Freedoms composed the first part (Hogg, 2010; Sharpe and Roach, 2009). The Constitution Act, 1982 is part of the Canadian Constitution, along with the Constitution Act, 1867, and any amendments made to these acts (Hogg, 2010). Section 15 (s.15) of the Canadian Charter of Rights and Freedoms was designed to ensure the equality of every individual in Canada, and to ensure that discrimination towards several specified minority groups, including people with disabilities, did not occur. This extends to protecting people with disabilities in the workplace. The Canadian Bill of Rights still exists today; the Canadian Charter of Rights and Freedoms takes primacy over the Bill (Hogg, 2010).

### *2.1.3 The Ontario Human Rights Code*

While the federal government was drafting the Bill, the Ontario government began to draft anti-discrimination legislation as well (Howe, 1991). After WWII, Ontario became an increasingly diverse province, in which 40% of the immigrant population was non-British and more women joined the workforce. There was also a push for anti-

discrimination laws in Ontario by a group of Jewish Canadians: Kalmen Kaplansky, Benjamin Kayfetz, Irving Himel, and A. Alan Borovoy (Howe, 1991). In response to these pressures, the Ontario government passed laws to prohibit discrimination in the specific areas of service provisions, education, rental housing, and the workplace on the basis of race and religion, and on the basis of gender in relation to pay (Howe, 1991). In the late 1950s, the Ontario government decided to consolidate these pieces of legislation into a singular human rights legislation - the Ontario Human Rights Code. The first reading occurred in 1961 and the final version was enacted in 1962. This piece of policy did not include provisions for many minority groups, including people with disabilities. The Ontario Human Rights Code was sanctioned by the Ontario Human Rights Commission (Howe, 1991).

Soon after the enactment of the Ontario Human Rights Code, minority groups and the Ontario Human Rights Commission began to lobby the Ontario government for a revision of the Ontario Human Rights Code. They demanded that the Ontario Human Rights Code's scope and application be reassessed; the provisions were viewed as insufficient. These lobbying efforts spanned the 1960s and 1970s (Howe, 1991). In 1977, the Ontario Human Rights Commission created a report called "Life Together", in which it made major recommendations for the reform of the Ontario Human Rights Code. In 1981 the Ontario government decided to revise the Ontario Human Rights Code entirely. It was during this revision that disability was added to the list of protected minority groups (Keene, 1981). In 1982, the revised version of the Ontario Human Rights Code was enacted. While there have been minor amendments since 1982, the 1982 version of the Ontario Human Rights Code is the version utilized today (Howe, 1991).

#### *2.1.4 Abella Report and the Employment Equity Act*

In 1984, after the enactment of the Canadian Charter of Rights and Freedoms and the Ontario Human Rights Code, Justice Rosalie Abella was commissioned by the Government of Canada to investigate employment equity in Canada as the chair of the Commission on Equality and Employment. The investigation culminated with a report called *Equality in Employment: A Royal Commission Report* (Abella Report) (Bakan and Kobayashi, 2007; Cornish, 2009). The Abella Report compared the composition of the actual workforce in Canada to that of the available workforce in Canada. This comparison suggested the existence of discriminatory barriers to employment in the areas of recruitment, retention, promotion, accessibility, accommodation, compensation, benefits, pension plans and training opportunities for women, visible minorities, aboriginal people and people with disabilities. Based on these findings, the Abella Report made recommendations to the Government of Canada to ensure employment equity for the four minority groups or designated groups identified in the Abella Report (Public Service Commission of Canada, 2011).

The Government of Canada responded to the recommendations of the Abella Report by enacting the Employment Equity Act in 1986. The Employment Equity Act was enacted by the Conservative government, under the leadership of Brian Mulroney, and became effective in 1987 (Agocs, 2002). The purpose of this legislation was to achieve equality in federally regulated companies with 100 employees or more for these designated groups (McColl, Schaub, Sampson, and Hong, 2010; Standing Senate Committee of Human Rights, 2010). The Employment Equity Act at this time, however, failed in effectively addressing a number of the recommendations. Most importantly, it

did not include monitoring and enforcement clauses, which meant that the legislation lacked a method to ensure employment equity (Agocs, 2002).

According to Agocs (2002), the Employment Equity Act underwent a parliamentary review in 1991, was amended by the Liberal government of Jean Chretien in 1995 to include enforcement clauses. The amendment included: expansion of coverage to the federal arena; enforcement mechanisms, such as an employment equity review tribunal and compliance audits; and the requirement of consultation and collaboration with minority groups in the provision of accommodation. This is the version of the Employment Equity Act used today to achieve representation rates in workplaces that are federally regulated under the Canadian constitution.

According to the Standing Senate Committee on Human Rights (2010), the Employment Equity Act ensures equality in the federal workplace for people with disabilities by removing barriers to employment, and by providing accommodation. Additionally, these federal workplaces are required to employ a certain number of people with disabilities to achieve representation of numbers that reflect the availability of employees with disabilities in the community. Essentially, this means that the number of people with disabilities working in a public agency must reflect the number of people with disabilities available to work in the community.

#### *2.1.5 AODA*

Prior to the election of the Conservative party in Ontario in 1995, Gary Malkowski, a deaf Ontario parliamentary member of the NDP party, introduced a private member's bill in Spring 1994 called Bill 168, which was the forerunner of the Ontarians

with Disabilities Act (ODA), and was the first proposition for disability legislation (Lepofsky, 2004). The bill was presented to the Legislature's Standing Committee on November 29, 1994 for debate and public hearings. After the committee session ended, the audience was invited to an informal meeting where Malkowski urged the disability community to support and advocate for this bill. The outcome of Malkowski's efforts was the establishment of a Toronto advocacy group, known as the Ontarians with Disabilities Act Committee (OWDA Committee), which was established in December 1994 (Lepofsky, 2003). As mentioned earlier, the Conservative party was elected in Ontario in 1995, and the Minister of Citizenship and Immigration became responsible for disability related policies (Lepofsky, 2004).

In the summer of 1998, the Government announced that an ODA Bill was under consideration (Lepofsky, 2004). On November 23, 1998, the Minister of Citizenship and Immigration held the first reading of the government's ODA Bill, named Bill 83. The purpose of this bill was to identify, remove, and prevent barriers in order to increase the participation of people with disabilities in the economic and social life of the province. It reaffirmed the rights of people with disabilities under the Canadian Charter of Rights and Freedoms and Ontario Human Rights Code but did not require the removal or prevention of barriers for people with disabilities. Fortunately for the OWDA Committee that felt that Bill 83 would be neither strong nor effective, it subsequently died when the Legislature rose for Winter Break (Lepofsky, 2004). In October 2001, the Conservative Ontario government announced that it would be introducing a new ODA Bill on November 5 of that year, Bill 125. When it was revealed, the OWDA Committee expressed similar concerns to that of Bill 83, as the new Bill did not require the



prevention or removal of barriers and applied only to some public sector organizations. Despite opposition from the OWDA Committee, the Bill received Royal Assent on December 14, 2001, resulting in the birth of the ODA that is active today (Lepofsky, 2004).

In October 2003, a Liberal government was elected in Ontario. During the Liberal election campaign, the party promised to enact a stronger, more effective form of the ODA legislation (Lepofsky, 2004). In 2004, the Liberals hosted several roundtable meetings to discuss the issue of accessibility for persons with disability in Ontario and how to create legislation that would effectively address this issue (Beer, 2010). After these meetings with representatives from the obligated organizations, disability groups and the private sector, the AODA was introduced in October 2004. It received Royal Assent on June 13, 2005 (Beer, 2010).

According to Beer (2010), the AODA calls for barrier identification and removal in both public and private sectors based on standards developed in five areas: customer service, transportation, information and communications, built environment, and employment. Barrier identification and removal is to be monitored by the government, based on reports produced by employers and governmental inspections, and should allow for Universal access to Ontario.

These five pieces of legislation each cover a facet of employment equity for people with disabilities. The Canadian Charter of Rights and Freedoms monitors governmental actions, the Employment Equity Act legislates equity in federally regulated workplaces, the Ontario Human Rights Code calls for anti-discrimination in private provincial workplaces while providing a venue for complaints, the AODA requires

barrier identification and removal in workplaces across Ontario, which will be monitored by the Ontario government, and the Labour Relations Act requires that accommodations be made through collective bargaining in unionized workplaces.

## **2.2 The Current Role of Federal Employment Equity Policies**

As discussed in the history section, policies have been enacted both provincially and federally since WWII to prevent the discrimination of people with disabilities in the workplace. Each of the policies that were mentioned in the history section play a unique role in creating employment equity. While the provincial policies responsible for employment equity will be discussed at length in the Chapter 3, it is important to understand the current role of the federal policies that mandate anti-discrimination, since they provide a basis upon which the provincial legislation is built.

### *2.2.1 The Canadian Charter of Rights and Freedoms*

The Canadian Charter of Rights and Freedoms is composed of 34 sections; the protection of people with disabilities falls under Section 15 (s. 15). This section is responsible for providing the right of equality, as well as preventing discrimination for the following groups: race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability (Canadian Heritage, 2013). The Canadian Charter of Rights and Freedoms ensures that any policies, public programs, acts, or governmental actions, both federal and provincial, provide equality for people with disabilities, including policies that may relate to employment. This policy protects people with disabilities from only governmental action; personal actions are not protected (Hogg, 2010).

The Canadian Charter of Rights and Freedoms is part of the Constitution of Canada, the backbone of Canadian policy. The Constitution of Canada outlines political principles, the powers of the state, and a set of civil liberties considered to be so important that they receive protection from any state action (Hogg, 2010). In order to provide this protection, the Constitution of Canada is designed in such a way that it is very difficult to amend, whereby the federal parliament and seven out of 10 of the provincial legislatures must agree to it, and the population of those provinces must make up at least 50% of the Canadian population (Hogg, 2010). Additionally, to ensure that these civil liberties are upheld, the Constitution of Canada is declared a supreme law under Section 52 of the Constitution Act, 1982, which extends to the Canadian Charter of Rights and Freedoms. Therefore, the Canadian Charter of Rights and Freedoms does not act alongside other policies, since it holds supremacy (Billingsley, 2002). Any law that is deemed to be inconsistent with the Canadian Charter of Rights and Freedoms will be struck down by the courts, and declared invalid (Billingsley, 2002). In terms of its jurisdiction, the Canadian Charter of Rights and Freedoms applies to the Parliament and government of Canada, as well as federal and provincial governmental action. It is important to recognize that the Canadian Charter of Rights and Freedoms protects people with disabilities from only governmental action and discrimination; actions in the private sector are not protected by the Canadian Charter of Rights and Freedoms (Hogg, 2010).

### *2.2.2 The Employment Equity Act*

The Employment Equity Act is a federal piece of legislation that applies to all federal public administration. The purpose of this legislation is to promote and achieve

representation of the designated groups in the workplace that is equivalent to the available numbers of people from the designated groups in Canadian society (Standing Senate Committee on Human Rights, 2010). If it is found that the representation of any of the designated groups is less than that of the available numbers, employers in the public sector are required to implement certain policies to ensure that more people from the designated groups are hired. Additionally, public sector employers are required to identify and eliminate barriers in the workplace and provide reasonable accommodation at all times. The Canadian Human Rights Commission is the body responsible for enforcing the requirements of the Employment Equity Act (McColl et al., 2010).

While the Employment Equity Act is an important tool in the federal government for providing employment equity, most employers in Ontario are not required to follow this law because they are part of the private sector. Therefore, the Employment Equity Act cannot provide equality on its own (McColl et al., 2010).

### *2.2.3 The Roles of the Canadian Charter of Rights and Freedoms and the Employment Equity Act*

The Canadian Charter of Rights and Freedoms and the Employment Equity Act are important federal pieces of legislation that ensure a basis for employment equity within the public sector across Canada, and act as a platform for provincial policy. With the Canadian Charter of Rights and Freedoms being the backbone of Canadian society, all laws are created and amended based on its requirements, including the three central policies of this thesis (Hogg, 2010). Equality rights are guaranteed within the Charter, and therefore employment policy must create equality. The Employment Equity Act

ensures that federal agencies work toward employment equity and equal representation of designated groups, thereby ensuring employment equity in the public sector of federal government institutions located in Ontario (Agocs, 2002). Together, the Canadian Charter of Rights and Freedoms and the Employment Equity Act encourage a united Canadian base of equality, from which the provinces can build their own legislation.

Together, the Canadian Charter of Rights and Freedoms, the Employment Equity Act, the Ontario Human Rights Code, the AODA, and the Labour Relations Act provide employment equity for people with disabilities in Ontario. Although this research study focuses only on the role of provincial policy in the private sector, and therefore the federal policies will not be included in the policy analysis, it is important to recognize the overarching role that the Canadian Charter of Rights and Freedoms and the Employment Equity Act play in employment equity.

### **2.3 Current Policy Context for People With Disabilities**

Canada has a rich history of legislative efforts to mandate anti-discrimination and employment equity for people with disabilities. After the Abella report identified people with disabilities as one of the designated groups, policy makers responded by including people with disabilities in the provisions of anti-discrimination and employment equity legislation. It has been more than 25 years since the Abella report was published, and there are currently two federal policies and three provincial policies in Ontario that directly address anti-discrimination and employment equity in relation to disability. Despite all this, people with disabilities in Ontario continue to experience higher rates of unemployment, underemployment, and poverty compared to able-bodied people (Brown

and Emery, 2010; Jongbloed, 2003). In Ontario, approximately 15.5% of the population reports living with a disability (Beer, 2010). Of this number, 54.5% of males with disabilities and 47% of females with disabilities participate in the labour force, compared to 90% of non-disabled males and 77% of non-disabled females. Moreover, employees with disabilities work on average 90% of the weekly hours that their non-disabled counterparts work. These numbers show that having a disability has a negative and statistically significant effect on labour force participation (Brown and Emery, 2010). When examining the average income of people with disabilities compared to people without a disability, the income gap has been shown to be around 50%. It is seen that people with disabilities experience decreased labour force participation, decreased hours worked, and consequently decreased annual income, even with these five pieces of legislation (Brown and Emery, 2010).

After noting the low employment rates of people with disabilities and the existence of numerous policies promoting their workplace inclusion, Shier, Graham, and Jones (2009) decided to explore the perspective of people with disabilities with low socio-economic status in the Calgary labour market to understand their experience in the workplace, with the goal of identifying reasons for their perceived difficulties in work integration. The researchers interviewed 27 individuals in Calgary and 45 in Regina who met the inclusion criteria, all of whom were in job training programs. Data were obtained through a combination of one-on-one interviews and focus groups in both cities, and participants were selected through stratified random sampling. It must be noted that at the time of the study, both cities had lower unemployment rates than the national average, with Calgary having the lowest unemployment in Canada. The interview process asked

the participants questions about barriers they have experienced in securing and maintaining employment.

The findings suggested three sources of barriers to securing employment. The first was employer discrimination. Many interviewees perceived that employers assumed that people with disabilities were unable to perform a job due to their disability. The second theme was labeling. Some of the participants felt that their struggles to secure a job were directly related to being labeled as “disabled”. Employers viewed the entire spectrum of those with disability as homogenous, and subsequently made assumptions about the capabilities of individuals based on a view of the whole. The participants felt that if employers knew they were disabled, that employers would be less likely to consider them for employment. The third theme was the negation of human capital. Human capital is the accrual of desired skills and training applicable in the workplace. Interviewees reported that as a result of the discrimination and labeling, employers who were aware that an interviewee had a disability were more likely to negate, or disregard this person’s human capital. This study provided evidence that this group of participants felt that they continue to face discrimination in the workplace, even though there were employment equity policies that legislated against it. Key to this discrimination was employer assumptions about the capabilities of people with disabilities.

Jongbloed, Backman, Forwell, and Carpenter (2007), in partnership with the British Columbia Paraplegic Association (BCPA), investigated the provincial social and political environment related to employment, and the way that they appeared to impact the ability of people with spinal cord injury (SCI) to find employment in British Columbia. Similar to the study of Shier et al. (2009), a part of this study investigated the

perspective of people with disabilities, and their perceived barriers to employment.

However, some of the questions targeted policy, and the way in which the employment issues faced by people with disabilities fit into a socio-political framework.

A questionnaire was mailed out to 970 people in the BCPA database; 357 surveys were successfully completed and returned to the BCPA. Based on the questionnaire results, three themes were identified: policies and programs related to finding appropriate work, federal and provincial government policies related to maximizing job opportunities, and attitudes of employers. Within the data, 111 of the respondents were employed, 207 were unemployed, and there was missing data for 39 respondents.

The first theme was that of finding and maintaining appropriate work. Of 207 participants who were unemployed, 98 wanted to find work. Of those wanting to find work, many reported finding employment to be challenging. This finding coincides with the PALS statistics discussed earlier, which showed higher unemployment and underemployment rates for people with disabilities (Brown and Emery, 2010). Additionally, employment re-training and education were identified as important aspects of re-entering the workforce for people with SCI, but the related services and information were difficult to access. In the discussion, insurance companies were identified as important vectors for re-entering the workforce, as they often had a goal and plan for return to work strategies.

The second theme of federal and provincial government policies related to maximizing job opportunities. The results indicated that there had been legislative efforts for employment equity in British Columbia in response to the creation of the Employment Equity Act, Federal Contractor's Program, Public Service Employment Act,



and the Canadian Human Rights Act by the federal government. The historical and current response to unemployment levels of people with disabilities in British Columbia, however, has not been strong. In 1994, British Columbia enacted its first piece of provincial employment equity legislation called the Public Service Act Directive on Employment, to redress employment inequity for women, visible minorities, people with disabilities, and aboriginals. While this legislation intended to create systemic change, it applied only to the public sector, and contained no enforcement mechanisms; participation was voluntary. In 2001, funding cutbacks caused the dismantling of infrastructures that ensured operation of the policy. Therefore, the policy continues to exist, but is ineffective (Bakan and Kobayashi, 2004; Jongbloed et al., 2007). The study participants remained confused by the perpetual changes made to their provincial policies on employment equity, and were skeptical as to whether there was enough being done to provide them with access to reasonable employment.

The final theme was that of attitudes of employers regarding people with disabilities in the workplace. The survey respondents felt that negative employer attitudes towards disability in the workplace were a significant barrier to employment. Negative attitudes were measured by the statement, “Canadians with disabilities are less likely to be hired for a job than those without disabilities, even if they are equally qualified”; 80% of respondents were in agreement, echoing findings of Shier et al. (2009). Since the purpose of the Jongbloed et al. (2007) paper was to examine the findings within a socio-political framework, the authors proposed that a cause for these employer attitudes could be the nature of anti-discrimination legislation, which focuses on individual cases, as opposed to systemic barriers. Employers hold much of the power in hiring; people with

disabilities are not entitled to a job, they are entitled to equal rights in the hiring process. Jongbloed et al. (2007) concluded that the creation of particular programs and policies through Canada's history has led to a fragmented environment in which several policies may apply to people with disabilities and employment equity. Moreover, these programs and policies focus on the individual remedies, and ignore the power systems promoting the unemployment and/or underemployment of people with disabilities. Importantly, the fragmented policy seems to permit the continuation of negative employer attitudes towards people with disabilities in the workplace.

To delve further into the attitudes of employers towards people with disabilities in the workplace, Lengnick-Hall, Gaunt, and Kulkarni (2008) conducted a study in the United States to investigate employers' perspectives on hiring people with disabilities for available job positions, and the reasons why they may be hesitant to do so. This paper is significant because it explores employer attitudes from the standpoint of the employer, whereas the previous papers have investigated employer attitudes from the standpoint of people with disabilities. It also investigates the reasons why employers may hold these attitudes. Thirty-eight corporate employers from small (0-49 employees), medium (50-499 employees), and large (500+ employees) companies in California, Colorado, Georgia, Kansas, Maryland, New Jersey, Texas, Virginia, and Washington D.C. were interviewed individually using semi-structured interviews covering the following topics: how proactive their industry was in hiring people with disabilities, the most effective ways to encourage hiring people with disabilities, reasons why people with disabilities were not hired, arguments likely to persuade employers to hire people with disabilities, why some companies in the industry were more proactive than others, familiarity of industry

employers with federal tax incentives for hiring people with disabilities, the importance of top-level leadership in hiring people with disabilities, the importance of human resources departments in promoting hiring of people with disabilities, internal organizational protocols within the company or industry that might contribute to hiring people with disabilities, and finally, the benefits of hiring people with disabilities. The study found that employers and industries were not proactive in hiring people with disabilities, giving three main justifications: they were concerned about the job qualifications/performance level of people with disabilities, the associated costs with providing accommodations, and other people's reactions towards disability (customers and coworkers). The Lengnick-Hall et al. (2008) study concluded by suggesting that the assumptions made by the employers were not justified in reality. Interview data suggested that opinions were formed without objective information. Therefore, this paper also echoes the findings of past research suggesting that employer attitudes pose a barrier to employment of people with disabilities.

In order to investigate the reality of the concerns that employers had voiced, Lengnick-Hall et al. (2008) performed a brief review of the research literature. Main findings from the review showed that people with disabilities in the workplace rated better in dependability than people without disabilities in the workplace with lower absenteeism and lower turnover; there were no job performance and productivity differences between people with disabilities and people without disabilities; the cost of accommodation was usually minor and provided greater benefits than drawbacks in the workplace; people with disabilities rated the same as people without disabilities in terms

of workplace accidents, injuries, and insurance costs; and there was no research to support co-worker negativity towards people with disabilities.

Employer attitudes do pose a barrier to the employment of people with disabilities, with policy across Canada focusing more on individual remedies to barriers as opposed to systemic barriers and power systems. Employer attitudes, and policies relating to employer attitudes have been studied further by Burns and Gordon (2010) when exploring the similarities and differences between Canadian and American disability policies. Burns and Gordon aimed to investigate the impact of disability policy in each country, as well as the trends and best practices such policies may impart. A literature search of library websites and the Internet was performed. Prior to the search, a glossary of terms was established in order to reduce word misinterpretation, and then search terms were created. After reviewing the literature, the authors found that the Canadian literature on disability policy was about one third that of the American. The authors suggested that this was likely the case because Canada lacked federal disability legislation to complement the Canadian Human Rights Code that ensured that people with disabilities across Canada have the same access to services, regardless of where they live. Instead, provinces mandate these issues with the current policies working at cross-purpose rather than in conjunction. Starting with the *Obstacles* report in 1981, which highlighted the necessity for discrimination prevention across Canada, various federal, provincial, and municipal governmental reports published between 1993 and 2002 echoed *Obstacles'* vision. However, both federal and provincial governments were slow to implement disability policies, causing Canada to be behind other developed countries, such as the

United States, in implementing the planned strategies for disability equity through use of policy.

The literature review of American legislation found that there was an array of articles on the topic. The literature indicated that the Americans with Disabilities Act (ADA) had created a national identity for people with disabilities, and had changed the face of accessibility across the country by creating a foundation for attitudinal, structural, and environmental change. Additionally, the ADA had changed the language and discourse of disability in the country. Burns and Gordon (2010) noted that, while the ADA has been successful, its full vision was not complete due to different interpretations of the legislation made by different parties. The review concluded that more favourable outcomes were seen with national disability legislation employed by the States. With the lack of federal legislation and inconsistent terminology across the country, Canada has much that needs to be done. Interestingly, the review found that in both countries, there was a paucity of educational and training materials for the public; health and other professionals; government personnel; transit personnel; and others, which is critical in making changes in public and other services.

With the lack of research on the three Ontario policies, and with evidence of the presence of attitudinal barriers in the workplace, the next step that needs to be taken in disability policy research is an investigation of the intricacies of current Ontario employment equity policies. It is important to understand the way in which these policies manifest in the workplace. Therefore, interviews with employers are also necessary in exploring employer knowledge and application of policy.

## **2.4 Purpose of Research**

The history of Canadian and Ontarian disability policies suggests that federal and provincial governments intended to create an equitable workplace free of discrimination. The Canadian and Ontarian governments recognized that discrimination against people with disabilities in the workplace was detrimental to an inclusive workplace, and made efforts to mandate against discrimination. The Canadian Charter of Rights and Freedoms, the Employment Equity Act, the Ontario Human Rights Code, the AODA, and the Labour Relations Act all mandate anti-discrimination for different facets of the Ontario workplace, with the Canadian Charter of Rights and Freedoms and the Employment Equity Act providing a national basis of anti-discrimination upon which provinces can build their own equity legislation. The Labour Relations Act, the Ontario Human Rights Code, and the AODA each were originally designed to monitor employment equity and anti-discrimination in different ways in Ontario.

The problem is that people with disabilities continue to be underemployed and unemployed, and live in greater levels of poverty than people without disabilities, despite the fact that there are several pieces of legislation present to mandate against discrimination and to promote employment equity. Current literature suggests that people with disabilities perceive their unemployment and underemployment to be related to employer attitudes. Moreover, some literature shows that employers do, in fact, hold some stereotypes relating to people with disabilities in the workplace, which is a contributor to lower employment rates among people with disabilities who want to be part of the workforce. Since all barriers to employment are illegal in Ontario, the policy context will be explored, to understand how these policies work together to ensure the

removal of attitudinal barriers in the workplace, thereby contributing to the creation of a workplace that is free from discrimination. It must be noted that employer attitude towards people with disabilities is just one of the factors that limit employment opportunities for people with disabilities. Therefore, the purposes of this research are as follows:

- a) Describe the current context of Ontario's employment policies by conducting a policy analysis to understand the ways in which the Ontario Human Rights Code, the Labour Relations Act, and AODA function together to provide a framework for action to guide employer attitudes towards disabilities in the private sector of Ontario;
- b) Investigate employer knowledge/understanding and application of the three central policies in the Ontario private sector by conducting interviews.

### **Chapter 3: The Policy Analysis**

The current chapter presents first, the methodological design of the policy analysis and second, the findings of this analysis, designed to answer the question: What do the three key Ontario policies together provide in the way of a framework to guide employer attitudes towards persons with disabilities in the Ontario private sector? A qualitative approach was selected, following policy analysis guidelines set out by Ritchie and Spencer (1994). Ritchie and Spencer's Framework is a qualitative data analysis method that was developed for research rooted in policy. According to the Framework, policy related research questions can be divided into four categories: contextual, where the research will explore the nature of what exists; diagnostic, where the research will explore reasons for the current context; evaluative, where the research appraises the effectiveness of what exists; and strategic, where the research aims to identify new theories or policies. Research questions may fall into more than one of these categories. The present study is contextual, as it aims to explore the policy context.

To analyze the data qualitatively, the Framework guides the researcher through five steps. Ritchie and Spencer (1994) present these steps in a linear fashion, but it is acknowledged that the analysis is not a mechanical process, and some steps may be skipped or re-visited as needed. While the Framework is usually applied to transcripts from interviews, the authors acknowledge that any type of textual data can be analyzed. The first step of the Framework is familiarization. Within this step, the researcher becomes familiar with the range and diversity of the data collected, and gains a general feel for the material as a whole. Since the data being collected for this particular study took the form of documents, the familiarization stage occurred throughout the lengthy



document collection period. During this step, the researcher begins to take note of key ideas and recurrent themes that arise from the material. The second step of the Framework begins, as the research begins to identify a thematic framework. This means that the researcher continues to identify key issues, concepts, and themes, which will help to create a thematic framework, within which data can be sifted. This process is not automatic, it involves logical thinking where judgments are made on meaning, and connections are made between ideas. The third step of the Framework is indexing. During this step, the thematic framework developed in the previous step is applied to the data by annotating and indexing in the margins of the text. The fourth step is charting. This step involves 'lifting' the data from the original context, and rearranging them under headings and subheadings according to the thematic reference. The final step of the Framework is mapping and interpretation. It is here that the researcher pulls together key characteristics of the data by searching for patterns and connections within the data itself (Ritchie and Spencer, 1994).

This particular framework was chosen because it was tailored to policy related research questions, and provided a systematic approach in which the researcher was able to sift, chart, and sort through relevant material in a qualitative manner. It also allowed for the use of creativity and conceptualization to find meaning within the data in a flexible manner, where the researcher jumped ahead in some of the steps, and returned to previous steps based on the creative process of interpretation. This flexibility was seen throughout the whole process of data collection and analysis process, and is key to the data analysis within this thesis.

### **3.1 Policy Analysis Methodology**

#### *3.1.1 Reasons for Document and Policy Analysis*

The primary reason for this policy analysis is to describe the ways in which Ontario's current employment policies work together to create a framework to guide employer attitudes towards people with disabilities in the private sector from the perspective of the contents of the documents. According to the framework being used, research questions for a policy analysis may answer contextual, diagnostic, evaluative, or strategic research questions (Ritchie and Spencer, 1994). Therefore, the present study investigated the contextual nature of Ontario employment equity policies relating to disability in the workplace to provide a rich description of how they work together in guiding employer attitudes. While this framework can be used in a multitude of research contexts, the current section of the study uses only documents to answer the research question.

There are several benefits to performing a document-based research, as identified by Abbott, Shaw and Elston (2004). First, the data may not be available in alternate forms, and therefore document analysis proves to be the only way to perform research on a certain topic, such as policy. Second, there are very few ethical concerns involved in the usage of documents as data, specifically with the usage of government documents, since there are few problems regarding privacy, anonymity, or confidentiality. All the documents used in this research were in the public domain, and therefore were not censored, or considered to be classified information. The third benefit is that the information is free of researcher bias, since the documents were prepared independent of the researcher. Additionally, the data collection process does not affect the data, as the

data are 'non-reactive'. Lastly, document review provides a relatively inexpensive method for data collection (Abbott et al., 2004).

### *3.1.2 Process of Data Collection*

The first step in the process of data collection was to decide which policies would be the focus of this study, keeping in mind the research question. According to Cornish (2009), The Ontario Human Rights Code, R.S.O. 1990, c.19, Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, c. 11, and the Labour Relations Act, 1995, S.O. 1995, c.1 were the critical Ontario policies that mandate anti-discrimination and employment equity in the private sector for people with disabilities in Ontario. Initially, the Canadian Charter of Rights and Freedoms had also been identified by this author as a policy that was relevant to anti-discrimination in Ontario, but the Canadian Charter of Rights and Freedoms' role is one of monitoring the content of and the actions resulting from other Canadian policies and governmental actions. The application of the Canadian Charter of Rights and Freedoms is broad, and does not itself mandate anti-discrimination and employment equity in the workplace, rather, it mandates that governmental policies be free of discrimination. Therefore, it was decided to exclude the Canadian Charter of Rights and Freedoms from this analysis and discuss it in the literature review as a foundational policy that has influenced the content of these three key Ontario policies.

Once the relevant policies were identified, a thematic framework was chosen for the data collection process. Within the Ritchie and Spencer framework, the identification of a thematic framework coincided with 'Step 2' of the process. As mentioned previously, this conceptual framework is not a linear process, which is why this process began with

Step 2 (Ritchie and Spencer, 1994). The guidelines by McColl and Jongbloed (2006) were identified as the thematic framework, as they were developed to apply to policies at varying levels from “legislation and regulations to programs of service or compensation, to position statements or policy papers” (p. 414). These particular questions were chosen because they investigate the key issues that differentiate disability policy from other policies (Canadian Disability Policy Alliance, 2012). These guidelines were general in nature and did not specifically address employer attitudes; therefore the guidelines were modified to include questions that would allow the researcher to explore those elements of the policies that may influence such attitudes.

In the final guidelines, two questions from the McColl and Jongbloed guidelines were excluded: 1) the question addressing the history of the policy, and 2) the question concerning the role of advocacy in the development of the policy. Although these questions were included among the initial policy analysis questions, it became evident that the answers provided information that was supplementary in nature. Rather than helping to answer the research question, this information only aided in understanding of the policies in the broader societal context.

The order in which the questions were posed was modified so that the basic questions about the content of the policy occurred at the beginning, while the later questions built upon these basic notions, probing more deeply some of the theoretical concepts related to the policies.

The first question was modified to include a question about employment. The original phrasing of the question was quite broad, and did not necessarily relate to employment policy. Two of the four subcategories of question five concerning the

definition of disability were also modified to be more specific to the research question. Instead of investigating the way the definition of disability impacted recipients of goods and services and service provisions, the study investigated the way that the definition impacted people with disabilities in the workplace, employers and attitudes. The five final questions that guided policy analysis in this study were as follows:

1. What is the purpose of the policy? Is it aimed at promoting equity, access, or support? In what way does it relate to employment?
2. At what level of jurisdiction is the policy? How does it correspond to other employment policies at that level? Is it overlapping, inconsistent or detrimental to the implementation of other policies?
3. Does the policy refer to disability as a minority group issue or as a mainstream, universal issue? Does it propose to provide specialized services to people with disabilities if they meet some eligibility criteria, or does it apply generally to the public or to society as a whole? What are the advantages and disadvantages of this view of disability for the objective of the policy?
4. Does the policy aim to correct an injustice perpetrated on an individual, or does it seek to make Canadian society collectively a more supportive place for people with disabilities? What attitudes do the policy illicit? Does it seek to enforce individual rights, or to outline collective responsibilities?
5. What definition of disability is employed? Who is included and who is excluded from the considerations spelled out in the policy? Consider the implications of the definition of disability from the following perspectives:

- People with disabilities in the workplace;

- Public perceptions of disability;
- Employers and attitudes; and
- Costs

The modified guideline was approved by the member of the author's Thesis Advisory Committee (advisory committee) and was used to analyze the three policies: the Ontario Human Rights Code, the AODA, and the Labour Relations Act.

In this study, the thematic framework was chosen prior to data collection, because it was intended to guide data collection of the available data by filtering search results. In essence, the guidelines acted as inclusion criteria, where documents were retrieved only if they concerned the three policies, disability, and specific concepts related to disability policy.

Next, the collection of the relevant pieces of data commenced, informed by the questions posed in McColl and Jongbloed's guidelines. According to Ritchie and Spencer's framework (1994), this is the stage in which the researcher takes part in the familiarization process, where, during data collection, the researcher takes stock, and gets a general feeling of the material in its entirety. This is described as 'Step 1' of the framework. An electronic system was devised to keep the data organized, in which three folders were created to store the documents, one folder for each policy. As the study went on, it was evident that not all the retrieved data were useful and so a fourth folder was created to house the documents that were not pertinent to the study.

In order to read through and appraise the documents that were collected, many documents were printed, bound, and kept in a storage file. The documents were placed in this storage system according to the policy they addressed. The storage system also had a

fifth compartment for additional notes made during the document collection phase. This section acted as a journal to aid in remembering progress that had been made during the data collection phase, and to note thoughts and ideas that occurred while reading the documents. According to the framework outlined by Ritchie and Spencer (1994), this aided in the process of familiarization, whereby the researcher makes notes regarding recurrent themes. The documents that were stored in this system also existed in the electronic system, and were often printed because they were of importance. It must be noted that ethics approval was not sought for this portion of the study since data were collected from documents.

### *3.1.3 Sampling Strategy*

The data collection process began in April 2011, and finished in June 2012. The process was open ended. The policy questions were the starting point for every conducted search, and a systematic sampling method was employed. First, the relevant government websites were identified. The identified ministry and governing body websites were then searched for policies, documents and publications, using search terms that stemmed from the questions in the McColl and Jongbloed (2006) guideline, the policy in question, and disability related terms. These terms included, but were not limited to, “AODA”, “Ontario Human Rights Code”, “Labour Relations Act”, “employment”, “accessibility”, and “people with disabilities”. Once these websites were exhausted, external links to non-government documents provided by government websites, and the reference section of these documents were hand searched for resources. Finally, separate searches of the Queen’s Library archive were performed when studies or papers outside of the

government website were required when the guideline questions remained unanswered, and there was further need to delve into specific topics in greater depth. In this case, the search involved indicating the policy in question, as well as key words found in the analysis question being answered.

#### *3.1.4 Collection Site*

The Internet was the primary collection site for this study. The policies and governmental documents were easily accessible on the Internet since these documents were created for public consumption. Ministry websites were searched for publications, including the Ministry of Community and Social Services, the Ministry of Economic Development, Trade and Employment, and the Ministry of Labour. Governing body websites were also searched for publications, such as the Ontario Human Rights Commission and the Ontario Labour Relations Board websites, which have been established to aid in the administration of the policies. The government documents collected from these websites generally acted as guidelines for policy interpretation. These documents included: Policy and Guidelines on Disability and the Duty to Accommodate (Ontario Human Rights Commission, 2009b), Guide to Your Rights and Responsibilities under the Human Rights Code (Ontario Human Rights Commission, 2009a), Human Rights Tribunal of Ontario Applicant's Guide (Human Rights Tribunal of Ontario, 2010), Integrated Accessibility Standards Regulation (Ministry of Economic, Development, Trade and Employment, 2013), and Annotated Rules of Procedure, 2008 (Ontario Labour Relations Board, 2008). The ministry websites provided links to non-governmental websites that housed more supporting documents, which took the form of



independent reviews of policies as mandated in the policies themselves, formal submissions to the independent reviews, and general literature. These documents were also retrieved electronically. It must be noted that the reference lists of these documents were searched by hand to find additional non-governmental documents.

Another site of information was stakeholder websites. Lists of stakeholder groups were often found in the appendices of documents. At times, the publications section of these websites provided important documents relating to the policies in question and the policy analysis questions.

Federal and provincial websites were also searched for documents that were not directly related to the three policies in question, such as the Canadian Heritage website and the Human Resources and Skills Development Canada website. Documents retrieved from these searches included: Constitution Act, 1982, Part 1, Canadian Charter of Rights and Freedoms; Obstacles (1981); Advancing the Inclusion of People with Disabilities (2008); and, Commission on Equality and Employment (1984). It must be noted, however, that data retrieved under many of these documents were omitted, when it was decided that the Canadian Charter of Rights and Freedoms would not be investigated as part of the policy framework.

Some of the data were found on the Queen's Library archive of documents. This website was searched with the intention of finding supporting documents that would deepen understanding of the policies and their implications. The searches usually included the words "people with disability", the name of the policy, and words pertaining to the analysis questions such as "universality", "minority group view", "undue hardship", "policy overlap", "definition of disability", and "cost".

A small amount of data was collected outside of the Internet, in the form of books and textbooks. These books were found in the Queen's University library, through a search of books relating to Canadian policy. Once the books were identified, they were searched by hand for content. Some important documents retrieved this way included: Disability and Social Policy in Canada (McColl and Jongbloed, 2006), Canadian Constitutional Law (Constitutional Law Group, 2010), and Constitutional Law in Canada (Hogg, 2010).

### *3.1.5 Relevancy of Documents Collected*

In total, 87 documents were collected (for a complete list, see Appendix C). The researcher scanned each document in its entirety to decide whether or not it would aid in answering the policy analysis questions that were guiding this portion of the analysis. Each time a document was read, the policy analysis questions were placed beside the researcher so they could be referred to easily. Notes were made on each document detailing the contents, the important aspects of each, and the policy question it would answer (if any). Not all documents were used in the study. First, not all documents proved to be relevant to the study. The elimination of the Canadian Charter of Rights and Freedoms from the data analysis process caused numerous documents to become irrelevant to the study. As discussed in section 3.1.2, certain questions were eliminated from the original policy analysis questions after some data collection had occurred, and therefore the data collected under these questions also became irrelevant. Second, some documents were repetitions of others. For example, many proposed versions of the Integrated Accessibility Standard Regulation were collected, but only the finalized

document was of relevance. The documents that were not utilized were stored in a separate electronic folder, in case they proved to be useful later in the analysis. In the end, 21 documents were used in this analysis. For a list of the documents used in this analysis, refer to Appendix D.

### *3.1.6 Data Analysis*

To begin the data analysis, the indexing process began, wherein the researcher systematically applied the thematic framework to the data. This is ‘step 3’ of the framework. All data were retrieved with the deliberate goal of answering a specific facet of a question, as previously discussed. The documents retrieved were classified based on the policy and question it addressed, each given a pertinent code, and placed in the appropriate location in the filing system. Data from within the documents were selected to answer the questions, which were compiled into three separate documents, one for each policy. Once completed, the separate analyses were reviewed and approved by committee members. The advisory committee and supervisor agreed that these documents of data from the collection process were considered to be “transcripts” which could continue to be analyzed qualitatively using the Ritchie and Spencer (1994) framework. After all the data were collected and indexed, the process of ‘charting’ commenced, as described by Ritchie and Spencer (1994). In this process, data were lifted from their original context and then rearranged according to the thematic reference. Flow charts were assembled in a cut and paste manner, to provide the chunks of information representing important concepts. A chart for each analysis question for each policy was created to organize ideas and themes. Next, the information was reorganized, where it

was taken from the chart, still in the raw data form, and grouped together to link like terms, and to begin to identify recurring themes and patterns throughout the data. Due to the nature of the analysis, much of the data grouped together into theme-like categories, which reflected the questions in McColl and Jongbloed guideline. Any repetition found as a result of researching the same question through different policies was eliminated.

Once the amalgamation of the data and charting was completed, mapping and interpretation occurred, according to the framework proposed by Ritchie and Spencer (1994). This is 'step 5' of the framework. In this step, the researcher begins to interpret the data as a whole based on the key characteristics identified in the prior steps. At this point, the aforementioned key characteristics of the framework were re-visited: defining concepts, mapping the range of policies, creating typologies, finding associations, providing explanations, and developing strategies. Based on the research question, and the common themes emerged during the charting process, 10 themes emerged.

### *3.1.7 Establishing Trustworthiness*

During the process of data collection and analysis, it was important to ensure trustworthiness and rigor. In this portion of the study, trustworthiness was ensured by following methods identified by Krefting (1991). The main source of credibility stems from the peer reviews. Both the researcher's supervisor and advisory committee reviewed progress on several occasions, providing feedback to guide the collection and analysis of the documents. The supervisor on numerous occasions ensured that the developing themes were in keeping with the data content. Additionally, the researcher utilized an appropriate, well-established technique for policy analysis coupled with systematic

methods for collecting data. Lastly, a prolonged period of time was spent being immersed and absorbed in the content, leading to saturation (Krefting, 1991).

### **3.2 The Policy Analysis Findings**

In this section, 10 different themes will be presented. The themes were developed with the first purpose of this study in mind, which was to describe the current context of Ontario's employment policies by conducting a policy analysis to understand the ways in which the Ontario Human Rights Code, the Labour Relations Act, and AODA function together to provide a framework for action to guide employer attitudes towards disabilities in the private sector of Ontario. These themes are arranged in similar order to the questions asked in the McColl and Jongbloed guidelines. These themes are as follows:

1. Anti-discrimination and accommodation
2. The individual complaint system of the Ontario Human Rights Code
3. The need for government participation, education, and awareness in the AODA
4. The application of the Labour Relations Act
5. Required employer knowledge of the three Ontario policies
6. Minority group treatment of people with disabilities in policy
7. The collectivist responsibility under the AODA
8. The definition of disability
9. The impact of the definition of disability on employers
10. The cost of accommodation

### *3.2.1 Anti-Discrimination and Accommodation*

The three policies all aim to provide people with disabilities with a workplace that is free of discrimination, and a workplace that is accommodative of their disability, allowing people with disabilities to reach their fullest potential in the workplace. Due to the fact that each policy differs in its defined purpose, the way in which each ensures accommodation and anti-discrimination also differs.

The purpose of the Ontario Human Rights Code as stated in the Preamble is to create “a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the province” (Ontario Human Rights Code, R.S.O., 1990). There are 15 groups identified in the Ontario Human Rights Code who are included in this policy, disability being one of them. The Ontario Human Rights Code is designed to address equality based on individual claims (Ontario Human Rights Commission, 2009a). Essentially, the Ontario Human Rights Code’s role for people with disabilities is to prohibit discrimination based on the existence of disability, or the perceived existence of disability in the sector of employment, as well as the following sectors: services, accommodation, contracts, accommodation of persons under the age of 18, employment, vocational associations, sexual harassment, and reprisals. In the field of employment, employers providing accommodation for people with disabilities in the workplace achieve protection from discrimination.

While the Ontario Human Rights Code does not provide any details for the actualization of accommodation, the Ontario Human Rights Commission created the “Policy and Guidelines on Disability and the Duty to Accommodate” (Guideline) to

provide guidance for interpreting the Ontario Human Rights Code, as mandated in Section 30 of the policy (Ontario Human Rights Commission, 2009b). This Guideline describes three principles that must be present in the provision of adequate accommodation. The first principle is respect for human dignity. In order to ensure human dignity, the person who is providing accommodations must consider the types of accommodations that need to be made, and must include the person with the disability in the process if the person so desires. The second principle is the importance of individualized accommodation. There is no formula for providing accommodations; every disability must be considered individually. The third principle is integration. Integration can be achieved in three ways: inclusion by design, removal of barriers, and accommodation of any remaining needs. If any of these principles are not met, accommodation has not been provided to the fullest capacity. It is expected that accommodation will be provided voluntarily, and that employers will be aware of their responsibilities to the Ontario Human Rights Code. If an employer does not provide the required accommodation, the person with the disability has the right to file a complaint with the Human Rights Tribunal of Ontario (Ontario Human Rights Commission, 2009b).

According to the Ontario Human Rights Code, there are two situations in which an employer may be exempt from the duty to accommodate. The first situation is the presence of undue hardship. There is no legal definition of undue hardship, but it is understood to mean that point at which accommodation negatively affects the person who is expected to provide the accommodation (Ontario Human Rights Commission, 2009a; Ontario Human Rights Commission, 2009b). The second situation is that of bona fide occupational qualification. In this case, reasonable job qualification criteria provided by

the employer are not considered to be discrimination, even if, given the criteria, it is unlikely that the person with the disability will get the job (Ontario Human Rights Commission, 2008). It is a reality that while accommodation is meant to provide equal opportunity for people with disabilities, it does not mean that people with disabilities will be given opportunities in the workplace for which they are unqualified.

The purpose of the AODA is to acknowledge the historical discrimination experienced by people with disabilities and to protect them from discrimination by identifying and removing the barriers that prevent full participation in society and creating enforceable accessibility standards (Beer, 2010). The AODA is aiming to create and implement accessibility standards by January 1, 2025. In order to achieve this objective, five different committees were created under this legislation and were put in charge of developing the standards for customer service, transportation, information and communication, employment, and the built environment (Beer, 2010). All committees include members from the disability community, industrial sector members, and members of the provincial government. This committee's composition is meant to allow all affected groups the opportunity to present their points of view. In 2007, the legislation was changed so that 50% of the standards development committee members were people with disabilities, or people who represent the disabled community; this ensured that the experience and opinions of people with disabilities were represented (Beer, 2010).

The AODA standard pertinent to this paper is the Employment Standard, which was finalized in the Integrated Accessibility Standards Regulation (IASR) on April 13, 2011. The IASR also contained the information and communications and transportation standards (Ministry of Economic Development, Trade and Employment, 2012). All five



standards apply to any business or organization, whether public or private, that has at least one employee, and provides a good, service, or facility to the public. Part 3 of the IASR delineates the employment standards for the AODA. The standards apply to employers who are part of the obligated businesses and organizations. The standards do not apply to volunteers or other unpaid individuals (IASR, Part 3, s.20). For the purpose of implementation, the IASR divides all businesses and organizations into five categories: Government of Ontario and Legislative Assembly, large designated public sector organizations with 50+ employees, small designated public sector organizations with 1 to 49 employees, large private organizations with 50+ employees, and small private organizations with 1 to 49 employees. The compliance dates and timelines for a business or organization depend on the category under which the business or organization falls.

According to the Employment Standard, during the recruitment process, employers in the obligated businesses and organizations will be expected to notify employees and the public of accommodations that are available in their workplace (IASR, Part 2, s.22). Employers must indicate that accommodations will be made upon request for the interview and selection process when hiring. If a job applicant requests an accommodation for the interview process, the employer must consult with him/her as to his/her specific requirements (IASR, Part 3, s. 23). The employment standards also stipulate that all employers are to inform their employees of the policies that will support people with disabilities, specifically accommodation policies (IASR, Part 3, s. 25). Employers must ensure that part of their accommodation policy includes providing employees with disabilities with employee information in accessible formats (IASR, Part 3, s. 26). Under the employment standards, it is also mandatory that employers create a

workplace emergency response plan specific to the person with a disability in the workplace (IASR, Part 3, s. 27). Section 28 of the IASR states that employers, other than small organizations, must have a policy that details the way in which individualized accommodation plans will be created. The plan must include information regarding the manner in which the person with a disability may participate in creating the individualized accommodation, details regarding the way in which assessments will be performed, the way in which the employer may seek medical or expert advice as to the accommodation plan, the role of bargaining agents, the measures taken to ensure employee privacy, and the reasons for denial of an accommodation plan. The employment standards also require that all employers, other than small organizations, must develop a return to work plan for employees (IASR, Part 3, s. 29). Lastly, the employment standards specify that employers who use performance management, provide career services, or use redeployment, must take into account the accessibility needs of employees with disabilities (IASR, Part 3, s.30, s.31, s.32).

The main purpose of the Labour Relations Act is to facilitate collective bargaining between employers and representatives of trade unions when there is a labour dispute in order to ensure both parties agree upon the resolutions (Labour Relations Act, 1995, p. 8). The Ontario Labour Relations Board is responsible for certifying a union as a bargaining agent. The certification process starts with a group of employees creating a business constitution that outlines the purpose of the business or union and the proposed procedure for electing officials and calling meetings. After this is done, the employees hold a formal meeting in which the constitution is presented to the Ontario Labour Relations Board for approval. When the employees approve the constitution, they become members of the

union, as drafted by their constitution. The employees are then given an opportunity to ratify the constitution and elect their union officers. Evidence of this process is submitted to the Ontario Labour Relations Board, and the Ontario Labour Relations Board has the power to grant the union official status (Ontario Labour Relations Board, 2008). It is during this collective bargaining process that people with disabilities will present their accommodative requirements, and the employer will agree on a way to have these requirements met. This process, thus, provides a way for the needs of a person with a disability to be heard and negotiated without that person having to bring legal action against his/her employer. Through collective bargaining, union members bargain with the employers to determine specific provisions that will be granted to people with disabilities in the workplace, ranging from accessibility needs to classic workplace concerns that affect all employees regarding wages and safety (Blackett and Sheppard, 2003). Non-compliance with the Labour Relations Act may be dealt with through a grievance filed with the Ontario Labour Relations Board, and a decision may be made as to appropriate measures to take. However, due to the fact that accommodations for disability are a human rights issue, any decision must reflect the Ontario Human Rights Code (Ontario Labour Relations Board, 2008).

It can be seen that each policy addresses a different aspect of protection from discrimination through accommodation in the workplace. The Ontario Human Rights Code provides a venue by which complaints can be made and accommodation can be demanded, the AODA and the IASR require that the employment sector be made fully accessible through the initiative of employers, and the Labour Relations Act provides accessibility as part of a collective bargain in a unionized workplace.

### *3.2.2 The Individual Complaint System of the Ontario Human Rights Code*

Although the provision of accommodation in the workplace is considered to be the employer's duty, the Ontario Human Rights Code is designed so that individual complaints can be filed reporting lack of proper accommodations (Ontario Human Rights Commission, 2009a). The body responsible for receiving applicant claims of discrimination is the Human Rights Tribunal of Ontario, as mandated by sections 34 and 35 of the Ontario Human Rights Code. The Human Rights Tribunal of Ontario is the quasi-judicial body responsible for the hearing or mediation of discrimination cases, as well as their resolution. The two other quasi-judicial bodies created by the Ontario Human Rights Code are the Human Rights Legal Support Centre, responsible for helping people file applications with the Human Rights Tribunal of Ontario, and the Ontario Human Rights Commission, responsible today for changing the root of discrimination by developing policies, educating the public, doing research and analyses related to discrimination, and conducting human rights inquiries (Ontario Human Rights Commission, 2009a; Ontario Human Rights Tribunal, 2010).

The first step to resolving a case under the Ontario Human Rights Code has the complainant fill out an application form describing the discrimination that he/she experienced, when and where the discrimination occurred, and the perpetrator of discrimination. The application also asks for a description of the way in which the discrimination affected the applicant, and the type of remedy he/she expects. The application can be submitted online, or mailed to the Human Rights Tribunal of Ontario. In the next step, the Human Rights Tribunal of Ontario reviews the application to ensure that it is within their scope, sends a copy of the application to the person who perpetrated

the discrimination (respondent), and allows the respondent to reply to the claim. There are two ways in which the case can go forward after the second step is completed, either as a mediation session if both the claimant and the respondent have agreed to this form of resolution, or as a hearing tried in the Human Rights Tribunal of Ontario court. The Human Rights Tribunal of Ontario encourages applicants to seek mediation. However, if the case continues into a hearing, the Human Rights Tribunal of Ontario will make a decision as to whether discrimination was experienced or not, and the appropriate remediation (Ontario Human Rights Commission, 2009a; Ontario Human Rights Tribunal, 2010). As is shown through this process, the Ontario Human Rights Code deals with equality complaints on a case-by-case basis, and is intended to individually resolve any discrimination that occurs in Ontario. All people with disabilities are entitled to this process, including those in unionized workplaces who are covered by provisions of the Labour Relations Act. Even when the AODA is fully enacted, people with disabilities will still be entitled to the complaints process under the Ontario Human Rights Code (Beer, 2010). Given the above data, it is clear that the Ontario Human Rights Code is the primary legislative mechanism responsible for individual complaints, and each complainant is treated uniquely for their accommodation. This legislation works on an individual level, not systemically.

### *3.2.3 The Need for Government Participation, Education, and Awareness in the AODA*

The aims of the AODA have been to address employment equity (and other inequities) through systemic change by requiring that all goods, services, facilities, accommodation, employment, buildings and premises be fully accessible. The contents of

the AODA mandate all aspects of the Accessibility Standards development process in Part III, and details as to the inspections process. An independent report by Charles Beer (2010) entitled “Charting a Path Forward: Report of the Independent Review of the Accessibility for Ontarians with Disabilities Act, 2005” suggests that there are several flaws with the actualization of this legislation that need to be address if the aims of the AODA are realized (Beer, 2010).

Beer was appointed by the Ontario government under s.41 of the AODA to perform a review that included consultation with members of the public, especially members of the disability community (Beer, 2010; Accessibility for Ontarians with Disabilities Act, 2005, c.11, s.41). Beer held 90 interviews with key informants with varying areas of interest, including disability groups, business associations, the provincial government, municipalities, transportation, hospitals, labour, postsecondary institutions, and the school system (Beer, 2010). Beer also hosted four round table sessions with accessibility groups, the transportation sector, the private sector, and the broader public. Additionally, all standards development committee members were invited to complete an online questionnaire regarding their views on what worked in the process, what didn't work, and what could be improved. Nearly 100 members responded, 40% of which were people with disabilities and representatives from disability organizations. To include broader public input, Beer hosted public meetings in Toronto, Ottawa, and London. Moreover, videoconferences were set up with members of the public in Sudbury, Thunder Bay, Sault Ste. Marie, Kenora, and Marathon. To reach members of the public with disabilities who were unable to physically attend the public meetings, Citizens with Disabilities Ontario orchestrated a webinar in which more than 100 people participated.

La Table Provinciale Francophone pour la Personne Handicapée orchestrated the francophone equivalent, in which 40 people participated. Lastly, a call for submissions was posted on the Ministry of Citizenship and Immigration's website, in which 58 written submissions and hundreds of emails were received. Beer noted that the most detailed brief received was written by the Accessibility for Ontarians with Disabilities Act Alliance, the group that succeeded the ODA Committee.

Participants of the Beer study labeled the government's recent inaction as the most fundamental problem in the effective implementation of the AODA. According to Beer (2010), virtually every stakeholder interviewed identified this as a major flaw. Participants identified a substantial need for increased public education and awareness as to the requirements of this legislation. Without awareness, the goals of the legislation would not succeed. In the area of employment, employers would be unaware of their obligations if the government did not actively disseminate information (Beer, 2010). According to Beer (2010), small businesses and businesses without human resources departments were identified as a group that was particularly affected by the lack of governmental education, as they may not have the time or resources to seek out the information themselves. These flaws and gaps would undermine the overall effectiveness of the AODA (ARCH Disability Law Center, 2009).

A second issue concerned the way in which the AODA was being implemented. Beer's participants indicated that employers across Ontario were not aware of the AODA's expectations; employer education was lacking. The Beer report suggested that educational resources and training programs would be particularly important for small businesses and non-for-profit organizations that may not have the human resources staff

to manage the compliance efforts. The proposed compliance and enforcement framework was also identified as an issue. Many participants felt that there were gaps in terms of enforcement, and wondered whether the government would focus on education regarding the issue of accessibility, or take a punitive stance when all the standards of the AODA had been finalized in 2025 (Beer, 2010).

A third issue was that the standards development process contained several flaws. Participants stated that marrying viewpoints of people with disabilities, the business sector, and government members on the AODA was ambitious, but necessary to produce AODA standards that met the needs of all key groups (Beer, 2010). However, in doing so, several organizational problems arose. Some members of the standards development committees were invited by governmental members overseeing the process instead of going through the application process; people with mental disabilities and small businesses were underrepresented in these committees; committees lacked resources and information that would be crucial in the decision making process; committees were too large to effectively communicate; the workload associated with being a committee member was far greater than anticipated; roles of people in the committees overlapped; and committee members were not permitted to speak at public meetings, which resulted in a missed opportunity for meaningful feedback (Beer, 2010).

The government responded to Charles Beer's report in August 2010, in the form of a letter from the Minister of Community and Social Services, Madeleine Meilleur, affirming that the government would make the changes they saw fit from the report; this report is posted on AccessOn (2014). The government stated that they would immediately harmonize standards. In terms of education regarding the AODA, the



government highlighted areas where progress had been made. In 2007, the government launched the AccessOn website, which was designed to provide updates on the AODA, as well as the EnAbling Change Program, which was also started prior to the report. After the report, the government also started a YouTube Channel dedicated to accessibility that was launched in 2010. Additionally, the Ministry launched a new section on AccessOn after the Beer (2010) report called Accessibility in Your Community, offering videos of people demonstrating best practices in AODA accessibility (AccessOn, 2014).

### *3.2.4 The Application of the Labour Relations Act*

In policy, the word systemic is defined as “patterns of organizational behavior that are part of the social and administrative structure and culture and decision-making processes of the workplace, and that create or perpetuate relative disadvantage for members of some groups and privilege for members of other groups” (Agocs, 2002, p. 257). While the Labour Relations Act was designed to give all employees, including those with disabilities, their own voice in the workplace, it is only able to affect change for a person with a disability in a unionized work setting. The provisions for people with disabilities may vary from union to union and companies with no employees with disabilities will likely have no union provisions for them (Wiggins, 2000). However, like all businesses in Ontario, unionized businesses are subject to the provisions of the Ontario Human Rights Code, and therefore workplace accommodations are expected regardless of collective bargaining. The Ontario Labour Relations Board is responsible for carrying out these decisions; however, discrepancies may also be filed with the Ontario Human Rights Tribunal (Ontario Labour Relations Board, 2008). In addition,

under the Labour Relations Act, a union is not required to ensure equal representation of people in the workplace; a small number of employees can speak on behalf of the larger unit, including minority groups (Blackett and Sheppard, 2003).

### *3.2.5 Required Employer Knowledge of the Interaction of Ontario Policies*

The Ontario Human Rights Code, the AODA, and the Labour Relations Act play an important role in ensuring employment equity for Ontarians with disabilities in the workplace. Due to the fact that these policies address employment equity in the workplace for people with disabilities, each in a different way, they interact and overlap with one another. Therefore, employers may need to be aware of the requirements of more than one policy, depending on the nature of the workplace (Beer, 2010; Ontario Human Rights Commission, 2009b). Overlaps in policy occur when two different pieces of legislation have some of the same requirements. Interaction of policy occurs when two or more policies work together on a same issue, but cover different aspects of the issue. Primacy is a term used in policy to mean that a piece of legislation is more important than other pieces, and therefore must always be followed. If there is a conflict between two pieces of policy, the provisions of the policy that has primacy will be used.

As mentioned earlier, the role of the Ontario Human Rights Code in Ontario's disability legislation is to provide a venue wherein people with disabilities can lodge complaints regarding the lack of accommodation in a workplace, as stated by the Ontario Human Rights Commission (2010). The Ontario Human Rights Code holds primacy over all Ontario policies, unless stated otherwise. The AODA and Labour Relations Act do not

have primacy over the Ontario Human Rights Code and therefore, must meet the expectations of the Ontario Human Rights Code at all times.

The Labour Relations Act is applicable to Ontarians who work in a unionized setting that has been approved by the Ontario Labour Relations Board. The Labour Relations Act interacts with the Ontario Human Rights Code in that no decision that is made during collective bargaining can be in conflict with the Ontario Human Rights Code's provisions for identified minority groups, including people with disabilities (Beer, 2010). The Ontario Human Rights Code stipulates that every person in Ontario has the right to freedom from discrimination. No terms of a collective agreement can justify discrimination or lack of accommodation. Even if an employer and his/her union are unable to come to an agreement regarding accessibility provisions during collective bargaining, the employer is required to create accessibility for employees with disability under the Ontario Human Rights Code (Ontario Labour Relations Board, 2008).

Currently, the AODA overlaps with both the Ontario Human Rights Code and the Labour Relations Act in unionized workplaces. Since the AODA applies to all employers in Ontario, unionized business owners must also be aware of their obligations under the AODA as it is phased in. Companies will soon need to be fully accessible, regardless of whether or not they have people with disabilities in the workplace (Beer, 2010; Ontario Human Rights Commission, 2009b).

The AODA also overlaps and interacts with the Ontario Human Rights Code (Beer, 2010; Ontario Human Rights Commission, 2009b). According to the Beer report (2010), participants discussed their fear that the AODA and the Ontario Human Rights Code would not be compatible when the AODA was fully enacted. The Ontario Human

Rights Commission reported that employers must be aware that compliance with the Ontario Human Rights Code did not necessarily mean compliance with the AODA. While some of the standards of the AODA may not require full accessibility until 2025, the Ontario Human Rights Code continues to mandate individual accommodation. Obligated sector members must remain aware of their requirements under both policies to avoid violating the Ontario Human Rights Code as they make changes to comply with the AODA (Ontario Human Rights Commission, 2009b; Ontario Human Rights Commission, 2010). Since both policies have enforcement mechanisms, the employer could be punished for failing to provide accessibility under both policies. Education of employers is paramount in ensuring that they are aware of all obligations, to avoid penalties, while also contributing to a more accessible Ontario (Beer, 2010). Given the above data, it is evident that employers need to be aware of the requirements of all policies, as all three policies interact and overlap. They are at risk of penalties associated with noncompliance with these policies, as both the AODA and the Ontario Human Rights Code have separate enforcement mechanisms, which will both apply to all workplaces.

### *3.2.6 Minority Group Treatment of People With Disabilities in Policy*

Currently, the two dominant socio-political views of disability in Ontario legislation are: the Minority Group view and the Universal view (Penney, 2002). The Minority Group view or approach originated in disability advocacy and protest in the 1960s and 1970s. This approach assumes that discrimination against people with disabilities is due to their membership in a class of people characterized by disability, and needs to be remedied by policy (Hahn, 1996; Joiner, 2006; Penney, 2002). Conversely,

Universalism, which is a relatively new concept, views the main barrier to participation as society's norm and assumptions, with disability as an intrinsic aspect of human functioning, not as a distinct class of people. In the view of Universalism, everyone exhibits his/her own level of functioning at any given moment (Bickenbach, 2006). The Minority Group view aims to place all people with disabilities into one group in order to pursue equality. Universalism recognizes the individual variations that occur on all levels of life's experiences (Joiner, 2006; Lepofsky and Graham, 2009). A Universalistic society would be accessible to all people, regardless of the severity of impairment (Lepofsky and Graham, 2009).

Except for some provisions in the AODA, all three policies treat disability as a Minority Group issue in the workplace. The Ontario Human Rights Code identifies the main barrier to societal inclusion as discrimination against a group of individuals due to their minority status. In order to receive any remediation from discrimination in the workplace, people with disabilities must identify as such, and identify the way in which they were discriminated against for being disabled. Under the Ontario Human Rights Code, the first step to inclusion and equality is for the person with a disability to inform his/her employer that he/she needs a certain accommodation. This request must be accompanied with a letter from a physician that spells out the requirements of accommodation. The letter does not need to identify the details of the disability diagnosis (Ontario Human Rights Commission, 2009b). The Minority Group view is inherent to reasonable accommodation (Penney, 2002). If the person with a disability communicated his/her accommodation requirements to his/her employer but continues to experience discrimination due to his/her disability, the Ontario Human Rights Code has provisions in

which that person can legally demand accommodation. The services provided by the Human Rights Tribunal of Ontario are aimed at the remediation of discrimination towards individual people with disabilities (Ontario Human Rights Commission, 2009a; Ontario Human Rights Tribunal, 2010).

The Labour Relations Act views disability as a Minority Group issue as well. If an employee with a disability is part of the unionized workforce, his/her union must be notified of the accommodations that are needed by this employee and a union member must give voice to these accommodation needs during collective bargaining. During bargaining, the employer and the union must come to an agreement as to the ways in which the accommodation needs of this person with a disability will be addressed. While the business will be subject to provisions of the Ontario Human Rights Code regarding accessibility at work, the protection of the union extends only as far as the specific requests of employees with disabilities (Ontario Human Rights Commission, 2009a; Ontario Human Rights Commission, 2009b).

Many of the goals of the AODA reflect Universalism. For example, the requirement that all built structures be physically accessible is in line with the ideology of Universalism (Lepofsky and Graham, 2009). However, the way in which the AODA addresses hiring and workplace accommodation suggest a Minority Group view. Each individual person with a disability needs to indicate to his/her employer the accommodations that he/she will require in the workplace (Ontario Human Rights Commission, 2009b; Penney, 2002). Interestingly, according to ARCH Disability Law Center (2009), a Universalistic society in which people with disabilities never need to have individualized consideration for accommodations is an unrealistic goal since

disability is a unique experience for every person who encounters it. This implies that Ontario will never be a province in which Universalism is fully achieved.

### *3.2.7 Collectivist Responsibility Under the AODA*

The AODA is the only legislation of the three that functions upon the notion of collectivism. The overall goal of the legislation is to facilitate collective community support, and make broad, systematic changes as opposed to case-by-case changes. The true collectivist nature of the legislation can be seen in the enforcement mechanism, whereby all employers are responsible for creating accessibility, and the government monitors this progress in a systemic manner.

The legislation requires that obligated sectors be fully accessible to people with disabilities, and such sectors must file accessibility reports with the province within a certain time period to demonstrate their compliance with the standards (Accessibility for Ontarians with Disabilities Act, 2005, c.11, s. 14.1). People with disabilities do not need to file individual complaints under this system in order to bring about desired change; there is a compliance system in place for employers. Enforcement is province wide, as opposed to the setting where a person with a disability files a complaint; all employers are subject to government inspection. Any business or organization that is not found to be in compliance with the standards will face penalties (Accessibility for Ontarians with Disabilities Act, 2005, c.11, s.21.3). Moreover, the government will conduct random inspections under the Act to verify the report accuracy (Accessibility for Ontarians with Disabilities Act, 2005, c.11, s.19).

The AODA aims to make Ontario a more accessible place for all Ontarians by making accessibility for people with disabilities a collective responsibility. Accessibility for people with disabilities will be achieved by creating accessibility standards in areas of customer service, transportation, information and communications, employment, and the built environment. As mentioned earlier, committees will be responsible for creating these standards for obligated businesses and organizations, which will be responsible for identifying and removing barriers within a stated time periods (Beer, 2010). The AODA is designed to mandate change to the physical environment, as well as the social environment. While the standards will be phased in, the goal is that Ontario will become a more navigable environment for people with all types of disabilities. The AODA was designed with special enforcement clauses that aid in enforcing the systemic changes. The enforcement technique is unique to Ontario disability legislation, as both the Labour Relations Act and the Ontario Human Rights Code are enforced in a case-by-case manner.

### *3.2.8 The Definition of Disability*

All three policies essentially employ the same definition of disability in different ways. The Ontario Human Rights Code and the AODA outline the same definition of disability, which is broad and inclusive. It is exemplary, not exhaustive. It consists of five sections, each of which outlines different cases of disability. Part (a) of the definition states that disability can be any degree of physical disability. Parts (b), (c), and (d) include mental retardation or impairment, learning disabilities, and mental disorders. The last part of the definition includes any person who claimed benefits under the Workplace



Safety and Insurance Act, 1997. The Labour Relations Act does not provide a definition of disability, the reasons for which will be explained later in this section.

The first requirement to be included in the Ontario Human Rights Code's definition of disability is the presence of a disability based on the definition provided in the Ontario Human Rights Code with confirmation of such by a medical professional. Specifically, for the application of the Ontario Human Rights Code in the workplace, the employee must provide the employer with a physician's note indicating the specific accommodations required. The Ontario Human Rights Commission makes it clear that the list of disabilities is illustrative, and should be interpreted broadly (Ontario Human Rights Commission, 2009b). Interpretation is important because the Ontario Human Rights Code deals with disability on a case by case basis, and the Human Rights Tribunal of Ontario must interpret the Ontario Human Rights Code to determine whether disability and/or the perception of disability is present (Ontario Human Rights Commission, 2009a). Subsequently, the exclusion criteria include the inability to demonstrate the presence of a disability. The inclusion and exclusion criteria exist to ensure that only people with disabilities are making claims under this aspect of the Ontario Human Rights Code.

The second aspect of the Ontario Human Rights Code's inclusion criteria, according to the Ontario Human Rights Commission (2009b), is the presence of discrimination. The Ontario Human Rights Code investigates the presence of discrimination by applying the prima facie test; this test is applied after the presence of disability has been established. The prima facie test consists of three inquiries that must be satisfied: 1. Was there differential treatment, either because of a distinction, exclusion, or because of a failure to take into account the position of historical disadvantage?; 2.

Was treatment based on an enumerated ground?; and 3. Does differential treatment discriminate by imposing a burden, or by withholding a benefit from the person? If the complainant is unable to demonstrate discrimination based on this test, he/she is excluded from the Ontario Human Rights Code's provisions.

Lastly, the provision of a claim under the Workplace Safety and Insurance Act is an aspect of the Ontario Human Rights Code's definition of disability, and is meant to include injuries that occurred in the workplace. The Workplace Safety and Insurance Act is in place to promote health and safety in the workplace, and aid in the return to work process for people who suffered workplace injuries. The Workplace Safety and Insurance Act also provides benefits for the spouses of deceased workers. Therefore, to be considered disabled under this clause, one must have submitted an application to the Workplace Safety and Insurance Act, and received approval of disability designation by a professional at Workplace Safety and Insurance Act (Workplace Safety and Insurance Act, 1997). The AODA treats this part of the definition the same as the Ontario Human Rights Code, as it is applied in the workplace when requesting accommodation and provisions.

While the definition of disability for the AODA is the same as the Ontario Human Rights Code, the application of the definition is different. The Ontario Human Rights Code requires that discrimination must be present for the legislation to be of use, whereas the AODA simply mandates that people with disabilities have access. However, both pieces of legislation require that accommodations in the workplace be granted only after a person proves that he/she has a disability by providing a physician's note. The AODA aims to enforce the rights of people with disabilities prior to discrimination, while

the Ontario Human Rights Code is designed to address the rights of people with disabilities once discrimination has taken place.

In the AODA, there are some parts of the legislation that will be usable by all people, whether they are disabled or not, unlike the Ontario Human Rights Code. For example, by ramping entrances to all public buildings in Ontario, people with varying mobility disabilities will gain access without having to ask for special assistance to enter the building (Lepofsky and Graham, 2009). People without disabilities may also reap the benefits of ramps, such as people who have luggage or strollers - the ramp is available for anyone who may choose to use it. For the standards designed to provide universal accessibility, no one is excluded from the provisions of the AODA (Lepofsky and Graham, 2009).

There are, however, some aspects of the AODA that require the person with a disability to provide a physician's note to be included in the provisions of the legislation, thereby requiring that this person fit the description of disability to be eligible. For example, to experience the benefits of the employment standard, the employer needs to be informed of the details of accommodation in a physician's note to be eligible for accommodation. Specific accommodations in recruitment, assessment, and hiring stages of employment cannot be universal, as some disability groups require unique accommodations (Ministry of Economic Development, Trade and Employment, 2012). Therefore, diagnosable disability, be it physical or mental, is the inclusion criterion for some aspects of the AODA. The absence of disability would be the exclusion criterion. In summary, due to the differences in the application of the AODA and the Ontario Human Rights Code, the actualization of the definition of disability differs.

As mentioned earlier, the Labour Relations Act does not contain a definition of disability. In fact, the text of the policy itself does not contain the word, “disability”. The Labour Relations Act’s purpose is to facilitate effective collective bargaining between unions and employers and to provide guidance on creating sound workplace agreements. All people, including people with disabilities, who are employees in unionized businesses in Ontario, will be covered under the provisions of the Labour Relations Act. This policy monitors actions that take place within the process of collective bargaining, whether or not the process involves people with disabilities. Due to the fact that the Labour Relations Act has no definition of disability, unionized businesses must use the definition of disability under the Ontario Human Rights Code.

### *3.2.9 The Impact of the Definition of Disability on Employers*

It is important under all three pieces of legislation that employers are aware of their obligations, and are knowledgeable in the range of disability as detailed by the Ontario Human Rights Code and the AODA. As mentioned, the definition of disability is broad and inclusive, which means that people with varying conditions and the perceived existence of a disability are entitled to the accommodations they need in the workplace. Therefore, no person with a disability will be excluded from the provisions of the Ontario Human Rights Code or AODA as long as they are able to demonstrate the presence of medically diagnosable disability. Given the Labour Relations Act’s alignment with the Ontario Human Rights Code’s provisions, collective agreements must reflect these ideals too. For this reason, it is important that employers understand the definition of disability as detailed in these policies to ensure that they are not discriminating against people with

disabilities by imposing barriers, or intentionally or unintentionally excluding people with disabilities from the workplace. Employers need to understand the range of disability, and the various ways in which accessibility can be created in the workplace. This may aid in the change of attitude towards disability, as people begin to understand that accommodations allow people with disabilities to do the same tasks as everyone else in the workplace (Beer, 2010; Ontario Human Rights Commission, 2009b).

### *3.2.10 The Cost of Accommodation*

Employers are required to provide accommodation at their own expense, unless it will amount to undue hardship. According to statistics collected by the Ontario Human Rights Commission (2009b), employers often feel that accommodations are costly; in reality, more than two thirds of employment related accommodations cost \$500 or less.

As mentioned earlier, the Ontario Human Rights Code contains a provision to protect employers from providing accommodation that is unreasonable. There are three situations that the Human Rights Tribunal of Ontario will take into consideration when determining undue hardship. The first is costs related to the accommodation. According to the Ontario Human Rights Commission (2009b), costs will amount to undue hardship if they are quantifiable, related to accommodation, and so substantial that they would affect and alter the fundamental nature of the business. If the employer's response for the claim does not satisfy all requirements, then the Human Rights Tribunal of Ontario will make a decision as to how the situation will be remedied. The second consideration is outside sources of funding. If a business receives outside sources of funding related to accommodation, these funds must be used to provide accommodation before undue

hardship can be determined. The last consideration is health and safety in the workplace. If an accommodation presents a health or safety risk, it is deemed to be an undue hardship for the employer. In reality, undue hardship is not a common occurrence, and in most cases employers are found to be capable of paying for accommodation (Ontario Human Rights Commission, 2009a; Ontario Human Rights Commission, 2009b).

Charles Beer (2010) discussed the issue of cost of accommodation under the AODA in his review as noted earlier. Beer's participants from the obligated sectors expressed concern about associated costs, including costs of accommodating people with disabilities (Beer, 2010). According to Beer (2010), the AODA timelines were described by some employers as too short, with lofty expectations of change. Participants felt that businesses and organizations need more time to provide accessibility than what has been proposed, due to Ontario's current economic environment. The Ontario economy was negatively affected by the downturn in the global economy after September 2008, and Ontario businesses were still attempting to recover from the economic losses experienced during that time (Martin Prosperity Institute, 2010).

In 2010, the Government of Ontario commissioned the Martin Prosperity Institute (MPI) to complete a quantifiable study of the economic benefits of accessibility, to justify the provisions of the AODA. The study analyzed potential economic impact of the AODA on individual Ontarians, the impact of the AODA on Ontario's markets, and the social costs and benefits of the AODA. The potential impact was measured because the AODA has not fully actualized yet, so this is a projective estimate. The MPI concluded that employment was one area in which providing accessibility could allow for significant economic gains, and that changes in accessibility levels would increase the

GDP per capita in Ontario upwards of \$600 per annum. The research demonstrated that there was a significant amount of untapped talent available in the disability community. Moreover, the study found that social exclusion required that the province increase funds on poverty related issues such as unemployment (Martin Prosperity Institute, 2010). These costs affect not just provincial budgeting, but the families and communities that support people with disabilities. Essentially, the report stated that, if implemented correctly, the provisions of the AODA could lead to economic growth for Ontario. As for the Labour Relations Act, the employer is required to cover the cost of accommodation (Ontario Labour Relations Board, 2008).

For each policy, the cost of accommodations for people with disabilities in the workplace falls upon the employer. According to the Ontario Human Rights Commission (2009b), people with disabilities should not be solely responsible for carrying the burden for the cost of accommodation; rather, it should be the responsibility of all of society. The provincial employment equity policies of Ontario mandate this to some degree, in that businesses and organizations are responsible for the cost of accommodations, not just one person with a disability. All three policies stand united in this point.

## **Chapter 4: Actualization of the Policies in Three Employment Settings**

The current chapter presents the methodology and the findings of the interview portion of the study. This portion was designed to answer the study question: To what extent are private sector employers in Ontario aware of these three central policies, and how do these employers apply these policies in their work setting in order to ensure employment equity for employees with visible disabilities? The first section details the methodology: the interview objectives, the sampling strategy, the study setting and rationale, the recruitment strategy, the data collection process and analysis. The second section of this chapter presents the interview findings, which fall into five different themed sections: view of disability, knowledge and application of the three policies, the “fit” of a prospective employee, the importance of a human resources department, and the presence of accessibility in the workplace.

### **4.1 Interview Methodology**

#### *4.1.1 Objectives*

The purpose of conducting interviews with Ontario employers was to provide a snapshot of the way in which the Ontario Human Rights Code, the AODA, and the Labour Relations Act have been actualized in the Ontario workplace. The interviews were conducted with three employers in the Ontario private sector. The specific objectives were to: a) investigate the level of private sector employer understanding/knowledge of the three central policies; and b) explore how these employers put their understanding/knowledge into practice within their work setting in order to ensure employment equity for employees with visible disabilities.



#### *4.1.2 Sample*

The sampling strategy was one of convenience. From August 2011 to October 2011, private sector companies of varying size and occupation were approached to participate. Three companies expressed interest in taking part. The interviews were conducted with the person in the company who was responsible for hiring employees. When approaching companies, the researcher informed the companies that she was interested in interviewing the person who was the main hirer in the company, and the company determined who that person was. In addition, this person had to have interviewed one or more people with a visible disability for an available job position. Of the three individuals who were interviewed, two worked in small business settings, and one worked in a business of medium size. According to Lengnick-Hall et al. (2008), a small business consists of 15-100 employees, and a medium sized business consists of 101-500 employees.

#### *4.1.3 Setting*

The setting that was selected was the private sector workplace of Ontario businesses. While the three policies of interest were applicable in the public sector, there are additional policies that monitor employment equity in the sector; therefore, the private sector was chosen as the setting because these three policies are directly responsible for ensuring employment equity in this sector for people with disabilities. Visible disability was also chosen as a parameter because the employer would be aware of the disability of a job applicant with a visible disability without disclosure. The hiring process was chosen as a parameter because the researcher was interested in understanding

the underemployment and unemployment rates of persons with disability, and the hiring process is a critical first step to gaining employment.

#### *4.1.4 Recruitment*

The researcher used the door-to-door method of recruitment, and approached local employers, suggested by word of mouth, to ask if they would be interested in participating in the study. The prospective participants were provided with the study information pamphlet (Appendix A); any questions that they had regarding the study were answered immediately. The method of door-to-door recruitment was selected because the prospective companies felt no obligation to participate. Initially the sample size of this step of the study was 4, but was reduced to 3 due to difficulty in recruitment. The businesses approached to participate in the study were in the Toronto area. This large geographic area was selected to aid confidentiality.

#### *4.1.5 Data Collection and Analysis*

The interview protocol was developed based on the research question, and guided by themes encountered during the policy analysis. The interview was comprised of five semi-structured, open-ended questions, which are as follows:

1. Can you describe the setting of your workplace? Can you describe the types of jobs people can be hired for? What types of accessibility equipment does your workplace have? Have you ever worked with someone who has a physical disability? Do you remember any special accommodations that they required in the workplace?

2. Can you tell me about the official guidelines your company uses for the hiring process? What do you consider to be important traits of a prospective employee? What process do you go through to decide whom to hire after you interview them?
3. Are there any government policies that your company makes use of regularly related to employment? Probe: specifically, what do you know about the AODA? Ontario Human Rights Code? The Canadian Charter of Rights and Freedoms? The Labor Relations Act? How does the company use these policies? How did you learn about these policies? What ways do you see these policies around the workplace?
4. How do you apply these policies you have talked about to the hiring process? Do you feel as though government policy has played an important role in the hiring process? Why or why not?
5. How much of a role do the policies play in the workplace? Do you feel that the policies are easy to apply? How often do you find yourself applying the policies you have talked about? Are there any educational programs at your work regarding the role of certain policies? Are there any company rules that make reference to any policies?

This semi-structured approach allowed for flexible conversations on the topics, with opportunities to probe should further details be needed to ensure understanding. It also allowed the interviewees to express thoughts in their own terms. It must be noted that in this study, a company policy is a written guideline that defines behavioural expectations, and may quote governmental policies to identify the basis for these

expectations; it is through these written company policies that both employees and employers come to understand what is expected of them in the workplace. At the beginning of each interview, the participant was given the Letter of Information/Consent form, which informed him/her of the purpose of the study, the research procedures, the potential risk, the maintenance of full confidentiality, and the freedom to withdraw from the study. The participant was asked to sign the consent form as an indication of his/her willingness to participate in the study (Appendix B). Approval to conduct the interviews was granted by Queen's General Research Ethics Board (Appendix E).

Each participant was interviewed once at his/her workplace. The length of the interviews varied from 30 to 45 minutes. The interviews were recorded onto an mp3 player and transcribed verbatim by the researcher. The content of each interview was analyzed by the researcher using qualitative content analysis techniques as described by Patton (2002). This process included the identification, coding, and categorization of the patterns of the data. The advantage of these techniques is that the researcher can make valid inferences, using a systematic and objective technique (Patton, 2002). First, each transcript was read so that the researcher became familiar with the content of each. The researcher then identified the units or chunks that reflected meaning within each transcript separately. The different meaning units from all three transcripts were then copied and pasted to a separate document; the same meaning units were grouped together. Once the data were organized into the different units, the data from the three transcripts were grouped together based on resonating themes, and labeled appropriately in a new document. This document was printed out, and interpreted using margin notes and a note pad to aid in the creation of themes. During this process, the researcher's supervisor

verified each step of data analysis, through emails, phone calls, and meetings. The advisory committee also approved the emerging themes.

Patton's approach was selected because it provided a framework for data analysis that was objective and systematic. Having such a framework was important because the data were rich and a reliable method for unveiling the underlying themes was required. This framework separates data in order to allow the researcher to understand the ways in which concepts interconnect, without the presence of prior judgment.

#### *4.1.6 Establishing Trustworthiness*

It is important to ensure that this study was performed with rigor and trustworthiness, according to Krefting (1991). To ensure credibility, several methods were used. The researcher used a well-established methodology of data collection and analysis, which has been previously successful in similar research endeavors. To verify the accuracy of the data, member checks were performed. Another method of ensuring credibility was the frequent use of debriefing sessions, where the researcher and her supervisor discussed the data collection process, and reviewed the data analysis to ensure that the quotes were in keeping with the interpretations. A thick description of the data was uncovered; examples are provided throughout the findings. To ensure dependability of the study, the researcher has provided a thorough description of the methods that were used, to ensure that another researcher could reproduce this study, and uncover similar results. This construct speaks to the dependability of the thesis. Lastly, the researcher was reflexive upon her personal experiences, to understand the way in which she might be

influenced by underlying opinions, to ensure neutrality. A journal was kept prior to the research experience, where some of these thoughts were recorded.

## **4.2 Findings from the Interviews**

### *4.2.1 The Participants*

In this study the term “employer” is used to label the representative of the company who was interviewed. This person could be the owner of the company, a manager, a human resources representative, or a combination of these. In order to obtain three willing study participants, about 20 employers from small, medium and large companies were approached. Over half of these potential participants expressed a willingness to be interviewed when first approached, but did not respond to emails or telephone calls initiated to schedule meeting dates and times. The names and contact information of two of the three participants were obtained through word of mouth references, where company employers suggested a colleague of theirs who, they thought, may be interested in participating. Employer 1 was the human resources representative of a finance company of 30 staff, employer 2 was the human resources representative and manager of operations and development of a private psychological and educational institute with staff numbers of 80 to 100, and employer 3 was the human resources/accounting manager of an engineering and manufacturing company with 120 permanent positions and 25 temporary positions. None of the participants was part of a unionized workplace.

The topic of how employers implement relevant government policies to ensure employment equity for individuals with visible disabilities is sensitive, and therefore the

candidness of the participants should be considered. It is difficult to know the extent to which the participants were being candid during the interviews, but some observations may suggest their levels of candidness. Two of the participants appeared to be candid. One of these participants provided information about the lack of policy implementation within the company; he/she stated at the beginning of the interview that he/she felt comfortable sharing this information because of the guarantee of confidentiality. The second participant also readily shared information about his/her company's policy implementation, and allowed the researcher access to their company policy book and training materials.. Both of these employers did not appear to contradict themselves during the interview. The third participant seemed to be less candid. This participant initially stated that his/her company applied the policies in question in the workplace, but later revealed that the company did not implement disability related policies, thus contradicting the earlier statement. To gather desired data, probing was required.

Findings from the interviews with the three employers were grouped into five themes. The themes are as follows:

- View of disability
- Knowledge and application of the three policies
- The “fit” of a prospective employee
- The importance of a human resources department
- The presence of accessibility in the workplace

These findings reflected the initial purpose of exploring employer knowledge/ understanding of the policies in question, and policy application in the workplace.

#### 4.2.2 View of Disability

All three employers described their view of disability in the workplace, identifying what ideas they held about what people with physical disabilities looked like, and how people with physical disabilities acted. Views of disability varied based on personal experience, with all three employers discussing the mobility issues experienced by people with disabilities, and one of the employers discussing the mental capacity of some people with disabilities. When asked about his/her experience with people with physical disabilities in the workplace, one of the employers briefly described a receptionist who had a mobility issues, but continued that the company had never employed someone in a wheelchair, or with spinal cord injury:

*We did have a receptionist for a number of years that had a rather serious accident with her leg... she wasn't capable of hauling [her leg] around the building... because she had difficulty walking. But, other than that, you know, there's never been someone who is wheelchair bound, or suffers any paralysis...*

The mental capacity of people with disabilities was mentioned by another employer, whose workplace educated children with mental disabilities. When asked if the speech recognition software that was used in the school setting was available to the employees if needed, the interviewee expressed doubt that someone with such a disability would be able to achieve the high level of education and experience required for that job setting:

*I think the likelihood of someone coming in here who had that kind of disability ... isn't really great. Even that they would apply here... because... one, they would have to get a Master's degree, right? Number two... you still need some experience, it would be difficult.*

This same employer linked accommodations for disability to accommodations for obesity, and expressed concern over the ability of their obese employees to maintain an appropriate level of hygiene:



*A couple of teachers that we've had who have been morbidly obese, and certainly had challenges with mobility. And I think, um, personal hygiene issues, as well, that sometimes kind of go along with that. So ya, um, it's challenging because there's...for example, someone who's a teacher, and they have students, and this teacher really stinks, that's a problem.*

This employer related the presence of obesity with the inability to maintain proper hygiene, and indicated that this issue was a concern for several people in the workplace who are obese.

#### *4.2.3 Knowledge and Application of the Three Policies*

All three employees held different levels of awareness of policy, which subsequently meant that each workplace had different applications of policy. The varying degrees of knowledge and application ranged from independently discussing the central policies and other policies, to awareness of policies not central to this thesis, to the inability to discuss the policies central to this thesis, as well as other policies.

One of the employers mentioned several policies independently; some of the policies were key to this study, while others were not. When describing the interview process, this employer alluded to the use of human rights policies, but did not specifically name a policy that his/her company applied during interviews: “we try to follow all the human rights things and that, like you can't ask age, home life, and all those questions.” The same interviewee discussed his/her knowledge of the Workplace Safety and Insurance Board without prompting from the interviewer, but did not, however, discuss the Workplace Safety and Insurance Act, the corresponding policy to the Workplace Safety and Insurance Board. When asked if there were any policies that his/her business regularly use, the interviewee independently named the AODA and Bill 168, which is a

policy that addresses workplace harassment, as policies that had just recently been added: “Ya, we do have a policy and procedures manual with all the standard stuff. But we’ve just incorporated the last two ones that the government introduced that was Bill 168 and the AODA.” While discussing the AODA, the employer also named the Good Samaritan Act, saying that it conflicted with some of the AODA values:

*...knowing when to ask if somebody wants help, because then you’re infringing on their right to help themselves. You know and then you think about what the Good Samaritan Act where, you know where some people are just always asking to help other people.’*

The same employer needed to be asked directly about the use of the Ontario Human Rights Code in his/her workplace, and was unable to discuss the policy independently. This employer cited the length of time the Ontario Human Rights Code has been around as the reason that the company rarely refer to it or enforce employee awareness: “I think [the Code] has been around long enough that most people are very aware of what you can and can’t do”.

Another employer named several policies used in the workplace, but did not independently mention the three in question. According to this employer, their engineering and industrial plant focused on health and safety policies. The Workplace Safety and Insurance Board was mentioned when discussing disability and workplace accommodation: “...it’s not through WSIB because it wasn’t a workplace injury, but through our benefit plan that pays short term disability.” When asked if there were any governmental policies that were viewed as important in the workplace, this employer indicated that Workplace Hazardous Materials Information System (WHMIS), the Health and Safety Act, and Employment Standards Act : “So anything to do with WHMIS or the Health and Safety Act, um, we’re very on top of new legislation that flows through here...

same with any changes that occur with the Employment Standards Act.” It must be noted that WHMIS is communication standard, not a policy. The employer felt that these policies were the most important to his/her workplace due to the nature of the work; disability legislation was not important because it is less applicable: “I think it’s what’s most applicable to us. You know, I think if you find yourself hiring somebody, perhaps, with a disability, you’re going to make sure that you’re onside from a legal standpoint.” The employer also indicated that other policies were identified in the employee manual, but was not able to name them: “We have a sexual harassment policy and equal pay for equal work policy, substance abuse, like the handbook names a number of, of um, policies that we uphold here.” When asked if either the Ontario Human Rights Code or the AODA were applied in the workplace, the same employer indicated that the policies were not applied in a formal manner: “No, they are not things that are applied here... if someone wants to say what they want, you try and uphold those things, but it’s not a formal, documented thing.”

The final employer did not independently discuss the policies in question or any other policies. He/she was asked about the use of these policies in the workplace, and indicated that the policy manual did not name these policies, but they were present as workplace foundation, since human rights legislation simply requires that people are treated in a way that one deems to be fair:

*It’s like how do you just treat people fairly? And I think generally speaking you have to know what the laws are. But generally if you’re trying to treat people fairly and do the right thing, 50% of it is taken care of... it’s not difficult to keep in mind people’s basic human rights (laughs), that’s the thing.*

When asked about the AODA, this employer indicated that it was not used, and he/she had only heard of it in a past workplace: “I haven’t had anything to do with it here.”

#### *4.2.4 The “Fit” of Prospective Employees*

During the hiring process, all three employers indicated that they looked for the right “fit” between a future employee and the existing atmosphere of the workplace. Their assessment of fit seemed to be based on the personalities, preferences, norms, and dynamic interactions of the other employees. The employers indicated that “fit” was a judgment that they made when they met the candidate during the interview process. The employers discussed how fit played an important role in choosing employees because the skills required to do the job were only part of participating in the workplace: “If you have a basic, analytical mind, and you know how to work a computer, and you have some background in it, a lot of what I need is are you going to be a good fit.” As well the idea that many skills can be taught:

*Criteria usually are, for us it’s not always about skill. It’s about fit as well. That people will be able to fit into the office environment... the office staff that’s already here... we kind of figure that anything can be taught.*

#### *4.2.5 The Role of Human Resources Departments*

While each employer had a slightly different experience with policy knowledge and application, all three employers seemed to suggest that the extensiveness of implementation was influenced by how effective their human resources department was. While all employers felt that the presence of a human resources department, or lack thereof, influenced the implementation of policy, only one company had a human

resources department. The other two companies had a human resources representative, but this representative was also responsible for other company roles, such as managing and finances.

The company that had a human resources department and a comprehensive company policy that referred to the AODA and the Ontario Human Rights Code attributed the company's ability to keep up-to-date with policies to the presence of a human resources department: "...it's nice to have a company of our size to have all these things because, even with the AODA, there's fines and things, so it's like it's very important." In this quote, "all these things" refer to the human resources department. This company had also started training their employees about the expectations of the AODA, based on a program obtained through HR downloads: "I found a company that provides the online training so staff can do it at their leisure. It takes about 2 hours, and it gives them the basis of the things we need to do to be in compliance." The employer had taken the training program himself/herself, and indicated that his/her personal views of disability had evolved since the training program, as it created a new perspective for him/her regarding acceptable ways to treat people with disabilities.

The other two companies had department managers who dealt with human resources concerns as one facet of their job. One of these two employers, who had a company policy but lacked a section on the Ontario Human Rights Code and AODA, felt that health and safety policies were important to them since they had a manufacturing plant in the back; he/she stated that disability related legislation was not applicable to them: "We're very much into the occupational health and safety... I think it's what's most applicable to us." This interviewee had indicated that he/she was unable to keep on top of

policies because there were so many, and he/she didn't have the time to self-educate: "I mean, one could bury themselves in paperwork, and reading up on policies, and policy changes, and everything that's out, you know, put out by provincial government and federal government." The other employer had neither a human resources department nor a company policy manual. This interviewee attributed the lack of a policy manual to the size of the company, the lack of human resources education, and a lack of time to research policy requirements:

*...the size of the organization means we can't have a robust HR department... Cause no one here has HR training. So if I came out of school with an HR background I would be very keen on having all these policy and procedure manuals, and everything else... I just don't have the time and it's not in my vocabulary.*

#### *4.2.6 The Presence of Accessibility*

While each work environment offered different forms of accessibility, all employers acknowledged the importance of accessibility in the work environment. The forms of accessibility offered reflected the requirements of the workplace, as well as the types of disability that had been encountered. One of the employers was familiar with employees who experienced short term disabilities: "... there have been a couple of people who have had cancer, heart attack, shoulder surgery, and various things." The accommodations that this employer identified were related to scheduling and the flexibility to work from home: "That's what they do when somebody's, you know, trying to make it back. They will talk to them and say, you know, what are your limitations, what can you do, what can't you do?" The main entrance to this workplace had stairs, thus limiting the accessibility for people in wheelchairs; this employer expressed that

there were no laws in place regarding accessibility when his/her company built the office in 2001: “When we built this building, um, there was no by-law that said a building of two stories had to have an elevator, so it’s not like we’re offside on anything.”

The building in which another of the employers worked had some building accessibility equipment, such as a small elevator: “We have an elevator, it’s a small elevator, but it’s basically for in case of a wheelchair. Or another reason why someone couldn’t get up and down.” This employer also mentions a wheelchair that is kept in the case of an accident, and a stair-less entry: “The front you can just come right in, so it was built that way on purpose to make sure there was accessibility.” The physical accessibility of the building was done so as to keep in line with building codes, as the office was a new building. According to this employer, many accommodations had been made for obesity related issues: “And so in [the company] specifically, obesity has been the one that you’ve seen more often than not.” These accommodations involved setting the obese teachers up with classrooms on the main level to aid in mobility, and allowing them to sit in the lobby while they wait for their students.

The last employer was situated in an office building shared by other companies, and therefore did not take care of the physical accessibility aspects of the workplace. His/her company had made minor accommodations in the physical environment for one of their employees:

*We had a young lady who had polio as a child, so she had a brace on one leg. So she was very tiny. So her chair had to be... special for her to be comfortable... the building has, you know, fire regulations and fire drills and all that, so we always had to have her on the list that you know somebody stayed with her.*

This particular interviewee also discussed accommodations that the company had made for an employee who went on a mental health leave, and was permitted to work from home: “Kind of re-structured the department a little bit so that she could have some time off to figure things out for the next... six weeks kind of thing.”

None of the employers identified accommodations made in the hiring process, with two of the employers indicating that the contents of government policies did not affect this process. For example, when asked if policies played a role when hiring, one of the employers said that the policies were present for employees within the workplace: “Um, I’m not sure if it affects hiring. Like I was saying, I think those policies in place are for when staff is here.” When asked if any parts of policy were applied to the hiring process, another indicated not: “So I don’t think government policies really play too much into who we would hire.” Another employers indicated that no government policies influence their hiring process, since that particular workplace was only concerned with policies to do with safety, and that human rights legislation would not play a part:

*Not in the hiring process, no... There aren’t really any policies out there that would directly impact the ability or desire to hire any particular candidate into [this company], um, like I said, we’re very into safety and employment standards, and both protection of the employee and the employer. But outside of those policies that we regularly deal with I’m not aware of any that would have as great of an influence over either employee or employer.*

#### 4.2.7 Summary of Results

A qualitative study was conducted to explore answers to the research question pertaining to employer understanding and application of the three policies of interest. The data were collected through open-ended, semi-structured interviews with the employers of 3 workplaces; these setting varied in size and occupation. The data analysis process



was guided by Patton (2002). The results showed that the 3 employers had varying views of disability, depending on their personal experience with disability in the workplace. Their knowledge/understanding of the three policies varied, ranging from the independent ability to discuss the policies, to an inability to discuss the policies without prompting. Each employer mentioned the importance of 'fit' when hiring persons with disabilities within their workplace; fit was the harmonious match between the job applicant and the current job environment and was assessed when the employer met the job candidate. The extent to which a policy was implemented seemed to be influenced by the presence of a human resources department within the workplace. In addition, all employers provided accommodations in the workplace; however, all employers indicated that they do not currently provide accommodations during the hiring process.

## **Chapter 5: Discussion and Conclusions**

The purpose of the current chapter is to discuss the research findings from both the policy analysis and the interviews and provide answers to the research questions: 1. What do the three key Ontario policies together provide in the way of a framework to guide employer attitudes towards persons with disabilities in the Ontario private sector? 2. To what extent are private sector employers in Ontario aware of these three central policies, and how do these employers apply these policies in their work setting in order to ensure employment equity for employees with visible disabilities? After the discussion, the limitations of this study, future research directions and final conclusions are presented.

### **5.1 Discussion of Findings**

#### *5.1.1 What do the three key Ontario policies provide together in the way of framework to guide employer attitudes towards persons with disabilities in the Ontario private sector?*

The findings of the policy analysis have highlighted the complex nature of disability policy in Ontario, given the lack of unified legislation. The policies in question share some important traits, while simultaneously offering unique characteristics, which in total builds a framework for action to guide employer attitudes towards people with disabilities in the workplace.

Historically, there have been many developments in anti-discrimination policy, and shifts within societal attitudes. Anti-discrimination became a priority in Ontario after WWII to ensure that all Ontarians would experience equal rights and opportunity. These policies were implemented progressively, reflecting the changing views of disability held by society and government. Disability began to be seen in policy as the result of a

disabling environment, not a fundamental part of a person. According to ARCH Disability Law Center (2009), anti-discrimination policies were not intended to function alone, but rather alongside one another to create a comprehensive framework where multiple aspects of anti-discrimination are addressed.

The Ontario Human Rights Code, the AODA, and the Labour Relations Act all mandate that workplaces in Ontario be free of discrimination towards people with disabilities. In each, anti-discrimination manifests itself through the requirement of accessibility in the workplace for people with disabilities. Accessibility and accommodations lead to anti-discrimination because they provide people with disabilities with a fair and impartial opportunity to participate in the workplace despite their disability. This means that people with disabilities will not be excluded based on stereotypes or perceived abilities. Instead their needs will be recognized and accommodated to ensure workplace accessibility.

Notably, the requirement of anti-discrimination under the three policies in question reflects the Minority Group view of disability, a viewpoint embedded within the three policies. This view, originally developed in the 1970s, posits that disabilities are the outcome of systemic and political structures that create disabling environments, which facilitate stigmatization and marginalization (Bickenbach, Chatterji, Badley and Üstün, 1999; Hahn, 1996; Jongbloed and Crichton, 1990). In this view, people with disabilities face discrimination together as a minority group, and require political solutions as a minority group to remedy discrimination (Bickenbach et al., 1999). Therefore, to amend the injustices faced by people with disabilities, anti-discrimination legislation defines disability as a homogenous group of people who require special attention in order to

eradicate discrimination. Bickenbach et al. (1999) notes that as a political strategy, this view has been a success, and can be credited for most changes in the treatment of people with disabilities, including changes in social attitudes. There are, however, drawbacks to this view of disability. The way in which the minority view guides attitudes towards disability, is that disability is seen as ‘special’, those assigned to the group are seen as homogenous, and the solutions to address discrimination are basically “one size fits all”.

It is important to understand the unique way in which each of the policies contributes to the framework guiding employer attitudes towards persons with disabilities. For the Ontario Human Rights Code, the goal is the provision of equal rights and opportunities for all people, regardless of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability, or the receipt of public assistance. The Code provides a global form of anti-discrimination, where disability in the workplace is one portion. The policy itself does not describe the requirements of accommodation; it simply states that it is necessary in the creation of an environment free of discrimination. The specific details to accommodation are provided in a separate document called the Policy and Guideline on Disability and the Duty to Accommodate, (Guideline). While the policy mandates accommodation in the workplace, and the Guideline describes a concrete plan for provision, neither documents stress the importance of employer education; it assumes that employers, following the reading of a policy, will understand it, and manage the responsibility of accommodation appropriately.

Another aspect of the Ontario Human Rights Code that could guide employer attitudes is that it provides a system where people with disabilities are given the

opportunity to report any forms of discrimination, or refusal of accommodation to the Ontario Human Rights Tribunal. The case is dealt with individually, and the Tribunal judge decides fair accommodation. Therefore, the Code not only mandates accessibility, but also provides a way for people with disabilities to demand the right to accessibility and accommodations. It is the only policy of the three that legislates an individual complaint system.

The Labour Relations Act is designed to facilitate collective bargaining in unionized workplaces, wherein accommodations for employees with disabilities are negotiated. The word disability is not mentioned in the policy, and anti-discrimination forms only a portion of the collective bargaining process; however, the process, and any actions performed by the Ontario Labour Relations Board, must reflect the requirements of the Ontario Human Rights Code, as the Ontario Human Rights Code holds primacy. Therefore, at minimum, the Labour Relations Act within the framework ensures the same provisions as the Ontario Human Rights Code. Within unionized workplaces, the terms of accommodation are agreed upon in a collective bargain, as per the Labour Relations Act. This legislation provides a legal venue in which the voices of people with disabilities can be heard on a regular basis within the collective bargaining process, as long as a person with a disability is part of the workplace. This provides an open venue for people with disabilities as supported by a union and a collective bargaining process; the person with the disability is not solely responsible for initiating the conversation regarding accommodations.

The AODA is the only legislation of the three where the contents of the policy focus solely on disability, as is suggested by the name; for the Ontario Human Rights

Code and the Labour Relations Act, the contents of the policy focus on anti-discrimination and collective bargaining respectively, not disability. A defining feature of the AODA within the framework is the way in which anti-discrimination and accessibility are enforced, as it is the only piece of legislation out of the three policies where people with disabilities are not personally responsible for reporting inadequate accessibility. Under the AODA, the government is responsible for systemically monitoring legislative compliance in all workplaces through inspections, and penalizes violators. This is a crucial enhancement to the framework, because people with disabilities will no longer be solely responsible for challenging violations of workplace accommodation. In addition, this system will encourage employers to broaden their understanding of people with disabilities, as the AODA standards require detailed provisions of accommodations. According to Cornish (2009), case-by-case eradication of anti-discrimination as necessitated by the Ontario Human Rights Code and the Labour Relations Act is lengthy, and ineffective in producing larger societal change. According to the Abella Report, the traditional complaint-based human rights system assumes that there is a single perpetrator of discrimination and a single victim of discrimination. It disregards the fact that discrimination is “primarily systemic and deeply embedded in Canadian labour markets” (Cornish, 2009). Since accommodations are often unique to a person with a disability given his/her workplace setting, it is important that the complaint system of the Ontario Human Rights Code be maintained. It is important to note that the complaint system of the Ontario Human Rights Code continues to be of value so that people with disabilities always have a way in which they can demand accommodations themselves, especially when accommodations may be unique to a person with the

disability given his/her situation. For this reason, the AODA and the Ontario Human Rights Code will function together, to ensure that accommodations are provided for all people who need it. This is especially important with the employment standard, where personal accommodations continue to be needed, and where unique accommodations are common. While the AODA is intended to provide systemic changes to accessibility through the governmental inspections, it is important that people with disabilities continue to have access to the individual complaint system; without a complaint system, some people with disabilities may still not be accommodated sufficiently.

According to this framework, societal attitudes towards people with disabilities in the workplace are inclusive, and see discrimination in the workplace as wrong. People with disabilities are entitled to accommodations in the workplace that provide them with equal opportunity. Lastly, the societal attitude towards disability, according to the content of the policy framework, is that employers should face penalties for failing to maintain a workplace with a discrimination free environment, and which poses barriers for people with disabilities, be it through routine inspection or a Tribunal decision.

Not only do the Ontario Human Rights Code, AODA and the Labour Relations Act together provide an anti-discrimination framework through accommodation and systems of collective compliant and individual complaint, but they also provide guidance on the definition of disability. Both the AODA and the Ontario Human Rights Code legislate the same definition of disability, where any degree of physical disability, mental impairment, developmental disability, learning disability, communication disability, mental disorder, or disability being claimed under the Workplace Safety and Insurance Act are included. The definition of disability as outlined by both these policies are not

intended to be finite, and are left to interpretation. The Labour Relations Act does not include a definition of disability, but instead employs the definition of the Ontario Human Rights Code. The definition of disability is broad and inclusive, but not exhaustive. It is important to note that the definition of disability enables the Minority Group view of disability. The three policies in question were written intentionally to acknowledge people with disabilities as a group who needs special treatment in order to overcome discrimination, by defining disability to create parameters for the group requiring special attention, and by designing a definition of disability to include all people with disabilities in one group.

Employers are expected to be aware of the breadth of disability, and be ready to create the necessary accommodations. According to each policy, employers are responsible for the cost of accommodation, unless it is found to be an undue hardship. The term undue hardship under Ontario law means that an employer must provide accommodations, unless the accommodations are proven to be too burdensome a cost, the company has no source of funding that could cover accommodations, or the accommodations may cause a health and safety risk; these claims are not up to interpretation, as they are quantifiable. However, employers have voiced individual concerns that, in the current economic climate, accommodations may be too expensive to justify (Beer, 2010). These results mirror those found by Kaye, Jans, and Jones (2011), where the researchers found that employers were wary of perceived financial burdens associated with accommodating an employee with a disability. The employers feared that reasonable accommodation would pose a substantial financial burden on the company, due to the perceived high tech nature of accommodations (Kaye, Jans and Jones, 2011).



According to the Government of Ontario, the majority of people with disabilities do not require special accommodations in the workplace (Ontario Human Rights Commission, 2009b). Therefore, it is important that employers are educated as to the reality of the price of accommodation, as well as their requirements to provide accommodations, due to the fact that they are required under all three policies to support the cost.

For effective enactment of the framework that these three policies create, employers must understand and implement those aspects of the three policies that apply to their workplace. The current challenge is employers need to be educated about the policies if they are to be fully effective. Of the three policies, only the AODA recognizes the importance of education. Among its standards are those that require the training of all members of obligatory organizations about the standards as they pertain to persons with disabilities. However, policy analysts argue for a more active role by governments in the education process. The Beer (2010) findings labeled governmental inaction as the primary flaw in the effective implementation of the AODA. Interviewees believed that this inaction had led to decreased public education and awareness as to the requirements of the AODA. Without this awareness, the goals of the legislation would not succeed (ARCH Disability Law Centre, 2009). Minimal employer knowledge of policies may lead to less proactive hiring, training, and retention strategies, which would contribute to reduced participation of people with disabilities in the workplace. A study by Houtenville and Kalargyrou (2012) found that there were a multitude of stereotypes held by employers in companies of all sizes, including the view that employees with disabilities were less capable than those without disabilities. Increased knowledge about employees with disabilities contributed positively to employers' hiring prospects in the leisure and

hospitality industry, while reduced employer knowledge detracted from the likelihood of hiring employees with disabilities (Houtenville and Kalargyrou, 2012).

Education is key in changing attitudes and creating equality (Brostrand, 2006). Through education, employers should gain an understanding of persons with disabilities and their legal responsibilities for accommodating persons with disability in the workplace as framed by these three policies. Beer (2010) suggests that employers of small businesses and businesses without human resource departments in particular seem to be unaware of the anti-discrimination policies that apply to their businesses. This lack of awareness would likely minimize the effectiveness of these policies to change employer attitudes to employees with disabilities and to the eradication of discrimination against people with disabilities in the workplace.

In summary, it is essential that employers are aware of their requirements under the three policies, and it is important that the Government of Ontario provide them with resources for education. If the policies are not being implemented correctly, the societal attitudes will not be fully reflective of the contents of the policy, and stereotypes and discrimination in the workplace will likely persist.

*5.1.2 To what extent are private sector employers in Ontario aware of these three central policies, and how do these employers apply these policies in their work setting in order to ensure employment equity for employees with visible disabilities?*

The outcome of the interviews for this small sample of three suggested that employers had varying levels of understanding of the three policies and varying ways of applying these policies to the workplace. The data also suggested that employers with a human resources department seem to be more aware and had a better understanding of

the policies than those without a human resources department. The interview data also suggested that companies without a human resources department or with a human resources manager who juggles multiple roles might not have the time and resources to educate employers about key policies. This finding is in line with research performed by Blackburn and Hart (2002), as part of Britain's Department of Trade and Industry research series on Employment Relations. The aim of Blackburn and Hart's research was to explore the knowledge of small business employers in terms of individual employment rights, including anti-discrimination. In this study, the owners of small businesses were responsible for any human resources duties. Findings included that one fifth of the employers who were interviewed lacked confidence in their knowledge of legislation and rights, less confidence was associated with smaller company sizes, while larger company owners were found to be more confident, although the difference in responses was not found to be statistically significant. The authors speculate that larger company owners had more experience addressing employment rights issues, which made them slightly more comfortable with the topic (Blackburn and Hart, 2002).

Within the application of policy, the data showed that regardless of their level of knowledge of the three policies, employers reported that they provided physical accommodation for employees who presented a need. This suggests that the idea of accommodation may have become a common and accepted concept in the Ontario workplace, and employers are willing to accommodate employees with disabilities when needed. This is an important finding, since anti-discrimination policies are based on an understanding that accommodation is a major requirement of anti-discrimination. A study by Unger and Kregel (2003) describing employer knowledge and utilization of

accommodations found that 82.6% of human resource professionals and supervisors highly rated the ability of their business to provide accommodations. Despite these numbers, though, employers demonstrated a limited awareness in ways to create accommodations, and relied heavily on human resource departments to identify and implement accommodations. The Unger and Kregel study concluded that it was encouraging to find that employers were willing to address disability in the workplace, but that there is a need to increase employer practical knowledge of accommodations. While Unger and Kregel demonstrate employer familiarity with accommodations for people with disabilities in the workplace, it is important to note that the study was performed in large for-profit businesses, which were “known for their proactive practices”; the participants were all employers in a small business (Unger and Kregel, 2003). This paper also demonstrates some of the supports that a human resources department can provide, linking back to the previous discussion.

Although all interviewed employers discussed accommodating employees who presented a need such as those with mobility problems or obesity, their definitions of disability seemed to vary and did not necessarily reflect the broad and inclusive definitions presented in the policies. Employer definition seemed to reflect personal experiences with disability rather than knowledge of the policies. Ren, Paetzold and Colella (2008) state that positive effects come from working alongside a person with a disability, since co-workers and employers may observe that the person with a disability is capable of performing equally in the workplace with accommodations, thus allowing co-workers and employers to overcome negative stereotypes. Therefore, personal experience with disability shapes the way in which they are viewed.

Interestingly, when applying the policies, a commonality held by all was that the Ontario Human Rights Code was present in their workplace, due to the fact that it had been in existence for a long time. This is in line with a study by Edwards, Ram and Black (2004), where the authors investigated reasons why employment legislation does not statistically have significant negative effects on small firms. One of the findings was that small firms and business owners often take for granted ‘older’ laws, assuming that much of its contents have become routine tasks. This may contribute to the reasons why all employers provided accommodation in the workplace, since accommodation is the major venue to anti-discrimination in the Ontario Human Rights Code.

When discussing the hiring of persons with disabilities, employers discussed the importance of the “fit” of a prospective employee to their work setting. This notion was explored in relation to the degree of application of the central policies. Interestingly, “fit” is not found within the policies, but seems to play an important role when selecting a prospective employee. Within the present study, employers described fit as the assessment of not only skill, but also personality traits and social skills. Individual fit has been described in the literature as particular individual characteristics that would suit a workplace, the person-situation match, and/or the person-organization match that will facilitate the greatest amount of success (Sims and Kroeck, 1994). Such a definition carries with it the possibilities of personal preferences, notions of ability, and ideals of a good employee. According to Ren, Paetzold and Colella, (2008), the fit of a job applicant with a disability was affected uniquely by both the nature of the disability, and the nature of the job. Furthermore, the presence of disability negatively affected the hirer’s perception of applicant’s capabilities, which stem from stereotypes held regarding people

with disabilities. Therefore, “fit” may detract from the anti-discrimination provisions if an employer is making decisions based on stereotypical ideas of disability. Within the study, employers demonstrated skepticism as to the abilities of a person with a disability to perform the job, because they believed that the disability would prevent the person from performing optimally, or they were unsure of what accommodation to provide (Ren, Paetzold and Colella). It is possible, though, that “fit” may become a venue for avoiding discrimination in the future, if employers see the capabilities of a person with a disability, and their possible niche in the workplace.

According to Harris (2002), understanding of the policies in question and the degree of engagement in implementation are correlated. The more employers understand the legislation, the more they will engage in policy implementation practices.

## **5.2 Limitations of the Study**

The first possible limitation of this study is that documents were used as the only source of data within the policy analysis section, and the researcher was limited only to documents that have already been created on this topic. The intention of the analysis was to present an amalgamation, description, and discussion of the documents that already exist, not to uncover new knowledge.

A second possible limitation of the study is that the interview data were collected from three companies in the Toronto area. This region has been exposed to advocacy efforts regarding certain policies, especially the AODA. It is possible that these employers were more knowledgeable, and applied the policies to a greater extent than employers in other regions of Ontario. Additionally, the three who volunteered had many

similarities, such as size and location. The findings may not be applicable to all companies in Ontario, as there are complex differences between companies, such as purpose, size, structure, and location that could influence findings. Given the results indicating the importance of a human resources department in implementing policies, a large company with a large human resources department might have provided entirely different data.

A third possible limitation is that none of the three businesses were unionized, therefore none of the employers had any experience with the Labour Relations Act. Only the AODA and the Ontario Human Rights Code were investigated in these interviews.

A fourth possible limitation of the study was a self-selection bias. It is likely that employers who have poor inclusion of disability in the workplace, or have had human rights complaints levied against them did not participate in the study.

A fifth possible limitation of the study was that data collection and analyses took place during 2011 and 2012. Given the rapid changes in the realm of policy development and politics, it is possible that additional documentation has accumulated that could have informed this study.

A sixth possible limitation of the study is the fact that the interview questions focused only on the anti-discrimination of people with visible disabilities in the workplace.

A final possible limitation of the study was that the data was collected using the McColl and Jongbloed guidelines, which would have shaped the policy analysis findings, allowing only data applicable to these guidelines to be retrieved.

### **5.3 Future Research Directions**

The thesis provided a description of the policy requirements of the Ontario Human Rights Code, the AODA, and the Labour Relations Act, and what they provide. As a next step, research should use this information regarding the legislative requirements, and compare it with current inequities identified, to begin to understand how the policy environment functions in reality, and why inequities persist. There is currently very little understanding as to how these structures work (Bickenbach, 2006).

Given the need for employer education regarding policies, future research efforts should focus on optimal ways to communicate knowledge from the government to the public. There is currently a website available to dispense information, but small businesses and workplaces without a human resources department may not have time to do the research on their own. There needs to be a more active method of knowledge translation, and researchers are in an optimal position to explore this.

Research should also explore the knowledge of public sector employers, as this study investigated the private sector. Contrasting the two workplaces may allow researchers to develop a deeper understanding of the reasons for existing discrimination, and may aid in providing potential solutions.

Further research regarding knowledge and application of policies in the private sector would also be beneficial, as the interviews with employers in this study provided only a few examples of the realities in Ontario workplaces. Understanding the realities of these policies will aid in understanding what parts of the policy are working, and which parts are not.



## **5.4. Conclusion**

Together, the AODA, the Ontario Human Rights Code, and the Labour Relations Act provide the requirement of anti-discrimination in all private sector workplaces for employees with disabilities, by mandating reasonable accommodation. This is intended to cultivate attitudes of inclusiveness, and respect for accommodation requirements. The definition of disability used under all three policies is broad, but not exhaustive, as every person with a disability must be recognized legally to receive accommodation; it is important that not one person with a disability be excluded. Each policy enforces the requirement of accommodation differently, using various mechanisms. Employers must know what is required of them under each policy, and how to provide accommodations for a broad range of disabilities, as the enforcement mechanisms differ, and employers may be at risk of penalties if they are unaware of requirements.

All three policies were designed to provide accommodations in the workplace under the Minority Group view of disability, where disability is treated as a special case deviating from the norm, requiring special treatment. This view is necessary for each person with disabilities to receive the workplace accommodations they require for equity. As a result of this view, the attitudes of employers have been influenced, with employers seeing people with disabilities as special and less able, believing that they possess traits that somehow differ from the 'norm'. Additionally, due to the requirement of individualized accommodations, employers have also come to believe that the cost of accommodation is much higher than the reality. It is important that employers come to view accommodation as a relatively inexpensive implementation, given the output

received, which will allow employers to see people with disabilities as a fully capable group, who do not differ much from themselves.

The interview data demonstrated the reality of implementing policy, and the ways in which social attitudes interact with personal attitudes. There is a large variance in the application of the central policies, which was influenced greatly by the presence of a human resources department. Employers who lacked a human resources department understood fewer details of the policy requirements than the employer with a human resources department. This understanding did not impede upon the provision of accommodation in the population interviewed, but one would question the extent to which all policy requirements were being adequately applied. In order to increase the knowledge and understanding of the extent of policy requirements, and to create positive attitudes towards disability, it would be recommended that employers be educated on the requirements on policy. With education, the policies may be implemented properly, disability may be more understood, and Ontario can continue towards its goal of being fully accessible for people with disabilities.

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## **Appendix A: Information Pamphlet**

### INFORMATION FOR POTENTIAL PARTICIPANTS

#### Physical Disability in the Workplace: How Policy Affects Attitudes

What is this study for?

This is a master's candidate study with Queen's University. This study is looking at the way employers apply employment equity policies, and how these policies affect attitudes of people with disabilities in the workplace. We will be investigating this by doing interviews with people who interview job applicants.

What will participation require?

If you agree to participate in this study, you will take part in an hour long interview in which you will discuss employment policies in your workplace relating to interviewing people with disabilities, and how these policies shape your workplace.

Will my name be used? Can I be identified?

The researcher will ensure confidentiality. They will keep all information collected in a locked computer. Also, you don't have to answer any questions that make you feel uncomfortable. If you decide at any point that you don't want to be in this study, you may withdraw.

Where will the study take place?

The study will take place in any location that you deem to be convenient.

If you have any further questions regarding this study, you can contact Anna Murray at (613) – 715 – 2662 or send an email to [9am8@queensu.ca](mailto:9am8@queensu.ca).

## Appendix B: Letter of Information/Consent

DATE: \_\_\_\_\_

### LETTER OF INFORMATION / CONSENT

#### Physical Disability in the Workplace: How Policy Affects Attitudes

##### Investigators:

**Principal Investigator:** Name: Anna Murray  
Department of Rehabilitation Science  
Queen's University  
Kingston, Ontario, Canada  
(613) 715-2662  
E-mail: [9am8@queensu.ca](mailto:9am8@queensu.ca)

**Co-Investigator:** Faculty Supervisor: Margaret Jamieson  
(613) 533-6088  
[m.jamieson@queensu.ca](mailto:m.jamieson@queensu.ca)

##### Purpose of the Study

You are invited to take part in this study on the application of employment policies in Ontario in the workplace and the way it relates with physical disabilities in the workplace. We want to investigate the way employers apply employment equity policies in the workplace by conducting interviews. We will ask questions about the company's hiring process, the use of government policy in the interview process and the adequacy of these policies.

##### Procedures Involved in the Research

In this study you will be invited to participate in an interview that will last between half an hour and an hour. The interview will be held in a location that is convenient for you. During the interview, I will ask you questions about your awareness of government employment policies, and whether the policies played a role in your interview with the person with a disability. I will also ask you some questions on your awareness of Ontario employment equity policies. The questions might ask things like "Can you describe your company's hiring process?" and "Which government policies play an important role in the interview process?". With your permission, the interview will be recorded using computer software. I will also take some handwritten notes to ensure that I am able to remember the whole interview experience.

##### Potential Harms, Risks or Discomforts:

The risks involved in participating in this study are minimal. You may feel uncomfortable with some of the questions regarding your interview experience with the person with a disability. You may feel as though some of these questions can be slightly sensitive.

You do not need to answer questions that you do not want to answer or that make you feel uncomfortable, and you can withdraw at any time. I describe below the steps I am taking to protect your privacy.

##### Potential Benefits

The research will not benefit you directly. I hope to learn more about the way that Ontario employment

equity policies influence employer attitudes about employees with disabilities. This study will set the stage for other researchers to look at this topic, and better understand how policy is affecting the way people act.

### **Confidentiality**

You are participating in this study confidentially. I will not use your name or any information that would allow you to be identified. No one but me and my research supervisor will know whether you participated unless you choose to tell them.

The information/data you provide will be kept on my computer that is secured by a password that only I only I will have access to it. Any rough notes that I take during our interview will be kept in a locked safe. Once the study has been completed, the data will be destroyed.

### **Participation and Withdrawal**

Your participation in this study is voluntary and it is your choice to be part of the study or not. If you decide to be part of the study, you can decide to stop at any time, even after signing the consent form or part-way through the study. If you decide to withdraw, there will be no consequences to you. In cases of withdrawal, any data you have provided will be destroyed unless you indicate otherwise. If you do not want to answer some of the questions you do not have to, but you can still be in the study.

### **Information about the Study Results**

I expect to have this study completed by approximately December, 2011. If you would like a brief summary of the results, please let me know how you would like it sent to you.

### **Questions about the Study**

Any questions about study participation may be directed to Anna Murray at 613-715-2662, email [9am8@queensu.ca](mailto:9am8@queensu.ca). Any ethical concerns about the study may be directed to the Chair of the General Research Ethics Board at [chair.GREB@queensu.ca](mailto:chair.GREB@queensu.ca) or 613-533-6081.

*This study has been granted clearance according to the recommended principles of Canadian ethics guidelines, and Queen's policies.*

### **CONSENT**

I have read the information presented in the information letter about a study being conducted by Anna Murray, of Queen's University. I have had the opportunity to ask questions about my involvement in this study and to receive additional details I requested. I understand that if I agree to participate in this study, I may withdraw from the study at any time. I have been given a copy of this form. I agree to participate in the study.

Signature: \_\_\_\_\_

Name of Participant (Printed) \_\_\_\_\_



## Appendix C: All Collected Documents

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## Appendix E: Queen's General Research Ethics Board Approval



October 13, 2011

Ms. Anna Murray  
Master's Student  
School of Rehabilitation Therapy  
Queen's University  
Louise D. Acton Building  
31 George Street  
Kingston, ON K7L 3N6

GREB Ref #: GREH-008-11; Romeo # 6006301  
Title: "GREH-008-11 Physical Disability in the Workplace: How Policy Affects Attitudes"

Dear Ms. Murray:

The General Research Ethics Board (GREB), by means of a delegated board review, has cleared your proposal entitled "GREH-008-11 Physical Disability in the Workplace: How Policy Affects Attitudes" for ethical compliance with the Tri-Council Guidelines (TCPS) and Queen's ethics policies. In accordance with the Tri-Council Guidelines (article D.1.6) and Senate Terms of Reference (article G), your project has been cleared for one year. At the end of each year, the GREB will ask if your project has been completed and if not, what changes have occurred or will occur in the next year.

You are reminded of your obligation to advise the GREB, with a copy to your unit REB, of any adverse event(s) that occur during this one year period (access this form at [https://eservices.queensu.ca/romeo\\_researcher/](https://eservices.queensu.ca/romeo_researcher/) and click Events - GREB Adverse Event Report). An adverse event includes, but is not limited to, a complaint, a change or unexpected event that alters the level of risk for the researcher or participants or situation that requires a substantial change in approach to a participant(s). You are also advised that all adverse events must be reported to the GREB within 48 hours.

You are also reminded that all changes that might affect human participants must be cleared by the GREB. For example you must report changes to the level of risk, applicant characteristics, and implementations of new procedures. To make an amendment, access the application at [https://eservices.queensu.ca/romeo\\_researcher/](https://eservices.queensu.ca/romeo_researcher/) and click Events - GREB Amendment to Approved Study Form. These changes will automatically be sent to the Ethics Coordinator, Gail Irving, at the Office of Research Services or [irvingg@queensu.ca](mailto:irvingg@queensu.ca) for further review and clearance by the GREB or GREB Chair.

On behalf of the General Research Ethics Board, I wish you continued success in your research. Yours sincerely,

Joan Stevenson, Ph.D. Professor and Chair General Research Ethics Board

cc: Dr. Margaret Jamieson, Faculty Supervisor