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Mercredi 9 août 2006

Standing committee on justice policy

Comité permanent de la justice

Human Rights Code
Amendment Act, 2006

Loi de 2006 modifiant le Code
des droits de la personne

Chair: Vic Dhillon
Clerk: Anne Stokes

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Wednesday 9 August 2006

Mercredi 9 août 2006

The committee met at 0904 in the Delta Ottawa Hotel and Suites, Ottawa.

HUMAN RIGHTS CODE AMENDMENT ACT, 2006

LOI DE 2006 MODIFIANT LE CODE DES DROITS DE LA PERSONNE

Consideration of Bill 107, An Act to amend the Human Rights Code / Projet de loi 107, Loi modifiant le Code des droits de la personne.

The Chair (Mr. Vic Dhillon): Good morning and welcome to this meeting of the standing committee on justice policy. The order of business is Bill 107, An Act to amend the Human Rights Code. This is our second day of public hearings, from Ottawa today. We will be meeting in Thunder Bay tomorrow. Public hearings will be held in Toronto in the fall.

For your information, to make these hearings as accessible as possible, American Sign Language interpretation and closed captioning services are being provided each day. As well, two personal support attendants are present in the room to provide assistance to anyone requiring it. To facilitate the quality of sign language interpretation and the flow of communications, members and witnesses are asked to remember to speak in a measured and clear manner. I may interrupt you and ask you to slow down if we find you're speaking too quickly.

Thank you very much.

OTTAWA AND DISTRICT LABOUR COUNCIL

The Chair: The first presenters are from the Ottawa and District Labour Council. Can you just state your name before you start for the record, please?

Mr. Sean McKenny: Good morning. My name is Sean McKenny, and I'm president of the Ottawa and District Labour Council. The labour council is comprised of 90 affiliated local unions representing approximately 44,000 working men and women in Ottawa. Those unions cover all sectors of our region. We're also one of the oldest labour councils in the country, having been first established here in 1872.

I don't think I need to highlight or frame the valued work of the Ottawa labour council or labour councils in general. Suffice it to say that we do some pretty good stuff here and have a fairly positive working relationship with our local elected municipal officials and the community in general.

I want to start by thanking the committee. I certainly appreciate the opportunity to present before you here today. I also want to thank the Ontario Federation of Labour. They've done an incredible amount of work surrounding Bill 107 and have provided us with the results of that work.

We can probably all agree that labour has played a significant role for over a hundred years with regard to human rights, and I think it's fair to state, factually, that our role has been a leading one. Many, many unions, federations of labour across this country and the Canadian Labour Congress have long had and continue to have human rights committees within their own internal structures, committees focused on and actively involved with human rights for their membership, for working people outside their membership and for those within the broader community in general.

We've been proactive throughout our history in respect to human rights, and labour's tags such as "Workers' Rights are Human Rights" solidify our role, be it past, present or future. So when labour talks about human rights, it does so with passion, it does so with authority, it does so with commitment, it does so with expertise, and yet through all of that we remain humble for the most part.

We believe that Bill 107, An Act to amend the Human Rights Code, will substantially weaken the Ontario Human Rights Commission and have a very negative impact on a number of groups in securing even the most basic of human rights as we know them today. What was incredibly telling for me as I prepared for this presentation was coming across a number of organizations and individuals who were not in favour whatsoever of the bill.

The system needs to be fixed, unquestionably. It's slow. It's backlogged. It's slow and it's backlogged because it has been underfunded for years. In 2004-05, the commission's budget was $12.5 million. In 1995-96, the commission's budget was $11.3 million. There needs to be more money put into the commission so that the system is provided the much-needed resources to be able to carry out its mandate.

There is no statutory guarantee within Bill 107 of free legal representation. Clearly, this will cause many Ontarians to represent themselves against well-paid counsel,

or if in fact they can afford to hire a lawyer, it's doubtful that they will have the same level of resources as the respondent. The bill hands off the advantage, right from the get-go, directly to the respondent. This in itself seems incredibly bizarre when you're talking human rights. The legislation must state clearly that all costs will be covered. The burden of financial responsibility should not be placed on the complainant.

Last week I received a call from one of the mayoral candidates in the upcoming municipal election in Ottawa. He asked me if I had the time to speak with an individual who had phoned over to his campaign office a few times over the previous week and a half. The calls and a couple of e-mails were about employment insurance or work, and this individual was apparently having some difficulty trying to apply, or something to that effect. Anyway, the request of me was that I meet with the individual. So I agreed.

0910

The meeting was arranged a few days later over at the labour council. Nice guy, Anthony; real nice guy. Heck of a story too.

I've been involved actively in the rights of workers for about 25 of my 45 years. I've seen quite a bit, as I'm sure you all have with the number of things that you're involved with and the things that you do. This one, Anthony—these pop up every so often—this one hit.

I met with Anthony at the labour council on August 3. Anthony is a 48-year-old who served in the army on behalf of his country for about five years, up until the early 1990s. In 1993, Anthony secured employment outside the military with a well-known company in the city of Ottawa. He liked the job, and was pretty good at it.

When 1997 rolls around, Anthony develops MS. I personally can't imagine what it would have been like for Anthony in 1997 to hear from his doctor that in fact he had MS. There you are one day, carrying a 60-pound backpack over 100 kilometres of some of the dirtiest terrain in a 48-hour period, as he did back in the late 1980s, and the next thing you know, you have this incredible presence of physical limitation.

I should point out that Anthony's job was not unionized.

Anthony notified his employer of his MS back in 1997. His employer's response was that Anthony would be better off going on disability. Not unlike his soldier days, Anthony remained a fighter. He refused. I should point out that the kind of work that Anthony did, and does, requires very little physical mobility. It's not an occupation where he's required to wear a tool belt and a hard hat.

Anthony told me that the employer had been trying to have him go on some kind of disability ever since 1997; this, an employer he's had for 13 years. Anthony has fought that battle and continues to fight that battle, again, not unlike the fighter that he once was.

July 13, 2006, rolls around and Anthony's MS flares up. His wife calls his employer and says that Anthony can't make it in that day. July 14, 2006: no change. Anthony's wife again calls his employer and explains that Anthony really, really wants to report to work but his MS flare-up prevents him from doing that for the second day.

July 17, a Monday: Anthony is feeling a little better. He reports to work and everything is fine. July 18, July 19, July 20: Anthony is at work, giving it his all. July 21, a Friday: Anthony's supervisor approaches him and tells him that there are some documents that he needs to sign at the central office. Anthony inquires, "What documents?" The supervisor responds, "Oh, just some health and safety documents, that's all. Just some health and safety documents that you need to sign." The supervisor takes Anthony to the central office, where, according to Anthony, he's fired.

I'm going to read to you a few e-mails that Anthony has sent to me since our initial meeting a week ago. Bear with me, because I've tried to not expose the employer. The labour council will have a way to do that over time.

This one is dated August 4 and it's to me:

"Sir,

"As I told you yesterday, my employer wants me to go on disability. They have done everything they can to try and make me quit.

"As I told you, my wife suffers from depression and anxiety attacks, and when her only living sister was dying of cancer, she would come pick me up. It was during a heat wave. While waiting for me in our car, she would be crying and vomiting. So I asked, could I swap jobs with a co-worker—and he had no problem with it—so I would get out a bit earlier. But the employer said no, laughed at me, and said they didn't care what was wrong with my wife.

"I slipped on a wet floor at 8 a.m. I broke two of the three bones in my elbow. I did my full shift, and only at 7 p.m. did I go to the hospital and I only had one day off.

"Sir, like I told you, even though my employer wants me gone, I will not quit, and I do not think while I can do a job I should have to go on disability. Sir, I think"—So-and-so at the workplace—"has gone on a holiday and a Mr. ... is the man in charge.

"Sir, I don't think it is wrong to want to work. I have not even been able to sign on because my doctor has to sign a form and post it for me. I'm sorry for having to bother you, but I really do need help. Sorry for troubling you.

"Anthony."

Next e-mail, same day, just a couple of hours later:

"Sir,

"I hope you will help me. I really need it. Yesterday when I saw you I was getting spasms in my left leg. They got worse and carried on until 11 p.m. That was because of the MS attack I got on the 11th. But now it is over and my left leg is much better. I do not even have to use my cane as much. Thank you for driving me home last night. When I am not at my computer, my phone number is... I will not bother you again. As I said, I have gone through both harassment and discrimination since telling my employer I have got MS. It is getting to my wife, who

suffers. I promise you I will not annoy you again, but I will answer any questions that you have.

"Thank you,

"Anthony."

Polite guy, man.

Another one:

"My wife has just told me I have been ill with MS the year after the ice storm and not 1996, as I thought. My family doctor has said, 'Sorry about having the wrong date.'

"Yours sincerely,

"Anthony."

The next e-mail he sent, dated August 7:

"Mr. McKenny,

"This is just to say thank you for all you have done for me. I am sorry I got the date I got MS wrong. My wife told me it was the year after the ice storm, but this I swear on the holy Bible, everything I told you was the truth. I know the employer will lie about me. They have had enough time to make a story up, but as you said, you've been doing your job long enough to know who is lying. Again, I can never thank you enough for being good enough to help me, which is why I will not lie to you about the harassment and discrimination I have suffered, which I know it's not only me who has gone through."

Another e-mail from Anthony:

"Mr. McKenny,

"Sir, just to wish you luck at the meeting"—I had a meeting scheduled with the employer yesterday; and this is dated August 8—"and to thank you. But, sir, another reason they dislike me is, I was working a public holiday building workstations and moving furniture at the building. I worked from 6 a.m. to 11 p.m. and when it came to my getting paid, I saw my pay slip. I was only paid for eight hours time-and-a-half. When I went to the pay office I was told it was because my normal work hours was eight hours, I was only entitled to eight hours time-and-a-half. I went back to the building, saw one of the managers I worked for and asked him how much he had charged for my services that day that I worked at the building. He told me he'd get back to me the next day. The next day he phoned me and said they had charged him time-and-a-half for the full hours. I had worked 6 a.m. to 11 p.m. I told him they had only paid for eight hours. So I said, where had the money gone? He phoned the company and asked about the missing money. He was upset and told them not to pull that trick again. My employers were very upset at me."

Next e-mail:

"Thank you for phoning me in time to meet me tomorrow. I will be there, sir." That's today, by the way, 11 o'clock this morning; I'm meeting with Anthony again. "I bet they made me look bad, but honest, sir, I swear, all I ever wanted was to work for as long as I could and bother no one. Anyway, as I said, I will be there for 11 a.m. Again, thank you for everything you have done.

"Thank you,

"Anthony."

You see an individual like Anthony not being helped in any way through Bill 107. Clearly, through his e-mails, he's limited in his ability to try and help himself, and this is not unlike so many other instances of new Canadians in those other areas, where our most vulnerable are exposed to these kinds of tactics by an employer or others. The proposed creation of a new human rights legal support centre will do little, if anything, to help Anthony. Give the guy all the information in the world, he can't defend himself. He's got no money to defend himself.

Again, the burden of financial responsibility should not be placed on the complainant. Workers must be able to use every means possible to challenge employers when they violate human rights. In addition, the labour council is not opposed to complainants having the option to take their complaint directly to the tribunal, as they do in the province of Quebec. However, this choice should not be at the expense of dismantling the Human Rights Commission and its capacity to investigate, mediate and resolve complaints.

In closing, I think you're starting to see, and you'll continue to see, that everyone is in agreement that there need to be changes to our human rights system. The problem lies as to where those changes need to occur. We believe Bill 107, An Act to amend the Ontario Human Rights Code, does very little to move our system forward. Thank you.

0920

The Chair: Thank you very much. We have about five minutes in total, so a little less than two minutes each. We'll begin with the official opposition.

Mrs. Christine Elliott (Whitby–Ajax): Thank you very much for your presentation. You really put it in human terms for us. I think it's important to note that there needs to be representation for people who are vulnerable because they really can't speak for themselves. They need to have assistance. You said that you weren't opposed to the idea of direct access. Would you be in favour of complainants having a choice whether to go directly to the tribunal or to proceed through the commission?

Mr. McKenny: I've read a number of the documents in regard to the bill and I've read that particular part in regard to the choice between both a number of times. Yes, we would certainly be in favour of the individual having the choice between either. But they have to have that choice. It should be and has to be, must be, up to them.

Mrs. Elliott: Thank you very much.

Mr. Peter Kormos (Niagara Centre): Thank you, Brother. I appreciate you coming here and being the first submission in Ottawa. Just fascinating, the data from the year ending 2006, that 57% of all complaints to the Human Rights Commission are resolved at the commission level by way of settlement, be they mediated settlements or settlements arrived at by mutual agreement of the parties. That seems to be a pretty valuable role. Why would the government want to eliminate that function?

Mr. McKenny: Hey, you're asking me. I have no idea. Those are the kinds of questions that we as a labour council have asked as well. If something seems to be working to a degree—and maybe it's not perfect; again, we've stated that, that it does have to be fixed. It needs to be fixed by the introduction of more dollars towards making it better, because clearly that's not happened over the last number of years. But again, we need to improve on that 50%. To do that is by increasing the money in respect to the commission.

Mr. Kormos: Thank you, Brother.

Mr. David Zimmer (Willowdale): I just want to point out that subsequent to the bill being introduced, in response to a question in the Legislature, the Attorney General did commit to introducing an amendment which would ensure that everyone before the tribunal would, in fact, have their own independent legal counsel. So your point on the representation has been well taken and addressed by the Attorney General in the Legislature. He's made that public commitment. Thank you very much for your submission on that point.

Mr. McKenny: You're welcome. I guess that's like any government. A lot of governments make commitments. Clearly the intent with the introduction of Bill 107 was to try and make the system better, but it's failed. Again, as labour, we're skeptical in regard to pretty much a lot that this current government says, especially when it comes to workers, especially when it comes to human rights and those kinds of issues. But I appreciate your comments. Thank you.

The Chair: Thank you very much for your presentation.

MULTIPLE SCLEROSIS SOCIETY OF CANADA

The Chair: The next presentation is from the Multiple Sclerosis Society of Canada. Good morning. If you can just identify yourself before you begin.

Ms. Yassemin Cohanim: Honourable Chair, members of the committee, ladies and gentleman, thank you for the opportunity to present the views of the Multiple Sclerosis Society of Canada, Ontario division, on the proposed changes to the Ontario human rights system.

My name is Yassemin Cohanim. I have secondary progressive MS. I have to confess, I'm feeling a bit like David facing Goliath by appearing before this committee. Perhaps that feeling of vulnerability typifies what many of us—people with disabilities—are feeling about the changes that Bill 107 might bring. Will the changes put us in a weakened position when we try to use the altered human rights system? Without the able support of the Ontario Human Rights Commission, how will we be able to successfully bring human rights complaints against large corporations and organizations? The changes proposed by the government will have an impact on people just like me. That is why I have come here today on behalf of the MS Society of Canada, Ontario division.

The MS Society of Canada has serious concerns about the changes proposed in Bill 107. In our view, if the bill is adopted as currently drafted, the result will be a weaker and less accessible human rights system. In my submission today, I will focus on some key points. In addition, as a member of the AODA Alliance, the MS Society of Canada supports the position on Bill 107 which has been taken by the alliance.

Our main concern is that reducing the powers and role of the Human Rights Commission in the enforcement of the Human Rights Code will further disadvantage Ontarians who experience discrimination. In our view, providing direct access to the Ontario Human Rights Tribunal without also providing legal assistance is a step backwards.

As others have noted, this represents a privatization of human rights protection and removes the commission from most discrimination cases that aren't considered "systemic," a term that is not defined clearly. As most of you would know, most human rights cases aren't systemic; they involve individuals, often people who are disabled, trying to obtain the rights enjoyed by other Ontarians in the face of concerted opposition from employers, landlords, service providers or government agencies.

Right now, if a person files a complaint of discrimination with the commission, it investigates that complaint as long as it is within its jurisdiction, not frivolous or vexatious or brought in bad faith and is not sent to another appropriate external complaint board. If the commission cannot mediate a settlement of the complaint between the parties, and decides that the case warrants a hearing before the Ontario Human Rights Tribunal, one of the commission's lawyers presents the case before the tribunal. In other words, people who experience discrimination don't have to be able to afford a lawyer or qualify for legal aid to ensure that a lawyer with specialized knowledge in human rights presents their case to the tribunal.

Bill 107 takes away this role. A person who is discriminated against will have to get their own lawyer to present the case or they will be expected to present the case themselves. Although the commission retains the power to intervene before the tribunal in certain cases that are designated "systemic" if it chooses to, the implication is that other complainants will have to fight their own cases. This may result in two-tier justice and is a step in the wrong direction. Bill 107 proposes to establish within the commission two new secretariats, one focusing on disability rights and one on anti-racism. Their roles are not defined, so I am unable to comment on their possible effectiveness or, more importantly, their possible ineffectiveness.

People with disabilities will rarely be able to afford the costs of privately investigating their own case, and they certainly won't have the public investigation powers that the OHRC now has. As this committee is no doubt well aware, 25% of Ontarians who are disabled are unemployed, according to Stats Canada. In the case of

people with MS, up to 80% are unemployed just a decade or so following diagnosis.

We understand that the Attorney General plans to have legal counsel available through a legal support centre. However, section 46.1 merely states, "The minister may enter into agreements ... for the purposes of providing legal service and such other services ... to a proceeding before the tribunal." There are no details and no guarantee this will happen.

What does this really mean? Does it mean all complainants to the tribunal will be guaranteed publicly paid lawyers who will assist them with what can be complex legal procedures; or does it mean that only at some levels of proceedings complainants will have legal counsel; or will only complainants who qualify under stringent legal aid requirements have legal counsel? We hope that this committee will ensure that adequate legal support is guaranteed and funded. There must be equal access to justice.

0930

The MS Society is also troubled by the proposed change that would allow the tribunal to charge user fees to people who bring human rights complaints forward. They could also be liable for the legal costs of the person or company charged with discrimination—and you can be certain the legal costs of a large company that has enlisted the support of a battery of lawyers will be substantial.

Another concern is whether legal representation for people who have human rights complaints will be adequately funded under the proposed legislation. Unlike the current system in which the Ontario Human Rights Commission is legally responsible for representing complainants to the Human Rights Tribunal, funding for the new system could be at the whim of any future government. The human rights legal support centre is not entrenched in the legislation and funding for it could easily disappear. Funding for the Ontario human rights system has never been adequate, and the proposed changes might jeopardize what currently exists.

It's surprising that the proposed changes to the Ontario human rights system appear to run contrary to the basic understanding of how the Accessibility for Ontarians with Disabilities Act, the AODA, will be enforced. When the new act was being debated, many groups called for a new, independent enforcement agency to be established to enforce the removal and prevention of barriers to access. The government took the position that no such new independent agency was needed because Ontario already had the commission, with all its powers to receive, investigate and prosecute human rights complaints. The proposed changes may seriously impact AODA enforcement, and we urge this committee to look carefully into that aspect of the legislation.

As you are probably aware, just over 54% of the human rights cases filed each year are cases of disability discrimination. Briefly, I would like to present for your consideration some amendments that the MS Society believes would greatly improve Bill 107:

—Ensure that the Human Rights Commission maintain a true investigative and support function for human rights complainants by providing meaningful investigative and enforcement powers to the disability rights and anti-racism secretariats.

—Guarantee all human rights complainants the right to publicly funded legal representation at all tribunal proceedings.

—Ensure that no human rights complainant is charged user fees or made liable for the legal fees of those who have been charged with discrimination.

—Ensure Bill 107 does not breach the government's commitment for enforcement of the Accessibility for Ontarians with Disabilities Act, the AODA. If the Ontario Human Rights Commission's current powers are not maintained, an effective independent enforcement agency under the AODA should be established.

In conclusion, it's important that Ontario retains a publicly funded, independent enforcement body with a formal individual complaints process and mandatory investigation duties. Without significant amendments, Bill 107 may result in a human rights system in Ontario that is very seriously flawed and that will discriminate against people with disabilities and others who are disadvantaged.

At the beginning, I mentioned feeling like David as he faced Goliath. However, let's all remember that David, in the end, prevailed. I urge committee members to help all of us Davids who are concerned about many aspects of Bill 107 to also prevail. Thank you very much for your time and attention.

The Chair: Thank you. We'll start with Mr. Kormos. There's a little bit over three minutes each.

Mr. Kormos: Thank you, Ms. Cohanim. I appreciate your participation as well as everyone else's. Just a couple of things—again, this concept of a legal support centre. Many of us are familiar with the Office of the Worker Adviser, which provides advocacy for injured workers—grossly underfunded, understaffed, underresourced. Never mind the waiting list at the WCB, the waiting list to get into the Office of the Worker Adviser is months, sometimes years, depending on what part of the province you're in. So with all due respect to my colleagues from the government, I have absolutely no confidence in this government's ability or interest in setting up an adequately resourced and staffed legal support centre—costs. Let's be perfectly clear. There are some lawyers on this committee who have practised in civil litigation who know—because that's what's happening. The tribunal is being turned into yet another style of court: You pay your fees, you file your claim. Inevitably, because the tribunal is going to have the power to set its own process, they're going to introduce concepts like discovery. They're going to have to, because there are no investigative powers, right? So they're going to have to have discoveries, costs of transcripts. And then the risk of costs: tens or hundreds of thousands of dollars. Experienced counsel can tell you that it's not uncommon at all.

Talk about creating a chill in an area where there's such a strong public interest.

I understand costs in the civil justice system, but here this is a public interest matter. Discrimination against you or you or you is as important to me and the rest of the 11 million, 12 million Ontarians as it is to you. I share with you an incredible fear for the chilling effect that the risk of cost is going to have in an area where we should be encouraging open address of all areas of discrimination if we're ever going to overcome it, if we're ever going to create a—Ms. Leclair spoke with us earlier about the goal of a truly barrier-free society. If we're ever going to get there, we can't be using a private courtroom model.

So I appreciate your comments. I know there are people who disagree with you and me, including these Liberals, but we're all Davids, aren't we?

Thank you kindly.

The Chair: Thank you. Mr. Berardinetti.

Mr. Lorenzo Berardinetti (Scarborough Southwest): Thank you, Ms. Cohanim, for your presentation today. We've taken your points into consideration. We do agree at least on one thing: The system needs to be changed. It's a question of how we're going to change it.

I just wanted to thank you for your presentation and ask you a quick question. I see in your presentation that you represent the MS Society of Canada, Ontario division. Have you had a chance to speak with the national division, or have you worked with the national division at all in coordinating an approach in critiquing or at least looking at the legislation? Have they been involved at all in this?

Ms. Cohanim: Yes, they've been involved. I recently have joined the Ontario division, so I'm getting groomed and interested in what their impact is. They have presented to the Ontario division. I'm just supporting Ontario and bringing forward what their concerns are.

Mr. Berardinetti: Okay. Thank you very much.

The Chair: Mrs. Elliott.

Mrs. Elliott: Thank you again, Ms. Cohanim, for your presentation; it was really excellent. Let me say at the outset that I share many of your concerns with respect to the commission, making sure that it retains the ability to investigate and to bring forward complaints, to assist complainants in bringing their complaints forward. Secondly, with respect to the so-called legal support centre, it's true that it's not mentioned in the legislation. It has been vaguely mentioned by the Attorney General in the Legislature. I think you probably heard the comments that were made with respect to the previous speaker. But it would seem to me that if it is as significant as it's said it's meant to be, it should be enshrined in the legislation, it should be guaranteed so it's not at the whim of government spending. Particularly when we look at the justice sector spending, which is flatlined for the next few years, one wonders how that's even going to be possible.

I thank you for bringing those concerns forward.

The Chair: Thank you very much for your presentation.

0940

LORRAINE PAQUIN
JANE SCHARF

The Chair: Next, we have Lorraine Paquin. Good morning. You have 20 minutes. You may begin any time.

Ms. Lorraine Paquin: Good morning. My name is Lorraine Paquin. I brought along Jane Scharf, who has helped me out a lot with my human rights complaint. There may be some questions you might want to ask at the end, and Jane will be able to help in answering them. I'm here today to let you know that my daughter Nicole—she's at the back—has Down's syndrome. She is well behaved and is high-functioning due to extensive preschool stimulation.

In December 2000, I filed my first human rights complaint with the commission on behalf of my daughter Nicole. Our complaint was with regard to Nicole being denied supports and services in French immersion at our home school in Greely, Ontario. Over five years later, in April 2006, our complaint was dismissed for insufficient evidence. My daughter will continue to face discrimination unless the Human Rights Commission starts standing up for the people they have a duty to protect and stops hiding behind the bureaucracies that discriminate.

Just to give you a few examples of how my daughter has been treated, Nicole did not receive supports and services in junior kindergarten. Although her progress was held back, Nicole nevertheless benefited from a regular classroom. This is something the school board had not anticipated. The school board also locked Nicole out of school in senior kindergarten for one month. After considerable protest, she was admitted, but again without supports and services. It's very serious.

Then in grade 1 the school board used an educational assistant to segregate her from her class and the curriculum so she would not benefit. This involved refusing to allow her access to any curriculum the other children were receiving, and they even refused to let her participate in drama class. Instead, they would have Nicole colour and play by herself. The school board locked her out of school with her sister, Jullian, who's at the back as well, at the end of grade 1 because I filed a human rights complaint, a severe reprisal which was not addressed by the Human Rights Commission.

When Nicole repeated grade 1 at another school, the same school board, Nicole was injured in what could have been construed as assault, which resulted in one entire school year lost. There were many other incidents of poor treatment and inadequate services, too extensive to list here.

I'm going to share with you what I feel the problem is. The main problem with the Ontario Human Rights Commission is that they have unfettered discretion during the entire process. For example, testimonial evidence given to the OHRC from bureaucracies that have allegedly discriminated may or may not be given to the complainant. Another example of unfettered discretion is in the

OHRC's ability to determine what appropriate services are. The OHRC have demonstrated to me their discretion to determine what are appropriate accommodations for the disabled, even though their assessments are not consistent with the medical assessments on file which clearly stipulate what the appropriate accommodations should be.

Another point: The OHRC do not have clearly stated regulations and/or guidelines to follow during the entire process, including reprisal. The OHRC are not generating their decisions in accordance with the rules of natural justice.

The result: This is what happens to us. As a result of the OHRC's unfettered discretion and unreasonable decisions, the boards of education have become untouchable and cannot be made to adhere to the Human Rights Code or the charter in relation to equality rights. The complainants—that's me—are wasting their money on lawyer bills. The proof is that it has been over 15 years since an educational complaint has been adjudicated in favour of the complainant. That's serious. Don't tell me that over the span of this many years there's not one person who has a legitimate complaint that their rights have been violated. In my opinion, one day without supports or services in the life of a disabled child is discriminatory.

The solution: I feel the solution for the Human Rights Commission is that the OHRC needs regulations and/or guidelines which rest on the principles of natural justice when processing complaints in order to prevent the OHRC from issuing biased decisions.

My conclusion to this: I just want people to know that there is no point to filing a human rights complaint the way the process stands today. I thought I could get justice and that the OHRC would be there for my disabled daughter when I needed help. I filed another complaint last year, in 2005. If only I knew then what I know now, I would never have filed another human rights complaint. I hope that justice will be rendered in the end and that positive changes will be made as a result of today.

Thank you for listening. Today was my day. I'm happy to be here, and hopefully it makes a difference.

The Chair: Thank you very much. We'll begin with the government side—a little bit over four minutes each.

Mrs. Maria Van Bommel (Lambton–Kent–Middlesex): I want to thank you very much for your presentation. I certainly hear a struggle that you have gone through. I think government and all parties recognize that there need to be changes made, and that's why we're proceeding in the direction that we are. But I would like to hear from you a little bit more about what you think we need to do for the whole process. As it stands now, we have the commission and the tribunal. People go through the commission and then they have to go through the tribunal, should they be successful at the commission level. It's a long, drawn-out process, as we have it today. For daughters like Nicole, by the time we get through the process they're already that much further in. Can you tell me more about the kinds of things that we need to do?

Ms. Jane Scharf: I think it's not so much a problem with the procedural set-up as the guidelines, the principles guiding the actions of the commission. If the investigation process were appropriate, it would eliminate the need and it would stop the ongoing discrimination and the need for subsequent complaints. If school boards knew that if they violate rights it's going to result in an investigation that yields accountability, then you're going to reduce your need dramatically, and then you are able to process the other things properly. In a perfect world you can have greyness, the board truly thinks this is better, and those kinds of things. Those are the kinds of things that should be going to the tribunal, not out and out locking the door and not letting the child in or other outrageous types of discrimination. That should not occur; there should not be enough buffer in the system.

I think the way it's set up now it actually helps the board to discriminate, because once the claim is filed then, "Oh, well, it's in adjudication. We could just do this for the next 10 years because it's in adjudication."

The Chair: Can I just get your name for the record?

Ms. Scharf: It's Jane Scharf. I'm acting as advocate for Lorraine. I've assisted her in the preparation of her claim. All the way through we've found, as Lorraine has said, the process is not guided by the rules of natural justice. There's no obligation; there's just all this discretion. It's become very blatant.

For example, just briefly, in Lorraine's case, the auditors did a review of the Ottawa board at the time when she was filing her complaint and the chair, Jim Libby, made a public statement to the effect that they were not meeting the needs of disabled children and they even had a human rights complaint. An auditor investigation the same year concluded that there was no accountability in the process between the board of education and the boards and that the special-needs children were not getting their needs met. You don't get any harder evidence than that. They reviewed all the funding and the documentation and all of that and confirmed what the essence of her complaint was stating. And yet here she is, how many years after that—five years later—and they are throwing out her case because it doesn't have enough evidence.

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Mrs. Van Bommel: Under the proposed legislation, you would have direct access to the tribunal. Do you think you would fare better in a process like that, as opposed to going through the commission and then to the tribunal?

Ms. Scharf: No. I guess I didn't say what I meant to say clearly. I think that if the system the way it's set up now was guided by the principles of natural justice, if you added that into this pot, then you would get an appropriate resolution process happening. I don't think the problem is that the person can't go directly to the tribunal; it's that the investigation process is not operated properly. There are a lot of resources going into it that just amount to screwing the parent around and oblit-

erating any chance they might have of proceeding to the tribunal. They're impeding the process.

If they were required by their own legislation to handle evidence reasonably and to behave—again, when the commission is investigating, it acts as an agent for the board. The board doesn't even have to—

The Chair: Thank you very much.

The official opposition.

Mrs. Elliott: Thank you very much, Ms. Paquin, for your heartfelt presentation.

Ms. Paquin: Thank you. It's been quite the road.

Mrs. Elliott: I can only imagine. When it comes to our children, I know that we'll go to the wall for them. I have a lot of understanding of the frustrations that parents of special-needs children feel with respect to the educational system, but I guess those issues are questions for another day.

When you talk about the issues relating to natural justice with respect to the actions of the commission, what natural justice means to me is that you need to have the right to have input into what's going on, that you have the right to have all of the evidence presented to support your case. The sense I'm getting here is that you feel somewhat powerless once it gets into the system, that you don't really have the right to be as involved as you would like to be in the presentation of it. Even though you're getting some assistance, you're not part of the process. It's sort of a powerlessness that you're feeling. Is that fair to say?

Ms. Paquin: Exactly, unfairness because they don't even give you the evidence that they base their decision on: "Well, why do you say insufficient evidence?" They won't even provide us with their testimonial evidence.

Mrs. Elliott: Yes. When you don't know the criteria for making the decision, then the decision itself seems somewhat meaningless.

Ms. Paquin: It's not fair. And I've worked hard on responding every time there's a different step, like in mediation, the bar conciliations. I've worked hard at answering everything properly. They make you out to look like an idiot for just trying to get the supports and services you're entitled to, that kind of thing.

Mrs. Elliott: So do you think, then, that if the rules around the commission's investigation were changed, that would have allowed you to proceed and feel that you had been more fairly dealt with at the end of the day?

Ms. Paquin: Yes, I agree.

Mrs. Elliott: Thank you very much. I assure you we'll be taking that into consideration.

Ms. Paquin: Thank you.

Mr. Kormos: Please don't go, Ms. Paquin.

Ms. Paquin: I'm on vacation.

Mr. Kormos: In a manner of speaking, so are we, Ms. Paquin.

Ms. Paquin: I'm joking.

Mr. Kormos: Nobody's actually doing heavy lifting here.

Thank you very much for coming here.

Ms. Paquin: You're welcome.

Mr. Kormos: You made a very effective presentation, because I think you make this point. Mr. Fenson, who's a legislative research officer—very experienced, very smart—is making a summary of all of the concerns that have been expressed about the commission, including yours today, because tomorrow I'll be moving a motion for this committee to have Keith Norton, Barbara Hall—and quite frankly, I believe we need management out of the commission as well as some commission officers—attending in this committee to respond to the concerns that you've raised and that other people have raised.

Ms Paquin: I appreciate that.

Mr. Kormos: What is frustrating, Chair—I've got to tell you, it rots my socks—is that this exercise should have been done long before Bill 107 was drafted. Had we invited members of the public, across the board, to come to the committee to talk about the commission and the tribunal, to understand what the real problems are, then we probably would have been far more successful at getting the government to produce amendments, as necessary, that address the real issues.

Look, there are people who support the legislation, people who oppose the legislation; God bless. There are people like you who have far more grassroots concerns, right?—gut level, personal, experiential concerns. We should have been listening to you two years ago rather than after the horse has left the barn. Do you know what I'm saying? That would have been a far more effective use of your time and our time. Thank you very much.

Ms. Paquin: No, thank you for listening.

Mr. Kormos: Good luck, and best wishes.

Ms. Paquin: Good luck to everybody too.

Mr. Kormos: We need it.

GREG BONNAH

The Chair: Next is Greg Bonnah. Good morning.

Mr. Greg Bonnah: Thank you, Chair. I have Charles Matthews sitting with me, who will respond to questions afterwards if there's time.

Thank you for granting me the time to speak to you. For your information, I am the parent of a disabled child. I sit for Integration Action for Inclusion in Education and Community on the special education advisory committee of the OCDSB. I write the education column for Access Now. I am an education consultant for Disabled and Proud and for Integration Action of Ottawa.

Today you will hear from many groups on how changes to the commission are going to affect them, so I am here for Access Now to talk about how changes to the commission will affect the disabled in general. But I first wish to speak to you as a parent of a disabled child, to express my opinion on how I see the commission and code being strengthened.

I, unfortunately, have had the misfortune of having had to go to the commission to right a wrong perpetrated against my child. In April 1999, the Ontario Human Rights Commission—case SBHE-3RNKSX—successfully assisted me in investigating and mediating a settle-

ment concerning waiting lists for special-needs children at daycare centres. The changes that you are contemplating would have prevented a mediated settlement and would have forced me into a potentially more confrontational situation, so please reconsider removing the mediatory and investigative portions of the commission.

My main concern here was that I filed this complaint in July 1997, so nearly two years went by before the practice of placing children on wait lists that would never be accessed ceased. From what I have been told by other complainants, the commission was working quickly in my child's case. Two years in a child's life is anything but quick. Something must be done to ensure that cases are solved in a more timely fashion.

The UN's Convention on the Rights of the Child, article 23, recognizes the rights of children with disabilities to "enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child's active participation in the community." The article further requires states parties to extend special care to such children to ensure that they have effective access to and receive training, education and preparation for employment, among other services, in a "manner conducive to the child's achieving the fullest possible social integration and individual development."

The UN's Declaration on the Rights of Disabled Persons affirms in section 6 the rights of persons with disabilities to education and vocational training and other services which will "enable them to develop their capabilities and skills to the maximum and will hasten the processes of their social integration or reintegration."

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The UNESCO 1994 World Conference on Special Needs Education resulted in the Salamanca statement and framework for action on special-needs education, which emphasized that educational systems and programs should be designed and implemented to take into account the wide diversity of children's needs and characteristics. And those with special educational needs should have access to regular schools, which should accommodate them within a child-centred pedagogy capable of meeting those needs. According to this document, "Regular schools with inclusive orientation are the most effective means of combating discriminatory attitudes, creating welcoming communities, building an inclusive society and achieving education for all. Moreover, they provide an effective education for the majority of children and improve the efficiency and ultimately the cost-effectiveness of the entire education system." Canada is a signatory to these agreements; therefore, any changes to the OHRC must be compliant with them.

The Canadian Charter of Rights and Freedoms, section 15(1) states, "Every individual is equal before and under the law and has the right to equal protection" etc. Yet in section 10(1) of the Ontario Human Rights Code's definitions, part I, "'age' means an age that is 18 years or more." Does this mean that currently children in Ontario are not recognized as being citizens and are not covered under the code? This is clearly not in keeping with the UN Convention on the Rights of the Child, the rights of the disabled, the Salamanca statement or the Canadian Charter of Rights and Freedoms. I truly hope that, if true, you rectify this situation, because without education our children will never have the opportunity to reach their full potential and be able to enjoy the life they should have.

Currently, persons with disabilities in Ontario have only two options to fall back on when common sense fails within the government of Ontario. They are the Ombudsman's office and the OHRC. On June 22, 2006, the Ombudsman, André Marin, noted in his press release that "At present, our office's jurisdiction is confined to 'government organizations,' even though much of what government does and pays for is carried out by different bodies acting as government agents. This limitation on our jurisdiction makes no sense. There is simply no merit to arbitrarily limiting access to our inexpensive, informal and effective methods of problem solving."

The Attorney's Generals office in 2004, before the Supreme Court of Canada, in the Auton case, stated that the province would take care of any child that they harmed. My child was adversely affected by what the government of Ontario, through the Ministry of Health, calls an adverse event to the DPT vaccine.

MPP Cam Jackson, at the standing committee on social policy on Tuesday, February 8, 2005, stated, "For those of us in public life, the most difficult time we have is when we fail. I took forward the legislation in 1986 on behalf of vaccine-damaged children and their families in Ontario and I was unsuccessful. The legislation was very specific. Then I proposed that if there was an adverse reaction, the second injection was to be stopped immediately, that the tests were to be allowed." My child was harmed by the second shot.

Let's see how the government of Ontario has taken care of a child that they harmed. MCSS would have been content to pay a fortune to warehouse my child, but just try getting a few dollars out of them to bring him along to his full potential. Here in Ottawa, organizations like service coordination and special services at home receive money from the government and set their own priorities for dispensing it. It appears from my perspective that their main priority is in dealing with children in segregated environments. I have to do tons of useless paperwork every year and they have the audacity to tell me how fortunate I am to receive 10% of what I requested. Their suggestion for me to obtain more funding is to exaggerate my child's needs. Personally, I do not like to lie because I find it easier to keep track of the truth. But, in my opinion, this validates what the Ombudsman stated in his report Between a Rock and a Hard Place in May 2005 concerning the homeostasis that is prevalent throughout MCSS, that the system is designed to keep these people employed, not to ensure the needs of the client.

The Ministry of Education, the architects of the Education Act and its rules and regulations: In the real world, he who pays the piper calls the tune, but the school

boards in this province are allowed to march to their own tune. The Ministry of Education gives the OCDSB $600 million per year, yet the only accountability the ministry demands of the school board is that they not spend one more penny than they receive. When a parent knows that the school board is contravening the act and asks the ministry for help, they abdicate their responsibility and advise the parents to go to court.

The OCDSB has a policy of segregation. This means that they choose to place the resources necessary for special-needs children in what they like to call system classes or schools. If parents want their children in a regular environment, then this school board will use any measure necessary to persuade the parents to do otherwise. In my child's case, this meant involving the police, the CAS and wasting one million taxpayers' dollars.

For the record, since the school board was ordered to put the necessary accommodations in place for him, all behaviours have ceased. In fact, school officials have reported to us that Zachary has beaten his rap and the children at the school are accepting Zachary for himself. Zachary went from pre-reading and pre-math to the grade 1-2 level. He has received awards in reading and music, and this past June he led two school assemblies by playing the national anthem on the piano. Currently, since Zak has graduated from the elementary panel, it appears as if we will have to fight to get these resources yet again because, as the superintendent who is responsible for special education stated in a letter dated March 2, 2006, "The tribunal decision addressed circumstances as existed when your son was in the elementary panel."

So while the Attorney's General's office may claim to the Supreme Court of Canada that the province of Ontario is taking care of the children they harm, either unintentionally or deliberately they never defined what that meant. Having a child that was harmed by a government decision not to test children for adverse events to vaccines, I have seen first-hand the reality, that the education system does the minimum until the child is 21, then they become the property of MCSS. These children are just a means to justify employment for others, and if a parent is foolish enough to actually want the system to work for this child, then MCSS and the MOE, through its agent, the OCDSB, have ways to re-educate us.

So from a personal point of view, I hope to strengthen the commission by reducing the process time, and the code by expanding it to include children.

Now then, changing hats, as a member from Access Now who was asked to speak here today, last February the government said it would eliminate the Human Rights Commission's core role of investigating human rights violations and prosecuting where evidence warrants. The government said it would instead provide legal representation for discrimination victims who take their case to the Human Rights Tribunal. When introducing Bill 107 last spring, it made the extravagant promise that each and every human rights complainant would be given legal representation at the Human Rights Tribunal regardless of their income. A new human rights legal clinic would do this work.

The government has so far committed no long-term new funding for these promises. It has been over five months since it announced its massive plans. The AODA Alliance has repeatedly requested details on how the government plans to deliver on its commitments. Back on June 8, 2006, Attorney General Michael Bryant said he will propose amendments to Bill 107. These will address provision of legal representation, among other things. The AODA Alliance wrote him on June 28, 2006, to ask for specifics of these amendments. We are still waiting for a response.

The human rights enforcement system clearly needs significant new funding. However, if the government just announces some funding for its promised new legal clinic, this quick fix alone won't solve Bill 107's many serious flaws. This is because any new, quick-fix funding won't change the fact that Bill 107 makes the Human Rights Commission much weaker. It largely removes the commission's enforcement powers. It takes away from discrimination victims the right to have their complaints publicly investigated, the right to ensure that hearings at the Human Rights Tribunal are fair and the broad right to appeal to a court from a tribunal decision against a complainant.

Any new, quick-fix funding this year can easily be cut again next year, or after the next election. Unless the new funding is very, very substantial, it won't live up to, even in the short term, the government's sweeping commitment to ensure that every human rights complainant has legal representation at the Human Rights Tribunal. Now there are at least some 2,500 cases in the human rights system. More will be launched in the future.

Any quick fix funding this year won't undo Bill 107's serious breach of the McGuinty government's understanding with the disability community regarding enforcement of the Accessibility for Ontarians with Disabilities Act. In the 2003 election, Premier McGuinty promised a new disability act with effective enforcement. After winning the election, the new McGuinty government rejected disability community requests to create a new independent agency to enforce the new disability act. The government said it wasn't needed since persons with disabilities can use the Human Rights Commission to enforce their rights. Now Bill 107 removes most of the Human Rights Commission's public enforcement teeth. Any new, quick-fix funding of the proposed legal clinics won't restore those teeth.

I would again like to thank the committee for coming to Ottawa and listening to ordinary people.

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The Chair: Thank you very much. Two minutes for each side, beginning with the official opposition.

Mrs. Elliott: Thank you very much, Mr. Bonnah, for your comments, both as a representative of Access Now and in your personal capacity.

In your official capacity, I agree with the concerns that you've expressed. Many individuals and groups who have appeared before the committee also shared those concerns. That is something that is going to need to be addressed, without question.

In your personal capacity, I think you may have heard my previous comments, that I'm certainly well aware of the frustrations and the issues that people have with special-needs children and local boards of education, and that's an ongoing issue. But as far as the issue of delay is concerned, I think that is one of the fundamental issues we need to address with respect to the operation of the commission, because as you say, two years is a very long time in a child's life and the time to take action to achieve the best success is in the very early years. That's also going to be something that we will definitely need to be concentrating on. Thank you for bringing that to our attention.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly, both of you, for your participation today. You've both been active in advocacy for persons with disabilities, advocacy around human rights issues in the broadest sense, obviously, for so long. I know there are some old reports, and jurisdictions like British Columbia have implemented the direct access system, causing great crisis in the communities there that advocate for human rights. But where in hell did the government get the idea that anybody in Ontario wanted to see the Human Rights Commission abolished? We've heard from folks who say the commission needs some tuning up, right? Clearly there are some problems and backlogs. But my goodness, did you write to Mr. Bryant saying, "Please abolish the commission"?

Mr. Bonnah: No.

Mr. Kormos: And in terms of your contacts within the community of advocates for human rights, are you aware of anybody who wrote to Mr. Bryant saying, "Please abolish the commission"?

Mr. Bonnah: No.

Mr. Kormos: Where would the government get that—what is going on over on Bay Street, in that tower of policy drones? Do you have any idea?

Mr. Bonnah: I really don't want to know.

Mr. Kormos: Gotcha. Thank you, sir.

The Chair: The government side.

Mr. Berardinetti: I want to thank you for your presentation. I just had a quick question. The thought is running through my mind. In your presentation you mentioned that it took two years, basically, for anything to happen through the commission. I'm just looking at the legislation and I'm trying to think this out, too, in my own mind. Under section 37, "Disposition of applications," it says, "The tribunal shall dispose of an application under this part through a hearing or through any alternative dispute resolution mechanism provided for in the tribunal rules." And subsection (2) says, "The tribunal shall adopt the most expeditious method of disposing of an application on the merits."

So I guess my question is this—and I'm not trying to be smart about it, I'm just trying to think this out in my own mind. Would you not have more legal teeth yourself, more potential strength, if you had a problem and went to the tribunal instead of the commission, and after six months or eight months, if you were waiting, you'd say, "Hey, wait a minute, there's a section here that says you've got to deal with this expeditiously and you're not, so I'm now going to take action to get this thing dealt with," instead of it going into a black hole?

Mr. Bonnah: You've got to have both. Back in 1997, I was not capable of going before a tribunal or speaking before you guys or stuff like that. I have learned since then to do it. But the vast majority of people—it's a very confrontational situation. It's a winner-take-all situation. Mediation is very, very important, because then both sides come out of it feeling good and there will be a lot more co-operation in getting things done.

The investigative portion of it—very few people have the resources or the time or the wherewithal to actually do the proper investigation. Taking that away is going to create a two-tier system. The rich are going to get the education, the poor are not—and access to lawyers, that sort of stuff. When I had to go through this the last time, if it wasn't for the generosity of groups like Gowling or Borden Ladner Gervais, I would never have been able to afford all of this stuff. But it still cost me $40,000—that was not funded by the taxpayers—while the school board was getting $1 million fully funded.

Mr. Berardinetti: But if the Attorney General or the government would provide you with legal assistance and perhaps make some amendments here so that you would have the right to a lawyer at the start of your case, would you not want—

Mr. Bonnah: And how are you going to fund this?

Mr. Berardinetti: This is something that's been brought up in hearing from people, and it's a good point—

Mr. Bonnah: Part of it is that, and for some persons who do want to go that route, you've got to have it. But mediation is still very, very important.

Mr. Berardinetti: Yes, I just don't want to see some thing—I would feel frustrated if I were in your shoes with something going to a commission for two years and being left in a black hole, where you don't know when you're going to hear back. Maybe that's a way—

Mr. Bonnah: Like the previous speaker said, we've got to have the information coming back to us. We've got to know where we're standing. When they just come back and say, "Case dismissed," and no reason for it and no evidence, then it leaves you very frustrated.

Mr. Berardinetti: Yes, and I agree totally with you on that.

The Chair: Thank you very much.

ACCESSIBILITY CONSULTANTS ASSOCIATION OF ONTARIO

The Chair: The next group is Accessibility Consultants Association of Ontario.

Mr. Kormos: Chair, while they're seating themselves, could I request of Mr. Fenson, the research officer, to please find out for us what the wait times are in the civil courts between filing a statement of claim and the matter going to trial? Is it two years, five years, 10 years or 12 years? Perhaps he could give us some help in understanding how in the private litigation world the black holes are wider, deeper, darker, scarier and far more expensive.

The Chair: Good morning. You may begin. If you could state your name for the record, please.

Mr. Rick Sinclair: Good morning. Looking around, gentlemen, I thought we were overdressed. It's too hot for a suit jacket.

My name is Rick Sinclair. I'm appearing before you today on behalf of the Accessibility Consultants Association of Ontario, as their president, to comment on the provisions of Bill 107. We've provided printed copies of my comments and a booklet addressing the issue of missed business, kindly provided by association member Shane Holten of SPH Consulting in Toronto.

As an association, we agree with and support the comments of the AODA Alliance, and I won't waste time by reiterating those comments here, except to refer to them when it is specific to the concerns of the ACAO or our clients.

Like the alliance, our concern lies primarily with the AODA, the Accessibility for Ontarians with Disabilities Act. Bill 107 affects that act, since the enforcement of the AODA was to be the responsibility of the Ontario Human Rights Commission. Although the AODA has provisions for enforcement within the act, they have never been implemented. We were told that the Ontario Human Rights Commission would handle it.

It is proposed under this bill that the enforcement will now be removed from the commission, leaving the AODA with no enforcement at all. This sends a very negative message to both the ACAO and our clients. You're saying, "We have this legislation for disability accommodation, but you can safely ignore it, since we have no intention of enforcing it." This gives heart to the bad guys, while making a laughingstock of our client companies who have attempted to implement disability access in good faith. It further says that this government does not know what it's doing. You cannot address Bill 107 without addressing its impact on the AODA.

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Accessibility accommodation is not just a "nice to have"; it's an integral part of access to a disability market worth an estimated $1.25 billion in Canada, based on 10% of the figures established for the United States. By that I mean the ability to service people who have a disability. They're still spending money: they're buying groceries; they're buying consumer items; they're travelling; they're doing all these things. But they need assistance from the companies or organizations that are providing those services so that they can take advantage of them. My experience with the United States has been that they don't see it as an onerous responsibility but as a profitable venture.

In both Canada and the United States, our populations are aging. With age comes certain disabilities for a significant number, which means changes in the way companies service their customers. Persons who cannot hear well on the phone, stand in long lineups, read the fine print on documents—or read the document at all—all need to deal with business differently, whether they be a customer or part of the organization's staff. That's an issue I'll come to in a moment. In the tourist industry alone, we have customers from the United States arriving and expecting a level of service here dictated by their ADA. To stay in business, we need to address that segment of the market.

Accessibility for those disabled also affects the workforce. Behind the wave of the baby boom, which is now reaching the age of late-onset disability, we have a vacuum in the labour force. We will not have enough workers in many trades and services to address the size of the current markets, let alone any expansion—an expansion that will be necessary to maintain the tax revenues to support the province's social net. It is crucial that the labour force not be reduced by the unsought retirement of employees otherwise able to do their jobs if access technology is implemented in business systems. We can't afford to lose those people. Bill 107 is saying, indirectly, that the government doesn't consider that potential workforce loss to be a problem.

In summary, Bill 107 sends a message that encourages the fly-by-night company willing to cut corners and discourages normally law-abiding firms from following the government's lead with the AODA. We direct attention away from changes necessary to maintain our skilled workforce at a time when their numbers are becoming crucial to the province's economic welfare. Bill 107, as it currently stands, is simply the wrong thing to do. We urge you to consider the weaknesses in this bill and make the changes necessary. Thank you for your time.

That concludes the official statement of the AODA. I'll just throw in a couple of personal comments. One, as you can see, I am wearing a CI. I've coped all my life with progressive hearing loss. Also, when I came to sit down over here, I was limping slightly. That's because I twisted my knee on the golf course this week, which is something that can affect anybody at this table. I point this out in the sense of self-preservation, when you start looking at this stuff. Because 50% of the complaints concern disability—only 10% of that disability are people who were born with them. I'm lucky; I was born with hearing loss. It's people like the people around this table who are suddenly hit with hearing loss that I feel sorry for. All of a sudden, you have to cope in an adult world. You can go out of this room today, look around while crossing that street, and, "Welcome to the club." So it's not just about people with disabilities, because it's very, very easy to join this club. You can be able-bodied today, and tomorrow you wake up different. It concerns everybody.

I don't like what I see. I'm a long-term Liberal; I'll admit it. I've been out there banging campaign signs into the snow, handing out pamphlets at doorways, freezing my butt off for years, and in return for that I expect to see Liberal legislation be Liberal legislation. Honestly, I look at this stuff and I'm thinking Mike Harris's Common Sense Revolution, which wasn't, as far as disability was concerned. I can't believe that you guys have brought this in.

I'll take any questions.

The Chair: Thank you very much. A little bit over four minutes each. We'll begin with Mr. Kormos.

Mr. Kormos: Thank you, Mr. Sinclair. I'm very tempted to just leave it at that. But I do want to commend you for bringing this insight, that we don't believe in access—real access, full access—because we're nice guys; we believe in it because it's smart policy. It's good for everybody; it's good economics; it's good social policy. It has nothing to do with touchy-feely niceness. I appreciate that very pragmatic perspective because that's often overlooked. So many Ontarians simply and regrettably don't understand that access doesn't mean a ramp to the back door of a building. It means full participation in the economy. It means full participation in the society.

That's a challenging goal, but that's why—what's going on? What is going on that people would want to abolish the commission? As you heard me ask other people here, if there are problems with the commission—and quite frankly, it appears there are from time to time problems, certainly a consistent problem of time frames, the time in which it takes a matter to proceed. Where's this drive coming from amongst real Ontarians, people out there in communities across the province? Where is the drive coming from to abolish the commission? I'm not aware of it. Even the supporters of Bill 107—nobody is suggesting that any of them wrote letters saying, "Please abolish the commission." And there are supporters for 107. Do you understand? Do you have any sense of where it's coming from?

Mr. Sinclair: No, I don't understand where it's coming from. Part of my private practice is that I'm the in-house consultant to the Canadian Human Rights Commission, and I'm hearing less—I'm not a lawyer—

Mr. Kormos: To your credit.

Mr. Sinclair: —I'm a consultant. I'm a specialist. But my understanding is that the feds managed to clean up all of their backlog in the commission without removing enforcement, so maybe a good place to start would be to ask them how they did it.

Bill 107 totally took me by surprise. I don't understand where it's coming from. I don't really know what it's intended to accomplish. I'm not hearing a message that tells me, as a man on the street, that this is a good thing. I don't know why it's being done.

Mr. Kormos: Thank you, sir. I'll leave it at that.

The Chair: Mr. McMeekin.

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): Speaking after you, Mr. Sinclair, is like dancing after Baryshnikov. By the way, ever since I wrenched my knee, my game has been so bad I've had to send my ball retriever out to get regripped. You being a golfer, you'd understand that.

Like you, I want to see us do the right thing. Perhaps unlike you, I'm not always sure what that is. Governments always—the trick is to try to balance competing issues and concerns and hopefully come up with something that helps. I'm wondering, sir, particularly given your confession, if you could tell us very specifically what—do we have to go back to the drawing board or are there three specific things you'd like to see happen that might improve this legislation? If there were three things, what might they be?

Mr. Sinclair: Three things? Number one is, don't remove the enforcement, for the simple reason that it sends the wrong message. It sends a really bad message. It's going to make the rest of your work on human rights that much more difficult, because you're telling companies they don't have to pay attention to what you're doing.

1030

Second is effective standards. You tell me that 50% of the complaints before the Ontario Human Rights Commission concern disability. If you have clear and adequate standards as to what a company has to do to comply, a lot of that will probably go down. I don't hear resistance from companies that are clients of the ACAO members. They say, "Yes, we would like to do that. We're not monsters, we're people who happen to run businesses, but we also have an interest in our society. If it's possible to comply with this, that's a cost of doing business. We'll get it back." Maybe you put the price up a few cents. But the point is, yes, they want to be actively involved in making sure that it's accessible if for no other reason than they have this huge baby boomer bulge coming through that spends a lot of money and is going to need different ways of accessing services and products. If you go to a bank these days, you see a teller with chairs for seniors because they can't stand anymore at the desk. Now, that keeps them coming back to that bank. They're pragmatic.

The standards that I'm seeing are coming from the AODA. One of my members said it took 27 people five months to produce this; she could have done it in an afternoon. It's remiss. I don't know whether the members have seen them yet, but I've seen them, and we're going to have to do a lot better.

To the extent that we can come out with true, accurate standards for access, everybody can relax. Everybody knows what you need at that point, and you're not going to be getting cases of discrimination due to disability. A lot of the time, it's not discrimination, it's ignorance. They don't know what they have to do. So that would be my second one.

The third one is, you're going to need expertise both at the government level and particularly at the public service level. When you set the public service to define the "how" to your "what," they need expertise. That com-

ment is self-serving, because I'm a professional consultant, but we offered and heard nothing back from the public service. I've got experts on the ACAO on just about every type of disability there is. We said, "We're willing to work with you. Yes, that's what we do for a living, but we can help you acquire comprehensive standards." One way or another, there has to be more expertise in addressing the issues. That's why I have to say those are my three points.

Mr. McMeekin: Thanks. I appreciate it.

The Chair: Mr. Runciman.

Mr. Robert W. Runciman (Leeds–Grenville): Thanks for being here. I'm just curious about your organization and the expertise. How large an organization is it? It says "Ontario," so you're province-wide? You're represented in most areas of the province?

Mr. Sinclair: We're a small organization at the moment, not the biggest—probably under 25 members—but there are not a lot of accessibility consultants to begin with.

I had a delegation here in Ottawa from South Africa that was looking for answers for the South African government. They said we were the only company they found in five countries that could give them the answers they were looking for. There are not a lot of us.

Mr. Runciman: You mentioned earlier in response to Mr. McMeekin that you offered your expertise through the public service or through the government. What was the approach there and to whom?

Mr. Sinclair: It was to the public service in the ministry.

Mr. Runciman: But they didn't take you up on the offer. Was this prior to the legislation being tabled? Was there—

Mr. Sinclair: We didn't get an answer at all.

Mr. Runciman: You didn't get an answer at all. So there was no opportunity—I know Mr. Kormos raised this issue before, that it's too bad we've heard about democratic renewal from the current government, but this is an example where standing committees of the Legislature could have performed a very valuable service in terms of public hearings and drafting legislation. Mr. McMeekin suggested that maybe we have to go back to the drawing board. I am not sitting through these hearings to their conclusion, but what I'm hearing is that even the delegates who support the legislation to some degree have reservations. I think there's no question that it will have to go back to the drawing board. The problem with that is that governments are reluctant to go back to the drawing board, and ministers who have carriage of the legislation are even more reluctant—but there could be a cabinet shuffle this fall.

I suspect that the real reasons for doing away with the commission and the enforcement side, which was a clear commitment with respect to the disabilities act, is cost-cutting. My colleague mentioned flatlining, but we were made aware of plans within the ministry last year to cut $330 million out of the justice portfolios and various responsibilities.

My own observation, from outside looking in, is that this was some sort of a cost-cutting measure. It seems to me that streamlining the commission's approach and perhaps additional resources to cut down the backlog would have been—what we're hearing this morning—the more appropriate way to proceed with this. I'm assuming, especially with the commitment made to enforcement of the disabilities act, that that's an approach your organization would recommend. Yes, no, maybe?

Mr. Sinclair: I'm not exactly sure how you're going to cut down the provincial backlog. I'm not an expert in that area. The distinction might lie between the political side and the public service side as far as solving that problem. I don't know whether or not you have to go back to the beginning, but I do know that it's going to cost you far more if you wind up having to pay out disability benefits to somebody who might have been a taxpayer. I know people like this; we'd just as soon be in the workforce.

A lot of my own members have spouses who are supporting them while they do the job of being consultants. They have the hope that eventually they will earn a living wage, but they're not asking the government to give them a pension or a grant or a handout. They want to be first-class, not second-class citizens. That's what is important to us. They're running their own businesses as best they can, and they pay taxes, like me. It's probably a lot cheaper for the government to create taxpayers than it is to create a problem where they have to pay people to stay home.

Mr. Runciman: Thanks for your contribution.

The Chair: Thank you very much.

LAURIE ALPHONSE

The Chair: Next up is Laurie Alphonse.

Ms. Laurie Alphonse: Good morning to you all. If you could just give me two minutes to get myself together here. Having just come through the construction on Queen Street, I got here a little later than I had anticipated.

The Chair: If you'd like a few more minutes, we can go to the next presenter, and then you could come back.

Ms. Alphonse: No, it's okay. I just needed a few minutes or so.

The Chair: Okay. Take your time.

Ms. Alphonse: Thank you for the opportunity to speak to you this morning. The work of the Ontario Human Rights Commission is something very near and dear to my heart, as you can probably see by looking at me. Just to give you a little bit of background about myself, I work as a consultant, much in the same way that that gentleman just spoke about, doing the work that you can when you can do it. I work in the Ottawa region. I work to make sure that those who are disadvantaged have their rights taken care of. I have in the past worked on Social Benefits Tribunal work. I am an advocate. I sit on two or three boards of directors of non-profit corporations. Ontario is where I have lived, worked, done

my education, and it is where I wish to continue to live. But looking at what is being proposed, the proposed changes to the Human Rights Commission, I'm not sure I'm going to want to live in Ontario anymore.

1040

I have experienced discrimination to a degree that I'm not going to get into today, but I also am very gifted in my ability to speak up, and that has probably limited the discrimination I have experienced. I think the creators of Bill 107 have never experienced discrimination in their lives, because had they ever experienced it, they would not be proposing such measures.

The investigative measures provided for in the Human Rights Commission allow for an equalization of terms when you are bringing forward a complaint. The people handling those complaints will spend time investigating to make sure that they have all the facts. It's not as adversarial as the court system, and in doing so, it provides for looking at the sensitivity required for people who have experienced discrimination.

The court system is not set up to do so. In his comments, the Attorney General said that he would make sure legal representation was provided for those who need it when they had their day in court. Having worked within the legal aid system, I can tell you that the resources of legal aid are already stretched. I do not know how, under any circumstances, the prior responsibilities of the Human Rights Commission can be off-loaded to the court system without there being a downloading of rights as well. And that scares me, frankly.

I have worked with people for whom the idea of bringing something forward to the Human Rights Commission is barely palatable. The idea of bringing things forward through a court proceeding—they'd take off and run in the other direction, because their experiences with courts have been even worse than the discrimination they experience on a daily basis. This is not the way to go.

In February 2005, I sat in a room not unlike this one at the Holiday Inn down on Cooper Street for the public hearings on Bill 118. I heralded the government for their actions in ensuring an Ontarians with Disabilities Act. And two years later, I'm here to say, "Shame on you" because you've given something with one hand and taken it back with the other. What's the point? The point, I thought, was to make things more accessible and more even for people with disabilities, but this is a huge slap in the face to the disabled community, this is a huge slap in the face to the black community, this is a huge slap in the face for women. I'm sitting in all those roles and I'm telling you this insults me.

I don't know what you want to do, but here's the thing: When I was deciding what I wanted to do in life, I said, "You know, I've had a lot of volunteers help me through my life, I've had a lot of social workers help me through my life, so maybe I want to be a social worker or a teacher." I became a social worker. I am a registered social worker and a registered member of the college of social workers and social service workers within this province.

When I was in high school, I was told, "College maybe; university, absolutely not." I sit here today having accomplished three university degrees and a college diploma. This spits on all my accomplishments thus far, because I'm going to have to continue to fight the fights I've already fought for the last 36 years of my life. I'm here to say, "Enough, already." Wake up. I thought the government had figured it out when they brought us Bill 118, and Bill 118 is not without its problems, but to give with one hand and take with another leaves the community feeling like—we always tend to think politicians are out for themselves and maybe you're proving that. But you think about that.

You can ask me questions, if you wish.

The Chair: Thank you. We have about three minutes for each side, beginning with the government side.

1050

Mrs. Van Bommel: Thank you very much for the presentation. Yesterday in the hearings we heard from a number of women's groups who told us that they felt the process, as it is now, was very long and drawn out and very intimidating for them, especially because they would have to go through the commission and recount their case to them and then, if they were to go forward to the tribunal, would have to get a new investigation, redo everything they had done. The concern was that they would either not start it at all because they knew it was going to take at least five years or more, or they would become intimidated and exhausted by the process because it was taking all their energies to just go through the process once, and then again.

I read in your presentation that you feel that Bill 118 is contingent on the work of the Human Rights Commission in its current form.

Ms. Alphonse: Yes.

Mrs. Van Bommel: Do you feel that the current form of having to go through the commission and then forward to the tribunal and redoing everything is workable or do you feel there is room for change, that we do need to make changes to the whole process, of some kind, anyway?

Ms. Alphonse: I stop short of saying that there needn't be changes, but what I'm against is the removal of the investigative piece altogether. There is no question there needs to be additional resources placed in the investigative portion in its current form. What I would like to see is not a need to redo an investigation, go from the original investigation, unless there is new evidence. But to say we're going to remove the investigative piece and everybody will get their day in court, you're going to have a lot more people stewing in the discrimination, and that is what I'm against.

The Chair: Mr. Runciman.

Mr. Runciman: Thank you for being here. That was very powerful testimony. Someone who has experienced the challenges in life that you have and has been able to overcome them to a significant degree I think is impressive to all of us sitting here today and many others as well.

I gather essentially the investigative powers of the commission, the removal of those powers, is your primary concern with respect to the legislation as it is currently structured. I'm just wondering if you can elaborate on one of the comments in the written material that we're given here for a few minutes: "To remove investigative powers from the commission and place it back with complainants, while sounding good in theory, will cause widespread discrimination within the very system that has been built to protect against it." I wonder if you could just take a bit of time and explain that more thoroughly.

Ms. Alphonse: The investigations, as I understand them to happen now, are done in conjunction with both parties, and the commission itself will investigate. What is being proposed, as I understand it, is that those pieces would go back through the court system. That requires that folks do a lot of their own investigation and it creates an uneven platform, because we all know with the court system that the more financial resources you have, the more resources you have in which to build a case for or against. So for folks who have already experienced discrimination and for some who are, to begin with, socially disadvantaged, the playing field, as you can probably picture, is going to get even more uneven.

The other concern I have is particularly in the area of people with disabilities. Such is true for those folks. Those are the folks I work with more often.

I hate to say this, but this was a creation of a bunch of lawyers sitting behind their desks who have never had to go through a system to fight for anything for themselves.

The Chair: Thank you very much.

Mr. Kormos?

Mr. Kormos: Well, Ms. Alphonse, I don't think there is anything I can say or ask you that is going to add to the potency and the incredible passion with which you've addressed this issue. So I, in one of those rarest of moments, will decline to say anything but thanks for your interest, for your attendance here.

Look, there are people who are on both sides of this issue. One of the experiences we've had is that there seems to be a preponderance of concerns about the bill rather than all-out, unequivocal support for the bill. I have no idea what high-priced policy people in their ivory tower sat down at their expensive IBM keyboards to draft this thing, but I'm inclined to agree with you about their respective backgrounds. Thank you kindly, Ms. Alphonse.

The Chair: Thank you very much for appearing before the committee today.

REBECCA LIFF

The Chair: The next presenter is Rebecca Liff.

Mrs. Rebecca Liff: My name is Rebecca Liff. Ladies and gentlemen, injustices need to be reversed by province-wide legislation and not by enabling legislation that allows municipalities to take 20 years to pass weak bylaws, and allows irresponsible school and hospital boards to do as they please because of their autonomy and their indifference to the plight of disadvantaged citizens. Make your vote in the next provincial election count for justice.

The city of Ottawa bylaw calls for zero handicapped parking spots in parking lots with up to 19 available parking spots; one, if the lot has 20 to 99 parking spots; and two, if 100 to 199 parking spots. Note: licensed drivers in Ontario, as of December 31, 2005, total 8,777,358. Accessible parking permits now in circulation are at 465,765. That's 18.5 to 1.

Many existing accessible parking spots are too narrow. Get rid of grandfather clauses. Hospitals need more parking garages. My doctor has to book bone density tests in her office building because of lack of parking at the Riverside and other hospitals. Parking now costs $3.50 per half-hour at the Riverside hospital campus. Two of my doctors were unable to request physiotherapy for my shoulders at the Riverside. Finally, on August 1, 2006, my dermatologist, who is on staff, referred me to the Riverside, where I will have to wait a minimum of six months before my application is even looked at, because only recent surgery patients get priority.

1100

It should be the law for those who administer medications to patients to verify the names on hospital wristbands with the names of the patients on patients' charts. Alcohol swabs or syringes should be supplied with prescriptions to prevent infections or inaccurate doses. Make legal a safer prescription form requiring lower-case printing for instructions and capital-letter printing for the name of the drug, and blocks or circles to tick or X-mark for easy-off cap on containers for patients with arthritis, or a reminder to supply alcohol swabs or syringes for precisely measuring liquid medications. The labels on the filled prescriptions should state the expiry date of the medications.

In Quebec, a food contractor was sending only two meals a day per patient to two institutions, and charging for three meals. The Alzheimer patients were unable to complain, and maybe the employees were afraid to blow the whistle and lose their jobs. This past April, I shared a room at the general hospital with a lady whose medication the nurse tried to administer to me. My roommate was starved without explanation and given only about half the food I received. The nurses had only available some toast and horridly weak tea to give her. A provincial audit of the food served at the general hospital, for taste, nourishment and cost, should proceed now.

The Ontario Ministry of the Environment should lay charges now against OC Transpo, because OC Transpo has disobeyed the ministry's standing order to, on a monthly basis, adjust the engines on their black-smoke polluting buses to keep the exhaust cleaner. OC Transpo even purchased new buses with the same problem. Cut the O-train and use the new funds for improving the bus system with free bus service to cut down on the use of cars in our city.

I had a problem recently with an escalator at the Bay in the St. Laurent shopping centre. The provincial

ministry official called me back from Toronto to tell me that the escalator was shut down as the left-hand rail had been detached. We need a provincial law requiring each building with escalators to have a daily inspection of all its escalators before patrons come into the building and to slow escalators down to a safer speed.

Why has nothing been done to double the amount of toilets for females in public buildings—the National Arts Centre, for example? I recall during a Dave Broadfoot concert years ago at the National Arts Centre trying to open the door to go outside, as the air was too sparse in the high-up box seats. The door was locked. What if there was a fire in the opera?

The province of Ontario should sue big tobacco and its beneficiaries. I would like Prime Minister Harper to have the Auditor General investigate the financial gain to the Honourable Paul Martin's shipping company by his inaction on the tobacco excise tax issue etc.

All public washrooms should have seats that allow the hips to be higher than the knees. Washrooms should be at least a foot wider than the current standard, and one foot deeper for legroom to door and walker. Grab bars should be on both sides, so that these toilets can be used by anyone other than someone in a wheelchair or a mother with a baby carriage or stroller. There should be at least two large, accessible washrooms, like Wal-Mart has on the ground floor on Bank Street, in case one is out of order. It did happen several months ago. It is not right for Loblaws in College Square to have people use an elevator to go to the washroom, as heavy grocery carts and children's strollers and motorized wheelchairs can hurt people who are in the elevator should there be a malfunction. The Riverside hospital has benches that are too low and toilets that are too low, especially in the main entranceway and the rehabilitation section. There should be ramps, not stairs, to all buildings open to the public, as well as easy-opening doors with long, curved, vertical handles.

In order for their very, very disabled children to get into special classes in the Ontario school system, parents have to prostitute themselves if they are non-Catholic to follow the Ontario requirement that these children attend Mass, but they are "not required to participate in any of the rituals associated with Mass." To me, this is the same twisted difference, and the parents are too afraid to complain. Examine what the Ontario government did because Premier Harris began to try to reverse a huge injustice to non-Catholic parents who wanted their children to have the same school benefits and attend their own schools the way the Catholic children have been doing for a number of years.

Look at the injustices in our school system in Ontario. We have no charter schools, except Catholic ones funded by our general tax dollars. Many of our teachers are not certified and/or have never studied the subject they are required to teach. Ratepayers, except for Catholics, cannot direct their school taxes to the school of their choice. Partial compensating grants promised to non-Catholic parents were clawed back retroactively, but there has not yet been a retroactive chargeback of the education costs incurred for the separate schools to the Catholic families who so unfairly benefited. This situation is cruel and unjust.

"Bill 107, An Act to amend the Human Rights Code"—how can you refer to a human rights code in the province of Ontario when there does not appear to be one, especially when non-Catholic citizens, the handicapped and other people are unfairly treated?

Make your vote count for positive change and justice in the next provincial election.

The Chair: Thank you very much. We'll start the questions with the official opposition—about four minutes each.

Mrs. Elliott: Thank you very much for your presentation, Mrs. Liff. You have raised a number of issues in your presentation with respect to some school issues, some municipal issues and some other issues that are of concern to you. I'm just wondering if you have proceeded to the Human Rights Commission with any of those issues.

Mrs. Liff: No.

Mrs. Elliott: Is there a reason why you haven't? Do you have a concern about the commission?

Mrs. Liff: I don't know anything about it. I've been fighting for non-smokers' rights for over 30 years, and it took 30 years to finally get proper legislation. I sat for two years monitoring the Ottawa Board of Education board meetings and I brought forward a lot of comments and things, and they blocked me from talking.

It took two years for me to get an outline of the provincial curriculum, and when I finally got it, I found out that each subject was listed in these two huge, expensive volumes but they consisted of two sentences for each program. In other words, they take unqualified teachers and have them write their daily outline for each course. Many of these teachers have never even studied the course. Then these teachers complain because they're not paid extra time for writing programs when they should never even be writing these programs. They're not even qualified to teach, never mind write programs. If you were going to ask me to write a program to teach a Chinese class, I don't know anything about Chinese and I'm not even a qualified teacher—but this is what they're doing in this province. So I ate my heart out just sitting there, and I couldn't get anywhere with that.

Finally, I wrote Premier Harris and listed all the things, and he was implementing them. Then the Liberals came along and threw everything out, you see? The one who doesn't even understand this twisted explanation of Mass—if you're forcing somebody who's not a Catholic to come into a room with crosses, and they don't have to participate but they're sitting there and listening to that, they're looking, and you don't want that. He doesn't understand that. You see, that's my MPP, who helped a lot with non-smokers' rights. But he's not going to get my vote in the next election because his ideas are twisted and it's twisting all—I listen here to what people are saying. You passed legislation for the handicapped, but

you're giving the storekeepers and the mall owners 20 years to fight with city hall to set up, to provide for parking. We don't have—the parking is available; it's got to be made accessible. If you've got narrow parking spots, take two of them and make them into a handicapped spot, but don't allow one spot for 18, by statistics, and allow two spots for 200, actual. That's wrong.

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Mrs. Elliott: Thank you very much. I appreciate your response.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you, Mrs. Liff. I read in addition to your submission the material you sent with it. You are prolific in how you address these matters.

Mrs. Liff: I try to give evidence. I'm not just making up stories.

Mr. Kormos: Quite right. We're just members of the opposition, but the most powerful person on this committee is David Zimmer. He's the parliamentary assistant to the Attorney General. He has the Attorney General's ear on a daily basis.

We have lunch break from, what, 12 till 1? If you can stay, I know that he'd want to hear from you directly and review some of this stuff. So, please. He's got staff here. He's got to be called out from time to time because he is a parliamentary assistant, but I know he'd want to spend some time with you reviewing this stuff. Please. Thank you.

Mrs. Liff: Okay.

The Chair: Mrs. Liff, the government side may have questions for you. Are there any questions from them?

Mr. Berardinetti: I think the presentation was straightforward. Thank you for your comments. We'll take them into consideration.

Mrs. Liff: You'll have all the details. There are about 50 sheets of stuff to back up, but not on the education thing, because this I said to Premier Mike Harris way back.

The Chair: Thank you very much.

EDUCATION EQUALITY IN ONTARIO

The Chair: The next presentation is from Education Equality in Ontario.

Mr. Leonard Baak: Thank you, Mr. Chair. Good morning. My name is Leonard Baak. I am president of Education Equality in Ontario. I'm here today with our chairman, Thomas Layer.

Education Equality in Ontario is a non-governmental human rights organization and education advocacy group. We seek the elimination of religious discrimination and duplication in the Ontario school system through the establishment of a single, publicly funded school system for each official language—English and French.

Ontario's divided school system was born out of 19th century realities. Ontarians of the day could generally be categorized as being either Protestant or Roman Catholic, and neither group had much tolerance for the religious teachings of the other. The laws of the day accommodated that intolerance by allowing for the segregation of students between the public system, which incorporated Protestant religious education, and a separate system for Roman Catholics. To assuage fears of eventual assimilation into a distinctly Protestant public school system, that segregation became a constitutional right for the Roman Catholic minority at the time of Confederation. The Protestant/Catholic, French/English and Irish/Anglo divisions in pre-Confederation Ontario society—

Interruption.

Mr. Baak: —sorry—together with the Protestant character of most public schools, were the reasons Roman Catholic separate schools were created. The original rationale for their existence is gone today. It is time to move on.

Today, the uniqueness of publicly funded school choice and additional employment opportunities for the members of a single faith group constitutes discrimination that offends the equality guarantees of the human rights instruments to which Canada is a party.

Ontario separate schools enjoy an unfettered right to discriminate against non-Catholic Ontarians in admissions before grade 9. All Ontarians bear the same tax burden, but only Catholic Ontarians enjoy the right to a publicly funded school choice.

While on the outside that choice might appear to be a religious one, the fact is that three quarters of the families using publicly funded Catholic schools today are "unchurched"—that information is from a Catholic priest—some are openly atheist or agnostic, and more and more are not even Christian. Most of the families choosing separate schools today are making a secular choice between two school systems based on secular factors such as facilities, standardized test scores, programs, locations and transportation. Religion is seldom the determining factor in making that choice, and I refer in a footnote to a poll conducted by the OSSTF.

Whether made for religious or secular reasons, that choice often ensures Ontario Catholics a higher quality of education than their non-Catholic neighbours. In some neighbourhoods, the separate school will be the better one; in others, the public school. If the better school happens to be the separate school, only Catholics are assured access at the elementary level. That discrimination in choice between publicly funded schools offering the provincial curriculum affects far more Ontarians than the discrimination in religious school funding. It affects millions. One's faith should not allow one to access better publicly funded schools than one's neighbour.

The discrimination in religious school funding cannot be ignored either. Catholic parents genuinely desiring a religious education for their children receive a government subsidy of over $8,000 per child per year for that education, while parents of other faiths receive nothing. Given that the constitutional obligation used to excuse the funding of Catholic schools is largely illusory—I'll say more on that later—the exclusivity of funding for

Catholics alone is indefensible. Fairness demands that we fund all religious schools equally or that we fund none.

One cannot forget the situation of Ontario's non-Catholic teachers. One third of Ontario's publicly funded teaching positions, those in the separate system, are essentially closed to two thirds of our citizens. In 1997, Ontario separate school boards won the absolute right to discriminate against non-Catholic teachers in hiring and promotion, a right they appear to use to the fullest.

Our Supreme Court has stated that denominational school rights "make it impossible to treat all Canadians equally." They were right. Non-fundamental denominational school rights render our fundamental equality rights ineffective by virtue of their constitutional status and their exclusive applicability to a single favoured group.

The Canadian Charter of Rights recognizes the widely accepted principle that discrimination by governments may sometimes be acceptable if it has as its object the amelioration of some disadvantage faced by an identifiable group. Affirmative action programs are an example. Such "morally acceptable" discrimination should not be confused with the "morally unacceptable" variety, that which favours groups having no measurable disadvantage when compared to other groups.

The special educational privileges of Ontario Catholics are an example of morally unacceptable discrimination. As a group, they have no measurable disadvantage that might warrant preferential treatment. As the province's largest religious group, Ontario Catholics are arguably the least in need of special consideration or government largesse. The corollary of continuing to uphold their exclusive education rights is to demonstrate contempt for the fundamental equality rights of all other Ontarians.

In November 1999, the UN Human Rights Committee found Canada in violation of the equality provisions of the International Covenant on Civil and Political Rights by virtue of the discrimination in the Ontario school system. They demanded that the situation be remedied by funding all religious education equally or by funding none. The committee censured Canada again in November 2005 for failing to "adopt steps in order to eliminate discrimination on the basis of religion in the funding of schools in Ontario." Not only was that discrimination not eliminated, but it was actually exacerbated in 2003, when the current Ontario government eliminated public support for all but Roman Catholic religious education.

The religious discrimination in the Ontario school system also offends the equality provisions of the Universal Declaration of Human Rights and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The education rights enumerated in the Convention on the Rights of the Child are also likely offended by the discriminatory manner in which those rights are given effect in Ontario. Canada is a party to all three of these instruments.

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In August 2005, the Ontario Human Rights Commission—the commission—undertook a review of the effectiveness of the Ontario human rights system using the Paris Principles for an effective human rights system. In its preliminary comments on the proposed reforms to Ontario's human rights system, the commission reiterated the importance it placed on any new system's consistency with the requirements of the Paris Principles endorsed by Canada. We submit to you that Ontario's system has never been consistent with those principles and that Bill 107 brings it no closer to compliance.

As a national institution, as defined in the Paris Principles, the commission has failed "to promote and ensure the harmonization of national legislation, regulations and practices with the international human rights instruments to which the state is a party, and their effective implementation." That's Paris Principle 3(b). By virtue of the discrimination in our school system, the Ontario government openly violates the equality guarantees of several of the human rights instruments to which Canada is a party. To our knowledge, the commission has never criticized the government for those violations.

The commission has similarly failed "to encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation," principle 3(c). Again, to our knowledge, the commission has never taken any steps to encourage the Ontario government to address their violation of fundamental equality rights within the context of our school system. To our knowledge, the commission has also failed to comment on the reports that Canada is required to submit to the United Nations, reports which universally fail to acknowledge the discrimination in the Ontario school system.

If truly committed to the Paris Principles, the commission must address its shortcomings with respect to its responsibilities as enumerated in those principles. It must break its silence and assert its independence in speaking out forcefully and relentlessly in opposition to the discrimination in the Ontario school system.

If truly committed to the creation of an effective human rights system, the Ontario government must ensure that Bill 107 encourages the commission to live up to its responsibilities as enumerated in the Paris Principles. To facilitate this, the government must take the steps necessary to include the repeal of section 19 of the Ontario Human Rights Code in its Bill 107 reforms. Section 19 effectively absolves the government and separate school boards from responsibility to uphold the code provisions forbidding religious discrimination in services—section 1—and employment—section 5. The government must also ensure that the commission enjoys the necessary independence to fulfill its responsibilities without hindrance or interference of any kind.

The discrimination in the Ontario school system cannot be addressed affordably by extending comparable funding to non-Catholic religious groups. Additionally, such extended funding would only compound the duplication penalty borne by the Ontario taxpayer, further fragment our school system and do nothing to address the discrimination in publicly funded school choice, affecting millions of Ontarians.

Instead, we believe that only one English-language and one French-language school system should enjoy full public funding in Ontario today. Furthermore, admission and employment in those public systems should be open to all Ontarians without discrimination.

A single publicly funded school system for each official language would fully address the discrimination in the Ontario school system and fulfill Ontario's domestic and international obligations to treat Ontarians of all faiths fairly and equitably.

Ontario could move towards a single publicly funded school system with or without constitutional change. Section 43 of the Constitution Act, 1982, provides a mechanism through which constitutional change affecting one or more, but not all, provinces such as denominational school rights can be accomplished through a bilateral amendment between the affected provinces and the Parliament of Canada alone. Quebec and Newfoundland both eliminated denominational school rights through such an amendment in the late 1990s. The Newfoundland amendment was obtained with blinding speed, being proclaimed just four months after being requested by the provincial Legislature. Manitoba eliminated denominational schools unilaterally in 1890, despite a constitutional obligation to provide them virtually identical to Ontario's.

Following the amendment of the Canadian Constitution to recognize the fundamental equality of all Ontarians:

(1) Revisions to the Education Act should be undertaken to remove exclusive entitlements with respect to publicly funded school choice and publicly funded religious education.

(2) Revisions to the Human Rights Code should be undertaken to remove references to the preservation of separate school rights having constitutional origin.

(3) A merger of Ontario's public and separate school systems should be undertaken, resulting in a single publicly funded school system for each official language.

I'll say a short thing on education tax credits here. Education Equality in Ontario is neutral on the virtues of education tax credits for families using public school alternatives, subject to the following conditions:

(1) Any tax credit offered for public school alternatives must apply equally to all Ontarians, including Ontario Catholics. A tax credit good enough for some should be good enough for all. Education Equality in Ontario will vigorously oppose any education tax credit proposal that leaves Ontario Catholics with superior funding compared to families using other public school alternatives.

(2) Any tax credit offered for public school alternatives must not discriminate between religious and non-religious alternatives.

(3) Any tax credit offered for public school alternatives should be modest enough so as to not detract from the quality of education offered in the public school system or encourage an exodus from that system which would undermine the role of public schools in fostering greater tolerance and understanding between Ontarians of different backgrounds.

Today we have outlined for you the need to change Ontario's Catholics-first-and-only policy with regard to publicly funded school choice and religious school funding. It is time for a religiously neutral provincial government to establish the proper primacy of fundamental equality rights over non-fundamental denominational privilege. There should indeed be one law for all Ontarians.

A single school system is the only affordable way to fully and completely address the discrimination in publicly funded school choice and religious school funding in our school system. From the equitable starting point of one system, the Ontario electorate can decide the issue of education tax credits for themselves in an election.

If this government's commitment to human rights is genuine, it will address the glaring omission of justice for non-Catholic Ontarians in Bill 107. It will address the shortcomings of our human rights system as measured against the Paris Principles for an effective system. In the process, it will do its part to ensure that Canada lives up to its international obligations and that Ontario lives up to its obligations to its own citizens.

Thank you for giving us the opportunity to speak to you today. We'd be happy to take your questions.

The Chair: Thank you very much. There's about a minute for each side. We'll begin with the NDP. The government side? No comments? He's declined. Any comments from the official opposition?

Thank you very much.

I know the committee is scheduled to break for lunch, but seeing that it's only 11:30 and there's a presenter from this afternoon who is here, Mr. Pocklington, if there's no objection, we can hear—

Interjection.

The Chair: Thank you.

MARK POCKLINGTON

The Chair: Mr. Mark Pocklington. You may begin.

Mr. Mark Pocklington: Thank you, Mr. Chairman. Good morning. I thought I was going to say "good afternoon." You caught me a little bit by surprise.

I'm just representing myself. I came up from Brantford. I like coming to Ottawa regularly. I've got family here; my mother is French-Canadian. Any opportunity I can get to come up here, I try to take advantage of.

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I have a little something—normally, I'd like to speak off the cuff about the situation I'm involved in with the Human Rights Commission, but my wife insists that I have a habit of drifting when I speak off the cuff, so she forced me to write out a script here. I'll read from it, but she did time me and she told me it took eight minutes, so it shouldn't be too bad.

First, I would like to thank the committee for this forum and providing me with a means to voice my opin-

ions and concerns regarding the changes in the Ontario Human Rights Commission code as proposed in Bill 107.

I just mentioned that I appreciate the visit to Ottawa, and often I get into spirited debates with my francophone relatives over bilingualism. Now that I'm involved in the commission—this is the first time I've ever been involved or associated with a commission. It's involving a francophone discrimination in the workplace issue, and of course that adds a little extra energy to my arguments over language and cultural rights. I thought that even though I'm quite green in the whole business of human rights, sometimes a fresh face sees things a little differently. I just thought I would take the opportunity to present my case, without going into any details; just an overview.

To start with, I filed a human rights claim with the commission in June 2005, so it's a little over a year. In my claim, I allege there was a code violation in the manner and reason for which I was terminated by my employer. From the onset, the staff members of the commission were very courteous and expedited my claim in a professional manner. It was obvious that front-line staff were well-trained in screening applicants and determining the legitimacy of their grievances. I was very encouraged by that process. As time went on, one-on-one support evolved into a request that both parties express their opinions or positions through completing a standard questionnaire. This seemed like a reasonably efficient way to start the claims process and encourage three-way correspondence.

Everything was moving along well until several months passed without any news of progress. To my surprise, on November 17, 2005, last year, I received in the mail a copy of the letter from the commission to the lawyer representing the respondent advising that the case would be transferred to their investigation branch. I brought copies of this letter if you're interested in it. I'm just going to make some-odd references to it. I'd be happy to pass them to you if you wish. I wish to highlight that without prior warning my file was turned over to the investigative office of the Ontario Human Rights Commission. I was not provided with notice that mediation had broken down nor was I informed beforehand that it was necessary to send a fait-accompli-style letter that spelled the end of first-round negotiations. If you read the letter, you will note that the respondent's lawyer applied for dismissal of my case, citing that it belonged in civil court, and the commission decided it would address their request only after an investigation was completed.

Looking back, I anticipated the commission would take a more distinct approach to resolving my case. What I imagined was that in a claim such as mine, the focus would be on upholding the human dignity of employment. It seemed natural that if my employment was terminated without a stated cause and if there was real suspicion of a code violation, then mediation would take on a sense of urgency due to the financial hardship experienced by myself and my family. This did not happen. Instead, the attention was drawn to the issues of legal jurisdiction, with the respondent recommending I pursue a civil case for wrongful dismissal. In reality, the commission's efforts amounted to sending a letter that prematurely ended its own mediation process.

And to add to my concerns regarding this event was the popular notion that perhaps the respondent was quite satisfied with the process, since the delays of months or years cost the accused nothing. It's a clever opening strategy.

Now, imagine for a moment my thoughts after receiving this letter last year. First, I was encouraged by many francophone supporters to file a formal complaint with the commission—something I have never done before—which, I am told, has the authority to reinstate me if indeed there was a code violation. Instead, I get a letter that implies, "Salut, bye-bye, see you next year." I would have to face the grim reality that I could be unemployed for a very long time. For what it's worth, federal government unemployment insurance provides me with a benefit of less than 20% of my previous salary. When I informed the commission that I was the sole provider to my family of six dependants, I was treated with indifference. This is not the Human Rights Commission that I imagined.

Since receiving the letter, I have waited nine months without word of progress. I recently inquired into the status of my file with the commission's office in Toronto and was told that it's customary to have to wait, on average, one year for investigations to start. They also reminded me that there was a good chance that my case may never be investigated if Bill 107 passes with the plan to abolish the process in the future.

Anyway, crying aside, one of my suggestions is that more resources should go into mediation and encouraging early face-to-face dialogue between the two parties involved in a claim handled by the commission. I also recommend using incentives to promote discussion and, in the very worst cases of outright intransigence, using progressive fines to discourage organizations from exploiting the goodwill of the commission and Ontario taxpayers.

I also wish to go on record as advocating official commission investigations, but restricted only to special circumstances. An example could be where there are allegations of a code violation involving a collaboration of those in authority within a large organization. Sometimes only an inquiry-style investigation can uncover the real source and extent of racism in the workplace. Furthermore, the evidence can be very useful in case studies to support education programs in the future.

I have presented my main points and now I would like to share with the committee—my wife recommended it—a small piece of cultural wisdom I learned while spending many years mediating business disputes in Asia. I'm sure the committee members might find some points useful in the context of human rights.

My primary responsibility when I was over there was overseeing the creation of joint venture partnerships on behalf of American enterprises. It was quite the challenge balancing Western and Eastern business values, and I

often experienced instances where cultural misunderstandings led to complete breakdowns of negotiations. For example, in one situation I remember, an American executive was trying to explain to his Korean host his banker's need for a formal written contract. The Korean, himself the chairman and owner of the business, responded by quoting Confucian traditions and the value of building relationships first.

As a rule, in the Orient, there can be a real aversion to legal contracts when it is between two culturally different groups. This is mainly because the good spirit of any agreement tends to be lost in translation. For this reason, the Korean chairman requested that contractual negotiations be postponed until he would feel more comfortable with the American businessman. The immediate reaction of the American was to question the validity of this relationship-centered tradition and insinuate that the chairman was up to some sort of trickery to buy time. For what it's worth, a delay to build relationships is so frequently complained about by weary, frustrated American businessmen that it's even given a name: It's called the 1,000-day rule. In other words, it can take 1,000 days for Asians to feel comfortable enough to become true customers or partners with Westerners. You hear it everywhere you go.

How was I to reopen discussion and negotiations? Wait another 990 days? In this situation, I had to use the strategy of fast-tracking cultural awareness on the American. This meant that if he wanted to reopen talks, he must learn to control his natural impulse to challenge the comments of a person in authority, like the chairman he had recently met, and more importantly, he had to observe the Oriental tradition that, in any discussion, an elder has an inherent right to be wrong. In fact, there was nothing to be gained by openly questioning the chairman's verbal request that more time was needed to develop mutual trust before entering into contract negotiations.

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I refer back to my claim with the commission. I often use this Asian experience to remind myself that regardless of my former boss's mistakes or errors in judgment, such as when he ordered my dismissal, he has a human right to be wrong. After I accept this right to be wrong, so to speak, I must move on, not in the pursuit of vengeance but instead in the patient pursuit of progressive understanding, specifically, an understanding that everyone's true motives must be revealed before a resolution to a conflict can be achieved.

So I tell this story about 1,000 days of patience and the right to be wrong mainly because, in a case such as mine that is complicated by bilingual and bicultural issues—and there are many in the organization I was involved with—an approach to mediation may have to be considered that is more relationship-centred, similar to my experiences in the Orient. What I am hoping here is that the Ontario Human Rights Commission maintains a clear procedural flexibility that is very distinct from our civil courts, despite what's being contemplated in Bill 107.

I would like to conclude by recapping my main points. First, due consideration is given to legislation that focuses more resources on the mediation process geared towards encouraging open dialogue over legalistic-type written communication, especially where you are involved with issues of racism. When you start writing things down, that gets into some big difficulties. Second, that the investigation process be always available as a tool to uncover widespread violations of the code, which can be used to support the educational objectives of the commission.

Lastly, I pray that all parties involved with the Ontario Human Rights Commission observe that unnecessary delays can victimize children, and every effort should be made to expedite the claims process when family income is at stake.

That's my official version. If you have any questions, I'd be happy to answer.

The Chair: Thank you very much. We have about three minutes each, starting with the government side.

Mr. McMeekin: First of all, thanks very much. Your wife was pretty close. You were about 10 minutes and 50 seconds. But given that you talked about the importance of relationships rather than being legalistic, I just footnote that as a piece of humour rather than any critique. I enjoyed your presentation.

I want to ask you the same question I asked earlier. You obviously have had a variety of experiences, some of them intercultural, which I found fascinating. If there were three specific things, Mr. Pocklington, that you would like to see changed in this legislation, what would they be?

Mr. Pocklington: The mediation process, as far as I was concerned, was everything. Of course, I was disappointed by the fact that it started off at the beginning all hot and heavy and then just died. And it seemed to have just died over a legalistic issue.

Mr. McMeekin: Very arbitrary.

Mr. Pocklington: Yes, arbitrary. I wasn't involved in the process. You're talking about changes. Well, there was one. There was no need. All of a sudden they're telling me it's going to investigation. Why? Why now? Again, legalistic arguments. I think that that has to be looked at by the committee, how many cases are rushed into investigation because they fail certain criteria and for what reason.

When I get back to mediation, talking about changes, I think where you get into issues of racism—you see it all the time in any large organization, where people say things out of frustration, the wrong words come out of a person's mouth, and the next thing you know someone's being accused of this or that on the shop floor and now there's another case that's going before the human rights. It just seems that perhaps more of the effort should be put into getting these people together and working out some kind of a settlement—compromise resolution rather than starting a whole investigation.

I can see the need for investigations, but I do also speak from my own experience in that there is a power

that goes with the investigation, and it's the power to disrupt someone's life and make things miserable. If there's an investigation ordered of a company, it's a lot of grief for that company, and there is a little bit of vengeance involved there. I have felt that myself, wanting to do that.

One has to remind oneself that—you know, whose money are you spending here? There's that balance. "Balance" is an overused word, but I always tell myself, "You have to answer to those whose money you're spending."

The Chair: Thank you very much.

Mr. Pocklington: You can't turn around and say, "Hey, I'm going to order an investigation here and have them come in and they"—I'm sorry.

The Chair: Thank you. Time's up. The official opposition.

Mr. Runciman: Thanks for appearing, Mr. Pocklington. I wasn't clear on the status. You filed a complaint. You went to mediation. There was not an investigation prior to the mediation?

Mr. Pocklington: No, it was the early mediation. I don't know the normal process, but mine was—

Mr. Runciman: How long did it take from the time of filing the complaint to get to that stage?

Mr. Pocklington: A month or two went by—

Mr. Runciman: Pretty quick.

Mr. Pocklington: It was very quick, I felt. The letters went back and forth, and then, as I said, I heard nothing for two months. I heard nothing, and then all of a sudden I get this letter saying that it's going to the investigation. I guess I'm caught in the hoop here because everything's on hold, so the investigation may or may never happen; I don't know.

Mr. Runciman: How long have you been waiting?

Mr. Pocklington: I got the letter in November of last year that it was going to investigation.

Mr. Runciman: November of last year, and no status report?

Mr. Pocklington: Zero. I eventually called them about a month ago, and they just said that it can normally take a year before they start, but it may not even start because of this committee going on—

Mr. Runciman: That's an interesting comment, because what you're suggesting is that people who have filed complaints may now be twisting in the wind, in limbo, because of this legislation, and that processes are not proceeding in perhaps the way they should be proceeding because of the possibility of this receiving final passage and royal assent and becoming law sometime later this year. That should be of concern to all of us, I would think, if that indeed is occurring, and we should at some point, if we have officials before the committee, pursue that point just to see what's happening within the commission itself, if it's grinding to a halt in a very slow fashion because of the legislation. That would not be treating fairly the people who filed complaints in good faith up to this point in time.

Your primary reason for appearing here is to recommend that we continue with the existence of the commission with more emphasis on mediation. If there's a challenge to any allegation, there is a responsibility at some level of the investigation, I would think, to try to determine the merits. I gather that you're suggesting there shouldn't even be some sort of a cursory investigation prior to entering mediation so we can argue the points with a mediator and try to make our case rather than, as you're suggesting, perhaps wasting taxpayers' dollars to go down this road before we at least try an initial mediation. And if that can't resolve the situation, then call in the investigators.

The Chair: A quick response.

Mr. Pocklington: In my case, it wasn't really a mediation. We all stated our positions in writing, and that got the wheels started. It very well could be that the company did not agree to a face-to-face mediation. I know I did, but I wasn't informed whether they did or not. They could very easily have said, "No, we just don't want to have a meeting. We do not want to mediate." That would be their right, and then everything stops.

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: What I'm inferring from your comments is that in your instance there wasn't a very adequate communication to you of what you could expect stage after stage after stage. Is that fair?

Mr. Pocklington: Yes.

Mr. Kormos: Perhaps, Mr. Fenson, that could be yet one more of the things that we address if the committee supports my motion to invite Mr. Norton, Ms. Hall, management from the commission and commission staff in here to find out what standards there are. Quite frankly, your complaint is not dissimilar to some of the complaints my constituency office gets from people who have complained about lawyers to the law society. I'm confident the law society is monitoring this, so, Sheena, you don't have to call me about it; it's okay. We'll talk in September. Notwithstanding the best efforts, there still seems to be some difficulty with complainants and the law society in terms of understanding what the law society is doing. They operate in a very similar way to the commission. Right before it goes to a disciplinary hearing, the law society attempts to resolve the matter. They investigate, and indeed they will prosecute the lawyer if there's sufficient evidence. Is that a fair interpretation, Mr. Berardinetti?

Mr. Berardinetti: Yes.

Mr. Kormos: It's not an unworkable system, is it?

Mr. Berardinetti: I've never been part of it. I've just heard about it.

Mr. Kormos: Mr. Berardinetti is a lawyer. You're well aware of the law society functions.

Mr. Berardinetti: Sorry, Chair, I don't mean to interject here, but I get the monthly reports that come from the law society.

Mr. Kormos: And you've supported constituents, as I have, with their complaints with the law society.

Mr. Berardinetti: Of course.

Mr. Kormos: Thank you very much. I just wanted to ensure I was on the same page as perhaps a younger, more astute lawyer than I am.

Anyway, I appreciate it, Mr. Pocklington. That's something that we've got to put to these folks if we get them here from the commission, because that's a problem, and it's a problem that should be addressed. There should be clear standards—people have talked about standards before—for how the commission deals with this.

The other question would be about case management. You're probably familiar with that, either directly or peripherally, in terms of the various types of work you've done. I'm just drawing this inference that there isn't very good case management of these files; there may be, and it could just be bogged down by lack of resources.

Thank you very much for raising these points.

The Chair: Thank you very much. The committee now stands adjourned until 1:20.

The committee recessed from 1151 to 1322.

ARCH DISABILITY LAW CENTRE

The Chair: Good afternoon. We'll be resuming the hearings before the standing committee on justice policy this afternoon. For those of you who have just arrived, I'm going to read this paragraph due to the nature of the hearings.

For your information, to make these hearings as accessible as possible, American Sign Language interpretation and closed captioning services are being provided each day. As well, two personal support attendants are present in the room to provide assistance to anyone requiring it.

To facilitate the quality of sign language interpretation and the flow of communications, members and witnesses are asked to remember to speak in a measured and clear manner. I may interrupt you and ask you to slow down if we find you're speaking too quickly.

With that in mind, our first speakers this afternoon are ARCH, a legal resource for people with disabilities. You may come up. You may begin.

Ms. Laurie Letheren: Good afternoon. My name is Laurie Letheren. This is my colleague Roberto Lattanzio. We're here representing ARCH Disability Law Centre.

ARCH Disability Law Centre is happy to be here today to express our support for the vision of Bill 107. This is an ambitious statute of broad application that has a most urgent goal: creation of a human rights process that works for all Ontarians who experience discrimination. ARCH supports the intent of this reform in that it provides persons who have experienced discrimination with the opportunity to have their experiences heard by the tribunal. However, in our opinion, Bill 107 needs to be significantly amended before it becomes law. This submission is not comprehensive or final. We will be making a further and more comprehensive written submission to this committee before the last day of hearings. We make this submission today to highlight some of the key issues that we feel must be addressed before Bill 107 becomes law.

Let me begin by briefly speaking about ARCH Disability Law Centre.

The Chair: I'm sorry, I just want to interrupt to advise you you're going a touch too quickly for the sign language people. So if you don't mind just slowing it down a bit, please.

Ms. Letheren: Okay.

The Chair: Thank you very much.

Ms. Letheren: ARCH is a charitable, not-for-profit specialty legal clinic primarily funded by Legal Aid Ontario. It is dedicated to defending and advancing the equality rights of persons with disabilities, regardless of the nature of the disability. We have a provincial mandate. ARCH represents national and provincial disability organizations and individuals in test case litigation at all levels of courts and tribunals, including the Supreme Court of Canada, as well as the Ontario Human Rights Commission and the Human Rights Tribunal of Ontario. We provide education to the public on disability rights and to the legal profession about disability law. We make submissions to government on matters of law reform and we offer a telephone summary legal advice service and referral service. ARCH maintains an informative website on disability law. Our membership consists of over 60 disability organizations and ARCH is governed by a volunteer board of directors, a majority of whom are persons with disabilities.

After reflecting on our experiences with the current human rights system in Ontario and hearing that other advocates had very similar concerns about the system, ARCH concluded that the current system is seriously flawed and does not adequately address the experience of discrimination of countless Ontarians. ARCH's view is that the problem with the current system is more than delay and a backlog of cases.

The ARCH board and staff support in principle the proposal under Bill 107 to move to a system where complainants would have direct access to a hearing. ARCH's view is that when the commission no longer has the job of screening individual complaints, it will be better able to fulfill its role as the public advocate and champion of human rights in Ontario.

Members of disability organizations have told ARCH staff that they discourage persons from filing a human rights complaint. They point out that the mediation and investigation process is stressful and disempowering, and their clients feel forced into accepting settlement offers that are not completely satisfactory because so few complaints are ever referred to the tribunal for a hearing. This is consistent with the information that we receive through our provincial telephone advice service and our community development work.

Many people believe that the most serious problem with the current commission is that it has the role of determining which cases will be referred to the tribunal for a hearing. The decision of whether a complaint is referred to the tribunal is made behind closed doors and

the commission generally gives very few reasons for its decision. The decision is based on the report of a commission investigator, and the complainant has no control over that investigation process.

On 6 April, 2006, ARCH interviewed Catherine Frazee, past chief commissioner of the Human Rights Commission, when she stated, "The commission is being asked to do the impossible. You cannot be performing the role of turning people away and still claim to be a human rights champion. It's entirely inconsistent. It sets up a dynamic that is doomed to failure." The entire interview was released in ARCH Alert, which is available on our website.

So how should Bill 107 be amended so that we have a fair and just system for addressing discrimination in Ontario? In our opinion, there are three things that must be embedded in the foundation of the new system if Ontario is going to succeed in establishing a system that truly works for all persons whose rights have been infringed under the Ontario Human Rights Code. We must have:

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(1) A properly resourced legal services centre that is fully accessible to all Ontarians and provides information, advice and representation throughout the entire human rights process;

(2) The development of expertise at the commission, tribunal and legal support centre. All those hired must have demonstrated involvement and experience in and a commitment to human rights. They must be recruited through an open, non-partisan competitive hiring process; and

(3) The commission, tribunal and legal support centre must be fully accessible to all persons with disabilities and must be committed to delivering barrier-free services. Persons with disabilities must be consulted.

When Attorney General Bryant first announced the reform of the Ontario human rights system, he promised that the new legislation would establish a system of full access to legal services for all, regardless of income. ARCH strongly supports this. However, Bill 107 does not contain any provision which clearly establishes a legal support centre. ARCH recommends that section 46.1 of the bill be replaced with the following language:

"(1) The minister shall establish a system for providing high-quality support services to any person who is, has been or may be a claimant under this act, and to provide information, support, advice, assistance and legal representation to those seeking a remedy at the tribunal.

"(2) The minister shall enter into agreements with prescribed persons or entities for the purpose of establishing this system of support services, and shall ensure that sufficient resources are allocated to the system to enable its functions to be carried out and to ensure that support services are available throughout the province.

"(3) The minister shall ensure that the services are fully accessible to persons with disabilities.

"(4) On an annual basis, a person appointed by the minister shall review the functions and operations of the system and shall advise the Legislature as to the sufficiency of the resources allocated to the system, the functions assigned to this system and the range of individuals who have access to the services provided."

Thus, the human rights legal support centre must include the following:

—no restrictions on eligibility for services;

—the provision of free quality legal services by trained human rights lawyers at every stage of the human rights process;

—the provision of free initial advice and information to callers who are considering making an application to the tribunal;

—physically accessible satellite offices and a system in place to ensure that the services are available throughout Ontario; and

—guaranteed allocation of sufficient resources.

In addition, ARCH recommends that the legal services centre should be designated the first point of contact for all persons who believe that their rights have been discriminated against under the code.

As we have stated before, it is our opinion that the development of the tribunal under the new system should be built on the premise that the tribunal will be an expert decision-making body. It is our position that if all claimants are provided with representation from trained human rights lawyers, the tribunal will be better able to fairly and effectively resolve matters before it and develop its expertise, and claimants will not face alone the challenges created by formal and complex procedural rules and practices. The publicly funded legal service is of crucial and utmost importance to making these reforms work. Thus, the right to such services needs to be explicitly legislated.

The commission, under Bill 107, will focus on prevention, public education and policy analysis. In order for the commission to exercise this role effectively, ARCH recommends that its functions should be expanded to include the right to conduct inquiries and investigations in addition to "reviews." ARCH recommends that the commission have the full right to make applications and the power to intervene on applications at the tribunal when the commission itself is of the opinion that it is in the public interest to do so. It is also important for the commission to have full investigative powers in exercising these functions and to have the means of enforcing co-operation with investigations.

Section 31 of Bill 107 proposes the establishment of a Disability Rights Secretariat "composed of not more than six persons." We must be practical and realize that the government will not have a largely expanded budget for the new commission. It's ARCH's concern that there will not be enough funding for both an adequately funded secretariat and a commission to serve persons who may have experienced discrimination on other grounds. When considering the need, effectiveness and possible impact of a Disability Rights Secretariat, it is important to keep in mind that disability continues to be the leading ground of discrimination cited by human rights complainants in Ontario.

It stands to reason that the development of knowledge and expertise within the commission with regards to disability issues should take place throughout the commission and inform all the work of the commission. It may be detrimental to compartmentalize disability apart from other grounds. This becomes more evident when we consider discrimination taking place on more than one ground, that is, the intersectionality of grounds of discrimination such as race, age, family and disability.

For example, the commission inquiry into the impact of the Safe Schools Act revealed that a disproportionate number of black students with disabilities were impacted by the policies of the school boards. It's essential that the work of the commission always consider disability as it impacts other areas.

ARCH recommends that the section proposing the establishment of the Disability Rights Secretariat be completely deleted from Bill 107. Instead of a separate disability secretariat, ARCH recommends that the composition of the commissioners should reflect the need to have at least 50% of its commissioners with a demonstrated experience in disability issues.

My colleague Roberto Lattanzio will now discuss issues of reforming the tribunal under Bill 107.

Mr. Roberto Lattanzio: It is essential for the government to ensure that all tribunal processes are fully accessible to all Ontarians and that rules of procedural fairness are applied throughout the process of resolving a claim. Surely, of all of the tribunals in Ontario, the Human Rights Tribunal should be barrier-free and it should declare clearly that persons with disabilities have an entitlement to barrier-free services.

An accessible process requires that all barriers at the tribunal, including barriers to accessing its physical spaces and barriers to information and communication, its policies and practices, be identified and removed to ensure full accessibility. There are currently many barriers, including attitudinal barriers, which persist. For example, there is currently no transcription or tape recording of the proceedings at the tribunal or automatic provision of accommodations such as real-time captioning. The onus is on the claimant to request the needed accommodations, which can be at times difficult and confusing.

Currently, the tribunal has no obligation to be proactive with regards to barrier removal and accessibility. Although the tribunal may be responsive when accommodation requests are made, ARCH argues that the process at the tribunal should make it unnecessary, as much as possible, for individual requests to be made. A claimant may not be aware of tribunal processes, and hence not be aware of the accommodations that she may need in accessing them, and may therefore not request the necessary accommodations in advance. The human rights process is complex, emotionally draining and difficult to follow for a layperson. The added difficulty of getting needed accommodations exacerbates this.

Our recommendation is that the onus should be on the tribunal to ensure that all accommodations are in place once a person's disability has been identified. One possible way of achieving this may be for the tribunal to have a system where accommodation needs are identified at the initial application stage, and a case file manager would then ensure that the claimant's needs are accommodated.

ARCH recommends that a provision addressing accessibility be legislated and that the following be added to section 37: "The principle of accessibility will have primacy over concerns of efficiency and expeditiousness of the tribunal process."

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In addition, ARCH recommends that accessibility also be included in section 34(2) of the bill, which sets out the key areas that the tribunal's rules of practice may address. We recommend that the following language be adopted at section 34:

"In making rules governing the practice and procedure before it, the tribunal must prescribe practices and procedures to ensure full accessibility throughout its processes."

I would now like to talk about section 41 of Bill 107, which deals with the early dismissal of applications by the tribunal. This provision provides for the dismissal of complaints "without a hearing" in whole or in part. Currently, as this bill reads, an application can be dismissed without any notice or any opportunity for the exchange of submissions or arguments.

First, ARCH recommends an amendment to section 41(1) to capture what we believe to be its true intent by inserting the words "full hearing on the merits" in the place of the word "hearing."

Unlike the current code, Bill 107 provides no right to make a request that the tribunal reconsider its decision to dismiss an application. ARCH recommends that this right be maintained.

It is our opinion that protections, therefore, must be clearly legislated. Such procedural safeguards should include a requirement of notice to the applicant, a full exchange of the opposite party's submission, an opportunity to make submissions to the decision-maker and the receipt of full reasons for the dismissal.

Lastly, under this bill, the tribunal can dismiss an application if it is of the opinion that another proceeding "has appropriately dealt with the substance" of the application. In making such a determination, ARCH argues that the tribunal must consider a number of factors, including the remedies awarded, the substance of the settlement that was reached and their inadequacies. Parameters must therefore be set out in the legislation.

I realize we're running out of time, so I would just quickly like to talk about section 45, which is the privative clause. Bill 107 removes the appeal provision. I won't go through my notes as it will take a little while, but we talk about the privative clause in our ARCH Alert article.

These are our initial thoughts, as Laurie mentioned earlier. Again, our ARCH Alert article discussing these issues was provided to this committee. We will submit a

final written submission to this committee before the end of public hearings, dealing with this bill more comprehensively. If there are any questions on these submissions or if any further clarifications are required throughout your deliberations, we would be happy to assist. Thank you.

The Chair: Thank you very much. There are 45 seconds each, or close to that.

Mr. Zimmer: Can you, in a nutshell, just set out your reasoning why you think there should be a privative clause? I see it's on page 17 in your ARCH Alert.

Mr. Lattanzio: That's right. Really quickly, following our line of reasoning about expertise and building expertise at the tribunal, having a privative clause would ensure this. However, we're cautious of this. Of course, we're cautious of the extinguishing of important rights, such as the right to appeal. So we would argue that we would support having a privative clause only in the backdrop of assurances that expertise would be built into the tribunal. That would mean that members are appointed mainly on their expertise and so on, that there would be things in place to ensure that expertise was built into the tribunal process.

About that provision as well, the latter part of that provision talks about the standard of patent unreasonableness. We have some concerns about that as well, as it limits the standard of review in a judicial review application, so—

The Chair: Thank you.

Mr. Lattanzio: I can ramble on about this one.

The Chair: Mrs. Elliott?

Mrs. Elliott: In the beginning of your presentation, you indicate that you have support for the vision of Bill 107. But your paper also indicates pretty clearly that you have some very substantive concerns about some of the measures here—fundamental issues, really, I would say—with respect to the legal support services, the operation of the commission, the intersectionality issue that you mentioned. Your recommendation that the secretariats be eliminated—wouldn't it seem to be more important than ever for the commission to retain some of its ability to investigate some of the individual cases because they are so intertwined with the issue of systemic discrimination?

If I could ask you both questions, my second question is with respect to the tribunal.

The Chair: You're going to have to make it brief.

Mrs. Elliott: Okay. The tribunal does have the ability to dismiss a complaint without a hearing, potentially putting a person in a worse position than they are under the present commission, because at least with the present commission they have the ability to have someone help them present their case in the best possible light.

Those are my comments. I'd appreciate your response.

Mr. Lattanzio: I would love a lot of time to answer that.

The Chair: Very briefly, because that's a long 45 seconds. We're going to have to move on. Maybe if you want to—

Mr. Lattanzio: Perhaps what I can do is refer you to our ARCH Alert article. We do talk about investigation, and the commission should be able to investigate even individual complaints. We do talk about the tribunal and how there should be safeguards in place before the tribunal dismisses an application.

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: Thank you, folks. I am fascinated by lawyers arguing for a privative clause when, by extension, one could say that if we really want to improve the quality of our provincial court, criminal division, we should make it very difficult to appeal from decisions made by provincial judges. Some people would find that a wonderful proposal, wouldn't they, Mr. Runciman? That way, we create greater deference, inherently, for that provincial judge's ruling and we cultivate more expertise in the criminal bench. I can't think of any of my civil libertarian colleagues who would endorse such a principle. Why in this case? Why is it applicable here when there are such important things at stake, but not applicable in criminal law, or family law for that matter? We could make the system so much easier if we simply eliminated appeals, couldn't we?

Mr. Lattanzio: If I can answer that, this actually occurs in many tribunals: in labour arbitration, workplace injury and so on. At the moment, for example, a remedy is awarded by the tribunal, and the claimant has to wait years and years and years to then actually receive that remedy. What we're proposing—although we'll make further, more detailed submissions on this—is not a full privative clause but basically—well, depending. Like I said earlier, the extinguishing of appeal rights is something to be taken extremely seriously. This is something we'll have to balance, but we want to balance a building of expertise and ensuring—

The Chair: Thank you very much.

PENNY LECLAIR

The Chair: Next up is Penny Leclair.

Ms. Penny Leclair: Good afternoon. It is always a pleasure when the government allows for the participation of people in a process where the people are the ones who will benefit or be harmed.

It's unfortunate—in fact, it's more than unfortunate—that there was no public consultation; we just go straight to a hearing. In other words, the government thinks this bill is so good that there isn't cause for public consultation. Well, from what I've heard this morning—and I'm not going to repeat a lot of stuff I've heard—I've been educated. I wish I could be the one sitting on this committee asking some questions; I have about 10 for every presentation being given. If we had public consultation, we would have that opportunity to understand the bill. As it sits now, I've read it; it's a vague piece of controversial documentation that doesn't tell me very much. How would my life change if this thing became law today? I'm not convinced my life would be any better.

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I'm an individual, but I do belong to many organizations. But I prefer to speak on behalf of myself and as a person who cares about other disabilities and about people not being discriminated against more than once, and that if a process allows someone to be discriminated against, the solution will allow that the next person will not be discriminated against. As this process sits right now—not the bill, but the process of human rights—the biggest problem is the fact that it simply allows for individuals to be paid off and pacified, but it doesn't solve real problems.

I'm an individual who belongs to organizations like the Canadian National Institute for the Blind, the Canadian Hearing Society and the Canadian National Society of the Deaf-Blind. As a member of these organizations and the ODA, I work with other people who have disabilities. We work together; we don't work against one another. The government assured that we have a better ODA, but they're taking away the very tools that make that happen.

I'm an individual who doesn't often speak out and I definitely know very little about human rights, but I learned a lot when I heard what people were saying, so I tried to read the bill and understand. I don't know the terminologies, but I am a person who last year filed a complaint, who last year settled my complaint by the mediation process. I want to tell you that wasn't a very pleasant process, not because of the commission but the fact that the city of Ottawa discriminated against me and I had to go to the Human Rights Commission because city council wouldn't change anything. In fact, two councillors told me, "Penny, we will change when the commission tells us we have to." Isn't that nice?

That's what discrimination is. That's what we deal with on a daily basis. That's why we keep seeing the same thing happen again and again. It's because people think it's okay to discriminate as long as you don't do it in a very mean way: Be nice about it, but you can discriminate; it's okay. This bill tells me that it's still okay. In fact, it's even better, because there's so little in this bill that would give me any reason to believe that it would be different. So it's controversial.

We need the right to public investigation. Let me ask the members of the committee something. If Christine gets harassed and wants to press charges, does she not go to the police force and get the police force to investigate? The commission is the same thing to me and my rights as the police force is to you, and yet you want to take it away. You want me to go and find my own way to do an investigation when the police force has the expertise.

When I went through this process, I thought it was just a person or a group of people—city council—who discriminated against me. It was the process and the investigation that helped me learn that they knew they were doing something wrong, so their lawyers went looking for something that would justify the wrongdoing. They dug out a policy and showed me, and sure enough the policy was discriminatory, but that's the policy they followed. That's the kind of thing that happens.

Christine would have the police force and the investigation process of that police force. That's the beginning, and then there's more as she presses charges; she's going to continue on. So the remarks made earlier today about doing away with some of this "uncomfortable" process—it's going to be uncomfortable to begin with, because it's not pleasant to be discriminated against and it's not pleasant when people treat you like that and they stand up and they justify their treatment by policies. I don't care about your policies. How does that feel? I wish you could be in my position.

We have to uncover the causes and the only way to really do that is through the investigation process, and as we go through it, we move from being subjective to being very objective. We take away from the personal feelings and we get involved with the facts of the situation, and the facts are the ones that tell the story. It doesn't matter what you said, it's the facts.

So 57% of people went to mediation and I was one of them. I go in and the city has a high-level official and he has a lawyer, and it was only me in that room and a staff person to make sure that we go through this process. When I said earlier that when you have this process—and what is being recommended or being offered to me isn't something that would help other disabled people. I was asked to maybe consider, "We'll give you what you wanted but it's just because we didn't realize you had so much to offer." I stuck to my guns and I said, "I want the policy changed." They said, "But Penny, we don't have to change the policy. We'll just allow you to do what we said you couldn't because we're sorry. You really are more intelligent than we thought." That was a slap in the face and I said, "No. I want the policy changed."

If I didn't have the tribunal, I could never have gotten my situation resolved. They weren't going to change the policy because it would have meant that they were going to have to do the same for people in that situation. Now that policy is changed, and it was a process. But if I didn't have the tribunal, if I didn't have that power—and I could sit there myself and say, "Okay, you don't want to change the policy. Then I guess we're finished with mediation, because I'm not settling for less than the policy. I don't want anyone else to have to come and sit in this room and feel really uncomfortable about you and your lawyer and high-level people, when you know you've done something wrong."

And it's so hushed up. It's very hushed up. When you do something wrong, you steal something, your name is in the paper; you feel the embarrassment. Do you know what happens to people who go to the commission and they have it resolved? Nothing. The public doesn't know what the city did to me. Nobody knows about it. There is no embarrassment. The mayor is not embarrassed that he discriminated against me—nobody even knows about it—and I am not really allowed to tell the story that much because I reconciled it. Now I'm a wonderful number in

the books of the 57% of people. Yes, I did, but it was because of my personality. If I had put most people into that room, they would have settled for being nice to you and giving you what you wanted and being told you're smart. I wasn't going that route, and I didn't. But that's what most people with disabilities would do.

The mechanism for the appeal process is something that is important. It's important in this process, as it is in any other. Even at the tribunal level, we have to be able to appeal it further to another court. The reason is because the lawyers and the commissioners can and do make mistakes. Why can't we admit that? Why can't we as people say, "You people may make a mistake? And just in case you do, we need that appeal process, in the same way we need it for civil law and in the same way we need it for international law." It's no different. Stealing is no different than discrimination. It's wrong. It has to be improved and it won't be improved if we're going to sit around and dip our fingers into soft, gooey stuff. We have to get hard-nosed about it. This government was going that route with the ODA and now it's turned completely 180 degrees going the other way. I'm not impressed.

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The current bill has addressed the issue of trying to make things go smoother and improve the time involved, but improving the time, unless you have real things happening—I can make beautiful numbers, but what actually happens isn't logical; people are still being discriminated against because real things didn't change. So having 57%—those are only people who were brave enough to go to the commission. That doesn't mean everybody who is discriminated against is going to the commission. I almost stopped going three or four times because I felt awful taking on the city of Ottawa. This is the city I live in. Why should I have to take on the city over something fairly basic? A lot of people back off. The 57% who get some kind of resolution through mediation could be a lot higher. But that mediation process, we should know what ended up. Was it really resolved or was it just people being pacified? The reason they're being pacified means we're going to continue to see the same thing over and over and over again. It doesn't get put into newspapers; nobody knows about it. That's another reason why it happens over and over again: There's no embarrassment involved here, as there is with other legal considerations.

Power to the people. Do you believe that? This bill doesn't give people the power. It doesn't give me any power. I wouldn't be able to say that no, I wouldn't settle for something, because I wouldn't know whether or not the commission would take it on to the tribunal. So I'm going to lose power. Power to the people: That's the way it's supposed to work, but it's not going to work with this bill if it goes through. That's what democracy is; it's power to the people, not to a group of people who may consider themselves to be experts. I want to be able to use a fully investigated process so that every time I say that, you think about your pocketbook. It's going to cost you if you have to do a brief. So therefore if I keep pushing and I know that you've got that cost or that economic factor, that's power and I can use it. And why shouldn't I be able to? But we'll lose that if we go the route of this bill. It's unfortunate.

On behalf of so many people who don't understand what's going on, who don't understand what will happen to them if they have discrimination against them, to the many, many, many people who never will go to speak out about what happens to them because it's a long process, and because it's long, it's intimidating—you'll always get those people. But we need to do something today so that fewer people are discriminated against. Discrimination is just like breaking traffic laws. It happens every day and it will continue to happen every day, but it certainly will happen less often if you take it seriously enough and put some real, hard-nosed ammunition, I guess you'd say, behind the Ontario Human Rights Commission.

I moved from BC and I'm glad I did because they've only got a tribunal and their tribunal is not working very well. I am proud to live here in Ontario and I am proud that I have the opportunity to address some people who may be able to do something. I will not be happy if the government can't listen to reason for the sake of money, for the sake of saving some dollars, when discrimination isn't getting better. It's improving, it's taking baby steps, but until the government really decides to get behind it and put some real money behind it—you've cut costs.

If I have a human rights complaint, I have someone help me fill out those forms, because they're not accessible on the website; I can't fill them out. Not only that, I didn't know the jargon. What's a complaintiff? What do these terms mean? Nobody tells you that; you're supposed to know it. So I had someone help me do that. Last year, it was cut in half, so by the time my complaint was registered, it was about three months after I actually started the process, because those people are overworked. The date shown isn't the date I actually went; it's about three months after I had told them about my situation. So we cut and we cut and we cut. But what are we doing to the lives of people when we do that? It's not a nice story; it's not the way I would like to see this community go. It's not a respectful way for citizens to be treated.

Thank you very much for your time and for listening. I've learned a lot in this process. I've learned a lot from ARCH, just before me, and some of what I said I probably would have said differently because I didn't have a chance to really think about what they were saying. But it's an interesting process for anybody to participate in and to be actively involved in. It's through exchange of ideas that we come to improve a system, as the consultation does. In a hearing, I don't get to ask any questions. It's not consultation; it's not the same thing. We should have the consultation back. This is not a consultation; it's a hearing.

The Chair: Thank you very much. You were right on; you used all your time. There won't be any time for questions.

BROCKVILLE AND DISTRICT ASSOCIATION FOR COMMUNITY INVOLVEMENT

The Chair: The next presentation is from the Brockville and District Association for Community Involvement. Good afternoon. You may begin. Before you start, if you could just state your names for the record.

Ms. Audrey Cole: My name is Audrey Cole. I'm a past president of the Brockville and District Association for Community Involvement. My colleague is Beth French, the executive director of the association. I'm going to ask Beth to start the presentation and then I'll continue.

Ms. Beth French: The Brockville and District Association for Community Involvement came into being in 1956 to address blatant discrimination. The association was formed by local parents of children with intellectual disabilities who, because of their disabilities, were denied access to that most important developmental phase of a child's life, a formal education. Ontario law at that time did not provide for the education of children with significant intellectual disabilities. The law was in fact written in a manner that clearly excluded them. Like thousands of families in this province and across the country, those parents set up their own school. They raised the money by bake sales, by selling flower seeds and by any means available to ensure that their children not be denied the right to go to school. It was 30 years before the provincial government finally enacted a law that guaranteed that right by requiring school boards to provide for the education of all children within their jurisdictions. The guarantee of its citizens' rights is certainly a slow process in the province of Ontario.

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BDACI is a local affiliate of the Community Living Ontario federation and a local member of the Canadian Association for Community Living. In its agency role of family support and coordination, BDACI assists 109 families with children under the age of 18, and 53 families with adult sons and daughters, and all of those individuals living in the family home. The support provided is individualized. Issues of dignity, respect and equality are key to ensuring the right of those children and adults to enjoy the fruits of inclusion in the life of their home communities.

This year, BDACI celebrated its 50th anniversary. Its membership continues a long tradition of speaking out for the rights and well-being of people with intellectual disabilities. It is for that reason that we appear today before the standing committee. We have concerns that Bill 107 has flaws. We fear that the bill, were it to be in force without amendment, could in the short term be inadequate to ensure optimal protection for the province's citizens.

It is not our intent that this be an exhaustive brief. Much of our reason for concern is shared by others involved in issues relating to disability who will be bringing or will have already brought those concerns to your attention. BDACI's intent is to highlight key issues that it sees as the most critical for people with disabilities and particularly those individuals and families it supports. Of particular concern to BDACI are matters relating to the sons and daughters of aging parents.

On that topic, which we will come back to later, we have a couple of particular concerns. One, these aging parents are individuals who have fought to build the Ontario that we have today and the kind of supports and services that people do enjoy, including the kinds of benefits that the Human Rights Commission would provide, and they find themselves in the situation where they have no promise of adequate supports for their sons and daughters were they to be no longer here, which is an inevitability. Secondly, there also is no provision for supported decision-making for their sons and daughters. That's a point that we'll come back to later that's quite relevant to Bill 107.

It is not at all clear to members of BDACI that Attorney General Michael Bryant's belief that enacting the Human Rights Code Amendment Act in fact "would strengthen Ontario's Human Rights Commission" and "improve access to justice for those who have faced discrimination and increase protection for the vulnerable" to the degree implied by his words.

It has been our observation that for some years now there has been need probably for reform and certainly for increased resources for the human rights system in Ontario. Although our direct experience with the work of the commission is dated, that experience engendered within BDACI a continued interest in Ontario's human rights system. It is against that experience that we have tended to measure its progress or otherwise over the years.

Twenty-four years ago, three Brockville area families, all members of BDACI, filed a complaint under the Human Rights Code. The three children of these families were denied access to a Catholic education by the Catholic school board, which was prepared to purchase educational services for those children from the public board but not to provide service within its own elementary schools. The families believed their daughters should have the same opportunities as their siblings for a Catholic education. Although in the considered opinion of the human rights system there had been discrimination, the school board appealed and that decision was overturned by Divisional Court in 1987.

Members of BDACI learned many things from that experience, including:

—that a complaint represents a massive investment of time and an emotional drain that most people with intellectual disabilities and their families can ill afford. Although the families appreciated the support of the commission staff, they simply could not have survived the long-drawn-out and arduous process had it not been for the personal support they received from their fellow members of the association, association staff and friends;

—that the results of the human rights process must be timely to be relevant to the claimants. Irrespective of the

final outcome, those children were already in high school by the time it was reached;

—that appropriate publicity and public recognition of the issues can be of greater value than the complaint itself. Although the Catholic school board had not been obliged by the process to accept the children with intellectual disabilities, it has since that time made extraordinary efforts to accommodate children with disabilities no matter how severe or complex their personal needs; and

—that, aligned with the above observation, individual complaints, given appropriate emphasis, can have quite a positive systemic effect, sadly, of course, at tremendous personal cost to the individuals who pursue the issue.

Ms. Cole: We're also concerned that perhaps our brief hasn't captured the issues with sufficient clarity, and we would like to reserve the right to do a final brief within the next few days to pick up the things that we think we've missed.

The problems faced by people with disabilities aren't individual problems at all; they're societal problems, and they can't be fixed by an individual complaint on an individual complaint basis. None of us would live long enough to see the world change if we had to do it solely on a complaints basis.

Although we believe that Bill 107 has some flaws and that the current system has even greater flaws, we welcome the opportunity offered in the bill for the commission to reinvent itself. A new kind of commission with a vision of a sharing and caring society and with the necessary resources to make things happen can lead Ontario to the point where eventually it won't ever need a Human Rights Tribunal. But that said, in the meantime we have to deal with the situation as it's presented in the bill.

One of the things that concerns us very much indeed is the fact that although the Attorney General talked about the reformed system being based on three pillars, one of which would be the revised commission—well, the reorganized, reinvented commission—and one would be the improved tribunal system, from a reading of the bill, we get no idea, no sense whatever, of the shape, substance or potential stability of the third pillar, which leaves us not only with the probability of an unstable system—wobbly legs, wobbly pillars—but also no legislated assurance at all, as had been promised, that appropriate legal support would be available to those who have been subject to discrimination or other human rights abuse in the process. In our opinion, that support is critical, and the three families referred to previously would certainly attest to that.

To our non-legal eyes, the proposed section 46.1 falls far short of a legislated commitment to the real, accessible and consistent support that individuals and families supported by BDACI would require were it necessary for them to approach the tribunal. The notion of going before the tribunal is intimidating. We've heard something about the intimidation of this whole process in the previous speaker. But without such support, it would be hardly possible.

Talking about the possibility of some kind of centre—by regulation or however it might be put in place—to people in small-town eastern Ontario, as we are, sounds like something obscure and far away. It seems to us that the legal and associated support that's needed must be more broadly distributed and more readily accessible than is implied by the term "centre," and entitlement to the appropriate support has to be entrenched right in the legislation. Its provision can't be subject to the whims of political interest and expediency.

We are concerned—and this was referred to by ARCH previously—about the makeup of the commission. It seems unfortunate that Bill 107 is silent on that because we would agree with ARCH wholeheartedly that because we know the majority of complaints relate to disability issues, it seems to make common sense that the commission has to consist of at least a majority of people who understand not only fundamentally the issues of human rights but particularly issues related to disability. From our 50 years of experience in our association, we suggest that there has never ever been a time when people with intellectual disabilities were not vulnerable to discrimination and didn't meet discrimination almost on a day-to-day basis.

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When we say that the commission has to have that kind of makeup, we also imply that it would mean the guaranteed provision of all the necessary support to enable participation, including participation of people whose voices must be heard by other means than spoken or signed or printed-out language. It's our experience that the more severe the disability, the less the expectation by others of both the right and the capacity to participate. That in itself is a form of discrimination. We also find ourselves totally opposed to the notion of a disability rights secretariat. The kinds of functions that we see in the bill relating to the secretariat are very well and ought to be, clearly, the functions of the commission. We need commissioners, not secretariat members, who gain the kind of knowledge and expertise in disability issues that are implied by those functions.

Also, the fact that subsection 31(4)(c) will subject the proposed secretariat to performing tasks and responsibilities prescribed by regulation sends the message that that body, that secretariat, were it to be in place, could take on a life of its own, should the political masters of the time so desire. That's inappropriate for a human rights commission.

We are forcibly reminded by the notion of this segregated secretariat of the attempt in Ontario by the Ontario government of the day to bring in a segregated Human Rights Code for people with disabilities about 25 years ago. Those of us with long memories will probably remember it. Despite attempts by Community Living Ontario in the 1970s to have intellectual disabilities put into the code, the government was willing only to include physical disabilities. In November 1979, there was first reading of Bill 188, An Act to Provide for the Rights of Handicapped Persons. It was the government's pragmatic

response to a political problem. Unwilling to risk opening the code to amendment, thus providing opportunity for the opposition to force inclusion in the code of age, sexual orientation and such things, the government devised a separate bill for people with disabilities.

On December 6, just a few weeks later, a coalition of over 60 disability organizations held a press conference in Queen's Park opposing the bill. The bill was withdrawn, but many of us felt at the time that the government had simply caved in to publicity while failing to understand why a separate disability system was so upsetting to those groups. But the point is that "separate but equal" is as "inherently unequal" today as it always has been. As with a separate code, we fear that the separate secretariat would actually diminish the equal status of people with disabilities. We sincerely recommend that section 31 be deleted. It's not in the interests of people with disabilities.

The enhanced role for the commission: Members of BDACI really welcome the opportunity for the commission to enhance its previous role and to become a true champion of human rights, thus expanding in Ontario and probably the country the horizons of human rights understanding. We see the commission as having the opportunity, for example, to look beyond the obvious and see the detrimental and discriminatory effects of practices not currently within the human rights purview.

One example of particular importance to many families, particularly families of people with disabilities of genetic origin, is the apparent inability of practitioners specifically and society in general to see the human rights implications of certain biomedical practices. On the one hand, we have a statutory human rights system predicated on respect for the dignity and worth of all people, and designed to protect a person with Down's syndrome, for example, from discrimination on the grounds of intellectual disability and, on the other hand, we have a statutory health care system which mandates certain tests and invests considerable resource in practices aimed primarily at eradicating such conditions, in effect, such people. The message here is devastating to the image and presence of people who live and thrive with such disabilities of genetic original. To families, the consequences of those practices can only be seen as discriminatory.

As previously implied, we have no sense from the bill of how we would support those people in the meantime, while our new Human Rights Commission is helping us to learn how to change society so there will be no discrimination. In the meantime, we have to deal with the fact that all we would have will be the complaint-based process. But there's no real sense of how that's going to happen.

ARCH has suggested that there has to be provision for the person who can't go himself or herself to make a complaint, who can't actually file a complaint, and suggested that perhaps there have to be provisions for a third party to offer those complaints. We would support that notion, the idea of community organizations getting involved in doing a third party complaint on behalf of the person who isn't able to do it themselves, because we don't see how else it would get done.

But there's a related issue for us that we wish to bring forward, because I don't think it will otherwise be addressed. We're concerned particularly about—

The Chair: One minute remaining.

Ms. Cole: Okay. We're concerned particularly about the process for an adult who wouldn't have the capacity to provide informed consent, who wouldn't be able to file on his or her own or authorize someone else to file or be deemed capable of instructing a lawyer.

Many people such as we have described in our organization have very supportive families and may also—and probably have—involved and committed social support services. We believe it's time for progressive thinking and that this is the one bill, the human rights bill, in which we could put in recognition of the reality and validity of supported decision-making. The concept of supported decision-making—the natural way we all make decisions—is particularly important to older families. After a lifetime of caring for their sons and daughters at home, they don't want to pass on and leave someone who is vulnerable to be put under guardianship simply because of the need to make a complaint.

The Chair: Thank you very much for your presentation.

ALLISON CORMIE

The Chair: Next is Allison Cormie.

Ms. Allison Cormie: If I run out of time, I have lots of one-page copies at the back of the room with 11 recommendations.

The Chair: You may begin.

Ms. Cormie: I'm a claimant of a human rights case and wish to support the goals of Bill 107 to change the process for dealing with complaints at the Ontario Human Rights Commission. My case has been before the commission for seven years without a hearing or even a decision to go to a hearing. In my experience of discrimination, this unacceptable delay has cost me my career, my means of livelihood, has damaged the evidence and caused severe financial distress to me and my family. Even now, after seven years, a meaningful remedy is nowhere in sight.

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I personally risked much to bring my case to the commission, only to find myself silenced yet again through its disenfranchising process. Case analyses and recommendations were being produced behind closed doors by anonymous individuals of unknown expertise, and without any input from me. This lack of control over my own case resulted in case analyses and recommendations that were in error and invalid, both in terms of the evidence and in terms of the basic principles of Canadian justice. These analyses were written as if vital documentary evidence did not exist at all. This included such things as my employer's harassment policy, my four

letters of complaint to my employer and its harassment officer, the extensive documentary evidence of the reprisals that followed, and an Ontario Labour Relations Board decision which determined that my union stood by and did nothing.

The commission has recently hired an expert from British Columbia, a law professor, who verified that on a number of accounts my case is valid. The professor agreed that the harassment I experienced while an assistant professor at a university did constitute gender-based harassment and discrimination, despite the fact that the perpetrator was female. This confirmed exactly what I had said to the commission back in 1999 and exactly what I had stated to my employer and its harassment officer in writing in 1997. The professor also recognized a pattern of reprisals that resulted from my complaints and described this as a second cause for relief. These reprisals were well documented and were described in three out of four written complaints to the university and its harassment officer. Despite reprisals themselves being contrary to the code, the commission did not even mention the issue of reprisals in two case analyses. In any event, one must wonder why, after seven years, the commission still needs an expert from British Columbia to help it to properly interpret the evidence and, as well, the Ontario Human Rights Code.

It is clear that my case ought to have been treated as a valid case by the commission from the outset, but it was not. Instead, I found myself having to fight with the commission itself for my right to a fair and equitable hearing, which I have still not received. Even with the expert opinion, I may still not receive a hearing.

My case is only unique in the sense that I managed to survive this long and have been able, twice now, to have the case analyses and recommendations overturned. However, this was only with the Herculean efforts of a top human rights lawyer and at considerable cost to me. The statistics demonstrate that the vast majority of cases are being dismissed inside a black box at the commission, without a hearing, without proper consideration of their merit and without investigation.

My experiences at the commission must be contrasted with those at the Ontario Labour Relations Board, where a decision was reached in my favour and against my union in approximately two years, and at a fraction of the cost to me. At the board I was allowed input into the decision-making process prior to a full hearing and was given direct access to the decision-maker. My lawyer and I sat in on all meetings, provided oral submissions, discussed the evidence with both the union and the decision-maker present and were able to respond directly and immediately to the union. Importantly, I was offered some control over how my own case was managed.

Meanwhile, the Ontario Human Rights Commission didn't even start its investigation until three and a half years after my complaint was filed. Then, during the next two years, it appears to have failed to interview any of my witnesses. After five and a half years, some of my witnesses confirmed to me that they had not been contacted by the commission. This meant that the case analysis was heavily biased towards the respondent's point of view. It is only now, seven years later and with a third investigator, that these witnesses are finally being interviewed. In the meantime, one of my witnesses has died of natural causes, without being interviewed. In a forensic sense, such delays are wholly unacceptable in terms of the manner in which they cause damage to the evidence.

Even after all this time, the results of the investigation won't be released to me so that I can make use of them at a hearing; the investigation is solely for the purpose of the commission. And if I go to the hearing, I have to start the fact-finding all over again, from scratch. I suspect that some of my witnesses may have refused to be interviewed for fear of reprisals, and based on my own experience, I would have to state that their fears are well founded. This highlights the need to protect witnesses from intimidation and reprisals throughout, while at the same time being able to compel their full co-operation with an investigation. After all, fear of reprisals on the part of witnesses should be considered by the commission to actually strengthen a human rights case rather than be used to weaken it.

The following examples from my own case demonstrate the hazards involved when decisions are made behind closed doors, inside a black box, and without any input from me—from the claimants in general. There were many instances of the commission being oblivious to the evidence.

In one instance, the commission agreed with the respondents that my case should be dismissed on a section 34 application because, according to the commission, my union had already adequately dealt with the matter. This was not true at all. In fact, the Ontario Labour Relations Board, after a full hearing, determined that my union failed in its duty to represent me. The commission was in possession of the board's decision but ignored it anyway.

In another instance, the commission claimed that the university lacked a clear policy for dealing with harassment. This was also not true. In fact, the university had a very clear harassment policy but chose to ignore it. The commission had a copy of this policy, and therefore such statements in its case analysis made no sense whatsoever.

In yet another instance, the commission illogically claimed that the university responded to my complaints in a timely manner. In fact, my complaints were completely ignored for two years, during which time I did not even receive a single letter to acknowledge their existence.

The above are just some examples of how my case was treated and undoubtedly represent how scores of others are treated as well; only in their cases, their cases are being dismissed without a hearing at all.

The oversights concerning the investigation and the documentary evidence would never have occurred at a tribunal or under any other circumstances where I and my lawyer were allowed input and access to the decision-

maker. This has already been tested at the Ontario Labour Relations Board where, after being allowed input, I won my case.

At the commission, just to prevent my case from being dismissed, I needed a top human rights lawyer willing to defer some fees. Such a requirement would clearly put justice out of reach for most human rights claimants. Most claimants are from a disenfranchised group to begin with and come to the commission with an imbalance of power. They have fewer resources than most respondents, who are often employers. In my case, I am a sole claimant against an army of respondents, and the university's lawyer, paid for by the university, is representing the perpetrator of the harassment.

One way that harassment and discrimination are allowed to continue is to silence its victims. My own personal experience with the current process at the commission has led me to conclude, and rightly so, that the vast majority of claimants arrive at the door of the commission, only to be silenced by the commission itself. Claimants are provided with no voice, no opportunity to provide oral submissions, no opportunity to publicly support their cases or challenge the respondents or speak to the decision-makers. In short, anonymous decision-makers are allowed to take total charge of a claimant's case and dismiss it without any input from the complainants. This total lack of control over their own cases amounts to a further silencing and disenfranchisement of claimants, most of whom are victims of legitimate human rights cases.

The statistics show that these intermediary processes inside the black box do in fact cause most cases to be dismissed. All of this inevitably supports the respondents and demonstrates to all that there are no consequences for harassment and discrimination.

It is clear to me now that in my case the university didn't even acknowledge the existence of four written letters of complaint because it made an educated guess that if I were to take my complaint to the commission, it would have nothing whatsoever to fear. Only with considerable resources and an excellent lawyer can one be expected to currently navigate one's way through the black box at the commission. Then, if I am one of the lucky ones and my case goes to a hearing, I have to start all over again from scratch to do the fact-finding, at yet more cost and more time for me. Even following a full hearing, a remedy can be indefinitely delayed when the respondents again use their extensive resources to appeal.

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Based on my own experiences at the Ontario Human Rights Commission and compared to those with the Ontario Labour Relations Board, I believe that the process at the board is how a system should look to a complainant or claimant. The current structure and process at the commission need to be fundamentally changed as proposed in general by Bill 107. The black box needs to be eliminated and all claimants provided with fair, speedy and cost-effective access to an impartial hearing at a tribunal. The decisions of this tribunal need to remain final.

I would now like to conclude by listing 11 changes that I consider important for creating a robust system at the commission and one that will actually protect human rights:

(1) Most importantly, provide all claimants with direct access to a hearing before the human rights tribunal. No one should be subjected to a commission investigation behind closed doors and with the lack of control that is inherent in the current process.

(2) Change the role of the commission from that of gatekeeper for dismissing cases to that of advocating for claimants and for human rights. This is needed to encourage victims to come forward and to correct an imbalance of power.

(3) Create a user-friendly, open and transparent tribunal process, one which encourages the full participation of claimants.

(4) Provide support, advice and legal assistance to claimants as needed throughout the process and codify and adequately fund this commitment through legislation. The government has just declared a huge surplus and now should have the money for this.

(5) Ensure that cases move expeditiously to a hearing following a fair and equitable pre-hearing process. Allow claimants during the decision-making steps to a hearing to make oral submissions directly to the decision-maker in an open setting.

(6) Ensure that the tribunal has a demonstrated expertise and sensitivity for human rights issues and knowledge of the basic principles of justice and fairness.

(7) Ensure that applications before the tribunal are initiated and concluded in a timely manner.

(8) Expand the powers of the tribunal to ensure cooperation by the parties in the fact-finding and evidence-gathering phase.

(9) Strengthen protections for witnesses and claimants against intimidation and reprisals.

(10) Ensure that the decisions of the tribunal following a full hearing remain final.

(11) Allow the tribunal to award both non-monetary remedies and significant monetary damages, with the latter in line with those achievable through civil litigation.

Thank you very much.

The Chair: Thank you very much for your presentation. We'll begin with the official opposition; two minutes each.

Mrs. Elliott: Thank you, Ms. Cormie. One of the presenters this morning spoke about the need for the commission to follow the rules of natural justice in conducting its investigation. Many items that you've listed here would seem to be in conformity with those rules: having an open and transparent process; allowing people to present themselves. Is that generally what you're looking at in terms of reforming the commission as it is?

Ms. Cormie: Definitely.

Mrs. Elliott: Yes? Okay.

Ms. Cormie: But also, some of the decisions really—there was an offset between what I expect to be a

principle of justice. For instance, an act of reprisal was described—I, my lawyer and also the BC law professor described it as an act of reprisal: Because I complained, I was investigated for misconduct and my complaint was never investigated, which the commission actually described as a fair and balanced procedure. It was just out of whack with any kind of concept of fairness.

Mrs. Elliott: As you know, Bill 107 will largely take away the investigative powers of the commission. Could you give us your opinion as to whether you think the changes should be as you've stated here, or do you think this new system, where you go directly to a tribunal hearing, would be better?

Ms. Cormie: I'm just wondering if you have my revised version, in which I do not mention investigation. I actually discuss using the tribunal and using the fact-finding at the tribunal in lieu of an investigation.

The Chair: Thank you very much. Mr. Kormos?

Mr. Kormos: How do you understand the delay to have been created? Surely, people didn't say, "All persons whose surnames end in C are going to suffer seven-year delays." I hope not.

Ms. Cormie: The respondents came to the commission with a great deal of power relative to me and one of the hugest law firms in Toronto, and they're putting forward objections to this and objections to that and filing—you know. They're able to create this delay. I have no other explanation than that of an inefficient process.

Mr. Kormos: You do have, obviously, the personal skills, the wherewithal, the financial resources to retain counsel, to retain one way or another the expert witness—

Ms. Cormie: Well—

Mr. Kormos: One way or another.

Ms. Cormie: I didn't retain that expert witness. The commission did, actually, in the end. The commission hired that expert.

Mr. Kormos: Oh, the commission. This is the BC law professor?

Ms. Cormie: Yes.

Mr. Kormos: That's a pretty valuable function, then, for the commission to have performed; isn't it?

Ms. Cormie: It is, but it seems to me that it was the job of the commission to actually come to that determination, to be able to evaluate a case. Why they had to hire someone from British Columbia when they're sitting there—they're the stewards of the code.

Mr. Kormos: I agree. There are professors all over Ontario who would have offered themselves up for a fraction of the fee.

Ms. Cormie: I have no idea why they had to do that. I think the fact that the perpetrator was female might have complicated the issue, but that really shouldn't have. If you're competent in human rights issues, that should not have complicated things.

Mr. Kormos: What stage is this at now? Where are you at now?

Ms. Cormie: We're on the third investigation, we have an opinion of the expert, and I still don't know whether I'm going to have a hearing. It could still be dismissed.

Mr. Kormos: Of course, because it will be if Bill 107 passes.

Ms. Cormie: Well, it won't be dismissed if Bill 107—

Mr. Kormos: You'll be sent back to point zero.

The Chair: Thank you, Mr. Kormos. The government side; Mr. McMeekin.

Mr. McMeekin: Thanks very much, Ms. Cormie. I'm particularly appreciative of the fact that you didn't just practise the politics of complaint; you actually came with some arguments about what you're for and the recommendations here. I want to have a chance to look at those.

I want to be clear, because I was intrigued with your language—I don't mean to imply that this is all inside baseball, but you talked several times about controlling your own hearing. I think I know what you mean by that, so I want to ask you, is there a difference between enhancing the hearing process—better communication, keeping people informed—and controlling your own hearing? My own sense is that a human rights commission, if it's working properly, has to be objective, and we're not arguing whether it was or not; okay?

Ms. Cormie: Yes.

Mr. McMeekin: I just wanted to get some clarification on your phraseology there.

And finally, I'm a little confused as to whether you actually favour Bill 107 with the changes or you're opposed to it.

Ms. Cormie: I favour it in the sense that it wants changes, big changes. However, I'm sure that the details and legalities of it are beyond my ability.

Mr. McMeekin: That's the inside baseball stuff.

Ms. Cormie: Exactly. When I talk about controlling it, I really do have to compare it to the Ontario Labour Relations Board, where there was a mini-hearing before the hearing to decide whether you're going to go to a hearing. I sat there, my lawyer sat there and the union sat there. The decision-maker was there. We all had an argument. If the union came up with a point, I could respond right away. I'm not advised—

Mr. McMeekin: So that was a good process.

Ms. Cormie: That was a good process—fair, open. I knew what was going on, for one.

Mr. McMeekin: So if we could replicate that, have some guarantee of replicating the essential goodness of that process in 107—

Ms. Cormie: I think that would be a valid process.

The Chair: Thank you very much, Ms. Cormie.

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LOCAL AGENCIES SERVING IMMIGRANTS

The Chair: Next is Local Agencies Serving Immigrants, Hamdi Mohamed. Good afternoon, Ms. Mohamed. You may begin.

Ms. Hamdi Mohamed: Good afternoon. My name is Hamdi Mohamed. I am the executive director of Ottawa Community Immigrant Services Organization. Today I am speaking on behalf of Local Agencies Serving Immigrants, which is a coalition of six major settlement agencies.

I want to start by thanking you for the opportunity to appear before you regarding Bill 107. This gives me a chance to speak to a very important issue that will have an important impact on the lives of Ontarians, particularly those most affected by discrimination. I must mention that I have been a proud Ontarian for the past 17 years. Ontario is my adopted home, after fleeing political persecution and coming here as a refugee. For this reason, the potential for the loss of access to justice under Bill 107 is deeply disturbing at the individual level.

First, I'm going to quickly tell you what LASI is, and then I'll start talking about my points.

Local Agencies Serving Immigrants, LASI, is a unique coalition of Ottawa's six major settlement agencies. These partner agencies are the Catholic Immigration Centre, Ottawa Community Immigrant Services Organization, Immigrant Women Services, Lebanese and Arab Social Services, Jewish Family Services, and the Ottawa Chinese Community Service Centre. These agencies were pioneers in the settlement and integration of new Canadians in this region. Some have been supporting new Canadians for almost 50 years now. Collectively, we provide a broad range of services and programs, including settlement support for immigrants and refugees, counselling, legal services, employment, prevention of violence against women, housing support and health services. Some of our staff provide support to immigrants who are struggling to deal with the trauma and pain of being victimized in making human rights complaints.

The Ontario Human Rights Code serves to create fairness and equality of opportunity for all Ontario residents and makes it illegal for anyone in the public or private sectors to discriminate against a person because of his or her disability, sex, religion, race, sexual orientation or certain other grounds. It bans discrimination in access to things like employment and the enjoyment of goods, services and facilities.

Created to enforce the code, the Ontario Human Rights Commission's most important duties include investigating human rights complaints and trying to negotiate a settlement. Human Rights Commission investigating officers have powers to publicly investigate discrimination complaints. In this sense, the commission is the most important public agency in this province, in our opinion.

The commission is a forum that has been accessed by racialized communities when an act of discrimination occurs, particularly when they experience racial discrimination or where race intersects with other grounds of discrimination. The general marginalization of immigrants and their increasing socioeconomic disadvantage has made access to the commission and its ability to protect fundamental rights guaranteed by the Ontario Human Rights Code critical. Being able to rely on a strong and independent human rights body to uphold their rights, and knowing that the commission will support them by investigating, helping them prove the case and assigning legal counsel and that they could depend on the accumulated expertise of the commission to help them navigate a very complex system put many at ease. This commission's investigative powers and its public interest role are particularly important in the context of 9/11 of increased prejudice and discrimination experienced by all racialized communities and Islamophobia experienced by Arabs and Muslims.

Bill 107 substantially weakens the commission's investigative powers and its public interest role. If a person has been discriminated against, they will have to file a human rights complaint with the Human Rights Tribunal. They must investigate their own case. Therefore, the proposed system under Bill 107, in our opinion, takes away guaranteed rights to investigation and legal support, and allows the tribunal to charge user fees.

As we agree with many concerns raised by community groups such as the AODA Alliance, I will only highlight points that are of specific concern with regard to immigrants and people we serve.

LASI's concerns with Bill 107: LASI welcomes change to the Ontario Human Rights Commission and we commend the government for its efforts to address the backlog of complaints in the current system and to improve a slow human rights enforcement system. However, while we agree the system needs to be substantially amended, we are deeply concerned with the potential of the proposed changes to substantially weaken the Human Rights Commission's core role of investigating human rights violations and prosecuting where evidence warrants.

By removing the commission's enforcement powers, we believe the proposed system under Bill 107 takes away guaranteed rights to investigation and legal support and allows the tribunal to charge user fees. This will impact the rights of all Ontario citizens and will have particularly detrimental implications for immigrants, who, because of their position in society, tend to be most vulnerable to discrimination and violation of fundamental rights. LASI is concerned that the decision to eliminate the investigative and prosecution process will deny access to justice to immigrants and racialized community members who experience racial discrimination.

LASI is particularly concerned about the following elements of Bill 107:

(1) No right to free investigation: The commission's power and ability to investigate human rights complaints is crucial for immigrants, who are often on the receiving end of multiple forms of inequity. Without the investigation and compliance functions of the commission, complainants will be expected to navigate the complex process on their own or hire a lawyer. It will be extremely difficult and onerous for many immigrants, who are socio-economically marginalized and lack the necessary resources to conduct their own investigations and

gather evidence that would be necessary to demonstrate that there has been racial discrimination and to convince the tribunal to refer their claim to a hearing or to succeed at a hearing. Meanwhile, they will be confronting the extensive and sophisticated resources that would be at the disposal of respondents such as corporate or state bodies. Even those who are able to investigate the complaint themselves would lack the commission's statutory powers of investigation. They will lose the commission's accumulated expertise in dealing with race-based and gender-based cases, and cases where multiple grounds are a factor.

In this case, we recommend that:

—the right to a free investigation to be conducted by the commission, including the commission's statutory powers of investigation and access to its accumulated expertise, be restored;

—Bill 107 should be amended so that it does not repeal the commission's powers under part III of the current code to investigate, conciliate and, where warranted, prosecute human rights complaints;

—Bill 107 should be amended to give human rights complainants the option of either taking their complaint directly to the tribunal or lodging it with the Human Rights Commission, with access to all the public investigation, mediation, conciliation and public prosecution powers and duties that the commission now provides.

(2) We are concerned about no statutory guarantee to free legal representation. Lack of free legal representation will shift the responsibility on to an individual victim and will contribute to further marginalization, pain and traumatic experiences for society's most vulnerable groups. The absence of a statutorily guaranteed right to publicly funded legal representation will prevent and deter many immigrant members of our communities from filing and pursuing legitimate claims in areas such as employment, housing, education and access to services.

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Immigrant communities, who may not have the same level of resources as the respondents, will have difficulties paying for a lawyer and will be forced to represent themselves against well-paid counsel if they can't afford a lawyer. These communities will be at a great disadvantage as they would likely be less familiar with a complex system and may often lack the knowledge and expertise required to mount a case. Claims of racism, which often raise systemic concerns, are complex and require extensive hearings, preparation and expert evidence. Complainants from these communities would not have the resources that are required and the disadvantage would be overwhelming.

For this reason we recommend that:

—section 46.1 of the bill be amended to provide that every human rights complainant has the right to publicly funded, effective legal representation by a lawyer in proceedings at the human rights tribunal from the outset of the complaint through and including all appeals and the enforcement of any tribunal order;

—Bill 107 be amended to require that government decisions over the funding of legal representation must be reported to and approved in advance by the Legislature; and

—Bill 107 be amended to require that a special all-party committee of the Legislature, with equal representation from all political parties, shall annually review the government's funding for legal services for human rights complainants and shall make recommendations to the Legislature regarding the level of funding for the following year.

The third concern we have is expanded tribunal gate-keeping functions. Bill 107 will see complaints moved directly to the human rights tribunal, which will then do the investigation and issue the decision. In addition, under Bill 107 the grounds for dismissing a complaint are expanded, and the tribunal will have the power to dismiss cases without ever moving forward. This, coupled with the lack of guaranteed legal representation, means that access to justice for members of these communities will be severely reduced.

Immigrants, refugees and members of racialized communities will not have an absolute right or direct access to a hearing, as the tribunal will now have the gate-keeping power to dismiss a complaint without a hearing. Whether the Human Rights Commission or the tribunal carries out the gate-keeping function, the entire system requires an immediate restoration of the funds that were cut by the previous government. The system in general would require a long-term commitment to maintain, if not increase, the restored funds so that complaints are not summarily dismissed because of lack of resources.

We also recommend that:

—all complainants opting for direct access to a hearing will get a hearing within 90 days of filing their claim, that the tribunal can't dismiss or defer a case without a hearing, and impose enforceable deadlines for major steps in the proceeding; and

—hearings are conducted in a fair manner, e.g., stop the tribunal, the judge, from also being the investigator.

The fourth concern we have is the reduction of the commission's public interest role and ability to address systemic discrimination.

The key function of the code and the commission is to represent the public interest in resolving human rights violations. Under the current code, the Human Rights Commission has broad powers to investigate any kind of violation of the Human Rights Code. It is built on the fundamental foundation that human rights violations are a public wrong, not just a private injury inflicted on a private individual. Its integrated function ensures that cases that proceed through the system are dealt with for wide-ranging policy considerations, legal implications, opportunities for public education, and with an eye to the public interest component. This means that both individual and substantive societal remedies are effected, thus having a stronger potential to prevent and eliminate discrimination on a broader basis.

Under Bill 107, the commission's power to launch and pursue systemic complaints at the tribunal will be subject to the tribunal's veto. This will significantly curtail its

public interest role and ability to effectively address systemic discrimination. Therefore, removing the commission's role in dealing with individual complaints severely hampers the fight against systemic discrimination. It creates a false distinction between individual and systemic complaints, as individual discrimination claims often involve broader and deeply rooted systemic problems. In the context of increased hostility, racialization and anti-immigrant sentiments, the commission's public interest role is more critical than ever.

Therefore we recommend that:

—Bill 107 be amended throughout to remove any reference to "systemic" issues, discrimination or cases as a criterion for any case, remedy, proceeding or jurisdiction;

—section 36 of Bill 107 be amended to permit the Human Rights Commission to initiate its own complaint in any case, regardless of whether it is a systemic case and not subject to any additional requirements;

—Bill 107 be amended to provide that no party can challenge the Human Rights Commission's decision to initiate its own human rights complaint as long as the complaint is within the code's overall jurisdiction;

—Bill 107 be amended to ensure that when the commission initiates its own complaints, it has all the investigation powers it needs;

—section 39 of Bill 107 be amended to give the Human Rights Commission the right to intervene in any case before the tribunal and to require the tribunal to forward to the commission a copy of every human rights complaint filed with the tribunal;

—section 43 of Bill 107 be amended to enable the commission, when it launches its own human rights complaints, to seek remedies not only regarding future practices but also for past discrimination, including all remedies now available under the current code and any additional remedies that are otherwise made available under any expanded remedy power to be provided in a strengthened Bill 107;

—section 42 of Bill 107 be amended to substantially broaden the power of the tribunal to issue strong remedies to prevent future acts of discrimination and to provide that remedies—

The Chair: One minute.

Ms. Mohamed: I'm almost done—are available which derive from the evidence at the hearing, irrespective of the subject matter of the complaint.

We also have concerns about the introduction of user fees and legal costs, but you have the submission—I must mention that the submission is still a draft; I will forward the completed one in the next little while—so I'm just going to skip that.

In conclusion, the Ontario Human Rights Commission plays a critical role in assisting individual victims of discrimination and is very important to all Ontarians. Bill 107, the Human Rights Code Amendment Act, weakens the commission's investigative powers and will take away the complainant's fundamental right to a publicly funded investigation. By forcing the complainants to investigate and prosecute their own complaints, the proposed changes will lead to the privatization of human rights and deny access to justice. Removal of the commission's power to investigate and prosecute claims of discrimination is particularly problematic for immigrants, who because of their socio-economic situation will not be able to afford legal representation and may be forced to navigate an unfamiliar and very often complex system on their own.

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We urge the government to put this proposal on hold and engage in broad public consultations. A thorough and meaningful consultation with the public is needed to find ways of strengthening the Ontario Human Rights Commission. We recommend consultations with those most affected by discrimination by virtue of their gender, race, economic status, national status, disabilities etc. in our society. To continue to live in a democracy where justice and discrimination are condemned and where pluralism and diversity are respected, Ontarians need a human rights system that is completely accessible to all people who face discrimination and need to be protected.

Thank you for your consideration.

The Chair: Thank you. That was right on.

MYALGIC ENCEPHALOMYELITIS ASSOCIATION OF ONTARIO

The Chair: The Myalgic Encephalomyelitis Association of Ontario. You may begin.

Ms. Margaret Parlor: On behalf of the Myalgic Encephalomyelitis Association of Ontario, I would like to thank you for the opportunity to appear before this committee. I am coordinator for youth and education issues for the association, a position I have held for three and a half years. My presentation focuses primarily on our efforts during that time to break down barriers to education for young people with ME and other chronic illnesses.

This weekend, I had the good fortune to meet a young man who is starting a career as an opera conductor. He was studying the musical score of a Puccini opera, preparing to lead rehearsals in two weeks' time. The conductor's score has about a dozen lines on each page, showing the parts for the various wind, brass, string and percussion instruments, along with the parts for the singers. His job, he explained, was to bring all the various parts together into a meaningful performance.

I could not help but think that there are strong parallels between his efforts to bring together the various parts of the opera and the exercise we are going through today. We have a human rights system that has a number of players, including educators, health professionals, the accessibility directorate, the commission and the tribunal, along with support groups and organizations such as our own. If we perform well together, we have a good system. If we do not perform well together, the system does not function for those it is supposed to serve.

ME is a syndrome, meaning that it is a pattern of symptoms. The pattern is instantly recognizable to those

familiar with it but baffling to those who are not. Unfortunately, not enough people are familiar with ME. Someone can be ill with ME for years without getting a correct diagnosis and thus not be receiving the appropriate medical and social support.

There are seven requirements for a diagnosis. The formal criteria are found on the last two pages of the package I handed out and are available on our website. Let me run through them very quickly, paraphrasing them somewhat.

(1) There is physical and mental fatigue that reduces activity levels, generally by 50% or more. This does not mean that people operate at half speed. For short periods of time, they may operate at full speed, but this cannot be maintained.

(2) Requirement 2 talks about post-exertional fatigue or malaise, which means that overexertion can lead to a worsening of symptoms, a worsening of the condition of the person. This is why we are so concerned about the new mandatory policy on daily physical activity in schools.

(3) Sleep disorder is present, meaning this condition cannot be fixed easily.

(4) Pain is present.

(5) There are neurocognitive difficulties in evidence. As with activity levels, these can be variable. There may be periods of clear thinking and periods of brain fog.

(6) There are other varied symptoms of the autonomic, neuroendocrine or immune systems.

(7) The symptoms must endure for at least six months for adults and three months for young people.

"Myalgic encephalomyelitis" was the name given to this group of symptoms in the United Kingdom, while "chronic fatigue syndrome" was the name adopted in the United States. The name "chronic fatigue syndrome" oversimplifies the illness by referring to only two of the seven symptoms. Chronic fatigue that comes from lifestyle choices is very different from what we are talking about here.

There are other conditions that have a similar pattern of symptoms. They should be ruled out before a diagnosis of ME is made. One in particular, Lyme disease, has become very troublesome. Lyme disease is a group of infections transmitted primarily by ticks. If untreated, it can lead to chronic illness or death. The medical profession thought it knew how to recognize Lyme disease. However, it is becoming apparent internationally that the criteria used for diagnosis are fraught with problems and that a significant number of cases have been missed. The issue may be particularly severe here in Canada because conventional wisdom states that there are infected ticks only in a few specific, known locations—an assumption that has been shown to be quite wrong. We hope that the Ontario health system jumps on this issue immediately to raise awareness of the potential seriousness of tick bites, to encourage early diagnosis and to go back and help those who currently have undiagnosed, untreated chronic Lyme disease.

Back to ME: The Canadian Community Health Survey, cycle 2, in 2003, found 133,000 Ontario adults with ME, representing 1.5% of the adult population. This is roughly the prevalence of Alzheimer's, and well above the prevalence of AIDS, MS, breast cancer and many other better-known and better-supported illnesses.

A UK study in the late 1990s found ME to be the leading cause of long-term school absence, well ahead of more likely suspects like cancer, psychiatric issues or injuries. We have to be very cautious in using the rate found in the study, but it does suggest that several thousand students in Ontario are affected.

ME has a high sickness impact profile. Australian researchers have found that those with this disorder have more dysfunction than those with multiple sclerosis and that in ME the degree of impairment is more extreme than in end-stage renal disease and heart disease. A recent US study found that each case of ME resulted in a US$20,000 annual loss of productivity for the family. Collectively, it has a substantial impact on the whole economy.

Treatment for ME is to live within one's limits and to work for recovery. Hospitalization is rare. Patients are more likely to be partially or completely homebound. A young person who is homebound would not have access to either hospital-based or school-based education programs, which is where the crunch comes in. The prognosis for young people with ME is fairly promising.

The Environmental Health Clinic at Women's College Hospital is the Ontario focal point for ME, along with fibromyalgia and multiple chemical sensitivities. It has an annual budget of around $400,000, a paltry amount considering the challenges it faces. The clinic does not serve children. There is no clinic for children.

Society is uncomfortable with childhood illness, especially ones that are poorly understood. Families, just when they need support, are suspected of being part of the problem and can be reported to the children's aid society.

We have identified three key educational issues. Number one is awareness of ME among educators, number two is the issue of qualifying for special services, and number three is the availability of suitable programs. We're talking about part-time school or homebound schooling, which can comprise visiting teacher, correspondence, Internet courses and so on. These programs must be accompanied by curriculum modification or a reduction in the amount of work. A young person who is at school only halftime would otherwise take eight years to complete a four-year high school program.

1520

We believe it is important for the education system to become familiar with ME for several reasons:

—The education system is in a very good position to recognize cases since, unlike health professionals, the education system sees students for extended periods.

—Educators would treat students with ME with more sensitivity. Incorrect labelling—words like "unmotivated," "defiant," "attention deficit" and so on—would be avoided.

—Better decisions would be made around appropriate accommodations and better decisions would be made

around activities to be avoided, like overexertion. And there is a question about whether immunization is appropriate for students who already have compromised immune systems.

Now let us look at some of the provisions in place which are supposed to protect access to education for young people with ME:

—The Ontario Human Rights Commission has confirmed that ME is a disability protected under the code and that students with ME have a right to access educational services.

—The commission has published guidelines for accessible education, outlining roles and responsibilities.

—The Education Act promises access to education for all young people in Ontario.

—The Ministry of Education requires all school boards to complete special education plans every year, outlining how exceptionalities are recognized and served.

—The Ontarians with Disabilities Act requires the ministry and boards to complete accessibility plans every year.

—Our national association has compiled a sourcebook for teachers of students with ME and fibromyalgia. I should mention that this document is only available in English; we have not found the resources for translation.

This is an impressive list; it looks good on paper. So where is the system breaking down? The problem starts around the categories of exceptionality.

What is an exceptionality? The education system is based on assumptions that students can see reasonably well, that they can hear reasonably well, that they can learn at a relatively average pace and so on. One key assumption is that students can attend and concentrate full time, and if the student misses school, he or she can make up the time. Students with ME have, at most, 50% of normal activity levels. Thus, they can be active, at most, six or seven hours a day, and that's the best case. Subtract activities like dressing, eating and transportation to and from school, and you can see that schoolwork will inevitably be affected. ME students, then, do not have energy reserves to catch up when they fall behind.

There is no category of exceptionality in Ontario for this circumstance. There is such a category in the United States legislation called "other health impaired."

We believe chronic illness or activity limitation should be a separate category of exceptionality. The previous minister suggested ME could be considered a physical disability. This idea could possibly work if there were a common understanding across school boards. We asked the ministry to notify school boards of this broader interpretation of the physical exceptionality. The ministry declined to do so. We simply cannot understand why. In the end, we notified boards ourselves. We are not sure we had much effect. The message would have been much stronger coming from the ministry. School boards are responsible to the ministry; they are not responsible to the Myalgic Encephalomyelitis Association of Ontario.

If school boards could not be nudged into considering the needs of chronically ill students through the categories of exceptionality and the special education plans which follow from there, we hoped to alert them through the ODA plans. The ODA requires boards to complete annual plans showing how they will improve accessibility. Unfortunately, the tool kit prepared for school boards did not consider chronic illness at all. We asked that the tool kit be amended and even submitted suggested changes. That was a year or two ago. Changes have not been made.

Now I'll give you a positive note. The Ministry of Education did compile information on home instruction policies from across the province. The study showed a variety of approaches, few, if any, of which would address the needs of students with ME. The ministry has indicated it will discuss the findings with boards this fall.

A number of human rights abuses have been reported to our organization. I have actively encouraged families to submit complaints. I was not aware of the ARCH report, which recommends that complaints not be filed; I actively encouraged them. Every single family I suggested this to refused to submit a complaint. Something is going on that I do not fully understand. I think it might have to do with the imbalance of power between families and the school system. Families do not want to upset schools because they feel there are no alternatives, that they have to maintain good relations despite the costs. They may fear retribution for their disabled children and the siblings. In some cases, the relationship between a family and the school had broken down completely and families resorted to home-schooling. In that case, why fight to return a student to a situation where he or she is not welcome? The provisions in Bill 107 to change the complaint process may have value, but we suspect that our families will still not use them to enforce educational rights.

Our issues are systemic rather than individual cases. The investigation process would appear to be a better strategy, so let's take a look at it.

On July 8, 2005, the commission announced an investigation of the Toronto District School Board regarding the implementation of the Safe Schools Act. On November 16, a couple of months later, the commission announced an agreement with the Toronto District School Board. The agreement put forward a number of initiatives to deal with the discrimination experienced by students—initiatives around awareness, staffing, monitoring, policy review and so on. This is a superb management framework for addressing the issues. It demonstrates the excellent understanding that the commission has of disability issues and how they might be addressed in a systemic way. It was music to our ears. We would love to have the same kind of integrated strategic plan for students with ME. It would make such a difference. However, in the same July 8, 2005, announcement, the commission said that it would also investigate the Ministry of Education. More than a year has passed. We have seen absolutely nothing. This is very discouraging. If this process is taking so long, we wonder how long it is going to take us to convince the government

that changes are needed to serve young people with chronic illness.

Based on the excellent work of the commission, we are supportive of an enhanced investigative role for the commission. However, we question whether this will do any good. Our experience is that the system blockages are occurring beyond the control of the commission. Ministries are not accountable to the commission; they are accountable to the provincial Parliament. Part of ministerial accountability should be adherence to the code. This, we submit, is a crucial issue for the justice policy committee to address.

As you conduct your hearings and deliberations, we ask you to consider not only how the commission and tribunal might be modified, but how the human rights system works as a whole. Human rights are not the sole responsibility of the commission and tribunal. Everyone needs to work together to make human rights a reality.

The Chair: Thank you. There's a minute each. We'll begin with the official opposition.

Interjection.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly, Ms. Parlor—a fascinating introduction to an issue that most of us have not had a great deal of exposure to.

I encourage you to not be overly harsh with the commission in terms of its investigation of ministries, because ministries, once they're under investigation, will circle the wagons. They'll lock and bolt the doors. The troops will be called out. They'll be lining the parapets and there will be pots of boiling oil in anticipation, whether it's of staff from the commission or even the public auditor. The public auditor has expressed concerns about accessing ministries, never mind the Ombudsman, Mr. Marin.

Having said that, I appreciate your interest in encouraging families to submit complaints. That's an important thing, because the more that the commission hears complaints, the more they then begin to identify the systemic quality of the problem. So, in my respectful submission, it's naive to tell people not to make complaints. It's important that complaints be made.

We perhaps have to—not perhaps. I'm sure the commission needs more resources. They perhaps need some stronger guidelines in terms of time frames and how it does stuff. But I for one think the commission's role has great value. I appreciate your input here today.

1530

Ms. Parlor: If I did not make myself clear, we very much appreciated how quickly the commission stepped forward to confirm that ME was protected. We very much respected Guidelines to Accessible Education; we think that is a very fine document. And we think the agreement with the Toronto District School Board is a very fine document also.

The Chair: Thank you. The government side.

Mrs. Van Bommel: I've heard of fibromyalgia, and ME is something new. Is there a difference between them?

Ms. Parlor: Very much.

Mrs. Van Bommel: What is the difference?

Ms. Parlor: I'm sorry. Let me not say "very much." They very often overlap. The National ME/FM Action Network, under guidelines set up by Health Canada, established two panels of expert doctors, and they came up with diagnostic criteria for ME and diagnostic criteria for FM. You can read them on the ME/FM Action Network website, mefmaction.net/.

To qualify for ME, you have to meet these seven requirements. To qualify for fibromyalgia, it's focused on widespread pain and a test of pain when tender points are pressed. It's a package beyond that. With fibromyalgia, if you pass the tender point test and you're diagnosed, then there are certain other symptoms that are very common with that. That's well documented on the site.

Mrs. Van Bommel: Because I do know that fibromyalgia patients also suffer from chronic fatigue.

Ms. Parlor: As far as I know, there is no active provincial association for fibromyalgia right now. We do work on behalf of young people with fibromyalgia as well.

The Chair: Thank you for your presentation.

YAVAR HAMEED

The Chair: Next up we have Yavar Hameed. Good afternoon. You may begin at any time.

Mr. Yavar Hameed: Good afternoon, panel members. First of all, I'd like to thank you for giving me this opportunity to present. What I've handed out to you is a brief series of recommendations that I have put together. I'll just give you a moment to receive that.

The Chair: You may begin.

Mr. Hameed: Okay. Sorry about that.

I guess by way of preface, to understand where my comments are coming from, I'm a member of the private bar here in Ontario. I am here in my personal capacity as a lawyer representing my law firm. I specialize in matters dealing with human rights. I thought that this is an issue definitely of public importance and certainly of importance to me. It's in that context in which I come forward.

I understand that you have individuals coming forward from different organizations, as well as legal aid, who will be giving you part of the picture. What I'd like to do is complete that from a private bar perspective, but perhaps throwing in a bit of a twist.

Maybe I can start with this, and it's not anything that you wouldn't have heard already. We know that the current process, as it exists before the Ontario Human Rights Commission, is bottlenecked. There are delays, and justice delayed is justice denied. I think it's that perspective which this government takes to loosening that bottleneck and moving things forward. The purpose of my comments today is perhaps to give pause to that laudable objective of receiving justice and doing so in a more immediate time horizon, but bearing in mind what the function is of protecting and preserving the public interest.

Before I get into my more substantive recommendations, the public interest is something that, as you know, the Ontario Human Rights Commission protects, it has protected and it is one of its functions, given the intrinsic nature and importance of human rights to our society, and internationally as well. What we're faced with here, in the context of Bill 107, is the opening of the door of accessibility directly to the tribunal. In some senses this is releasing that bottleneck, but effectively what we're doing—there shouldn't be a mistake—is that we're also deferring that bottleneck to somewhere else, before the Ontario Human Rights Tribunal.

Without casting aspersions on the intent and the objective and the motivation of the Ontario Human Rights Tribunal—I think it's there and it will attempt to make the process as efficacious as possible—the Ontario Human Rights Tribunal is not the Ontario Human Rights Commission, and the difference there is that we're talking about an adjudicative body versus an investigative body which has as part of its mandate to protect the public interest. By severely limiting the capacity in which the Ontario Human Rights Commission is able to protect the public interest—that is to say, limiting it to complaints of a more systemic nature—in a sense we've hamstrung the ability of that body to protect the public interest and, in a larger sense, for the public interest to be protected at all. That's sort of the foundational principle of my submission. Whereas I agree that there needs to be some form of attenuation of the existing system, how can we do that without completely gutting and completely undermining the very important principle of protecting the public interest?

Moving to my recommendations, as part of this government's commitment to the public interest in terms of both ensuring access to justice and accessibility, we also want there to be adequate funding and resources for individual complainants before the Ontario Human Rights Tribunal. As a general principle, no matter which way you go on this legislation—I think other groups would have said it and I'm simply reiterating what's been said because it's so important—there needs to be some kind of mechanism of funding put in place, something concrete, not a general abstract notion of agreements that can be entered into or funding in theory, but there needs to be funding in practice. This needs to be contextualized against a backdrop of the limited funding resources and capacity that we're faced with. So if we are taking away from one pot, which is the Ontario Human Rights Commission, we just need to be cognizant that there is not an unlimited fund to deliver funding before the Ontario Human Rights Tribunal.

1540

As a lawyer practising in the private bar, I tend to think that there is something laudable about opening the doors to accessibility, but at the same time accessibility must mean meaningful access. So I leave this question for you to deliberate about—I believe the South Ottawa Legal Clinic is going to speak to this matter as well—but we must bear in mind the burdens that are already being borne by legal aid clinics. We have no idea what the road map is going to look like when this burden is deferred to legal aid, when it's just thrown out there into the void. I would love it personally, as a private bar lawyer, if I could simply go to legal aid, have my clients apply for a certificate and represent before the tribunal. I somehow am skeptical that that's going to happen with the kind of ideal notion of accessibility that we would like, given what I'm sure you know about the financial burden and cost of litigating any case before the Ontario Human Rights Tribunal. So these are things that need to be foremost in your mind. Bill 107 doesn't have a plan for financing and funding individual complainants before the tribunal and that's simply not acceptable.

The next points, I would say 2, 3 and 4, are consistent with my comments by way of preface in terms of the public interest, and that is to say that one of the things you're well aware of in terms of the amendments proposed under Bill 107 is that the commission in the main is to maintain its role with respect to advocacy against systemic discrimination. But how does the commission know which complaints are systemic and which are not? Often what happens in the existing system is that the commission assists in articulating what the systemic nature of a complaint is as a complainant attempts to define what the issue is. In that sense, I would say that at the very least the commission, in whatever form it takes, needs to be given notice. It needs to know what complaints are passing through the system. I think that's important and is simply in furtherance of what's already there within the context of the amendments.

Thirdly, giving the Ontario Human Rights Commission the capacity to have standing before the Ontario Human Rights Tribunal: This is a legal issue. I don't specify the dimensions of what that standing needs to mean, but I think at a very basic level the standing at least should be there. That is to say that the Ontario Human Rights Commission should be at the table or should have that capacity to come to the table to deal with complaints as the protector, as the purveyor of the public interest—an adjudicative body just simply can't do it—in order to maintain any semblance of even-handedness. That's just not the role of the Ontario Human Rights Tribunal. So we need to, as point number 3 suggests, have the commission there to at least articulate issues of public importance through the process or at least at the outset of the process or at critical junctures. There are a lot of questions to be answered, but I think it would be an error to completely extract the commission from having a role before the tribunal.

Fourthly, and this is something that I did not develop single-handedly but in consultation with some of my colleagues who have had experience in dealing with the commission, with the delays of the commission—I'm not sure if you would have heard this kind of suggestion before, but sort of an attenuated idea of an investigative capacity of the commission to say, "Is there a way that we could maintain the commission, maintain its commitment to the public interest and at the same time streamline the process?" Those persons who are very firm

believers in the importance of the investigative process will say that you can't have this middle-of-the-road type of perfunctory investigation; it's not adequate. It doesn't allow the commission to do its job.

I guess the essence of this proposal in number 4 is in cognizance of the context in which we are right now. If we have to move forward, if we have to somehow decrease the hurdles, the obstacles that are creating the bottleneck, is there something we can do, short of completely gutting and eroding the body that protects the public interest? So by number 4, what I refer to there is some kind of threshold, a lower threshold. I refer to the reasonable and probable grounds standard, as you probably know from cases of criminal prosecution. In that case, those of you who have been exposed to that system, it's a bare threshold and it's one that by and large will allow charges to pass muster at a preliminary stage to get in the door.

What this would avoid, I guess, is, again, deferring that process of gatekeeping from the Ontario Human Rights Tribunal. Because again, and I emphasize the point, the Ontario Human Rights Tribunal is not there to protect the public interest—it simply can't be—so in this sense, again, a scaled-back version of protecting the public interest, but it's still there with respect to keeping that alive within the Ontario Human Rights Commission.

A fifth point, which is more of a nuanced point: I know this came out in the more recent Cornish paper as an issue to look to, and it's one that has particular significance to my practice, and that is to say that Bill 107 essentially—I believe it's under section 35; I'm not sure—forces the individual to make a choice of procedures. One of the pitfalls of that process is that effectively or implicitly what the Legislature is doing is eroding the capacity of individuals to take claims forward based on section 15 of the charter.

In a federal context, the federal court has dealt with this issue in a case called Pereira several years ago. I think it was quite aptly put out in that case that the intrinsic nature of human rights and equality protections that are set out in the charter should not be eroded by another parallel, albeit very significant, process. We don't want to erase that availability process for individuals. I think that's significant to keep that alive in terms of where individuals might have recourse in terms of availing of their charter protections.

In summary, then, I would simply say that we should really take a long look and take a step back before we consider doing this step or this proposed amendment, which will undoubtedly have dire consequences for our system. We simply don't know what will happen in the future. I think there is certain optimism on the part of all actors and stakeholders that the new system may be better, may be more efficient, but at a fundamental and conceptual level, we simply can't be deluded into thinking that the newness of the process can be a surrogate for the protection of the public interest. So in that regard, I would urge you very strongly to reconsider a sweeping erosion of the commission's purview and mandate, and think more along the lines of how the commission may be tailored to maintain that public interest role that no other body can protect.

1550

The Chair: Thank you. We have about a minute each, beginning with Mr. Kormos.

Mr. Kormos: Thank you, Mr. Hameed. You've got to understand, just like Mr. Zimmer and his colleagues get paid a fair amount of money—not a lot, but a fair amount—to get the pompoms out and cheer this legislation, we get paid a similar amount of money to criticize it. But I've got to tell you, two parts of this bill that just scare the daylights out of me are that "the tribunal shall adopt the most expeditious method of disposing of an application on the merits," but the tribunal also may create rules which "limit the extent to which the tribunal is required to give full opportunity to the parties to present their evidence and to make their submissions." Yikes. That is scary stuff.

They're being told that it's got to be the most expeditious way. Well, we can speed things up all right. We'll grease this pig and slip it through in the dark of the night. We can require people to present evidence by way of affidavit, to restrict those affidavits to two pages; in the case of submissions, to limit submissions to 10 minutes. The tribunal has the capacity to make those rules. What, 2,400 complaints a year, all going directly to the tribunal, according to these guys? Horse feathers. A tribunal with these powers will make short shrift of due process for complaints. I'm worried about that. You may not be, but I'm particularly worried about that kind of stuff. I'm worried about the lack of the commission's role.

The Chair: Thank you, Mr. Kormos. The government side?

Mr. Berardinetti: Thank you for your comments. It was quite a thorough presentation. It was good to hear from a young lawyer who is practising in this area.

The Chair: Mrs. Elliott.

Mrs. Elliott: I also really appreciate your unique perspective as a legal practitioner in this area. I appreciate your comments with respect to the weakening of the commission's role in the new legislation and share your concerns.

Some groups have recommended that people have a choice whether to proceed directly to the tribunal or to go via an investigation with the commission. Could you just give us your thoughts on whether you agree with that or not?

Mr. Hameed: That's a very tricky question, in the sense that if we agree—I think at some level we will all concede that the public interest aspect of human rights is intrinsic, is very important—is this something that simply should be left up to the individual to decide on a case-by-case basis? What we do by relegating that to the individual is completely absolve ourselves, from the perspective of government, of ensuring and protecting that public interest role. I guess part of my submission—it's nuanced—is to say, how can we maintain that fundamentally, at a baseline level, keeping in mind concerns of

efficiency, and not simply say to that individual, "You decide whether the public interest will be upheld or not"? The public interest is a different and discrete thing from individual cases.

I don't know if I can expand for 30 seconds on this.

The Chair: Time's up. Thank you very much.

MARIA YORK

The Chair: Next up is Maria York. Good afternoon.

Ms. Maria York: Good afternoon.

The Chair: You may begin.

Ms. York: My name is Maria York. I appeared in front of your colleagues in February of last year. I spoke about Bill 119. At the time, I spoke on behalf of the Canadian Council for Injured Workers and I made certain proposals which are along the lines of what the new bill proposes.

Specifically, on behalf of a group of workers and myself, as a person who has a lot of experience with the Ontario Human Rights Commission and the Canadian Human Rights Commission and numerous processes of the tribunals, I recommended direct access to the tribunals for individual citizens. From my perspective, that is a requirement for the system of enforcing human rights in Ontario and in Canada to be compatible with the Universal Declaration of Human Rights and, based on a layperson's understanding of the charter, which is a very simple law, from my perspective—equal rights for everybody—the requirement under the Constitution that people who are pursuing human rights complaints have access to the tribunals.

I began the process with a complaint on behalf of a worker and his family in May 2000. This took me through a process that is incredible, unbelievable, and I came here to tell you how unbelievable this process is if you want to listen. I have some notes which I'll read to you, and perhaps I can even entertain you, because you look tired. I don't mean to entertain you at the expense of any person; therefore there will be no names here. I will just read the statements. I am not a lawyer. I am a person who was trained as an economist. I also have a background in comparative literature. I learned a lot about the law because of the pursuit of justice through the process of both commissions. I don't see the way lawyers see perhaps. I read the decisions, I read the acts and I try to understand them the best way I can. When I'm really stuck, sometimes I get help, but not too often because it's too expensive.

I'd like to just speak for about 10 minutes and then I'd like you to ask me questions, because maybe, based on what I will say, you will want to know more, and then I can give you all kinds of documents if you ever want to read the stuff. My file with the Ontario Human Rights Commission is 4,000 pages. My file with the Information and Privacy Commissioner, as a result of the practices of the Ontario Human Rights Commission, is about 500 pages, two binders that size. My file with the Canadian Human Rights Commission is 600 pages and keeps on growing, because now I'm supposed to go to the Information and Privacy Commissioner with an appeal if I want to know what's in this file. This is not something that an average citizen expects when they read the basic descriptions of human rights in the code and the guides that you receive when you file a complaint without a lawyer.

I'd like to speak to you about effective judicial review of an administrative act. I'm just going to throw at you some arguments based on something that I found on the United Nations' European website, because the Ontario Human Rights Commission goes there with their arguments quite often, and I read their arguments. They seem to be quite different from what I experienced here in Ontario.

This presentation is not extremely well organized. I'm just going to throw toward you some of the arguments which I highlighted, because this is about 19 pages.

The second thing that I'd like to speak to you about is the conduct of the chair, vice-chair and members and what you have to propose. I'd like to suggest that there should be some mechanism for citizens to complain about inappropriate conduct of these individuals, the same way that you have for judges, especially because these people are appointed. If you feel that their conduct is inappropriate, you cannot really pursue an action against them. I don't see anything that's being proposed of this nature. Up to this point in time, if you had an issue with the commissioners, you didn't have any place to go to complain except to the Office of the Ombudsman. The Office of the Ombudsman cannot make any orders against the commissioners.

1600

I'd like to speak to you about a case at the reconsideration stage. There is, in my opinion, the possibility of an action against the government under section 15 of the charter. That is my opinion of a person who is not trained as a lawyer, who just studies the charter the way I see it interpreted by justices in their decisions. I will start with this part.

I gave you some information; I asked for some information to be distributed about legal assistance for ordinary working Canadians, not just people who are extremely poor and extremely disadvantaged but for working people who spend all of their money and therefore don't have money left for legal assistance if they need to get help from a lawyer.

If I have time, I will also speak about the definition of "disability"; otherwise I will just tell you—I probably won't have any time to speak about it, so I will just ask you to consider examining the definition of "disability," especially the inclusion of workplace safety insurance cases as a separate class. I don't see any need for that. A person with disabilities is a person who has certain functional limitations. Creating a group of people who are protected by workplace insurance versus, let's say, people who are disabled as a result of car accidents—why? Why do we have this? Why does the commission look at the people who are injured at work in a different

way from the beginning than somebody else who is just injured and disabled? This is incredible. I've been through this for five years, fighting and arguing.

I will start with part IV, which is the most important from my perspective. I'm lost in my own notes here. Sorry; I reorganized them at the last moment. Okay. Cases at the reconsideration stage, part IV. I am supposed to be speaking here about the decision by a commissioner that I am familiar with, because my case right now is at the reconsideration stage, which, according to the proposal in the bill, the way I understand it—because I didn't have a chance to consult with a lawyer. In Bill 107, transfer to the tribunal is being dealt with in section 10, I believe, of the bill, the amended act. I am specifically talking about subsection 52(2). It says, "A decision referred to in subsection (1) is final, subject to the right of the parties to apply to a court for judicial review."

Actually, I wanted to leave you with a question, because you will make recommendations about this bill and I understand some of you are lawyers. I gave you a chart—I'm not sure; do you have a copy of it? It shows you where a person in my position and many people who may be at the reconsideration stage right now would be after going through the process for four or five years. That means you would send all those people who have worked so hard—the reconsideration stage is only for victims, people who allege discrimination; it's not for the respondents. Therefore, no one would pursue this unless they have a strong belief about something wrong being done to them or unless they have a lawyer who would just—I don't know. I don't believe this is possible. I believe if people get to the reconsideration stage, they have a very valid reason to be there.

When you then force this particular group of people—I don't know if the decision to include this is based on the statistics or not. If you force only this group of persons pursuing a human rights complaint, which are all of the protected groups under the code, you are in essence discriminating against one specific group. Because they've managed to get so far into the process, forcing them to court—the entire process of enforcing human rights is for people who are not supposed to be going to court, who are supposed to be able to have their violation of human rights addressed by the administrative tribunals. So I really ask you to think about this section.

Certainly, I am speaking here about myself. As an individual, it will have tremendous impact on me because then I have to make the decision whether I am learning a civil procedure for the next five years and fighting through courts or whether I am just saying, "Thank you; goodbye. That process did not work for me." I would really ask you, especially the people who are former lawyers on this plan—and I understand there are a number of lawyers, yes? Am I correct?

Mr. Kormos: A couple over there.

Ms. York: Yes—that you actually consider this argument from a layperson. I am not a lawyer, but this is how it looks to me. It's unfair to people who work so hard: five or six years.

I wanted to throw another question at you. "Application by person," subsection 35(1)(a), "within six months after the incident." Why six months for the people who are victims of discrimination? Some lawyers from the Ontario Human Rights Commission presented their factum in Pritchard versus the Ontario Human Rights Commission. The case was decided by the Supreme Court of Canada. I read the decision; I made an effort to read the factums of the lawyers working for the commission. They argued that the discrimination is sort of like a civil tort action. Why, then, do people who are being subjected to a violation of their rights as other forms of torts, resulting in a violation of their rights, have a different statute of limitations than people who are being described by the staff of the commission, whom I'm sure are putting input in for this in some way, as victims of torts? This is in the submission. The lawyers' submission I do not know, but the name of the submission is the memorandum submitted by the Ontario Human Rights Commission to, again, Pritchard versus the Ontario Human Rights Commission.

This is again from the perspective of a person who does not agree with this, something that I'm asking you, as the elected officials representing people who live in your constituencies, to consider. Because I didn't have a chance, I may speak to my own MPP about this.

How much time do I have?

The Chair: You have eight minutes.

Ms. York: Eight minutes? Okay. I'll try to cover some of the key arguments. This would actually address an argument which you raised on the tribunal.

I should say I like the proposal—I said it at the beginning—of allowing people access to the tribunal, because at least this will allow people who do not have lawyers and who make the effort to become informed about the Canadian system of justice to go as far as the tribunal would allow them to go, with certain assistance from the staff and whatever the design will be at the end.

I wanted to just throw out some of the things that I've selected. This would address the issue of the tribunal not really having any rules. What do they have in Europe? There are many people from Europe living in Canada—many. I'm European, therefore I have a certain level of understanding of European law and perhaps I understand it better than the Canadian law, because I never heard any legal issues in this country. In a country like Portugal, a tiny country, when they joined the European Community, they created a code of administrative procedure so that an ordinary person would have some guidelines to go by.

My biggest problem with the commission was that there were no guidelines to go by when I started the process. That means that the lawyers representing other parties would have known all the tricks, all the games, all the behind-the-closed-doors, how you do it, how you get away with it, how you delay the process. I didn't, and the reason that I didn't is because I read the guidelines provided to me, the complainant, by the commission: "This is how you follow the process." Well, I was a fool to do this. If you ever have your constituents coming to

you and complaining about the process of these tribunals, the advice I would give them if I was in your position is, "Don't read the guidelines. Go and speak to a very good lawyer and ask him to interpret these guidelines for you." At least then you can navigate through the process.

Getting rid of the function of the commission which gives us adjudicative power, authority to decide, and giving it to the competent tribunals—I hope competent tribunals—and I hope you as politicians would ensure that these people are competent. That is, in my opinion, the only way to go.

Let me just read to you some of the things I've selected. I'd like to allow at least five minutes for your questions, because I want you to ask me about the process of the commission. So please stop me when I go over the next two minutes or so.

I just wanted to read something.

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The Chair: If I can interrupt. How much time did you want for questions?

Ms. York: Well, I don't know. Maybe five minutes. That's probably all that is left right now.

The Chair: You have six minutes, so if you want to stop whenever in the next couple of minutes?

Ms. York: Okay. Let me just select what is the most important. I was going to talk about my personal issues from personal files. I can give this to you. I am not going to make a record of this.

I'm going to talk about general issues: definition of disability or some of the proposals regarding supreme administrative tribunals in Europe. Which one would you prefer that I speak about?

Interjection.

Ms. York: Whichever? Okay.

Perhaps you didn't hear from too many people speaking about a supreme administrative tribunal. I was planning to write to the Attorney General to propose this. I feel this would be a good idea for Canada, perhaps not right now, not at this stage, but maybe in the future when we have an administrative process that allows people to essentially—an administrative process, from my perspective, brings justice closer to the people, brings justice, the law, to the people, the kind of law that ordinary people need to rely on, depend on, that they are protected by. The rest of legal statutes or whatever is for other people. I'm just talking about average working citizens.

What they have in Europe is a supreme administrative tribunal. You get stuck at the level of one of the tribunals you are dealing with, and then you can appeal the decision through the process, which is a continuation of the administrative process, but it's a supreme tribunal. I am not sure if this system would work now, but I would ask you to consider that.

According to the statistics available everywhere, from Statistics Canada and organizations that study labour movements and the changes in Canadian society, an extremely high percentage of immigrants will be part of the Canadian labour force. Human rights are very important to protect certain groups of people—disadvantaged groups, persons with disabilities—but we also have to remember that human rights are designed to also protect working people, people who come to this country, who are from outside who don't happen to understand the system. For them to have access to those tribunals, you need to have a system that doesn't force them to go to court, because then what these tribunals can do if they decide to abuse their authority in an indirect way is force everybody to court whose cases they don't want to examine. Then these people have to stop pursuing whatever they were pursuing.

The Chair: Ms. York, you have three minutes remaining, so if you want to give each side a minute each?

Ms. York: Yes. So basically, I just want to leave you with this idea. In Europe, they had a meeting of the ministers. Then certain European countries adopted a code of tribunals procedure. I think, from my perspective, navigating through the jungle that the commission has created and the stories that I will possibly submit by e-mail, it's incredible. So please consider this, at least something, that maybe next time the government has a chance to examine something or create new statutes. Maybe that would be something to be considered.

Now please ask me some questions about my experience, if you wish.

The Chair: Okay. Briefly, the government side.

Mrs. Van Bommel: You mentioned the supreme administrative tribunal. Is that the ultimate tribunal, or is there an appeal mechanism for that tribunal?

Ms. York: The way I understand it, different countries adopted different procedures. So it wasn't a requirement for the countries that joined the European Community. I was there. I was in Portugal in 1991. Portugal was going through the process of what you are doing right now: changing all kinds of laws to make them compatible with, in their case, the European Community.

These administrative tribunals allow people to go through the administrative process all the way. So you don't appeal to the Supreme Court of Canada, where you have a different process: You require a lawyer, you have to learn a new procedure, you have to follow all these technical rules. You have a simplified process. Don't ask me for any details, because I haven't lived in this part of the world for a long time. I understand that certain former Communist countries, like Czechoslovakia, also adopted it, I understand. So this is something that would be of interest to you. Maybe some of the researchers from the department could get some more information about it. I just researched it very briefly.

The Chair: Thank you very much. Mrs. Elliott.

Mrs. Elliott: I'd just like to thank you for giving us something of an international perspective, Ms. York. Certainly, we're looking at ways to make the system more accessible and user friendly for everyone. Some of your comments and thoughts with respect to the administrative tribunal are very interesting and something that we would definitely consider.

The Chair: Mr. Kormos.

Mr. Kormos: Ms. York, I'm so grateful to you for coming to the committee. I've got a motion I'm going to be putting tomorrow to get Keith Norton, Barbara Hall, commissioners and management from the commission here in front of the committee. This flow chart is a very useful tool for us. What two things would you want us to ask those people about the process in the commission and about problems with how the commission works?

Ms. York: First of all, if you look at the beginning, you go to the intake—are you talking about trying to maintain the commission in its current—

Mr. Kormos: The commission, not the tribunal.

Ms. York: In my opinion, the commission should not have adjudicative authority to decide on individual rights. The commission itself refers to discrimination as a violation of a civil right and allows people then to pursue it; a criminal can fight for his rights directly with the courts and file a statement of claim. If the commission wants to continue its existence and support certain issues of great importance to the public—let's say that I discover something but it's not me who's being affected by it. I come to the commission and say, "Listen, there's a problem there. No one has brought this to your attention. Can you look at this and examine whether it may be a violation of human rights?"

This is how I see the function of the national—they refer to themselves now as a national human rights institution. Now, be careful here. How many national human rights institutions are we going to have? If every one of them calls itself a national human rights institution when they appear in front of the United Nations, then perhaps we should design a common ground for what these national institutions will be speaking about at those international forums in terms of Canadian human rights.

Commissioner Norton is very familiar—

Mr. Kormos: Go ahead.

Ms. York: Commissioner Norton and Barbara Hall, through my process of pursuing human rights—

The Chair: Ms. York, thank you very much. Your time has expired.

Ms. York: You can obtain this information.

The Chair: Thank you for your presentation.

Ms. York: Thank you very much for your attention. I was really glad to speak to you on those issues.

CHINESE CANADIAN NATIONAL COUNCIL, OTTAWA CHAPTER

The Chair: The next presenter is the Chinese Canadian National Council, Ottawa chapter.

Ms. Linda Szeto: Shall I start?

The Chair: Yes, go ahead, and if you can state your names for the record.

Ms. Szeto: Good afternoon. Thank you for allowing us this opportunity to appear in front of you. I am Linda Szeto. I'm the vice-president of the Chinese Canadian National Council, Ottawa chapter, or CCNC Ottawa for short. My colleague here is Jonas Ma. He is the president of our chapter. We have another board member here in the audience to support us.

CCNC Ottawa is a human rights advocacy organization which champions the rights of Chinese Canadians in this region in particular and the rights of all Canadians in general. Our national organization is at the forefront of the Chinese head tax redress campaign, for which the current federal government made a formal apology and compensation to the surviving head tax payers and spouses this past June. We have written material—a one-pager, the blue sheet—that gives you bullet points about who we are.

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On behalf of CCNC Ottawa, we are here to outline to you our profound concerns on the fundamental flaws of Bill 107 and our proposed amendments to rectify this bill.

The Human Rights Code enables citizens in this province to concretely exercise their rights and freedoms enshrined in our Constitution. The Human Rights Commission is the key legislative arm to enforce this code and to protect the public interest. We commend the McGuinty government's intention to improve the current human rights enforcement system with the introduction of Bill 107. However, this proposed bill is fundamentally flawed. Instead of improving the system, this bill substantively weakens the Human Rights Commission by eliminating its investigative power and its universal access by victims to publicly funded prosecution of human rights complaints. This bill will not do what the government intends or promises; only to its contrary. Here are the reasons:

(1) Bill 107 takes away our current right to publicly funded investigation by the commission of all non-frivolous human rights complaints. Complainants will be forced to either do their own investigation or pay for an investigator. We Chinese-Canadians have learned that discrimination has many forms and shapes. Explicit, in-your-face racism is not as common today. Rather, it has given way to more covert, subtle and hidden systemic discrimination in the communities, social services and workplaces which are difficult and complex to prove in a court of law. It requires expert investigators to systematically gather evidence and information to support the claims. The current commission has this expertise, and by abolishing the commission's statutory investigative power, this government is saying to the poorer members of our community—and we do have poorer members of our community—"You are on your own. Human rights are for those who have the money and resources."

(2) This bill further accentuates this fundamental flaw by eliminating the complainants' right to publicly funded legal representation when their complaint is referred to the tribunal. In this proposed bill, complainants will have to hire their own lawyers to bring a claim in front of the tribunal or represent themselves. Bill 107 does not propose an establishment of a legal support centre nor has the government provided any details on any structure or resources to address the abolition of a complainant's

right to publicly funded legal representation, and this legal representation is a fundamental underpinning of a fair and equitable human rights process and enforcement.

(3) Bill 107 gives the tribunal unprecedented power to override the due process provisions of the Statutory Powers Procedure Act. What is the purpose of a Human Rights Tribunal without due process? Can there be justice when hearings are done in haste and behind closed doors and without adequate legal representation, particularly for the complainants?

(4) Bill 107 allows the commission the power to charge user fees and the complainants can be liable for their opponents' legal costs at the Human Rights Tribunal hearing if they lose. Losing a claim does not necessarily mean that discrimination didn't happen or that the complaint is without merit. Awarding the legal costs to the complainants in these situations is adding salt to the bleeding wound; the dressing on the cake that says human rights are only for those who can afford it.

(5) Bill 107 permits the tribunal to order the parties into mediation, whereas the current system provides mediation services on a voluntary basis. Mediation is not appropriate when parties do not agree to partake or where there is an unequal power hierarchy between the parties. And I think there are lots of studies that underline this fact.

(6) This bill proposes appeal of the tribunal's ruling only if it is proven to be patently unreasonable, which drastically limits the current rights of appeal.

(7) Furthermore, Bill 107 broadens the scope in which the tribunal can dismiss a complaint without hearing.

(8) Contrary to the original aims of resolving systemic discrimination and protection of public interest in the establishment of the Human Rights Commission, Bill 107 dramatically reduces the commission's ability to achieve these aims. Since the commission will no longer receive individual complaints, it will not be able to monitor complaints for the systemic nature of these complaints nor for the public interest. Furthermore, the commission has to apply to the tribunal, which then determines if the commission can participate at its hearing. The commission can launch a systemic complaint but the tribunal has the power to dismiss the case. Stripping away these functions renders the commission impotent and irrelevant, even in its maintained role of public policy, advocacy and public education. If you don't know the complaints and you don't hear about them, how do you know and how do you determine whether they are systemic or not? If you do public policy and public education, you need to know, you need to have the information.

Given these fundamental flaws in Bill 107, CCNC Ottawa strongly recommends that the government drop this flawed bill and start again. We are supported by our fellow CCNC members in Toronto and our chapter members across Ontario, including other organizations and individuals, and some of them you have heard here today; organizations such as the Accessibility for Ontarians with Disabilities Act Alliance. If the government chooses to press on with this flawed bill, CCNC Ottawa strongly recommends the following amendments:

—Reinstate the statutory investigative power of the Human Rights Commission and give the complainants the option of bringing their cases to the Human Rights Commission for investigation if they so choose.

—Reinstate the statutory guarantee of publicly funded lawyers for complainants at all tribunal hearings.

—The tribunal cannot be exempted from the Statutory Powers Procedure Act.

—Reinstate the complainants' right to appeal to the court if they lose at the tribunal.

—Delete the user fees. We recommend that a penalty fee be charged to complainants whose claims are found frivolous as a deterrent; so consideration for the monetary side.

—Legal costs cannot and should not be awarded against the complainants when they lose the case, and that the court may not award and should not award against the complainant the legal costs of a judicial review application or an appeal. In the public interest and to protect the public interest, we recommend that the commission must and should continue to absorb the legal costs for the complainants.

—Limit the grounds under which the tribunal can dismiss a claim without hearing. Furthermore, all meritorious claims should not be dismissed without at least first holding an oral hearing.

—Mediation services must be voluntary and with consent from all parties.

—To protect the public interest, the Human Rights Commission must have the statutory power to initiate its own complaint within the code jurisdiction, without any additional requirements; the right to intervene in any case before the tribunal; and the power to require the tribunal to forward to the commission a copy of every human rights complaint filed with the tribunal.

—In the public interest, the commission must have the power to seek remedies for past discrimination, as well as present and future practices, including all current remedies available under the code as well as any additional remedy power required to prevent the continuation of discrimination prohibited under the code.

Here I want to add, because I just heard one of the submissions about genetic procedures, that these are the future practices I'm talking about, when you have technologies that are marching ahead. Sometimes we are not even aware of how these things could affect us. So it's critical that we have that.

—The commission must have the power to monitor, audit and enforce compliance with tribunal orders.

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In conclusion, CCNC Ottawa reiterates that Bill 107 is fundamentally flawed. Good intention is not enough. Bill 107 privatizes discrimination and the pains of less fortunate members of our communities. This bill forces less privileged citizens to face the indignity of discrimination by themselves and to fend for themselves at a time when they most truly need a universal, accessible, publicly

funded human rights enforcement system to defend their rights and to protect the public interest.

Today we are being challenged by resurging racism in our province and in our country. It is the time and the opportunity for this government and Ontario to take leadership, as it did in the past—and I want to underline that, as it did in the past—to build a strong, vigorous, universal, accessible, publicly funded human rights enforcement system to protect the public interest and the rights of its citizens.

Hear us today and hear us well. Hear our critiques of this bill and our proposed amendments, which would rectify it fundamentally. We thank you for listening to us and we shall look forward to seeing the changes in a vastly revised bill. Thank you very much.

The Chair: Thank you. There are about two and a half minutes each. We'll begin with the official opposition.

Mrs. Elliott: Thank you very much, Ms. Szeto, for your comments on behalf of the CCNC. You've raised a number of important points, some of which we've heard from other people. I'd just like to pick up on your one comment with respect to the role of the commission, that if they don't hear from some of the individuals, how will they be able to determine whether there is systemic discrimination; and that it's important that they be in the loop, so to speak, with respect to the information. I think that's very important advice that you're giving us, so thank you very much.

The Chair: Mr. Kormos.

Mr. Kormos: Ms. Szeto and Mr. Ma, thank you very much. I am impressed with the fact that you are among the few people who have pointed out the extraordinary provisions that allow the government to exempt the tribunal from the Statutory Powers Procedure Act. You heard me raise this a couple of submitters ago with Mr. Hameed, the lawyer who was here. Take a look at this, friends. Subsection 38(2): The rules of the tribunal prevail when there's a conflict between those rules and the Statutory Powers Procedure Act. Subsection 37(2): "The tribunal shall adopt the most expeditious method of disposing of an application on the merits." That has so much the quality of newspeak because, at first blush, it sounds like, "Oh, we'll deal with these complaints speedily"—"the most expeditious method"—and then the tribunal may make rules to "limit the extent to which the tribunal is required to give full opportunity to the parties to present their evidence and to make their submissions." Good God, this is frightening, dangerous stuff. This is not stuff that happens in democratic countries where due process and natural justice are the underpinnings—they are, aren't they?—of our adjudication systems. This is stuff that comes out of some tinpot dictatorship; it really does. It means that complainants can be told, "You make your submissions in five minutes on an affidavit," because that's what the rules say, or you can't appear at all. You can't cross-examine. Very frightening stuff, and civil libertarians and people concerned about human rights and protecting human rights should be very concerned about this. I'm so pleased that you've chosen to highlight that. I am extremely frightened by this. This sets us back years. Thank you kindly, folks.

The Chair: The government side?

Mr. Zimmer: No, nothing here.

The Chair: No comment? Thank you. Thank you for your presentation.

THERESE LEFEBVRE

The Chair: Therese Lefebvre, good afternoon. You may begin.

Mrs. Therese Lefebvre: Members of the panel, I am very grateful to have been given this time to meet with you today. You have received from Kevin, hopefully, some information regarding what is happening to me.

I learned through TV, which I watch every morning, when you have the panel, and the session in the afternoon when they are debating in the House. Bill 107, the Human Rights Code: I read it and then I said, "Well, this is my chance, with everything that I've been going through for 15 years and fighting for 15 years." You have a chance to read it and ask me questions. The only thing I would like to read is, and I think you have a copy of this:

"Ladies and gentlemen,

"Please find attached the history of a deteriorating health problem since my operation on March 2, 1990, by a negligent and incompetent Dr. Puranik. Since then, I had nothing but pain and suffering and am unable to perform any kind of manual or clerical work whatsoever. I must have the use of a cane to help me control my balance when walking.

"I have pleaded my case twice with the college of physicians, but was rejected on both occasions.

"I now beg you to peruse through the information that I am providing you at this time and hope that you see fit to accord me a just decision which would include full compensation for the tremendous amount of pain and suffering that I am still experiencing which was caused through no fault of mine but by the lack of competence, honesty of a negligent physician."

I have not written very much because I'm here as a person that has been suffering for 15 years. I was a healthy person. "Human rights" for me means that something should be done for me. I am not a mobile person. I have to have different persons take me wherever I want to go: doctors' appointments, everything. This has been going on for 15 years. I haven't been there at all for my two girls for six years because of physiotherapy, which I needed to start walking again.

I was refused in 1996 by the college of physicians because I wasn't strong enough; I was told by a lawyer who was paid by the province that I would be destroyed mentally if I would go on with the case. So I just let it go. But in 1999, something happened and I had to have another surgery, the third, for the same L5-S1 disc, which was never removed to start with in 1990. It was taken out in 1999 in Ottawa.

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I have done everything in my power. I'm not a rude person; I'm a quiet person. I was a good worker all my life. I know that there is justice. Human rights—that bill just went to my heart, and I said, "I'll phone and see if they will see me or let me have a chance." I've been fighting three years to be with you and I was told that I was not allowed to speak to anybody—no committee, no tribunal, nothing. I can't go out of the house without having somebody with me. This is for the rest of my life. I cannot visit my daughters when I feel like it or I would like to. I am at home since that day. It was not easy. A physiotherapist spent six years to put me back on my feet, just to find out three years later that I couldn't get better because the L5-S1 disc was still there.

I have tried to understand through MPs, through government, through Ontario health profession boards. I have done everything. I'm not here to have pity; I'm here to have justice. I am here to have the right to have your opinion. You can ask me any kind of question. I have nothing to hide. I was well in 1990, and one month after that my life was over—no career, no nothing. Today I'm here to plead for your support and to answer questions that might not be clear for me and maybe it would help you too. I'm sure that I have lots more paper, information, but I've been trying to get them back to me by an MP and it was never returned to me.

I hope that the Human Rights Code that I have read—and I have phoned, and I was very pleased with the people who answered the phone and phoned me back that I had this chance. I say thank you.

I never thought I would end up this way. I thought I would be—I am a fighter. I have worked hard all my life since the age of 10. When you're told that your life is over physically—I was mentally, physically and emotionally stressed for 10 years. It was hard for me not to be there for my girls because it wasn't my fault and it wasn't their fault.

I know a lot of things. Doctors are protected. Lawyers protect lawyers. I know all those things. I read a lot and I hear a lot on TV. I listen to everything that has to do with politics. For me, it's not—when you said "20 minutes," for me, it's a lifetime. So 20 minutes is very good for me to be here. If this is not enough for you, I will have the MP with—it's a committee that has everything and they haven't done anything since a year and a half in Toronto. They've been saying to me: "Well, we haven't made any decision." But it was never looked into.

For me, for today, I can give you more information that you already have. I hope that it was enough. If not, I will try to get the rest and send it to Kevin, because it's bigger than what you have. Fifteen years is a lot of paper. All that money that was spent for me was a waste of money, from the government: physio, doctors, appointments. I had 25 epidurals. I had some needles. I can't find the name—to your spine; I had 25 of those—spinal taps to find out what went wrong. My nerves are really bad now since all those injections. The nervous system is—I had to prepare myself two days to be here. I had to just plan it and say, "It's going to be all right." There are MPs and there are people from the tribunal, I think, here.

I speak French but it's easier for me in English. If there are any questions, this is what I have to offer you.

The Chair: Thank you very much. There are about three minutes for each side, beginning with Mr. Kormos.

Mr. Kormos: Ms. Lefebvre, you're right: Fifteen years is a long time, especially when you're burdened with the discomfort and the pain and the disappointment. You have the letter here from your MPP, Jean-Marc Lalonde. He did his best for you—he did—back in 2002. I see tragically the letter from 1996 from the College of Physicians and Surgeons; it wasn't going to pursue your complaint against the doctor. I see the letter from Clare Lewis, the Ombudsman, who did what he could, but as he described in his letter, the law was clear. Clare Lewis, the Ombudsman, did his best for you, but it wasn't anything that was going to change your reality. So here you are. You're in front of a committee now of the provincial Legislature. We're members of the opposition. There are some powerful people on the committee: the parliamentary assistant, the committee Chair. We've all heard you. I don't know what more can be done; I don't. I'm prepared to put our heads together with these other people and see what can be done.

My concern is that maybe nothing more can be done. Maybe the system just doesn't work any more for someone who has been victimized the way you have. That's my concern. It's not very helpful, is it?

Mrs. Lefebvre: No. But I'm just going to say, you talked about Clare Lewis. The disappointment in that is that I had bought my tickets and I was going to Toronto.

Mr. Kormos: I see that. Yes, you were ready to meet with him.

Mrs. Lefebvre: Yes, with my husband. The day after, I get one phone call to tell me, "Are you ready to leave?" An hour later, they tell me—

Mr. Kormos: That is bizarre. I don't know the explanation for that.

Mrs. Lefebvre: I know the explanation. The explanation is that there was another Ombudsman who worked very hard and he reopened my case on February 21, 2003—Clare Lewis reopened the case. On December 18, 2003, I get the call to be in Toronto and meet with Clare Lewis. One minute I'm talking to Helen Jennings. She tells me, "Have you got your tickets?" and this and that and I said, "Yes." "Okay, that's fine. We're very happy." An hour later, Jean-Marc phones me and he said, "It's been cancelled." Then Roch McLean, who works in the Ombudsman's office, phones me and says, "Why did you refuse to go? You told them it's a waste of time for you to be there. And don't call me back, because I'm going to lose my job." Those were the exact words.

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I should be compensated for the damage that was done to me physically, mentally and emotionally, because I wasn't there for my kids. After this happened, I had no energy at all—and I know what you mean. For me, the system can see through this, but it's like it's not im-

portant. If you have a code and Bill 107 containing human rights, I should be in front of a tribunal or whatever and still have a chance to be compensated for what was done to me.

Mr. Kormos: I think that is your most important point.

Mrs. Lefebvre: Yes.

The Chair: To the government side. Any questions?

Mr. Berardinetti: I just have one question.

Thank you for your presentation. There's a lot of information here and I'm not sure what the answer would be, but I know that you did have a lawyer represent you at one point.

Mrs. Lefebvre: Yes, Marc Marcotte.

Mr. Berardinetti: Of Charbonneau Smith Inc. Did they represent you before the College of Physicians and Surgeons when you went there?

Mrs. Lefebvre: No, I didn't go. He was paid by legal aid. It's still government money. He's the one who told me, "You can't go there. You're not physically able to go through this, because they will destroy you." I didn't know what he was talking about then. I went back to see him with this, because the paper from Ottawa said, "We've done surgery on this 52-year-old woman, the same surgery. It wasn't scar tissue; it was a disc that was there," the same disc that was supposed to be taken out 10 years before. He said to me, "If you would have had that letter, you'd be compensated for it." Now he's not a lawyer. He's a judge for the province of Ontario.

I'm not stupid. I'm an intelligent woman who could have done a lot in this society, which I did before this all happened to me.

Mrs. Elliott: There's no question that you've gone through a really difficult time in the last 15 years. As my colleague Mr. Kormos has indicated, I'd like to say that we would be able to get you that compensation, because you've clearly had a horrible time, but I don't know that that's something we would be able to do.

If I can offer you any consolation, I think that hearing from you, as we've heard from so many other people about their frustration in dealing with—in your case it's some other organizations, but we've also heard that with respect to the commission. If we can eliminate that and make it a completely fair process so that everyone has the right to be heard in a fair manner and with an appropriate hearing, then that's certainly what we're striving to do. So your presentation has been extremely helpful to us in that, and I want you to know that we really do appreciate your being here.

Mrs. Lefebvre: Will I be hearing from you?

The Chair: I don't think that's the purpose of these hearings.

Mr. Kormos: Chair, on a point of order: This woman has gone out of her way to come here. She might not have fit perfectly into the Bill 107 slot, but she has presented a very poignant, painful story. If I could prevail, without pointing fingers—we've listened to her. Mrs. Elliott very clearly said that although we may not be able to help you, your presentation may help other people in terms of how you've influenced how we look at things and hear things.

Can somebody, perhaps the PA's office, take it upon themselves to simply respond to Ms. Lefebvre in writing, even if we agree that all of the avenues are exhausted, to acknowledge that she's been here? Can somebody please do that? Would you do that?

Mr. Zimmer: I'll speak to you away from the table, at the back here, and see if we can—

Mrs. Lefebvre: Thank you very much.

The Chair: Thank you for your presentation.

SOUTH OTTAWA COMMUNITY LEGAL SERVICES

The Chair: The next presentation is from South Ottawa Community Legal Services. Good afternoon. You may begin.

Ms. Chantal Tie: Thank you very much. Unfortunately, I wasn't able to be here earlier. I think I would have benefited from some of the other discussions, so I hope that what I have to say isn't too repetitive for you. I have provided some materials, which I believe you may have by now.

I'm here representing South Ottawa Community Legal Services, which is one of the 79 legal aid clinics in Ontario. We're funded by Legal Aid Ontario, but we're governed by independent boards of directors, and we have served low-income Ottawa residents in the south of Ottawa since 1987. On a personal level, I am an immigration and refugee lawyer and was the director of the clinic from 1987 until last year; I'm now one of the staff lawyers at the clinic. I have an extensive background of more than 26 years' experience doing various types of human rights litigation as well as immigration and refugee law, all of which I have done through the clinic.

Our clients represent the most marginalized and disenfranchised communities in Ontario. What that means in south Ottawa is that we have a large number of immigrants and refugees, a large number of single parents, mostly women, large numbers of seniors and the disabled. These groups are representative of the most vulnerable groups, precisely the groups that the Human Rights Code is designed to protect from discrimination.

Our mandate is set by the Legal Aid Services Act, which defines "clinic law" as including human rights law. Our clinic policy itself sets criteria for case selection which include human rights. We have a history of fulfilling that mandate with test case litigation in many areas, some of which include, in recent years:

—discriminatory credential recognition challenges for foreign credentials;

—discrimination in social assistance regulations, including the "spouse-in-the-house" litigation and the lifetime ban, which were the Broomer case and the Falkiner case, as well as the inquest in Sudbury into the death of Kimberly Rogers;

—discriminatory immigration requirements for landing in Canada; and

—discriminatory mobility restrictions for people in institutions with disabilities.

When I went back over the clinic records since we opened, I wasn't surprised to find that we had never filed a complaint under the code, despite our mandate and our concern for human rights. What we have done is used the charter in the courts and we've used the code in the courts outside of the complaint process. This is despite the fact that we strongly believe in the protection that the code offers for our clients. Indeed, we've used the code in other tribunal proceedings to protect our clients, such as before the Ontario Rental Housing Tribunal to prevent the eviction of tenants with mental disabilities where the landlord has failed to accommodate up to the point of "undue hardship," at the Social Benefits Tribunal to argue discriminatory treatment of the disabled, and in the Divisional Court to argue that teacher credential recognition procedures are discriminatory.

1700

The Chair: Ms. Tie, if I could just interrupt you, can you slow down the pace for the interpreter?

Ms. Tie: Sorry.

We've even used the threat of code complaints to organize public housing seniors around the issue of accessibility, knowing full well that if the organizing, lobbying and public shaming that we were engaged in with the public housing institutions were not successful, a complaint was unlikely to succeed for our clients.

Why don't we use the code? The answer is simple: Our clients are extremely vulnerable. Their human rights needs are often urgent, related to income supports, housing and other essential services. They need a timely resolution. What possible use is any decision to them rendered three, five or even eight years after the fact when it relates to essential services? The current process is simply incapable of delivering anything of use to our clients. What use is a 4% to 6% referral rate, which I understand is the rate of the commission?

Unfortunately, the current process that we are engaged in has serious limitations for our clients. Litigation before the courts is extremely expensive, making it inaccessible to our clients because we simply can't afford it either as legal aid. The opportunity to appear before the courts and before an expert tribunal that could potentially provide people who are both sensitive to human rights issues and trained in human rights is lost. We don't get that in the courts. That's a serious limitation.

Because of the tremendous costs and complexity of litigation in the courts, we can only concentrate on large systemic issues which have an impact on large numbers of individuals. We have to make strategic decisions, leaving individual acts of discrimination, particularly in the areas of essential services, without remedy. And all acts of discrimination which occur outside the jurisdiction of other tribunals also go without remedy.

Last year, in co-operation with CERA, the Centre for Equality Rights in Accommodation, here in Ottawa we conducted a series of focus groups on discrimination and housing, which is an essential service. We conducted four focus groups: one with street youth, one with psychiatric survivors, one with young parents and pregnant mothers, and one with agencies which provide services to all of these vulnerable groups. What the focus groups demonstrated for us was that despite significant concern about discrimination and lots of direct experience with discrimination, no one had used the formal human rights complaint process. Again, why not? The process takes too long; the process is not fair in the sense that there's just a far too low referral rate; there's a lack of resources and assistance available; and many people were not even aware of the possibility of using the code.

We support Bill 107. What do we see? We see tremendous potential in Bill 107, potential to really assist our clients in a meaningful way. We see the potential for a system which would provide the tools that our clients need to address discrimination in all its forms, which would give access to a process superior to the current process in Ontario and superior to the current court or other tribunal process we are currently using. I say "potential" because there are some absolute, bottom-line requirements which, if not implemented, will mean our clients will continue to be denied the benefits of the code protections that they're entitled to.

What would it take for us to have confidence in the system and to actually have our clients use it? It would take adequate resources for the tribunal. Our clients need resolutions within a reasonable amount of time. Inadequate resources cause delays and significantly undermine the integrity of the process. We fully support direct access through the removal of the gatekeeper function, which we see as both paternalistic and discriminatory in itself.

We need adequate funding for legal and other representation. Our clients need that assistance to prepare and advance their claims. That assistance must also include adequate resources for accommodations which they will inevitably need. We welcome the Attorney General's stated commitment to the third pillar in the human rights system, which is full access to legal assistance, but this commitment must become a legal obligation. All claimants who are victimized by illegal acts of discrimination should not have to bear those costs of righting the wrong. The same way we protect our society from criminal violations, we must protect society from discrimination. It is a social commitment, not an individual cost.

Thirdly, appointments to the tribunal must be independent. A tribunal or a court is ultimately only as good as its decision-makers. Under the current system, tribunal members are cabinet appointments, and unfortunately governments and cabinets are often beholden to individuals and power brokers. Tribunal appointments are seen as a suitable reward for services rendered. Our clients need expert and sensitive decision-makers. They need a tribunal which is representative of our community in all its diversity, with a demonstrated commitment to human rights and active involvement and lived experience in human rights. This can only mean that we need a legislated appointment process which is independent, trans-

parent, competitive, with stated criteria for appointments that include expertise and sensitivity and demonstrated commitment to human rights. Without these controls, the tribunal will not serve to advance human rights, but only to reward the party faithful, at the expense of the most vulnerable in our communities.

I've included with my materials a joint submission from the community legal aid clinics, which I've distributed with my notes. It contains more technical discussion and 11 specific recommendations we are making which will improve, in our opinion, Bill 107. They are found on the last page of the submission.

If I have a minute, I would like to address Mr. Kormos's concerns before I'm finished on this.

The exemption from the Statutory Powers Procedure Act: We actually don't have a problem with the exemption. I would refer you very briefly to what I found in the Association of Human Rights Lawyers' submission. At point F, they talk specifically about the necessity for flexibility. I think that other tribunals could provide the Human Rights Tribunal with some guidance so that you don't get draconian rules such as the ones Mr. Kormos has been proposing, like extensive discussion and consultation on the drafting of rules. I've been involved extensively with the Immigration and Refugee Board in a number of their rules-drafting exercises. I would suggest that is an adequate check upon rules which could be drafted in a draconian manner. I think that's far preferable than requiring the tribunal to continue to abide by all of the Statutory Powers Procedure Act, which I would suggest is not the type of procedure that would necessarily best serve our clients under the circumstances.

I would also agree that when you look at whether you change from an appeal to the courts to a judicial review procedure, what judicial review does is, if you adequately structure your tribunal with expert members, as we've recommended, then judicial review gives them some measure of ability to exercise their expertise, as opposed to having courts which are not expert in human rights overturning good human rights decisions, which is what we see at the present time if you look at who's appealing, who's winning and who's losing. Thank you.

1710

The Chair: Thank you. We'll start with the government side.

Mr. McMeekin: Ms. Tie, thanks very much. I'm not a lawyer, so I don't know all the legal ins and outs, but there's something I do know as one who has been, like you, in the trenches with some of our vulnerable folk: Vulnerable folk don't get to throw wine and cheese parties at Queen's Park to lobby people. The cards really are stacked against those who so often don't have a voice. So I'd simply want to say to you that I appreciate your taking the time to be so thorough and thoughtful in terms of your recommendations. I really am hopeful—perhaps not optimistic at the moment, but hopeful—that some of this is going to sink in, that we will get to a tribunal that would be quicker, fairer, better funded and would really respond to the challenge that you've issued. I appreciate what you've shared. I want you to know that there are people in all three political parties who really do care. It's tough, but I want to make sure the AG sees all of their briefs, but particularly your very thoughtful one, because you're in the trenches every day and it's good to hear from you. Thanks.

The Chair: Mrs. Elliott?

Mrs. Elliott: I too appreciate your comments, Ms. Tie, being a practitioner in the area for a number of years. I do have some additional questions with respect to the exemption from the SPPA, but I suspect that my colleague will ask some additional questions. I wish we had more time. I'd like to know more about that.

You have indicated your support for the principle, for the potential of Bill 107, yet there are some pretty fundamental, significant concerns that you've still expressed with it, all of which is predicated, of course, on the idea that the tribunal will actually hold hearings and will allow people to get to that stage and have a hearing. But, as you know, the legislation does not provide for that. Do you have any comments on that?

Ms. Tie: Yes. We've actually recommended—I didn't keep a copy of my own material—that there always be a hearing, even for a dismissal. This is the practice at the Immigration and Refugee Board you're entitled to, and other tribunals. There's nothing that would prevent holding a hearing when there's going to be a dismissal, and that's one of our recommendations, that there be some type of hearing.

Mrs. Elliott: Thank you.

The Chair: Mr. Kormos.

Mr. Kormos: Thank you kindly. I wish I had—you're a person of great faith. Maybe I've lost my faith along the way. Maybe I never had any to begin with. Maybe I'm just cynical about governments. But when I see the provisions of the act, for instance, the rules may "provide that the tribunal is not required to hold a hearing," that's the same little rule-setting power that says they can exempt themselves from the Statutory Powers Procedure Act. You see that it causes me concern when governments put that in their legislation, and then when they promise not to use it, because I've witnessed those promises. But fair enough; we'll disagree on that.

I'm interested, however, in concerns you might have about the true arm's-length status of the whole Human Rights Commission. Reference has been made to the preferability of having a Human Rights Commissioner. You talk about beholden. You see, the commissioner is beholden to the government of the day, because he or she is hired by the government of the day, it just occurred to me—the Environmental Commissioner; the Ombudsman; Ms. Cavoukian, the Information and Privacy Commissioner.

Ms. Tie: Yes. One of the recommendations, certainly, also of the Association of Human Rights Lawyers is that the commissioner report to Parliament, not to the government.

Mr. Kormos: The problem is that the Attorney General is not going to sit down and read any of these sub-

missions. The Attorney General is neither going to read them in the forms that they've been tabled with the committee nor read them in the Hansard. He's got staff—they were all over here a little while ago—who are going to read them, the policy people.

One of the remarkable things is that there's been more concern about the bill than there has been enthusiasm for the bill. I appreciate that the human rights lawyers as an association endorse it, that the legal aid clinics—because I got mail—support it, but the legal aid clinic we've got down where I come from is hard pressed to handle the demand that's out there. It can't handle it. Women like Mrs. Lefebvre don't get their cases dealt with by the legal clinic. They don't fall under their mandate, because their mandate is so restricted, and it's not out of any ill will; it's because there's no funding.

Ms. Tie: That's right. That's why I said there were three preconditions, one of which is—

Mr. Kormos: Yes. With 2,400 applications a year to the commission, at an average of $3,000 per case, you're talking about millions of dollars. Do you expect that to come from this government into the system? I'm hopeful.

Ms. Tie: I don't know where you get the figure of $3,000 a case.

Mr. Kormos: I just picked it out of thin air. Do you know a better one?

Interjections.

Mr. Kormos: Well, have you got a better one? Have you got one, David? Do you have a number? Of course not.

Ms. Tie: All I'm saying is that we appear regularly before the Ontario Rental Housing Tribunal representing—we have clinic coverage across all of Ontario. We perform duty counsel functions as well as regular functions at the tribunal, and I would doubt very much that the cost is $3,000 a case. And the volume is far greater than 2,400 cases a year.

The Chair: Thank you very much for your presentation.

Mr. Zimmer: Just to let the committee know, I did speak to Mrs. Lefebvre and sorted something out there that we'll work out. Thank you.

The Chair: Thank you, Mr. Zimmer.

The next group is the Native Women's Association of Canada. No? Then we'll go to Mr. Foster.

JOSEPH FOSTER

The Chair: Mr. Joseph Foster. Good afternoon, sir. You can begin whenever you're ready.

Mr. Joseph Foster: Thank you very much. I may be slightly frazzled. It's because I got back last night, fairly late, from El Salvador. I hesitated to come because I had not heard before I left on the 26th that I would have the privilege of being selected, therefore I haven't done the amount of research, review and reflection that I would like to have done. But at the same time, especially after coming back from El Salvador, I felt that it's a privilege but also a responsibility to chat with you briefly. If we were in Salvador, you would have bodyguards and I would be afraid to address you. If we were in Salvador—in fact, I did not take my dog because I don't think she would have survived it. So while we're not perfect in Canada, we have made major strides. That's one thing I wanted to note.

I may ramble a bit. One thing I did want to note is that as we develop our human rights strategy here in Ontario, the disabilities act, and also at the federal level, I think to some extent the eyes of the world are upon us and we should be able to develop practices, legislation, principles, systems that work that are rational and that, most of all, provide dignity to the persons involved. Unfortunately, we know in Canada that we have not done that historically in terms of aboriginals and even to some extent with our welfare people. So I think the importance of keeping that above all else, if I fail to leave an imprint of anything else, I do want the word "dignity" to remain as something the committee should consider both in terms of the legislation and, more importantly, how it's applied.

1720

What I hope to suggest this afternoon is probably considerably different than what some of the other people have addressed you with, and is more of a matter of principles in terms of this legislation and how it's applied. Then I'll throw it open to questions, if you have some comments, to which I'd be happy to try to add.

To give you a bit of background, since you haven't had a chance to read the document I've written, you'll note when you do get it that some of it is in some strange small font because somebody changed the program without telling me what they'd done. After I write "th," it goes into superscript, super small, so maybe it will put us on a level playing field, because you'll barely be able to read it. I will send it by e-mail to Anne later so that you can hopefully get a better copy.

What I want to do is go over a few basic principles. One that I've already stressed is dignity and the fact that I think, most importantly, no matter how the legislation is written, it should be written in such a way that those who are applying it have enough room to adapt that legislation to the community level and the individual situation. There are a few situations where big fits all or all fits everything, but I think those are the exceptions. If we're going to make it work, I think that any changes made to the legislation have to be made in such a way that those who are applying it can do it in a rational and practical way, and that it's done in a way that people don't get left out.

When I talk about people getting left out, I'm not talking about only the people who may have an issue but also the community that is being affected. I heard a story a while back, and I don't know whether it's true or not, of someone being concerned, for example, that if ramps had to be built into every small public place, such as a church or whatever, they would have to close them up. I don't think this is the intent of the legislation. I can speak as a visually disabled person. If I were in a little community library that was their own endeavour and they

didn't have all the fancy equipment, I personally wouldn't expect that community to provide that equipment unless there were help from the province or some other source to assist them. What I'm hoping and praying is that the legislation and the mechanisms and policies that are set up work to the benefit of everyone.

One of the basic principles should be that it must be a win-win situation for the issue and for all those involved. It shouldn't be a matter of complaints solely; it should be a matter that those who have ideas can come to whoever is the body and say, "Look, this would make it better for our community and to be able to assist those who have, in some way or other, a problem in terms of human rights." This is one of the very basic principles.

Just to give you a bit of background, I haven't always been blind. I have about 1% vision. I can see a light here and there. So I come at it slightly differently. I've been on the other side, looking at disabled people. I can't see them any more. I'm one of them. But it's not all bad, because it gives me a much more holistic perspective on how to be on one side and be on the other side and realize that there is a considerable gap of understanding and empathy—whatever it is. I guess what I'm saying is, there has to be an element of compassion that's applied when legislation is written and applied.

I think, just very quickly, in terms of the VIA Rail decision, which I believe is still in front of the Supreme Court and where, to me, it's a matter of rights over economics. I'm hoping that justice, in terms of real social justice, will prevail in that case. I think that's very important in the way the legislation is drafted and applied. As I said, I give an example where one doesn't expect undue financial burden, but I think in many cases that can be an excuse. On the other hand, it shouldn't be unreasonable.

Coming back from Latin America, I certainly realize that democracy is a privilege. We take it as a right, but it's also a privilege. It's also very fragile, and therefore it's a responsibility. But the one thing I've noticed working with disabled people is that everyone, and that includes every disabled person that I have contacted because of my present work, says, "Yes, we want the benefits, we want to participate, but we also want to contribute." I think that if the legislation is written properly and if the government supports it properly, then it will not be so much a matter of costs; it will be investments, and in many cases those investments will not only be in terms of social justice and dignity and the advancement of Ontario society, but will actually generate economic benefits. So we can look at it sometimes too narrowly, and I think this certainly was the VIA Rail case.

I would prefer to stop there for the moment and leave it open to some questions, if I may.

The Chair: We have a little over three minutes for each side, beginning with the official opposition.

Mr. Runciman: Thank you, sir, for being here today. I very much appreciate it, and I have to say I really like your approach with respect to setting out, as you see them, the principles that should apply to the application of human rights legislation in the province.

When this legislation was tabled, I cited a case which I think falls into the area that you've referenced here. It was a situation that upset me, as someone who has been a part-time resident of Toronto for over 25 years. The human rights organization in Ontario made a decision that the Uptown Theatre had to install elevators. This was a historic old theatre in downtown Toronto, and it was one of those situations where the economics just didn't make sense. The theatre closed its doors and has been torn down. The commissioner at the time, Mr. Norton, expressed some, I think, very sincere regret.

I think those are the situations that you're talking about, that if there's going to be a decision made, there should be some rationality brought to it and there should perhaps be some assistance. If an arm of government is going to make a decision like that, which I think was damaging in a bigger sense, in terms of the people who may have been suffering from a lack of access versus the broader public good and the history behind that particular facility, there should be a willing role of government to assist in meeting that requirement and not simply making it a requirement which, in this situation, obligated the business to close down. I'm not sure how often that sort of situation crops up.

I don't really have any questions. I think what you have suggested here makes eminent good sense. It's the sort of thing that in some way, shape or form the committee, at the end of the day, should be endorsing, something along these lines, in terms of whatever comes out of the legislative process. At the end of the day, I think this is the kind of mandate or raison d'être for the committee and the human rights organizations in this province in terms of how they proceed in the future.

Well said, and I very much appreciate your input.

1730

Mr. Foster: Just to respond to that, I get rather incensed when I hear the concept of a Canadian disabilities act for the disabled—because I don't think it's for the disabled; it's for Canadians—that same mentality of paternalism that doesn't work for anybody. I've worked as a CIDA person for many years, and we started out by doing development for them—no, worse than that, we started out doing it to them. Then we got a little bit enlightened. We did it for them, we're moving towards doing it with them, and hopefully we're moving towards them doing it with our assistance. I would like to think that eventually we can move in that same sort of progression here, and that certainly applies to human rights.

The Chair: Thank you. Mr. Kormos.

Mr. Kormos: I think everybody here agrees with what you have to say. That's the problem with rights. That's why they're called rights. It goes from the very title that you can't pick and choose, you can't weigh rights versus cost. Rights are inherently rights. We have a charter now that has generated concern about everybody having rights, but you can't pick and choose. You can't say that tomorrow is a better time for enforcing rights as

compared to today. If you don't have that perspective, then you don't have rights, do you, Mr. Runciman?

Mr. Foster: In response to that again—I've covered that, you'll notice, in the notes—I think that there's a tendency, especially being Canadian, for us to try to find the perfect solution, and therefore we never quite make it, we never quite implement it. We try sometimes to make too large a jump, to change too quickly. Canadians, particularly, don't like change; for example, I don't think we're as adventuresome as Americans are. So we need to make changes slowly—look at them, modify them, educate people about them—and get on with it, and then you can move more quickly once you know you're going down the right path. Otherwise, you can get enormous delays. Again, the point that I make in the paper is that rules are great, but you can find a good lawyer—sorry, gentlemen and ladies—that can find a way to delay it, get around it, and we've seen that happen, whereas if we follow principles, it's much harder to get around those principles. When you have to look somebody in the eye and say, "I don't agree with that principle," it's much harder to justify, either as a legislator or as a politician.

Mr. Kormos: You're right, Mr. Foster: You can find good lawyers, but you've got to be able to afford them too.

The Chair: Mrs. Van Bommel.

Mrs. Van Bommel: Thank you, Mr. Foster. Especially as we near the end of the day, it's good to be reminded that we are lucky to live in Canada, that we do live in a democratic country that gives us the foundation to make the kinds of reforms that we want to make. You're right: We try for perfection a little bit too much sometimes, and when we miss the target in our efforts, we tend to almost walk away from it. But justice is possible here; there is opportunity for that.

I think sometimes in a democratic society our biggest obstacle and our biggest barrier is attitude, and that's the most difficult to change too. I'd like to hear your comments about the whole issue of attitude as a barrier.

Mr. Foster: Thank you.

The Chair: Thank you, Mr. Foster.

Mr. Foster: Thank you very much. It's been a privilege.

NATIVE WOMEN'S ASSOCIATION OF CANADA

The Chair: Our last presenter is the Native Women's Association of Canada. Welcome and good afternoon. If you can state your names for the record, please. You may begin.

Ms. Lisa Abbott: My name is Lisa Abbott. I'm here on behalf of Sherry Lewis, our executive director. I work for the Native Women's Association of Canada. I'm joined by—

Ms. Neegann Aaswaakshin: Neegann Aaswaakshin.

Ms. Abbott: I'd like to start off by thanking this committee for giving the Native Women's Association the opportunity to come and make a presentation on some of the concerns that we have with Bill 107 and perhaps pose recommendations for how we feel the bill could be strengthened. You'll have to excuse me because I just got told about an hour ago that I was presenting.

I passed out our written submission. The Native Women's Association of Canada was founded in 1974, so we've been around for over 30 years. We're an aggregate of 13 provincial native women's associations across Canada. Over the past 30 years, the equality interests of aboriginal women and First Nations women in this country—the Native Women's Association, as one of the few national aboriginal women's associations, has been really essential in bringing the equality interests of women to the international arena. We have NGO status, so we make a lot of submissions in the international arena. The Native Women's Association, as the umbrella association, does a lot more in the federal and international arenas, as opposed to our sister organization, which we've jointly made the submission with, the Ontario Native Women's Association, which does a lot more regional and provincial advocacy.

One of the goals of NWAC is to empower aboriginal women by engaging in these kinds of advocacy measures aimed at legislative and policy reforms that promote equal opportunity for aboriginal women, such as access to programs and services. As well, we are committed to ensuring that the unique needs of aboriginal women are reflected in any and all legislative and policy directives that have the potential to have a significant impact on aboriginal women.

We feel that the proposed amendments to Bill 107 will have a significant impact on members of disadvantaged and marginalized populations in their ability to access human rights mechanisms.

The Chair: Can I just interrupt? Could you slow down a bit for the sign language—

Ms. Abbott: Sorry. I talk too fast all the time.

The Chair: Thank you.

Ms. Abbott: Thanks. It's nervousness, actually.

While we see that there is a significant need for reforms because the current system has existed for 40 years relatively unchanged, the face of Ontario is changing. For aboriginal peoples, 75% of our population lives off reserve in urban centres. Aboriginal peoples generally have low socio-economic—they're disadvantaged in the Canadian population. But aboriginal women, by statistics, are even further marginalized. Some of the ways that Bill 107 can be strengthened are by accessibility, defined jurisdiction, adequate power for the Human Rights Commission, operational efficiency and effectiveness, and independence and accountability.

While we feel that there could be more significant, substantive law changes, such as aligning the Ontario Human Rights Code with some of the UN conventions to which Canada is a signatory, such as the social, political, cultural and economic rights as recognized under these very important conventions, we feel the provinces have a very significant role to play in ensuring that Canada meets these important international obligations. So while

we feel that the Human Rights Code can be amended to recognize these important social, political and economic rights, we focused our submission mainly on the impacts of Bill 107 and the shifting of the powers from the Human Rights Commission to a tribunal process, which has been loosely called direct access.

1740

We do not feel that the direct access model under Bill 107 will mean that aboriginal women will have more access to bringing their claims before the Human Rights Tribunal. We feel that they will have less access, actually. First and foremost NWAC, as a standard, always asks itself whether or not an aboriginal woman with very limited education, perhaps a single parent, with limited financial resources, would be able, and feel comfortable, to bring her claim forward. So we asked ourselves this, whether or not an aboriginal woman in that circumstance could bring her claim before a newly revised process, the process that Bill 107 is attempting to amend. We feel that shifting the jurisdiction and power and giving individuals access to a Human Rights Tribunal will make the system more adjudicative, as opposed to supportive.

As an organization, NWAC has used, with limited resources—we have very limited resources as a national organization and we've relied on the Canadian Human Rights Commission and have worked with them in two areas. In 2001, with the Canadian Elizabeth Fry Society, we jointly launched a human rights complaint for women who were federally sentenced. We feel that the commissions play a really important and vital role in looking at systemic discrimination and taking claims, supporting individuals and looking at the systemic nature of discrimination against marginalized populations. We feel that this is a very important, vital role and we're hoping that Bill 107 does not strip that role and that function from the commission because it plays a really vital role in monitoring human rights and taking claims on behalf of the public interest. That's our main recommendation. I guess I'll stop there because I'm just rambling.

The Chair: Thank you. We'll start with Mr. Kormos.

Mr. Kormos: You made reference to making a complaint on behalf of women prisoners, women in federal prisons. Do you call upon your people to use the respective commissions to make complaints when they encounter discrimination, racism, sexism, what have you?

Ms. Abbott: All the time. The Native Women's Association actually fields many calls from women right across Canada, and usually that's what we do. A lot of times women contact our office as aboriginal women because they think we have the resources to launch these kinds of claims, either charter claims or human rights claims. So we usually direct them to the Canadian Human Rights Commission because of its access, because you don't need a lawyer to go through that process and you'll be guided through the process by the commission.

Our organization itself, because we deal more in the federal jurisdiction—the Canadian Human Rights Act has a section called section 67. It's the last section in the Canadian Human Rights Act and it exempts the Indian Act and actions pursuant to the Indian Act from human rights claims. So we have a lot of women in the public sector, off reserve, who call our office for claims against provincial governments or in the workplace and these sorts of things, but we also have another group of women who call our office for discrimination claims against their bands. But the Canadian Human Rights Commission and the Canadian Human Rights Tribunal don't have the jurisdiction, because of section 67, to look into those kinds of claims.

Women call our office, I would say, on average—Neegann, what do you think?

Ms. Aaswaakshin: Probably about 10 times a month we have different complaints from aboriginal women on First Nations and in urban areas. We don't have the capacity to facilitate and advocate for each one of these aboriginal women, nor do local aboriginal women's organizations. We're understaffed and we just don't have the resources or the capacity to help women with these claims, and there are a lot.

Mr. Kormos: What's the timeliness? I appreciate that you're talking about the Canadian Human Rights Commission, but it's a commission body with a tribunal at the tail end, very similar to Ontario. What's the time frame that they resolve matters in, in your experience?

Ms. Abbott: Originally, when we had launched the joint claim with the Canadian Elizabeth Fry Society, we were going to put the claim in on behalf of six women in prison. The Canadian Human Rights Commission wanted to—well, we decided with the Canadian Human Rights Commission that it might be more advantageous if we looked at more of the systemic barriers because of the high overrepresentation of aboriginal women in the prisons and also, once they arrive in prison, the system of discrimination that occurs even within the prison. We decided to launch more of a systemic investigation, so we were happy with that.

In 2001, we filed the claim and did submissions. By December 2003, the commission had issued its report. So it was two years for that claim process.

Mr. Kormos: Thank you kindly. Please tell your executive director that this committee indicates very clearly that you represented her extremely well. You did.

Ms. Abbott: I was nervous as heck. Thanks.

Mrs. Van Bommel: Thank you for your presentation. As I'm going very quickly through your brief to us, I certainly note your second recommendation, which points out that there's a need for access to service in rural areas. As an MPP for a rural area, this is the first time I've seen this in any of the documentation that's been brought before us, and I certainly appreciate you bringing that to our attention. It's very important in terms of access.

I want to carry the question that Mr. Kormos brought forward one step further. In the last few days, we have heard from a number of women's groups who have told us that they found the whole system intimidating and very long in the Ontario Human Rights Commission and

tribunal system. I'm wondering, what is the experience of aboriginal women in the Ontario system?

Ms. Abbott: Because of the intimidation and these sorts of things, I think that aboriginal women are one of the underserviced populations. I think it has to do with a lot of things. A lot of people are under the impression—maybe they really don't know their rights, first of all. The Canadian Human Rights Act was passed in 1977, the section 67 that I was referring to, and a lot of aboriginal people don't think they can actually have access to a Canadian Human Rights Commission or a process such as that. So a lot of times, when women call our office asking us to help them or advocate for them in certain areas, we have to tell them what their rights are, where they can go, where they can access services, those sorts of things. So those issues of access are compounded for aboriginal women because of intimidation and a whole history of being excluded from these kinds of processes.

Mrs. Elliott: I'd also like to add my voice to thank you for your excellent presentation. I have gone ahead and read very quickly through your submission, and it seems that, unlike what's recommended in the legislation, which is to reduce the investigative powers of the commission, you're really recommending that they be enhanced. So is it fair to say that we're sort of going in the wrong direction with this legislation, with respect to the commission?

Ms. Abbott: Yes. I think the commission does play a really vital role in supporting individuals and also in taking on these kinds of systemic issues. I think that part of the problem with the timeliness and those sorts of things is the fact that it has been under-resourced and underfunded for so long. That's what created the backlog. I believe that an independent commission does have a significant role and function to play in Canadian society and in the province of Ontario.

Mrs. Elliott: Perhaps I could just ask you one other question, because I also see that you recommend the principle of choice: either proceeding directly to the tribunal or having complaints investigated by the commission. In your experience with aboriginal women, how often do you think that your clients would choose to go directly to the tribunal?

Ms. Abbott: I think it's a really complex issue. Some claims and some claimants who have the resources to proceed directly to tribunal probably could benefit from that system, but for others who may need more support or whose claims are more systemic in nature, a commission-style investigation and following it through the process that way probably would be more beneficial for the individual and for the larger society.

Mrs. Elliott: Thank you very much. I appreciate that.

The Chair: I missed Mr. Zimmer. Would you like to make a comment?

Mr. Zimmer: Are you presenting on behalf of the Native Women's Association of Canada or the Ontario Native Women's Association?

Ms. Abbott: The Native Women's Association of Canada. ONWA will probably be presenting tomorrow in Thunder Bay.

Mr. Zimmer: What are your particular responsibilities at the association?

Ms. Abbott: Last year I articled with them, and I stayed on this year as a policy analyst.

Mr. Zimmer: Are you a lawyer by training?

Ms. Abbott: Yes, and even this is intimidating, just so you know.

Mr. Zimmer: Thank you very much.

Mr. Kormos: Chair, if I may, just briefly, it's been a long day here in Ottawa, and I will be bold enough to speak for all of us on the committee in thanking the Legislative Assembly staff who have borne with us, some of whom will continue to stay here and work as they unload this stuff from the room and load it back up. I just want to say we're grateful for their high level of tolerance for elected members.

The Chair: Thanks to the staff, all the committee members, the presenters and, again, the sign language staff.

This committee is adjourned until tomorrow morning in Thunder Bay at 10 a.m.

The committee adjourned at 1751.

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