

TO: Kathy Raftice
FROM: Monaghan Leahy
DATE: August 22, 2022
RE: Beach accessibility at Fort Williams

Recommendation: While a Court likely would not find that Cape Elizabeth has violated the MHRA by not having an accommodation for disabled people to visit the beach, we believe that it would be prudent to investigate options/costs to make the beach area at Ships Cove handicap accessible.

Issue: Does Cape Elizabeth need to make the beach at Fort Williams Park handicap accessible?

Facts:

Fort Williams Park has a small rocky beach in the Ships Cove area of the park. Although it is intended and primarily used as a vista while picnicking on the neighboring grassy lawn and Ships Cove picnic area, tourists and visitors will occasionally use it as a traditional beach. Swimming, fishing, and paddling are not prohibited there. Recently, a group visited and intended to enter the beach. At least one member was wheelchair bound and complained to the State that they could not access the beach.

Relevant Law:

The Maine Human Rights Act prohibits unlawful public accommodations discrimination, specifically stating:

1. Denial of public accommodations. For any public accommodation ... to directly or indirectly refuse, discriminate against or in any manner withhold from or deny the full and equal enjoyment to any person, on account of race or color, sex, physical or mental disability, religion, ancestry or national origin, any of the accommodations, advantages, facilities, goods, services or privileges of public accommodation, or in any manner discriminate against any person in the price, terms or conditions upon which access to accommodation, advantages, facilities, goods, services and privileges may depend.

5 M.R.S.A. § 4592. A "place of public accommodation" is defined under the Act to include a "park" or "seashore accommodation or boardwalk or other place of recreation. 5 M.R.S.A. § 4553(8)(I).

Case Law:

The Law Court has decided few public accommodations cases, the most significant being *Me. Human Rights Com. v. S. Portland*, 508 A.2d 948 (Me. 1986). In that case, the Court was tasked with determining whether South Portland's bus route discriminated against handicapped individuals. South Portland purchased six busses, which ran on fixed routes that were not accessible by wheelchairs. In an effort to make the fixed system accessible, South Portland contracted with vendor for paratransit services. Some users of the paratransit services found that the system deprived them of the spontaneity and independence that the fixed route offered. The Commission found reasonable grounds to believe South Portland had violated the MHRA. *Id.*

The Court found that the MHRA recognized that it is not possible to require the immediate removal of all barriers that prevent handicapped persons from gaining entrance, but rather established a continuing process of review to permit, where possible, the application of correction measures. *Id.* at 954.

The Law Court adapted the MHRA test previously used to analyze religious discrimination in the workplace which required “imposing the obligation on the employer “to make reasonable accommodations to the religious needs of employees . . . where such accommodations can be made without undue hardship to the conduct of the employer's business.” *Id.* The Court adopted the test, **stating that “the obligation of the proprietor of a place of public accommodation with regard to physical barriers, is limited to that which can reasonably be accomplished without undue financial or administrative burden.”** *Id.* at 955.

The Court found the South Portland violated the MHRA, holding that “the creation of a physical barrier in circumstances where that result could reasonably have been avoided without financial or administrative burden, constitutes an illegal act of discrimination.” *Id.* at 955-956.

Id. at 955.

Here, we believe it would make sense to investigate whether handicap access to the Ships Cove beach can be accomplished without undue financial or administrative burden to the Town of Cape Elizabeth.