

## A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

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### Accessible Websites

How far must regulators go to ensure that their websites are accessible to people with disabilities? A recent case indicates that internet access to government information and services is so fundamental to its mandate that providing non-internet alternatives is insufficient. As regulators make their websites an integral part of their regulatory activities, the question becomes whether the same expectations will apply to them.

In *Canada (Attorney General) v. Jodhan*, 2012 FCA 161 (CanLII) a legally blind, sophisticated computer user was unable to access certain federal government websites. This resulted from various causes including the use of pop-up windows and pdf documents which did not lend themselves to accessibility software. Ms. Jodhan brought an application for judicial review arguing that her right of equal protection and equal benefit of the law under section 15 of the *Canadian Charter of Rights and Freedoms* had been breached.

The Court accepted the argument that equal benefit meant effective access to government services and not, necessarily,

access by the person's preferred channel of delivery. However, the Court found:

... I have great difficulty understanding how the benefit of access to government information and services can be truly enjoyed or exercised, in the present day, without access to that information by way of the Internet. In other words, depriving a person of access to government information and services by the use of one of the most important, if not the most important, tool ever designed for accessing not only government information and services, but all types of information and services, cannot constitute, in my respectful opinion, the provision of effective access to that information and those services.

The Court went on to say:

I am therefore of the view that the benefit of the law is access to government information and services. However, access thereto necessarily includes the benefit of online access, which is not just an ancillary component of the multi channel delivery mechanism, but an integral part thereof. In other words, one cannot speak of access to government information and services without

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including access thereto by way of the Internet.

The Court did accept that if there were significant challenges to the government accommodating the disability, the Court might not order it. However, that was not the case here:

In the present matter, no evidence has been offered by the Attorney General to the effect that there is any impediment to moving forward and enabling the visually impaired to readily access government information and services online. Consequently, I also have difficulty with the proposition that alternative formats and channels meet the goal of substantive equal treatment. Where not possible for technological, cost, or other reasons, I readily accept that the visually impaired would have to access government information and services through alternative formats or channels.

The Court supported Ms. Jodhan's application and declared that the government had breached her rights under the *Charter*. The Court declined to make a supervisory order in which the Court would actively monitor the government's progress towards enhancing accessibility. It said that a basis for such an extraordinary remedy had not been established for many reasons including that the government was already moving towards greater accessibility. Never the less, the government is required to address the issue.

The same result would not necessarily apply to regulators. Some regulators do not yet use the internet as an integral part of its regulatory activities. And the cost of some

accommodation tools may be excessive for some regulators. However, it is clear that regulators do need to be moving towards greater accessibility to the extent that they rely increasingly on on-line services.

This case reinforces the duties imposed by the *Accessibility of Ontarians with Disabilities Act (AODA)* which has recently begun to apply to Ontario regulators. For example, many larger regulatory bodies will have to begin complying with certain web accessibility standards by January 1, 2014.

The *Jodhan* case can be found at: [www.canlii.org](http://www.canlii.org).

The Ontario web accessibility standards are found in section 14 of O. Reg. 191/11 (the "Integrated Accessibility Standards) under the AODA: [http://www.e-laws.gov.on.ca/html/regs/english/elaws\\_regs\\_110191\\_e.htm](http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_110191_e.htm).