Legislative Assembly of Ontario

Assemblée législative de l'Ontario

STANDING COMMITTEE ON GOVERNMENT AGENCIES

REPORT ON AGENCIES, BOARDS AND COMMISSIONS

HUMAN RIGHTS TRIBUNAL OF ONTARIO

2nd Session, 39th Parliament
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Legislative Assembly of Ontario

Assemblée législative de l'Ontario

The Honourable Steve Peters, MPP
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Government Agencies has the honour to present its Report and commends it to the House.

Ernie Hardeman, MPP
Chair

Queen's Park
October 2010

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2nd Session, 39th Parliament
(as of March 9, 2010)

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KEVIN DANIEL FLYNN was replaced by LOU RINALDI on February 19, 2009.

RANDY HILLIER was replaced by GERRY MARTINIUK on March 25, 2009.

FRANCE GÉLINAS was replaced by HOWARD HAMPTON on April 9, 2009.

MARIA VAN BOMMEL was replaced by RICK JOHNSON on April 9, 2009.

LOU RINALDI was replaced by LAURA ALBANESE on September 15, 2009.

JULIA MUNRO was replaced by ERNIE HARDEMAN on September 15, 2009.

DAVID RAMSAY was replaced by YASIR NAQVI on September 15, 2009.

LIZ SANDALS was replaced by LEEANNA PENDERGAST on September 15, 2009.

GERRY MARTINIUK was replaced by JIM WILSON on September 15, 2009.

RICK JOHNSON was replaced by DONNA H. CANSFIELD on March 9, 2010.

YASIR NAQVI was replaced by M. AILEEN CARROLL on March 9, 2010.

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CONTENTS

INTRODUCTION 1
Organization of the Report 2

OVERVIEW OF THE HUMAN RIGHTS TRIBUNAL OF ONTARIO 2
Background 2
The Human Rights System in Ontario after Bill 107 3
Applications to the Tribunal 4
Administration of the Tribunal 6

ISSUES RAISED AND RECOMMENDATIONS OF THE COMMITTEE 7
Access to Justice/Legal Representation of the Parties 7
Accountability 9
Backlog and Volume 10
Budgetary Challenges 11
Case Management System 12
Criticism of the Tribunal 12
Decisions 13
Frivolous or Vexatious Applications 14
Mediation 15
Proceedings in Respect of the Same Subject-Matter Occurring in Multiple Forums 15
Professionalism of Tribunal Staff and Adjudicators 16
Public Interest Remedies 17
Rules of Procedure, Policies and Forms 17
Stakeholder Consultation 20
Statistics Relating to the Tribunal 21

LIST OF COMMITTEE RECOMMENDATIONS 22

LIST OF WITNESSES AND SUBMISSIONS 24

APPENDIX A
Dissenting Opinion of the Progressive Conservative Members of the Committee

APPENDIX B
Dissenting Opinion of the New Democratic Member of the Committee

INTRODUCTION

The Ontario *Human Rights Code* (the *Code*) provides that every Ontarian has the right to equal treatment, free from discrimination and harassment in employment, accommodation, goods, services, facilities, contracts and membership in vocational associations. It is the role of the Human Rights Tribunal of Ontario (the Tribunal) to resolve—through mediation and adjudication—claims of discrimination filed under the *Code* in a fair, open and timely manner.

In accordance with its terms of reference, the Standing Committee on Government Agencies reviewed the Tribunal on February 9, 2009. Under these terms of reference, as set forth in Standing Order 108(f), the Committee is authorized to review the operation of all agencies, boards and commissions (ABCs) to which the Lieutenant Governor in Council makes some or all of the appointments, and all corporations to which the Crown in right of Ontario is a majority shareholder. The Committee is empowered to make recommendations on such matters as the redundancy and overlap of ABCs; improving the accountability of ABCs; ABCs or parts thereof which could be subject to sunset provisions; and revising the mandates and roles of ABCs.

Appearing before the Committee from the Human Rights Tribunal were Mr. Michael Gottheil, Chair; Mr. David Draper, Executive Director; Ms. Fanella Hodge, Manager, Business Services; and Ms. Reema Khawja, Legal Counsel.

We were also addressed by five stakeholders:

- Mr. Mark Steyn (Steyn), author and commentator;
- the Ontario Federation of Labour (the OFL), represented by its Executive Vice-President, Ms. Terry Downey. Ms. Downey's presentation was also made on behalf of the African Canadian Legal Clinic, the Association of Community Legal Clinics, B'nai Brith, the Canadian Arab Federation, the Colour of Poverty Working Group, the Metro Toronto Chinese and Southeast Asian Legal Clinic, the National Anti-Racism Council of Canada, the Ontario Public Service Employees Union, and Parkdale Community Legal Services;
- the Canadian Association of Counsel to Employers (the CACE), represented by Ms. Patricia Murray, a partner at Hicks Morley LLP; and Ms. Gita Anand, a partner at Miller Thomson, LLP;
- Mr. Richard Moon (Moon), professor of law at the University of Windsor; and
- The *Accessibility for Ontarians with Disabilities Act* Alliance (the AODAA), represented by Mr. Orville Endicott, Legal Counsel to Community Living Ontario; Mr. David Lepofsky; and Ms. Lesley MacDonald, National Coordinator, Accessible Design Services for the Canadian National Institute for the Blind.

In addition, we received written submissions from a number of parties:

- the Ontario Bar Association (the OBA);
- the Human Rights Legal Support Centre (the Centre);
- the Ontario Human Rights Commission (the Commission);
- Ms. Mary Cornish (Cornish), human rights lawyer;
- Mr. Gilbert Gagnon (Gagnon), an individual;
- Mr. Hesham M. Sabry (Sabry), writer and public speaker on Muslim issues; and
- Mr. David Simpson (Simpson), an individual.

The Committee wishes to express its appreciation to all those who made submissions, whether during our public hearings, or in writing. This report represents our findings and recommendations with respect to the Tribunal. Separate dissenting opinions of Committee Members belonging to (1) the Official Opposition and (2) the Third Party have been appended to this Report.

The Committee recognizes that the effective protection of human rights is critical to the well-being of a society. Our recommendations seek to improve the operations of the Tribunal. We urge the Minister responsible for the Tribunal—the Attorney General—to give serious consideration and thoughtful consideration to the Committee's findings and recommendations.

Organization of the Report

The first part of this report provides an overview of the mandate of the Tribunal, how it processes applications, and how it is administered. Where appropriate, we have included information provided by the Tribunal in its written and oral submissions.

The second part of the report provides a summary of the submissions made to the Committee, a brief discussion of the issues by the Committee itself, and the Committee's recommendations. This part is organized thematically, with the submissions, discussions and recommendations being grouped together topically. For each topic, the summary includes a list recommendations and concerns put forward for the Committee's consideration by those making submissions.

OVERVIEW OF THE HUMAN RIGHTS TRIBUNAL OF ONTARIO

Background

The Human Rights Tribunal of Ontario (the Tribunal) adjudicates and mediates cases of alleged discrimination, harassment, and reprisal under the Ontario *Human Rights Code* (the *Code*). The *Code* was first enacted in 1962, and has the purpose of recognizing the dignity and worth of every person by providing for equal rights and opportunities without discrimination (based on enumerated grounds). The *Code* takes precedence over any other statute of Ontario and is considered by the courts to be quasi-constitutional in nature.

Under the *Code*, the Ontario Human Rights Commission (the Commission) was established. Prior to June 30, 2008, the mandate of the Commission included: investigating complaints of discrimination and harassment; attempting to settle complaints between parties; preventing discrimination through public education; and inquiring into situations of discriminatory behaviour. Complaints of merit would be, after investigation and attempted settlement by the Commission, sent to the Tribunal for adjudication.

During the 1980s and early 1990s, the Commission struggled with a persistent backlog that resulted in well-publicized delays in processing cases. In the early part of the last decade, the Commission was successful in reducing the average length of time for processing a complaint; however, the active caseload began climbing in 2002-03, and the average length of time to process a complaint began rising again in 2003-04. At the end of March 2008 (year-end), the Commission had a backlog of 708 cases, down only slightly from the previous year. The average age of the 4199 active cases at year-end was 14.8 months, down from 16.4 the year previous. However, 252 of the active cases (6.1%) were over three years old, up from 169 cases or 5.5% of the active caseload from the previous year.

On June 30, 2008, Bill 107, the *Human Rights Code Amendment Act, 2006*, came into effect. Bill 107 made significant changes to the *Code*, including the repeal and substitution of the provisions concerning the Tribunal and the Commission, and added new provisions establishing a Human Rights Legal Support Centre (the Centre).

The Human Rights System in Ontario after Bill 107

With the coming into force of Bill 107, the Commission now concentrates on its broad mandate to develop policy, provide information and education, and promote public awareness and understanding of, and compliance with, the *Code*. It retains the authority to initiate complaints of its own accord. The human rights complaints under the *Code* that were previously handled by the Commission now go directly to the Tribunal.

The role that the Commission formerly played in assisting complainants appearing before the Tribunal now falls to the Centre. The general objects of the Centre are to establish and administer a cost-effective and efficient system for providing support services to those bringing an application before the Tribunal, and to establish policies and priorities for the provision of support services based on the Centre's financial resources.

As described above, post-Bill 107, the advancement and enforcement of human rights in Ontario is dependent upon the three bodies established under the *Human Rights Code*: the Ontario Human Rights Commission, the Human Rights Legal Support Centre and the Human Rights Tribunal of Ontario. It is the work of the Tribunal that will be the focus of this Report.

Applications to the Tribunal

Under the changes that took effect June 30, 2008, the Tribunal is now responsible for receiving and resolving all claims of discrimination (formerly "complaints," now called "applications") brought under the *Code*. This means "providing expeditious and accessible processes to assist the parties to resolve applications, and to decide those applications where the parties are unable to resolve them through settlement." In other words, the pre-adjudicative stages of processing an application, formerly carried out by the Commission, are now performed by the Tribunal. The Tribunal has jurisdiction to determine all questions of fact or law that come before it.

The Application Process

Any person who believes that his or her rights under the *Code* have been infringed may apply to the Tribunal for an order under section 45.2 of the *Code* (see discussion below under the heading, "*Remedies Available*"). The Commission may also initiate an application before the Tribunal where it believes it is in the public interest to do so and that an order by the Tribunal could provide an appropriate remedy. As of June 30, 2008, a person or organization (other than the Commission) may apply to the Tribunal for an order on behalf of another person if that person would have been entitled to make an application and consents to the application being made on his or her behalf.

The Tribunal is empowered to dispose of applications by means of the procedures and processes contained in its *Rules of Procedure* or by any other means which, "in its opinion, offer the best opportunity for a fair, just and expeditious resolution of the merits of the application."

Prior to an application being served on a respondent, the Tribunal assesses the application to ensure that it has "apparent jurisdiction." A small number of applications are returned to the applicants on account of being incomplete. Of the applications received as of the end of December 2008, 22 have been dismissed and 19 have been withdrawn by the applicants.

The Tribunal utilizes voluntary mediation and case management techniques to ensure the fair and expeditious resolution of applications.

Application Streams

Presently, the Tribunal deals with three streams of applications.

- **New Applications** are those filed directly with the Tribunal since June 30, 2008. As of the end of January 2009, 1,268 new applications had been filed. A small number of these cases had already gone to mediation (approximately 200) while about 60 applications had been deferred or finally dealt with. In preparing for the new mandate, the Tribunal assumed that 75% of all new applications would be resolved by mediation. The Tribunal further assumes that 70% of matters not resolved through mediation will be resolved in hearings taking two to four days to complete. Few hearings on the merits of

applications have occurred in the first seven months of the Tribunal's operations under the post-Bill 107 mandate, so it is not possible at this time to say whether the 70% assumption will hold true.

- **Transitional Applications** are cases where individuals had complaints outstanding at the Commission that had not been dealt with by the Commission; as of the end of 2008, the Commission's jurisdiction to deal with these outstanding complaints lapsed. As of the time of the Tribunal's appearance before this Committee, it was estimated that somewhere in the order of 2,000 complaints remained with the Commission. Complainants have until June 30, 2009 to withdraw outstanding complaints from the Commission and have them transferred to the Tribunal as transitional applications. By the end of 2008, some 940 transitional applications had been filed with the Tribunal. So that the large number of transitional applications does not cause new applications to become backlogged, the Tribunal stated that it had designed separate, highly expeditious procedures for transitional applications, and had dedicated four full-time adjudicators, a number of part-time adjudicators, and a separate complement of staff to dealing with the transitional stream. Because the Commission has already dealt with some aspects of these cases, they can be processed more quickly and with fewer staff resources than new applications. However, the Tribunal only has funding for dealing with transition cases through 2010. The Tribunal indicated that this may not be sufficient to dispose of all transitional applications which may be filed.
- **Commission-Referred Complaints** are cases where the Commission had investigated the original complaint and referred it to the Tribunal under the pre-Bill 107 procedure. There are approximately 750 such matters, although some of these matters have been "grouped," resulting in approximately 275 actual cases. A senior adjudicator has been assigned to manage and track this stream of cases. For a number of these complaints, settlements are pending; the Tribunal estimates that the outstanding cases in this stream can be resolved within a year.

Remedies Available

The Tribunal is empowered to determine whether a complainant's rights under the *Code* have been infringed, who infringed the right, and the appropriate remedy. If, on an application made by an individual or made on behalf of an individual, the Tribunal determines there has been an infringement of a right, it may make one or more of the following orders under section 45.2 of the *Code*:

- directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect;
- directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect; and

- directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with the *Code*.

If, on an application made by the Commission, the Tribunal determines there has been an infringement of a right, it may make an order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with the *Code*.

Administration of the Tribunal

The Tribunal operates on the core objectives of fairness and transparency. According to the Tribunal, adjudicators and staff attempt to be consumer-focused, and to recognize that their role is to facilitate the resolution of the disputes put before the Tribunal in a fair, just and expeditious way.

Tribunal Staff

Prior to Bill 107 coming into effect, a transition team was put in place to ensure proper staffing for the implementation of the Tribunal's new mandate. An initial concern was hiring and training new intake staff to process applications received directly from the public as of June 30, 2008. Presently, the Tribunal employs 48 staff; this number is expected to grow to 60 by the end of 2009. At the same time, the number of adjudicators was increased accordingly.

Tribunal Adjudicators

Tribunal adjudicators are appointed by the Lieutenant Governor in Council in accordance with a competitive selection process prescribed by the *Code*. The criteria used to assess candidates includes the following:

- experience, knowledge or training with respect to human rights law and issues;
- aptitude for impartial adjudication; and
- aptitude for applying the alternative adjudicative practices and procedures that may be set out in the Tribunal rules.

The Lieutenant Governor in Council designates one person as Chair and one or more persons as Vice-Chairs. New appointees serve an initial two-year term, and are eligible for two reappointments at the discretion of the Lieutenant Governor in Council; the first for three years, the second for five years.

As of June 30, 2008, the Tribunal had eight full-time adjudicators in addition to the Chair; that number began to increase over the summer of 2008, and at the time of the public hearings, stood at 22 full-time adjudicators in addition to the Chair. The Tribunal also uses 22 part-time adjudicators paid on a *per diem* basis; this permits the Tribunal to respond to fluctuations in the level of applications ready for adjudication. Thirty-nine of the 46 current adjudicators live in the GTA.

Rules and Procedures

The Tribunal's rules and procedures are devised upon the belief that, in order to enhance access to justice, they should not be overly technical or necessarily adhere to older, more court-like notions of administrative procedure. They are, and have to be, according to the Tribunal, responsive and proportionate to the nature of each individual case and the parties involved. The Tribunal's practices, such as the way it determines what evidence is relevant and what evidence is unnecessary, are designed to enhance justice for all parties, rather than privileging those with legal representation.

The Tribunal has endeavoured to create procedures, policies and forms that are accessible and understandable in plain language. These documents are available online from the Tribunal's website (www.hrto.ca/NEW/default.asp). Decisions of the Tribunal are posted on the website of the Canadian Legal Information Institute (www.CanLII.org), and are freely accessible by the public; a link to the relevant database on CanLII is provided on the Tribunal's website.

Caseload

Traditionally, the Ontario human rights system has averaged about 2,500 discrimination cases every year. Of these, only a small number actually reached the stage of being adjudicated before the Tribunal. Prior to Bill 107, the Tribunal adjudicated only about 150 complaints annually, all referred to it by the Commission. In comparison, for the six months ending December 2008, the Tribunal received approximately 1,050 new applications and 940 transitional applications (in which individuals chose to transfer their existing complaints being handled by the Commission over to the Tribunal). The Tribunal expects its caseload to grow to an estimated 3,000 applications annually in its new role as the primary intake agency for human rights complaints in Ontario.

ISSUES RAISED AND RECOMMENDATIONS OF THE COMMITTEE

Access to Justice/Legal Representation of the Parties

Presentations to the Committee

We were told by the Tribunal that its adjudicators and staff are consumer-focused and trained to facilitate the resolution of disputes coming before the Tribunal in a fair, just and expeditious fashion. The Tribunal's staff advises applicants of the availability of assistance from the Centre. However, some applicants specifically want to represent themselves.

It was suggested that, because the Tribunal's procedures and forms were written in plain language and meant to be easily accessible to lay persons, and because most cases coming before the Tribunal are not factually or legally complex, the Tribunal's processes work equally well for represented and self-represented applicants. The Tribunal's practices were said to enhance justice for all parties, rather than privileging those parties with legal representation. This view was supported by the CACE, which indicated that it did not consider it necessary that

applicants or respondents have a lawyer in order to deal effectively with an application before the Tribunal. The CACE praised the Tribunal's accessibility and noted the availability of legal assistance to applicants through the Centre.

In response to a question from the Committee, the Tribunal affirmed that it does not have the power to fund any party, whether applicant or respondent.

The OFL expressed concern as to whether the human rights system permits fair access to justice for would-be applicants. The OFL described the result achieved by Bill 107 as being the "privatization" of human rights in Ontario. The AODAA agreed with this characterization, stating that Bill 107 "privatized" the work previously done by the Commission, putting the job of investigating and litigating human rights complaints on discrimination victims, a population that is already recognized as vulnerable, disadvantaged, often impoverished and little able to take on that duty on its own. In contrast to these positions, Mr. Steyn indicated his belief that applicants should not be allowed unlimited funds with which to pursue frivolous claims against respondents.

The Committee heard evidence from the OFL that Ontarians are seeking assistance from community legal clinics when filing complaints. Some persons, especially those whose first language is not English, find the initial paperwork and filing requirements to be overwhelming. The application form is longer and more detailed than that used for initiating a complaint with the Commission under the old system. According to the OFL, this has resulted in the creation of new barriers and restricted access to justice for complainants.

The OBA expressed the opinion that the new system of having applicants file their complaints directly with the Tribunal had effectively removed the gatekeeper function previously performed by the Commission, resulting in greater access to justice. The AODAA disagreed, suggesting that, instead of doing away with the gatekeeper role, Bill 107 merely transferred that role to the Centre.

The AODAA expressed its belief that, contrary to what the Tribunal and the CACE suggested, applicants appearing before the Tribunal require legal representation. Despite this, the Tribunal's statistics suggest that 60% of applicants are unfunded. Mr. Lepofsky of the AODAA spoke personally of the unfairness that can occur for an unrepresented, disadvantaged discrimination claimant going up against a respondent represented by legal counsel. He stated that when he brought two complaints to the Commission to require the Toronto Transit Commission (the TTC) to call out bus and subway stops, the TTC spent a total of $450,000 on legal fees to fight the complaints.

Discussion and Recommendation of the Committee

In many respects, the new human rights system under Bill 107 enhances access to justice for persons with human rights complaints by giving them direct access to the Tribunal. Victims of discrimination and harassment are empowered by having a level of control over their complaints that they would not have had under the previous system, where the Commission acted in a prosecutorial capacity. To

facilitate the use of this direct-access model, the Tribunal has attempted to provide user-friendly services, forms and procedures for litigants, and a Centre has been established to provide legal advice and representation to applicants.

The Committee heard conflicting testimony about the accessibility of the Tribunal for persons without legal representation. While the presence of the Centre mitigates concerns about accessibility somewhat, the Committee recognizes that the Centre has finite resources and cannot represent all applicants.

Recommendation:

1. **If they do not do so already, Tribunal staff should inform applicants of the existence of the Human Rights Legal Support Centre and advise applicants to seek legal advice and representation.**

Accountability

Presentations to the Committee

The Tribunal informed us that it has developed a code of conduct and system for dealing with complaints about Tribunal personnel. Complaints about adjudicators are dealt with by the Chair of the Tribunal, Mr. Gottheil; complaints about Tribunal staff are handled by the Tribunal's Executive Director, Mr. Draper.

The Tribunal also informed us that it has provided a copy of its most recent annual report (in this case, a bi-annual report covering 2006-07 and 2007-08) to the Ministry of the Attorney General. The Tribunal awaits the tabling of that report in the Legislature before it can release it to the public.

To enhance both accountability and the Tribunal's ability to meet its mandate, the Tribunal and the Ministry of the Attorney General undertook a comprehensive review in drafting a memorandum of understanding (MOU). The MOU is near completion, and is awaiting final ministerial approval.

The Tribunal is subject to audit under the *Auditor General Act*, and provides such reports to the Treasury Board and the Management Board as are required of it.

Discussion and Recommendations of the Committee

We are of the view that the Tribunal's annual report and MOU with the Ministry of the Attorney General should be made available to the public as soon as is practicable to ensure the continuing transparency of the Tribunal's practices. The Tribunal appears to be committed to making itself accountable and transparent to stakeholders and the general public; the Committee recognizes the Tribunal's efforts in this regard and hopes that those efforts continue in the future.

Recommendations:

2. **The Tribunal's Annual Report should be tabled in the legislature as soon as is practicable.**
3. **The MOU between the Tribunal and the Ministry of the Attorney General should be finalized and made public as soon as is practicable.**

Backlog and Volume

Presentations to the Committee

The Tribunal expressed concern that volume would be a potential challenge for it in the near future: the volume of new applications received; the volume of applicants appearing without counsel; and the volume of transitional applications being filed.

The AODAA asserted that the backlog under the new system is as large as it ever was under the previous system. It estimated the current Tribunal backlog to be as high as 4,200 cases, including both new and transitional applications, and the cases still with the Commission that could conceivably be re-filed with the Tribunal. The AODAA does not believe that the Tribunal's adjudicators can possibly deliver hearings in respect of all of these cases within a one-year period, even if its adjudicators work non-stop without sleep or breaks.

The AODAA dismissed the notion that the backlog could be explained or justified as a result of the Tribunal going through a transition period, as the Government had 18 months between the passage of Bill 107 and its coming into force to correct the problem. It also noted that the Government provided what it characterized as "unprecedented" funding to deal with the backlog before June 2008.

In contrast, the OBA commented that, although more applications would be proceeding to adjudication under the new system, the Tribunal appears to be keeping pace, and has, if anything, improved on the timeliness of adjudication as compared with under the pre-Bill 107 regime.

Discussion and Recommendation of the Committee

Backlog has been a long-standing concern with respect to the human rights system. For many years, the large backlog of cases at the Commission was a frequent cause for complaint. Bill 107 was enacted in the hope of changing this situation. It was meant to facilitate access to justice by allowing persons to submit their complaints directly to the Tribunal for a hearing.

Under Bill 107, the Tribunal has been tasked with eliminating the backlog of complaints that has accrued with the Commission. Therefore, in addition to dealing with new applications submitted directly by complainants, the Tribunal must deal with a large number of existing complaints that come to it in the form

of transitional applications and commission-referred complaints. The Tribunal has indicated that it has a plan in place for dealing with the backlog of transitional applications. There are different rules for transitional applications, which reflect the fact that they come to the Tribunal at a more advanced stage than new applications. The Tribunal has dedicated resources—both administrative and adjudicative—to deal with the resolution of transitional applications. A senior adjudicator has been assigned the task of managing the transitional stream of applications, which are tracked separately from new applications. At the hearing of this Committee, the Tribunal indicated that it did not then have a backlog of cases, and hoped to have the transitional cases completed within one year.

While some witnesses indicated scepticism about whether the Tribunal would be able to reduce, and ultimately eliminate the backlog of cases being received from the Commission, others indicated that early results were positive. In particular, we were encouraged by the OBA's comments that the Tribunal appears to be not only keeping pace, but actually improving upon the timeliness of adjudication in comparison with the pre-Bill 107 regime. We are confident that this will continue to be the case, and that backlog will soon be a thing of the past in Ontario's human rights system.

Recommendation:

4. The Tribunal should compile and regularly publish statistics tracking the volume of applications it deals with and its backlog.

Budgetary Challenges

Presentations to the Committee

In 2009-10, the Tribunal projects a total budgetary expense of $10.5 million, versus funding of $8.7 million. The Tribunal indicated that the projection is based on staffing levels that the Tribunal does not expect to actually reach this year, although it noted that even with a smaller staff complement, there would be budgetary pressures. The budgetary expense estimate is based on caseload projections, settlement rates and the length of hearings, which may not prove to be accurate; variances in these projections could affect the actual expenses incurred.

Ms. Cornish noted that the Tribunal would be challenged by a lack of access to sufficient funding; effective human rights enforcement will depend on sufficient ongoing funding.

Discussion and Recommendation of the Committee

The proper funding of the Tribunal is a matter of the utmost importance. The first year or two under the post-Bill 107 system will be challenging, with the Tribunal adjudicating new, transitional and Commission-referred applications. On an ongoing basis, proper funding is necessary to ensure that the Tribunal has the

resources it needs to resolve applications expeditiously and avoid falling into a state of backlog, as sometimes occurred with the old human rights system.

Recommendation:

5. The Ministry should monitor the funding requirements of the Tribunal to ensure that it has the resources required to properly fulfill its mandate.

Case Management System

Presentations to the Committee

The Tribunal noted that problems have arisen with its case management system. The case management system was designed simultaneously with the Tribunal's processes, complicating the development of the system. The initial expectations of what the system should be able to accomplish were quite high, and it was suggested that perhaps the Tribunal should have been more modest in its expectations. While the vendor works to improve the functionality of the system, Tribunal staff has had to develop workarounds which, while effective, are more time- and paper-intensive. Mr. Simpson agreed with the Tribunal's assessment.

Discussion and Recommendation of the Committee

A faulty case management system presents a number of problems for the Tribunal. It lessens the efficiency of staff, which is forced to adopt time-intensive workarounds. It denies staff the convenience and advantages associated with electronic filing, and has the potential to slow the processing and resolution of applications. Thus, it can impact on stakeholders as well as Tribunal staff and adjudicators. Furthermore, it is from the case management system that reports on statistics are to be drawn. If problems with the case management system prevent the Tribunal from compiling proper statistical reports, it will be difficult to evaluate how well the Tribunal is operating. These problems need to be rectified as soon as possible.

Recommendation:

6. The Tribunal should remedy the problems with its case management system as soon as is practicable.

Criticism of the Tribunal

Presentations to the Committee

Mr. Steyn stated that the present Ontario human rights system is incompatible with a free society. He suggested that it institutionalizes racism and sexism through its inability to understand disputes except through the prism of identity politics. He characterized the Ontario human rights system as being at odds with

both Ontario's common law legal traditions and a number of articles in the United Nations' *Universal Declaration of Human Rights*.

In response to a question from the Committee as to whether freedom of speech trumps human rights or *vice versa*, Mr. Steyn criticised the Tribunal for equivocating. He claimed that whenever the Tribunal's adjudicators take away individual human rights, they do so under the guise of what they call balancing competing rights; the Tribunal always defers to collective group rights in preference to individual rights. Mr. Steyn believes that the ultimate minority is the individual and that historically, the common law has been entirely antipathetic to group rights. He suggested that the notion of group rights should be unacceptable to Ontarians. He also asserted that human rights are not protected equally for all, and that there are different standards of equality for different complainants.

Discussion

In response to Mr. Steyn's criticisms of the jurisprudence of the Tribunal, we note that the work of the Tribunal and similar human rights bodies across Canada is subject to the superintendence of the superior courts, which can examine Tribunal decisions by way of judicial review. As to criticism that the *Code* protects group rights and that the existence of such rights should be anathema to Ontarians, we note that there is a long tradition of protecting collective rights in Canada, which is exemplified by the protection of language and denominational school rights in the Constitution of Canada.

We are sensitive to concerns about human rights law and its interplay with, for example, notions of freedom of expression and rights in property. We believe, however, that the present human rights system is integral to ensuring that justice and equality prevail in a pluralistic and diverse society like that of Ontario. The Tribunal is an effective, transparent adjudicatory body, capable of striking the correct balance among the many competing interests that parties to an application may possess.

Decisions

Presentations to the Committee

The OBA praised the Tribunal for making its decisions available through a link on its website, as they were not previously accessible to the public. The OBA suggested that this practice would assist parties, both represented and self-represented, appearing before the Tribunal, and would in the long run lead to an improvement in the quality of advocacy before the Tribunal by making the Tribunal's reasoning more transparent.

Discussion

We applaud the Tribunal's efforts to render its decisions in plain language. This assists the parties to an application in understanding the reasons why the Tribunal decided a matter in a particular way, and, combined with the posting of the Tribunal's decisions on the website of the Canadian Legal Information Institute,

improves the accessibility of the Tribunal's jurisprudence for legal counsel, litigants, and the general public.

Frivolous or Vexatious Applications

Presentations to the Committee

The CACE expressed concern that the Tribunal does not have an effective screening method for disposing of complaints that appear on their face to be frivolous or vexatious. The current process requires respondents to spend a significant amount of time and money addressing the merits of the application even if it is clearly frivolous. The CACE also noted that neither the *Code* nor the Tribunal's *Rules of Procedure* provide for the awarding of costs. Respondents who are faced with frivolous or vexatious applications have no ability to seek a remedy or sanction by way of costs against the applicant from the Tribunal.

Members of the Committee questioned the Tribunal about cost sanctions and compensation for those who are "wrongly or falsely accused." The Tribunal noted that, during its consultations on procedures with stakeholders, there were various views taken with respect to awards of costs. Among the applicant community, some felt that cost provisions would limit access to justice by discouraging people with legitimate complaints from pursuing them; others suggested "one-way" cost provisions to allow costs to successful applicants who bring forward cases involving broader public interest issues, but not to respondents. Among the respondent community, some felt that costs should always be awarded to respondents where an application was dismissed; others preferred a more limited entitlement to costs where the Tribunal found an application or position taken to be frivolous, vexatious or in bad faith.

The Tribunal pointed out that the *Code* does not contain any specific cost provisions. The Tribunal does have the authority to award costs in limited circumstances under the *Statutory Powers Procedures Act*. Ultimately, the Tribunal decided not to include cost provisions in its *Rules of Procedure*.

Discussion and Recommendation of the Committee

Frivolous and vexatious complaints waste the time and resources of both respondents and the Tribunal. Accordingly, it may be appropriate for the Tribunal to strengthen its procedures regarding the early dismissal of frivolous and vexatious applications. For the same reason, some kind of cost sanction may be appropriate as a means of deterring the actions of applicants who abuse the Tribunal's processes by initiating frivolous or vexatious applications. That said, while the Committee desires that groundless applications be discouraged, we recognize the importance of facilitating access to justice. We do not wish to discourage persons with meritorious claims from having their human rights grievances adjudicated by the Tribunal.

Recommendation:

7. The Tribunal should establish effective rules to permit frivolous and vexatious applications to be dismissed at an early stage.

Mediation

Presentations to the Committee

The Committee was informed by the CACE that the use of Vice Chairs as mediators improved the effectiveness of the mediation process.

Discussion

Effective mediation is an important element of the new human rights system post-Bill 107. We are pleased to hear that the Tribunal's Vice Chairs are proving to be effective mediators.

Proceedings in Respect of the Same Subject-Matter Occurring in Multiple Forums

Presentations to the Committee

With respect to applications made in multiple forums, the Tribunal noted that while it is unable to refuse an application on this basis, it possesses a number of procedural mechanisms for dealing with such applications. The Tribunal does not ask applicants whether they have filed a claim in another jurisdiction, but does specifically ask respondents whether they seek early dismissal of an application on the basis that it has been dealt with in another forum. The Tribunal also asks whether it would be appropriate to defer an application because the subject matter of the claim is currently before a court or another administrative tribunal.

If an application is the subject of proceedings in another forum, the Tribunal may defer the application until the other proceedings are finally disposed of. An applicant may then seek to have the proceedings before the Tribunal restarted. However, if the subject matter of the application has been appropriately dealt with before the other forum, the Tribunal may dismiss the application.

The OFL commented that the deferral process appeared to be working well with respect to the Tribunal deferring applications in favour of the grievance arbitration process when human rights issues arose in a labour context. The CACE noted that, while its members were experiencing positive results in this particular context, the Tribunal appeared less likely to defer applications when the other forum was something other than a grievance arbitration.

Discussion

The testimony before the Committee seemed to indicate that the Tribunal's procedures for dealing with matters that were the subject of proceedings in

multiple forums were generally good, especially when a human rights complaint was also the subject of a grievance under a collective agreement.

The Committee recognizes the value of having effective procedures to prevent a human rights complaint from being re-litigated in multiple forums. This ensures fairness to respondents and a more efficient use of adjudicative resources. We also note and approve of the fact that the Tribunal's *Rules of Procedure* deal explicitly with proceedings in multiple forums. The deferral process with respect to proceedings in multiple forums in Rules 7 and 14; the dismissal process to be used when the substance of an application has been dealt with in another proceeding is set out in Rule 22 and s. 45.1 of the *Code*.

Professionalism of Tribunal Staff and Adjudicators

Presentations to the Committee

The CACE stated that the Tribunal's staff is to be praised for providing excellent customer service in respect of mistakes made or confusion arising out of the new forms used by the Tribunal. They also commented that the new Vice Chairs had proven to be very effective at their roles. Ms. Cornish also noted the professionalism and expertise demonstrated by the Tribunal's adjudicators and staff when dealing with stakeholders.

The OBA praised the new statutory requirements regarding appointees to the Tribunal. It would like to see the move toward embedding formal qualification and expertise requirements for appointments into the legislation governing other administrative tribunals so as to reduce the likelihood of pure patronage appointments to such bodies.

Mr. Simpson suggested that while the Tribunal had taken care to educate its adjudicators with dealing with self-represented parties, it should consult broadly with stakeholders to determine other competencies required of adjudicators. He suggested that various stakeholders would likely be in a position to provide training and support to assist adjudicators with developing required competencies.

Discussion and Recommendation of the Committee

There was widespread agreement that the staff and adjudicators of the Tribunal are professional, well-qualified and well-trained. This bodes well for the Tribunal's ability to serve stakeholders now and in the future. We encourage the Tribunal to uphold the excellent reputation of its staff and adjudicators by providing ongoing training to assist with the development of personnel.

It appears to us that the setting out of qualifications and expertise required of candidates for appointments to statutory bodies in the legislation governing such bodies is a salutary practice which should be continued in the future.

Recommendation:

8. The Tribunal should provide ongoing training to its staff and adjudicators to ensure that they maintain the already high level of skill and professionalism that they currently demonstrate.

Public Interest Remedies

Presentations to the Committee

The AODAA noted its concern that public interest remedies are necessary to prevent incidents of discrimination from recurring. Under the pre-Bill 107 system, the Commission took a leading role in seeking public interest remedies. The Alliance wrote to the Tribunal to ask in how many cases have public interest remedies been granted post-Bill 107. According to the AODAA, the Tribunal has yet to provide an answer to this question.

Discussion and Recommendation of the Committee

Public interest remedies are not punishments. They are actions that a respondent can be ordered to take to prevent similar discrimination from happening in the future (*e.g.*, the Tribunal could order a respondent to change a discriminatory hiring practice or have all staff receive training on a human rights policy). Public interest remedies are important in that they help to ameliorate the underlying sources of discrimination to permanently fix a problem, rather than simply providing a one-time remedy to a victim of discrimination or harassment.

Recommendation:

9. The Tribunal should advise self-represented applicants of the availability of public interest remedies so that applicants can request them if appropriate.

Rules of Procedure, Policies and Forms

Presentations to the Committee

The Chair of the Tribunal indicated his belief that the Tribunal and its *Rules of Procedure* are highly accessible. The Tribunal has endeavoured to create procedures, policies and forms that are accessible and understandable in plain language. To the best of its knowledge, the Tribunal is not aware of any litigants who have expressed concern about the fairness of the Tribunal's procedures. Mr. Steyn, however, recommended that the Tribunal's procedures should be reformed so that the burden of proof is on applicants.

With regard to criticism that the Tribunal's *Rules of Procedure* provide the Tribunal with too much discretion, the Tribunal suggested that such criticisms were inaccurate. It stated that, for example, while some have criticized that the

Tribunal's *Rules of Procedure* permit cases to be deferred without reasons being given, the Tribunal does in fact provide reasons for deferring an application.

The Tribunal has developed a policy with respect to scheduling hearings and dealing with adjournments. However, while the Tribunal is attempting to implement the policy, there has been difficulty in adhering to it as parties sometimes mutually consent to adjournments and delays (*e.g.,* for the purpose of attempting to reach a settlement). This results in the inefficient use of the Tribunal's resources.

The OFL asserted that the Tribunal has developed complicated rules that are difficult or impossible for unrepresented persons to navigate. However, the Centre commented that, in its experience, even unsophisticated applicants seemed to find that the Tribunal's rules and forms to have been designed and written in an accessible, easy-to-follow format.

The OBA suggested that the Tribunal was operating smoothly under its new *Rules of Procedure*. The CACE noted that the Tribunal's new procedures and processes appear to be flexible and responsive to the particular cases being filed, and have been successful in moving applications towards resolution at a rapid pace. In its opinion, this results in early and effective access to mediation. The CACE suggested that this would lessen the number of complaints about the human rights system, which it suggested are largely a result of the inordinate delays experienced by litigants under the pre-Bill 107 system. It also asserted that respondents would be better able to defend themselves, as the new system expedites the process and permits earlier hearings and, presumably, allows respondents to reduce the time, effort and legal fees spent on mounting a defence.

The AODAA stated that the Tribunal, in its *Rules of Procedure*, had overridden the requirements of fairness in the *Statutory Powers Procedure Act*. As an example, the AODAA complained that, in the case of *Persaud v. Toronto District School Board*, a Vice Chair of the Tribunal, before the hearing began, decided to set limits on the time that could be used for the examination-in-chief and cross-examination of each witness. The AODAA asserted that it is impossible for an adjudicator to know better than counsel how long will be needed to examine or cross-examine a witness. The AODAA believes that the Tribunal's *Rules of Procedure* are long, detailed and complex, and can potentially serve as a trap for the unrepresented.

In contrast, the OBA commented that the new forms used by the Tribunal require more detail from applicants when making an application than under the previous system. It characterized the increased detail as being a necessary trade-off against the simplicity of the old forms, because the additional information provides the Tribunal with sufficient information to meaningfully adjudicate applications. Respondents also require this information at an early stage so that they can know the case they have to meet.

The OBA also noted the ways the Tribunal has attempted to mitigate the impact of the more detailed applications forms by

- making the forms available in a variety of accessible formats;
- producing a series of user-friendly applicant and respondent guides that explain what is expected when filling out the sections of the forms; and
- producing a plain language guide to the application process.

Mr. Simpson recommended that the Tribunal enact a rule for determining when the Tribunal will hold hearings *in camera*, which could be necessary if the holding of a public hearing could jeopardize the health, well-being or safety of an individual appearing before the Tribunal.

He also stated that in the future, the Tribunal should develop rules in consultation with stakeholders after a period of input from the public. The Tribunal's rules should exist to protect the parties, rather than simply expediting processes for the convenience of the Tribunal.

Discussion and Recommendations of the Committee

The Committee recognizes that devising rules, procedures and forms for the Tribunal is a difficult exercise. On one hand, some degree of simplification is required to ensure that the Tribunal remains accessible to unrepresented parties. On the other hand, a degree of specificity is required to ensure that there is certainty (as opposed to arbitrariness) in the Tribunal's practices and procedures and that, in the instance of application forms, respondents are provided with sufficient information to know the case to be met. We heard widely differing views from witnesses, with some suggesting that the rules and forms are difficult, complex and impossible for unrepresented parties to navigate, while others suggested that the rules and forms were sufficiently accessible that even unsophisticated parties could file applications and appear before the Tribunal on their own. Given the divergent views heard by the Committee, we believe that it will be important to monitor the experiences of unrepresented parties with the rules and forms of the Tribunal to ensure that they are working as intended.

While we heard criticism that the Tribunal's *Rules of Procedure* might lack fairness owing to the amount of discretion they sometimes impart on adjudicators, we also heard that in order to enhance access to justice, rules must be flexible and responsive to the nature of the case, rather than necessarily adhering to older, more technical conceptions of administrative justice.

Recommendations:

10. The Tribunal should address ways to better enforce its policy with respect to scheduling hearings and dealing with adjournments.

11. The Tribunal should review its forms and *Rules of Procedure* periodically to ensure that they are sufficiently accessible and understandable to self-represented parties.

12. The Tribunal should identify and implement ways to simplify its forms and *Rules of Procedure* on an ongoing basis.

13. The Tribunal may wish to enact a rule to govern the holding of hearings *in camera*.

Stakeholder Consultation

Presentations to the Committee

Beginning shortly after the introduction of Bill 107 before the Legislative Assembly of Ontario, the Tribunal engaged in 18 months of widespread consultations with stakeholders regarding how best to carry out its new mandate. The Tribunal is presently in the process of setting up a stakeholder advisory committee of users to facilitate future input.

The CACE expressed appreciation for the efforts the Tribunal undertook to consult with stakeholders leading up to June 30, 2008, when the Tribunal commenced its new role under a direct access regime. Ms. Cornish and Mr. Simpson were also highly complimentary of the Tribunal's consultations with stakeholders; Ms. Cornish noted in her letter to the Committee that she would be co-chairing the advisory committee. Mr. Simpson suggested that the membership of the advisory committee should reflect the diversity and geography of Ontario, and be comprised of those wishing to strengthen human rights in Ontario.

He also suggested that the Tribunal consult further with consumer-survivors, peer support workers, agencies, advocates and families supporting those with mental illness. It was recommended that the Tribunal strike a Mental Health and Addictions Advisory Committee to advise the Tribunal on all aspects of its work involving the mentally disordered.

Discussion

The testimony we heard indicates that the Tribunal did a good job of consulting with its stakeholders prior to the coming into force of Bill 107. We hope that the Tribunal will continue to make good use of stakeholder consultations in the future through its use of the stakeholder advisory committee.

Statistics Relating to the Tribunal

Presentations to the Committee

At the time of the hearing on February 9, the Committee was provided with a number of preliminary statistics from the Tribunal. However, the Tribunal was unable to provide more detailed statistics detailing, for example, the rates of representation of applicants for the various streams of applications, or the incidence of unrepresented applicants opposed by represented respondents. The AODAA criticised the lack of statistics kept by the Tribunal with respect to the instances where the respondent is represented but the applicant is not.

In his written brief, Mr. Simpson recommended that the Tribunal track whether applicants or respondents are self-represented, and track the outcomes of represented versus self-represented parties. He also suggested that the Tribunal ask all applicants and respondents about their experience before the Tribunal and whether they found the Tribunal to be fair and transparent; this would be helpful to the Tribunal when assessing its practices and procedures.

Mr. Simpson further suggested that the Tribunal should consider what types of statistics that its shareholders might request to obtain and develop a database capable of retrieving them. A database capable of producing reports based on a number of variables would increase transparency and public confidence in the work of the Tribunal.

The Tribunal noted that it was continuing to identify and refine its statistical needs, and to develop its reporting capacity through its case management system.

Discussion

The Committee appreciated the statistics provided to it by the Tribunal in advance of the hearing. In order to determine whether the Tribunal is functioning efficiently, and whether the new human rights system is succeeding in its objective of enhancing access to justice, it is important that the Tribunal keep and make available detailed statistics regarding the applications filed. Of particular significance to us are statistics regarding the representation of the parties and the outcomes achieved by self-represented parties as compared to represented parties.

LIST OF COMMITTEE RECOMMENDATIONS

1. **If they do not do so already, the Tribunal staff should inform applicants of the existence of the Human Rights Legal Support Centre and advise applicants to seek legal advice and representation. (pp. 7-9)**

2. **The Tribunal's Annual Report should be tabled in the legislature as soon as is practicable. (pp. 9-10)**

3. **The MOU between the Tribunal and the Ministry of the Attorney General should be finalized and made public as soon as is practicable. (pp. 9-10)**

4. **The Tribunal should compile and regularly publish statistics tracking the volume of applications it deals with and its backlog. (pp. 10-11)**

5. **The Ministry should monitor the funding requirements of the Tribunal to ensure that it has the resources required to properly fulfill its mandate. (p. 11-12)**

6. **The Tribunal should remedy the problems with its case management system as soon as is practicable. (p. 12)**

7. **The Tribunal should establish effective rules to permit frivolous and vexatious applications to be dismissed at an early stage. (pp. 14-15)**

8. **The Tribunal should provide ongoing training to its staff and adjudicators to ensure that they maintain the already high level of skill and professionalism that they currently demonstrate. (pp. 16-17)**

9. **The Tribunal should advise self-represented applicants of the availability of public interest remedies so that applicants can request them if appropriate. (p. 17)**

10. **The Tribunal should address ways to better enforce its policy with respect to scheduling hearings and dealing with adjournments. (pp. 17-20)**

11. **The Tribunal should review its forms and Rules of Procedure periodically to ensure that they are sufficiently accessible and understandable to self-represented parties. (pp. 17-20)**

12. The Tribunal should identify and implement ways to simplify its forms and Rules of Procedure on an ongoing basis. (pp. 17-20)

13. The Tribunal may wish to enact a rule to govern the holding of hearings in camera. (pp. 17-20)

LIST OF WITNESSES AND SUBMISSIONS

Abbreviation	Organization/Individual	Date of Appearance
AODAA	*Accessibility for Ontarians with Disabilities Act* Alliance	9 February 2009
CACE	Canadian Association of Counsel to Employers	9 February 2009
Cornish	Mary Cornish	Written Submission
Gagnon	Gilbert Gagnon	Written Submission
Centre	Human Rights Legal Support Centre	Written Submission
Moon	Richard Moon	9 February 2009
OBA	Ontario Bar Association	Written Submission
OFL	Ontario Federation of Labour	9 February 2009
Commission	Ontario Human Rights Commission	Written Submission
Sabry	Hesham M. Sabry	Written Submission
Simpson	David Simpson	Written Submission
Steyn	Mark Steyn	9 February 2009

APPENDIX A

DISSENTING OPINION

OF THE

PROGRESSIVE CONSERVATIVE MEMBERS OF THE COMMITTEE

Standing Committee on Government Agencies

Dissenting Opinion

In 1962, the Ontario Progressive Conservative Party created the first human rights code in Canada through *The Ontario Human Rights Code Act*. Two years earlier, the Progressive Conservative Party of Canada enacted the Canadian Bill of Rights, also the first of its kind. The Progressive Conservative Party has always been and remains committed to protecting and preserving the fundamental rights and freedoms inherent to every Canadian. These contributions have enriched and continue to strengthen the public discourse on the equal and inalienable rights of all Ontarians.

Dalton McGuinty's *Human Rights Code Amendment Act* fundamentally changed the structure of provincial human rights adjudication by setting apart the Human Rights Tribunal of Ontario, charged with resolving cases brought under the Ontario Human Rights Code, from the Ontario Human Rights Commission.

The Liberals' Bill 107, which was opposed by the Ontario Progressive Conservative Caucus, passed on December 5, 2006, and explicitly changed the structure of Ontario human rights protection by creating a three-pillar system based on three inter-related and interdependent institutions: the Human Rights Tribunal of Ontario, the Ontario Human Rights Commission, and the Human Rights Legal Support Centre. Precisely because these three institutions are interdependent, a Committee studying the dispute resolution process for human rights ought to have examined them all together. Studying one part or agency in isolation – as the Standing Committee on Government Agencies did – results in an incomplete, inaccurate picture of how the system is or is not working. Despite the Ontario Progressive Conservative Caucus raising this issue at the outset of the Committee's work, the Ontario Liberal Caucus used its majority to steer the study in a different direction, choosing instead to focus on just one aspect of the human rights structure in isolation, the Human Rights Tribunal of Ontario.

Procedural fairness in the human rights adjudication system in Ontario cannot be properly examined by the Committee while focusing on only one pillar in isolation. For example, while the Human Rights Legal Support Centre exists for those launching a complaint, there is no comparable legal support for those who are subject to one. Several stakeholders who appeared before the Committee were concerned by this structural imbalance and the resulting procedural fairness issues Bill 107 created. One stakeholder went so far as to tell the Committee that restricting legal support for defendants before the Human Rights Tribunal of Ontario is at odds with both Ontario's common law legal traditions and a number of articles in the United Nations' *Universal Declaration of Human Rights*.

There are also issues of resource allocation that cannot be addressed when the three inter-related pillars of the human rights structure are examined in isolation, as the Ontario Liberal Caucus decided by over-ruling the objections of the Official Opposition during the Committee's work in 2009. According to the Public Accounts of Ontario 2003-2004,

the Ontario Human Rights Commission and Human Rights Tribunal of Ontario spent $11,982,774 and $811,147, respectively, for a total of $12,793,921. Comparatively, the Public Accounts of Ontario 2008-2009 revealed that the Ontario Human Rights Commission, Human Rights Tribunal of Ontario, and Human Rights Legal Support Centre spent $14,178,907, $7,383,889, and $4,263,967, respectively, for a total of $25,826,763. This represents a 102% increase in spending in the space of just 6 years – with 33 positions on the Public Sector Salary Disclosure list for 2009 – and yet the Committee only addressed one aspect of the system during its hearings. Typical of Dalton McGuinty's management, the province has increased spending and increased bureaucracy while the system is failing to do what it was intended to do, which is protect every Ontarian's right to live free from discrimination and harassment.

The Ontario Progressive Conservative Caucus agrees that the provincial human rights structure must be examined in its entirety in order to evaluate where questionable and vexatious claims can be removed from the system so that legitimate cases of discrimination can be heard in an efficient and fair way.

APPENDIX B

DISSENTING OPINION

OF THE

NEW DEMOCRATIC MEMBER OF THE COMMITTEE

Dissenting Opinion from the New Democratic Party Member of the Committee

Re: Human Rights Tribunal of Ontario

The NDP remains extremely concerned about the ability of the Human Rights Tribunal to protect every Ontarian from discrimination and uphold their rights under the Human Rights Code.

The Committee has failed to address the serious concerns brought forward by stakeholders such as Terry Downey of the Ontario Federation of Labour and David Lepofsky from the Accessibility for Ontarians with Disabilities Act Alliance.

The NDP remains tremendously concerned about access to legal representation under the new human rights system as set out in Bill 107. The notion that individuals fare equally as well without legal representation, as those that previously had full access to legal services under the old system, is outlandish.

Bill 107 purported to re-focus its attention on eliminating the roots of discrimination. Yet today, we fear that the Human Rights Tribunal may be reinforcing the very inequities it is tasked with expunging. As Mr. David Lepofsky remarked, "The government decided to privatize it: to put the job of investigating and litigating our human rights on the backs of discrimination victims themselves, a population that the government always recognized as vulnerable, disadvantaged, often impoverished and least able to take on that privatized duty on their own." (Hansard)

The Committee has failed to address this fundamental problem and the NDP remains seriously concerned about the repercussions of this indefensible oversight.

Concerns also remain about the ability of the human rights legal support centre to serve Ontarians outside of Toronto and those whose first language is not English. Finally, the Committee did not address the lack of statistics kept by the tribunal. The failure to track trends such as the number of complainants who lack legal representation and the existence of systemic discrimination are troubling.

New Democrats remain deeply concerned that the changes made to the Ontario human rights system have essentially made its services out of the reach of the vast majority of Ontarians.

Sincerely,

MPP Cheri DiNovo