

2. Proposed Compliance Enforcement Initiatives

Two elements of the inspection and enforcement system will be regulated within the Compliance Assurance Framework under the Integrated Accessibility Regulation:

Part E: Administrative Monetary Penalties Scheme

An administrative monetary penalties scheme is being established under the AODA (s.39).

The scheme will allow the director or a designate to issue an order against a person, organization or corporation to pay a penalty amount as a result of non-compliance with the AODA or the accessibility standards.

Administrative monetary penalties are one of the tools used to encourage compliance and do not involve court action. They will be one of the options considered in cases where efforts to assist a non-compliant organization have been unsuccessful. They are issued using a director's order and can be appealed to the designated tribunal.

The largest lump sum penalty amount that can be issued to an individual or an organization that is not a corporation is \$2,000 and the maximum for a corporation is \$15,000. The amount of the penalties will be set out in a regulation.

When determining the penalty amount that will be issued against a non-compliant person or organization, the ministry will take into account (i) the compliance history of the person/organization and (ii) the severity of the impact of the violation on persons with disabilities.

- Compliance history will be ranked “minor”, “moderate” or “major” and will be based on a period of two reporting cycles and violations committed across the Act and/or the accessibility standards.
- The severity of impact will be based on the classification of the provisions of the accessibility standards into minor, moderate and major categories and an assessment of risk.

Example: Compliance history x Impact of the violation

| Compliance History | Impact of Violation |
|--|--|
| Minor: 1 contravention | Minor: applies to administrative/ operational requirements of the standard; e.g. keeping an employee training log |
| Moderate: 2 - 5 previous contraventions | Moderate: applies to organizational preparedness requirements; e.g. having an accessible website |
| Major: 6+ contraventions and/or are known offenders | Major: applies to requirements that government determines are a priority; e.g. an area that may pose a threat to safety |

The ministry will determine the severity of the impact of the contraventions of the provisions of the five accessibility standards, beginning with the Customer Service Standard, as minor, moderate, or major and provide information on this ranking to the regulated community as part of the compliance assistance efforts.

Compliance history and impact of violation will be aligned within an escalating chart of risk (see Table 1) to determine the amount of the penalty. These amounts represent lump sum amounts.

Table 1

| Person/ Organization | Major Impact of Violation Priority Requirement | Moderate Impact of Violation Organizational Preparedness | Minor Impact of Violation Administrative/ Operational |
|--|---|---|--|
| Major Compliance History (>6 previous contraventions) | \$2,000 (can be issued per day) | \$1,000 | \$500 |
| Moderate Compliance History (2-5 previous contraventions) | \$1,000 | \$500 | \$250 |
| Minor Compliance History (first contravention) | \$500 | \$250 | \$200 |

| Corporation | Major Impact of Violation Priority Requirement | Moderate Impact of Violation Organizational Preparedness | Minor Impact of Violation Administrative/ Operational |
|--|---|---|--|
| Major Compliance History (>6 previous contraventions) | \$15,000 (can be issued per day) | \$10,000 | \$5,000 |
| Moderate Compliance History (2-5 previous contraventions) | \$10,000 | \$5,000 | \$2,500 |
| Minor Compliance History (first contravention) | \$2,000 | \$1,000 | \$500 |

The largest penalty amount that can be assigned to an individual is \$2,000. Where a penalty is assigned to a corporation, the largest amount that can be issued in an order is \$15,000.

To be issued an order with the maximum penalty amount, the person, organization or corporation must:

- Have a compliance history that includes six or more previous contraventions and
- The contravention must be a priority requirement of the accessibility standard, as determined by the ministry.

Potential for daily amounts

- Reserved for contraventions that fall within the “major compliance history and major impact” category
- Director may determine that such case warrants an increase in penalty amounts and issue an order requiring payment of a daily penalty amount (versus a lump sum)
- Decision will be made on a case-by-case basis with careful consideration of the circumstances before an order for a daily amount is issued
- For fairness, the daily amount will be fixed at a maximum.

Potential to reduce the amount or rescind the order

- Persons and organizations that are going to receive a director’s order will receive notice
- They will have an opportunity to make written submissions explaining the non-compliance
- A director’s review of the submission can result in the decision to reduce or rescind the initial penalty amount
- The decision to reduce or rescind the initial penalty amount will be made on a case-by-case basis taking into account the explanation provided by the organization and other factors such as steps taken to come into compliance and any economic benefit derived from the contravention.

Failure to pay an administrative penalty

- If an organization fails to pay an administrative monetary penalty within the time specified in the final order, and no appeal has been made to the designated tribunal, the order can be filed with a local registrar of the Superior Court of Justice to be enforced like a civil court order (s.23)
- Failing to comply with a director’s order is an offence under the AODA that can be prosecuted (s.37).

Part F: Designation of a Tribunal

Under s. 26 of the AODA, the ministry must designate a tribunal within a reasonable time after the first accessibility standard is in place.

After conducting research, including a review of Ontario tribunals, it was determined that the Licence Appeal Tribunal (LAT) will be designated as the tribunal to hear appeals of director's orders under the AODA.

The LAT is the most suitable existing tribunal for designation as the LAT handles appeals related to businesses meeting prescribed standards or requirements under regulations and statutes. Cases can involve appeals of orders and penalties imposed by government registrars, directors, inspectors or investigators. The tribunal also has familiarity with the regulated community and has the expertise and capacity necessary to adjudicate appeals related to the AODA.

The Tribunal will handle written hearings under the AODA, unless the Tribunal decides that in-person hearings are required (ss.27(4)).

The tribunal will be responsible for hearing appeals from director's orders including orders for administrative penalties issued against a person or organization for contravention of the Act or accessibility standard(s) or other regulation.

Obligated organizations who have received a director's order related to compliance with the standards have the right to file an appeal with the designated tribunal (s.27). The tribunal will not be responsible for hearing complaints from individuals about violations of accessibility standards.