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## **Official Report of Debates (Hansard)**

**Tuesday 8 August 2006**

## **Journal des débats (Hansard)**

**Mardi 8 août 2006**

**Standing committee on  
justice policy**

Human Rights Code  
Amendment Act, 2006

**Comité permanent  
de la justice**

Loi de 2006 modifiant le Code  
des droits de la personne

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 8 August 2006

Mardi 8 août 2006

*The committee met at 1010 in Four Points by Sheraton London, London.*

HUMAN RIGHTS CODE  
AMENDMENT ACT, 2006LOI 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, everyone. Welcome to the meeting of the standing committee on justice policy. The order of business today is Bill 107, An Act to amend the Human Rights Code. This is our first day of public hearings, in London today. We will be meeting in Ottawa tomorrow and in Thunder Bay on Thursday. Public hearings will also 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.

Also, in the spirit of respecting human rights, the purpose of today's proceedings, we would like to remind everyone of their responsibility to make this process accessible. When presenting, please speak clearly, audibly and at a moderate pace for the benefit of everyone present. I may interrupt you and ask you to slow down if we find you're speaking too quickly.

## SUBCOMMITTEE REPORTS

**The Chair:** The first order of business is the adoption of the subcommittee report. I would ask someone to read the first report into the record and move its adoption.

**Mr. Lorenzo Berardinetti (Scarborough Southwest):** I have the report of the subcommittee.

Your subcommittee considered on Thursday, June 22, 2006, the method of proceeding on Bill 107, An Act to amend the Human Rights Code and recommends the following:

(1) That the committee meet for the purpose of public hearings on Bill 107 in London, Ottawa and Thunder Bay on August 8, 9 and 10, 2006. Dates and locations may

change depending on logistics and numbers of requests made in each location.

(2) That the committee resume public hearings in Toronto after the House resumes in the fall.

(3) That the deadline for those who wish to make an oral presentation on Bill 107 for the locations of London, Ottawa and Thunder Bay be 5 p.m. on Friday, July 21, 2006.

(4) That the deadline for those who wish to make an oral presentation in Toronto after the House resumes be determined at a later date.

(5) That, by the deadline, if there are more witnesses wishing to appear than time available, the clerk will advise the Chair so that a subcommittee meeting may be called to make decisions regarding meeting dates and witnesses to be scheduled.

(6) That organizations appearing before the committee be given 30 minutes each and individuals be given 20 minutes each in which to make their presentation, depending on numbers of requests made and subject to modification by the subcommittee.

(7) That an advertisement be placed for one day in all Ontario English daily newspapers, in all Ontario French weekly newspapers, in all ethnic newspapers in Ontario and also be placed on the Ont.Parl channel, the Legislative Assembly website and in a press release.

(8) That the ad specify that opportunities for video conferencing and teleconferencing may be provided to accommodate witnesses unable to appear in each location.

(9) That sign language interpretation, closed captioning and attendants for the disabled be provided for all public hearings on Bill 107.

(10) That interpretation for languages other than English and French be provided on the request of witnesses requiring such interpretation for their presentations.

(11) That the subcommittee meet again to make decisions on dates for clause-by-clause consideration.

(12) That the deadline for written submissions be the end of public hearings on Bill 107.

(13) That the research officer provide the committee with a background of issues considered when the Human Rights Commission was originally established.

(14) That the research officer provide the committee with a summary of witness presentations prior to clause-by-clause consideration of the bill.

(15) That options for video conferencing or teleconferencing be made available to witnesses where reasonable.

(16) That requests for reimbursement of reasonable travel expenses for witnesses to attend hearings be subject to approval by the Chair.

(17) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Chair:** Thank you, Mr. Berardinetti. I just want to make the point that the closed captioning services are not in operation at this time. We are making arrangements for them to be in place very shortly.

I just want to check with the interpreter whether that speed was fine. So if we can have everyone speak at that rate, that would be much appreciated.

Is there any debate on the motion?

**Mr. Peter Kormos (Niagara Centre):** I just want to thank Mr. Fenson for his compliance with request number 13, I believe, on that submission. He provided, as usual, a very capable précis of the origins of the commission.

**The Chair:** Any debate? Seeing no further debate, all those in favour? Opposed? That motion is carried.

I believe there is another subcommittee report.

**Mr. Berardinetti:** I would like to move adoption of the report of the subcommittee on committee business.

Your subcommittee further considered on Tuesday, July 25, 2006, the method of proceeding on Bill 107, An Act to amend the Human Rights Code and recommends the following:

(1) That the committee meet for public hearings on Bill 107 in London on Tuesday, August 8, in Ottawa on Wednesday, August 9, and Thunder Bay on Thursday, August 10, 2006.

(2) That the clerk schedule witnesses in London on a first-come first-served basis between 10 a.m. and 5 p.m. with organizations being given 30 minutes and individuals 20 minutes in which to speak.

(3) That those who cannot be scheduled in London during the time available be advised that they will be given the opportunity to appear before the committee at a later date in London or in Toronto.

(4) That witnesses in Ottawa be given 20 minutes in which to speak in order to schedule all those who made requests by the deadline.

(5) That, in Thunder Bay, organizations be given 30 minutes and individuals 20 minutes in which to speak.

(6) That the clerk of the committee, in consultation with the Chair, is authorized immediately to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Chair:** Any debate? Seeing none, all those in favour? Opposed? That motion carries.

1020

LINDA SAXON

**The Chair:** Our first presenter this morning is Ms. Linda Saxon.

**Mr. David Zimmer (Willowdale):** Mr. Chair, as the parliamentary assistant at the Attorney General's office, I have some opening remarks that I'd like to put on the record before we commence.

**The Chair:** Does the committee have any opposition to that?

**Mr. Kormos:** We've had exhaustive subcommittee meetings, and it was agreed that because of the number of people who wanted to participate we'd get right into the hearings, so let's get right into the hearings. I appreciate Mr. Zimmer's zeal, but Ms. Saxon is zealous as well.

**The Chair:** Ms. Saxon, you have 20 minutes. Any time that you don't use will be divided up amongst the three parties. You may begin.

**Ms. Linda Saxon:** Thank you. Good morning. My name is Linda Saxon. I live in the historic town of Amherstburg, a rural community south of Windsor. I am very concerned about Bill 107 because, as an individual with a disability, I feel that my quality of life is being threatened. I had to rely on the Ontario Human Rights Commission to ensure my right to equal access in my community.

As a victim of human rights violations, I would like to share some of my experience with you.

In 2000, I filed my first human rights complaint against the town of Amherstburg, which denied my request for accessible parking in front of the local high school where I volunteered on the high school council executive.

In 2001, I filed my second human rights complaint against the town of Amherstburg because it would not provide equal access to the town's historic Carnegie library.

These complaints followed several frustrating years of requests, which I believe aggravated my disability. In the case of the library, I made my first request for accommodation in 1992 and continued for almost a decade with correspondence, appearances before town council and letters to the editor. Throughout the same decade, there were engineers' studies, consultants' reports, announcements that fundraising would begin, and requests for proposals—all delaying tactics, in my opinion. The deputy mayor at the time even publicly stated, "If someone files a complaint with the Human Rights Commission we might be forced to do it. So far, no one has complained."

Accessibility was just not a priority. The town did not take advantage of funding initiatives—for example, SuperBuild—which placed an emphasis on accessibility projects. The town was invited by SuperBuild to apply for the marina it listed as the community's priority project, which I questioned. Rather than change its priority to the library, which met the criteria for funding, the town withdrew its application.

In 2001, when I learned that the town intended to make repairs to the library, I requested that council include accessibility in the tender. Instead, the town donated \$710,000 for a replica of the tall ship HMS

Detroit to set sail. Taxpayers incurred a 9% tax hike over a two-year period for the project which, several years later, still has not become a reality.

My two human rights complaints were combined into one. I represented myself, and of course the town vigorously defended itself. I endured a battle for simple requests that are granted all the time in larger cities like Toronto, London and Windsor. It was as though elected officials were personally affronted by my exercising my human rights. Feeling discriminated against was humiliating enough, but my feeling that I was a second-class citizen intensified when the town's solicitor refused to send me copies of correspondence sent to the Ontario Human Rights Commission. In five separate letters, I reminded the town's law firm that I was a party to the complaint and would appreciate the courtesy of being copied on all correspondence.

Eventually, just prior to a scheduled Ontario Human Rights Tribunal hearing, minutes of settlement were agreed to in April 2004. In August 2004, the town's lawyer advised the commission that the town "will be working with respect to the diameter of the railing." Almost a year later, in June 2005, the town's lawyer advised that "the chief building officer said this matter will be resolved in two weeks." In September 2005, I notified the commission that I wished to file a breach of settlement complaint against the town of Amherstburg. Within days, the handrails were replaced with ones that complied with the Ontario building code.

An item I requested in the 2004 settlement was a mandatory training session for town council on the duty to accommodate individuals with disabilities under the Ontario Human Rights Code. I hoped that council members would benefit from this educational session.

My expectation that nothing would change has been met. For almost three years I've requested, among other things, that the town's and police service's website be made accessible, that documents be provided in multiple formats and that the model parking bylaw be adopted—to no avail. At last December's town council meeting, two councillors chastised me for raising concerns about equal access. One councillor proclaimed, "I resent this delegation," while another asked me to face the audience and tell them about the "good things the town has done for accessibility."

In May of this year, the town reviewed its official plan. I objected to the use of the word "handicapped," the lack of commitment to housing for persons with disabilities and provision of accessible parking, barrier-free parks, walkways etc. At the July 31 public meeting, it was noted "that the terminology regarding accessibility be corrected throughout the document." I was not requesting a term in the terminology regarding accessibility; I was asking that documented, preferred terms and person-first terminology be used when referring to persons with disabilities. Simply editing and replacing the word "handicapped" with "disabled" was unacceptable. I had previously informed council that the lexicon of preferred terms could be downloaded at no cost and it

would help avoid the use of offensive and/or insensitive language. I offered samples of more appropriate terminology, which were rejected, as were my remaining objections to the official plan, so I submitted them again last Monday evening.

Given my experience with my municipality to date, I feel Bill 107 needs major changes. Bill 107 takes away important rights that Ontario's disability community fought for and won in 1982. If the Human Rights Commission's investigation and prosecution powers are stripped and its role is reduced to education, I am confident that my rights will continue to be infringed.

I would not feel comfortable investigating my own complaint; it would be unrealistic for me to expect the town to co-operate. The commission's investigator made several contacts with the town's counsel to gain relevant information for the investigation of my complaint. Despite the investigator's efforts, no information was obtained until after the director of mediation and investigation for the commission wrote a detailed letter to legal counsel for the town. The response was, however, silent on why it took 10 years of intervention by me to obtain a commitment from the town to make the library accessible.

For the first time, the Human Rights Tribunal can charge user fees for going to the tribunal. It could expose human rights complainants for the first time to have to pay their opponents' legal costs at tribunal hearings if they lose. Now the tribunal can only order the Human Rights Commission, not the discrimination victim, to pay the legal costs of the party accused of discrimination. As I am on disability pension, I would not be able to afford a lawyer to represent me at a tribunal hearing, let alone pay my opponents' legal costs.

This bill unfairly forces thousands of discrimination cases now in the human rights system to start all over again in the new system, but without the benefit of the Human Rights Commission's help. If I have to file any more human rights complaints against my municipality, I want the full protection and benefit of the code in its current state.

By Bill 107, the McGuinty government seriously breaks faith with 1.5 million Ontarians with disabilities. In the 2003 election, Premier McGuinty promised a new disability act with effective enforcement. After winning the election, the McGuinty government rejected disability community requests to create a new independent agency to enforce the new disability act. The government said it isn't needed since persons with disabilities can use the Human Rights Commission's complaints process to enforce their rights. The disability community applauded the new 2005 disability act, even though it created no new independent enforcement agency. Now Bill 107 removes most of the Human Rights Commission's public enforcement teeth.

#### **1030**

I strongly endorse the AODA Alliance's draft submission on Bill 107, and I feel that the following are some of the changes that should be made to Bill 107:

It 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.

Section 46.1 of the bill should be amended to provide that every human rights complainant has the right to publicly funded, effective legal representation by a lawyer and proceedings at the Human Rights Tribunal from the outset of the complaint through and including all appeals and the enforcement of any tribunal order.

It should be amended to provide that the tribunal may not order a complainant to pay legal costs at the tribunal and that a court may not order a complainant to pay legal costs on a judicial review application or, if appeals to a court aren't abolished by Bill 107, on an appeal to court.

It should be amended to eliminate section 45.2 and to prohibit the tribunal from charging user fees.

Sections 51 to 56 of the bill should be amended to provide that any complaint that has been filed with the commission before the date Bill 107 comes into force shall proceed and be dealt with under the existing code, not under Bill 107's new system.

Only human rights complaints filed on or after the date the bill comes into force should be dealt with under Bill 107's new system.

I hope my experience has demonstrated the need to preserve the right of every complainant to have the commission investigate their case. The town of Amherstburg complied with the code because it was forced to. It logically follows that education and advocacy are not strong enough tools to protect anyone's human rights. Another example of this is an Amherstburg police sergeant's human rights complaint, which the commission is currently investigating.

If the taxpayers in this province can pay millions of dollars to prop up Polkaroo and other TVO programs, I think persons with disabilities deserve to have their rights protected, investigated and enforced. I know this will be an election issue for me next year. I am tired of having to fight for what is right. I want to conserve my energy to fight my disease and enjoy my quality of life that others before me fought for. Thank you.

**The Chair:** Thank you. You have about three minutes each. We'll start with the official opposition. Mrs. Elliott.

**Mrs. Christine Elliott (Whitby–Ajax):** Thank you very much, Ms. Saxon, for your very thorough presentation. I just had one specific question and that was with respect to the minutes of settlement that were agreed to in April 2004. Can you elaborate a little bit more on what assistance you were provided by the commission in getting to that point? I think you had indicated that the director of mediations had to get involved. Could you explain a little bit more to us about what exactly happened in that process?

**Ms. Saxon:** We attempted mediation with my parking complaint first. Then, when the two were combined, I was offered an option for mediation, but I said no, based on my experience already with the parking complaint. The minutes of settlement addressed more than what I

had personally asked for. It did include public interest issues. I had asked for the elevator and the mandatory session for council members, and it was extended to include the handrails, the accessible washroom, placement of the paper towel holder etc.

**Mrs. Elliott:** This was all drafted with the assistance of the commission?

**Ms. Saxon:** Oh, yes.

**Mrs. Elliott:** Yes, okay. Thank you very much.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Thank you, Ms. Saxon. Look, first, I've got to come to Polkaroo's defence. Polkaroo costs but a fraction of Steve Paikin's salary, trust me.

**Ms. Saxon:** Okay.

**Mr. Kormos:** Yours is a very important contribution. We're going to hear all sorts of opinions over the course of today, tomorrow and then up in Thunder Bay. But you make an interesting proposal when you endorse the proposition that perhaps the government should create some choice for complainants and victims of discrimination. Let the complainant elect—I'm saying this because I want to make sure I understand what you're saying. Let the complainant elect to either proceed directly to the tribunal with their own lawyer and team of investigators or data, or let the complainant elect to have the commission conduct the investigation and perform the prosecution. Have I got that right?

**Ms. Saxon:** Yes, that's right.

**Mr. Kormos:** It seems to me that eliminating the commission is like eliminating the police force and the crown attorney's office. In other words, a victim of a crime can go directly to a court by laying a private charge and hiring a lawyer to prosecute that criminal charge. Surely the government doesn't advocate that as a solution to a backlog in criminal court. I think your proposal is a very fair one, and I'm confident that there are going to be members of this committee asking legislative counsel to draft amendments to that effect. Thank you very much.

**The Chair:** Ms. Matthews?

**Ms. Deborah Matthews (London North Centre):** Thank you very much. I'd like to take the opportunity to welcome you and everyone else here to London, to my town. I know we're going to hear from a lot of very thoughtful and well-informed people, and I appreciate your being the leadoff for us this morning.

**Mr. Kormos:** It's Mr. Bentley's town too.

**Ms. Matthews:** It's Mr. Bentley's town too. In fact, we might even be in Mr. Bentley's riding, or Mr. Ramal's riding. We share. So thank you.

I also want to just take a minute and say thank you for the fight you've had over the past many, many years. It's because of the work you've done and others like you that we are as far along as we are. We still have a long way to go, but the fight is worth it. Thank you for coming today. I know this is not easy to do, but because you and others are prepared to do it and to tell us your experience and what you think we can do to improve the bill, this will be a better bill at the end of the day than it was at the be-

gining. So I want to thank you, and thank you for sharing your story with us.

**Ms. Saxon:** Thank you.

**The Chair:** Thank you, Ms. Saxon.

#### ROBERT ILLINGWORTH

**The Chair:** The next presenter is Mr. Robert Illingworth.

Good morning. You may begin.

**Mr. Robert Illingworth:** Thank you very much. My name is Robert Illingworth. I reside in London, Ontario. The reason I requested to appear before the committee is that I have been involved in a human rights complaint that has gone to tribunal and is now going to appeal. I felt that my particular case offers a lot of insight into the way the tribunal works and how the process works and how it might be improved.

I'll just give you a brief synopsis of the case itself. It has to do with the Coroners Act and discrimination in the Coroners Act. The respondents are the Attorney General and the chief coroner of Ontario.

I originally got involved in this situation with the Coroners Act back in 2002 by writing a letter to Keith Norton, who was the chief commissioner at the time. I had mentioned to him that I thought the act was discriminatory because mandatory inquests are provided for prisoners who die in prison, but if you die as an involuntary patient with your freedoms taken away, you're not entitled to a mandatory inquest of your death. I felt this was discriminatory.

Mr. Norton agreed and wrote a letter to the chief coroner, cautioning him of the possible discrimination in this differentiation and recommended that they hold inquests for involuntary patients. The only reason I bring up the letter to the commissioner is that I know that even under Bill 107 the commission is given certain powers to advise, to educate etc. However, it seems to me that a government agency can just choose to ignore any recommendation from the chief commissioner, as happened in my case. So I filed a complaint with the Human Rights Commission, and that complaint went through the opposition of section 34, then it went to 36, and it was decided that it would go before the tribunal, even though the commission's own investigation was going to turn down the complaint.

#### 1040

The major thing I want to talk about is the tribunal part of it, because this seems to be the direction that the government is moving in for all complaints. In my particular case, it was a three-week hearing. At the very beginning of the hearing, the government already put a motion forward to dismiss the complaint. That was looked into by the tribunal and that was overturned. They launched a judicial review. I wrote to the Attorney General and said that I thought this was an obstruction of justice because that's what we have human rights for, to at least hear the matter and make a decision, rather than have a judicial review and dismiss it right from the beginning without even getting to the tribunal.

I don't know how judicial reviews are going to fit into Bill 107, but if the government or someone else can come ahead and have a judicial review just to question the tribunal's authority to even hear the complaint, this is one way of rooting out complaints right from the beginning. I don't know how that's going to operate under here. From the very first day of the hearing, the Attorney General hired someone from the court reporting office to transcribe the entire hearing, at a huge cost, I would imagine, to do that. As a complainant, this indicated to me that all the hearing was being used for was to set up for an appeal. That was the purpose in having the hearing, to prepare for an appeal. In my particular case, the adjudicator was former Supreme Court Justice Peter Cory. He was assigned to that case, I assume, because of his experience with human rights issues and his knowledge of the law.

This is where the whole tribunal process, to me, broke down. Justice Cory, I thought, did a very thorough job of conducting the hearings. I'd also like to comment on the commission lawyer. The commission lawyer did a very thorough job in defending the complaint. I think this is relevant, because they want to set up a system whereby people can access some sort of legal counselling. I think it's essential to have somebody with the background that the lawyers have at the commission—they know the precedent-setting cases, they know how things operate—rather than somebody who may not even have experience with human rights being there to represent you. I don't know what kind of background the lawyers are going to have that people are going to be able to access, but I'm sure they won't have the experience of the lawyer that handled my particular complaint.

Around the issue of appeals, I know that under Bill 107 you won't have the right to appeal a tribunal decision. In my particular case, the Attorney General has chosen to appeal this case. They claim to have found a total of 37 errors in law and fact in that tribunal case. Remember that this was conducted by a former Supreme Court justice. To me, this was a case that was set for appeal before the door even opened, and the reason that I bring that up is that Bill 107 was considered long before this appeal was launched in my case. The appeal was just launched in June, so one of the questions that I have to ask is, when it comes to sincerity in putting a bill forward, I haven't heard any rationale behind why they're not going to have any more appeals. However, you can't sit on both sides of the fence. You can't say that appeals are not important and then turn around and appeal a case that the commission considered to be a landmark decision.

So I don't know where Mr. Bryant truly sits on this particular point, because he seems to be playing both sides of the fence: When it's convenient to appeal, "Let's get this appeal in before this bill takes away the right to appeal."

The other thing I want to mention is all the technical aspects of a tribunal. I was represented—well, I guess you don't say, "I was represented," but the complaint was

represented by the commission. But there was an additional part of the complaint which the commission didn't carry and which I had to represent myself. In the tribunal hearings, it's no different than being in a court. You have to put together factums, books of authorities, things I had never heard of before that I had to research and figure out how to put together, and then you have the cost of couriering these things to all these other people involved in the case. It can become quite a cost factor for somebody in that situation.

As far as access to the tribunal, I lived in Barrie, as a complainant, but the tribunal was in Toronto in the middle of January, which meant I had to get down to Toronto every day for three weeks from Barrie. That was considered accessible to me and within the catchment area of Toronto.

I guess the other issue I wanted to speak to has to do with the tribunal as well. I think what's going to happen is that people are going to bring complaints to the tribunal. They are going to get some kind of legal advice, whether it be someone sitting beside them at the tribunal—I don't know if they will have that luxury of having somebody there every day or whether they'll get, as Mr. Bryant recommended to me, "You can call the law society and get half an hour of legal advice." That was his advice to me. So I don't know the in-depth legal advice that people are going to receive. There are all kinds of deadlines to be met, rules of evidence that have to be understood, rules of hearsay etc.

In my particular case, the Attorney General is even appealing Mr. Cory's qualifying of expert witnesses. So I think what's going to happen is, when it's a big case and the government is involved, there will be ways that they will find to delay the process, to have it reviewed, to have it dismissed before it's heard. That's what my fear is, that people are going to go in there against large companies that have bottomless pockets when it comes to defending themselves, and the complainant is going to have to rely on somebody they might have talked to for half an hour. I don't know who is going to prepare all the factums. I can't imagine all these tribunal hearings going on, with the amount of time that is consumed by one hearing alone. Are these lawyers going to prepare the factums for these people? Are they going to prepare the books of authorities for these people? And then are they going to present the case before the tribunal for the person, or is the person going to be left on their own? I don't think there's much clarification as to how the actual tribunal is going to proceed, but I can't see the tribunal dealing with the number of cases that they would have to deal with without shortchanging the complainant or the respondent, whoever is getting shortchanged in that process. You can't physically do it if the rules are going to be the same and you have to prepare all these factums and books of authorities and you have to serve them to people within certain dates. Things are already delayed by the time periods that people are allowed to bump things off. Even with the appeal in my case, we have to wait two months just to get the transcripts of these hearings.

Those are basically the things. I thought I should come before you, because I think my case speaks a lot to the government's belief in the tribunal truly being a way of resolving things. If that's the case and they truly believe that it should be in the hands of the tribunal, then why on earth are they appealing my case at this point? To put me through two more years—I've been dealing with this since 2002. When is it going to end?

**1050**

I would like to hear from the government the rationale for doing away with appeals, because nothing has been said on that issue: why they now think that appeals are not important. I haven't heard anything on that. But I certainly see the value of having commission representation at a tribunal. You need somebody there who knows the ropes and has the experience, especially in my case, when you're dealing with the Attorney General's office. They have very experienced lawyers with all kinds of degrees in administrative law etc. You need to be represented by somebody who really knows the process thoroughly.

I thank you for the opportunity to come here and say that, because I think they're making a big mistake if they go to tribunals only, because they'll never be able to fit them in the time frame, or they'll shortchange people by not giving full attention to the matter. I don't know if anyone has any questions.

**The Chair:** Thank you. We'll start with Mr. Kormos.

**Mr. Kormos:** Thank you, Mr. Illingworth. Of course the complaint that you speak of and the ruling is one that has received wide attention across the province. I agree with you. It takes some chutzpah to appeal Mr. Justice Cory, and it suggests that he erred in law time after time after time. But far be it for me—there will be appellate judges and lawyers making money in the course of doing that, and God bless.

You talk about a tremendously important public policy issue. In fact, Ms. Elliott's colleague Mr. Jackson has a private member's bill that advocates a coroner's inquest for the death of anybody in the care of children's aid societies, which is within the theme that you speak of.

The role of the commission, in your case, was a very important role in terms of advancing public interest. You cause me to reflect on the incredible role that the commission has played in protecting the rights of children with autism. I've sat through some of those hearings with Ms. Martel—incredibly complex material—data, research, medical research—requiring a great deal of expertise. The poor parents of these kids couldn't, nor should they be expected to have to, finance that type of litigation on their own.

I'm going to be subject to perhaps criticism, and I'm prepared to accept it, but I'm becoming increasingly impressed with the proposition that, fine, if you want direct access to the tribunal, have direct access, but don't take away the right of so many people who need the commission to prosecute, because, again, you're not the complainant; the issue is the complaint. You were so articulate when you said—did you hear what Mr.

Illingworth said? It isn't about him; it's about the issue. And that's why it's in the public interest that the commission prosecutes it, just like it's in the public interest that a crown attorney prosecutes criminal charges.

The investigative role: No parent or anybody else should be expected to have to undertake that responsibility, because they'll get blown out of the water time after time after time. Is that your sense as well?

**Mr. Illingworth:** Yes, that is. That is.

**Mr. Kormos:** Thanks kindly for coming in today. A valuable contribution.

**The Chair:** The government side? Mr. Zimmer.

**Mr. Zimmer:** Thank you very much for your submission. I should point out—you may or may not be aware of this—the Attorney General has publicly committed in the Legislature—it's a matter of record in Hansard—to amend section 46 to provide full legal support to Ontarians who have to turn to the human rights system. So at the end of this process, I expect, as the Attorney General has said, there will be an amendment to ensure full legal support of complainants at the tribunal/commission.

On your point of the appeals, the idea is to have expert commissioners or tribunal members dealing with these matters—people like Justice Cory. Their decision of the facts, there's a finality there. But there is always a judicial review in the event that the process in which the tribunal or the commission went about its work, if there's some mistake or error or flaw there. So the judicial review will deal with process issues, although the decision on the facts, there's a finality there, for the reasons you've given. I can have someone get you a copy of the Attorney General's statement on the proposed amendment to section 46, to ensure legal representation.

**Mr. Illingworth:** My concern with the judicial review and the process is that that's the very reason they were going to have a judicial review in our case, just to say that the tribunal is not the proper place to hear this etc. So it leaves the door open for large companies and governments to judicially review before the complaint is even heard and get it dismissed at that point. I know it's supposed to be "patently unreasonable" or something to get—

**Mr. Zimmer:** Yes, that's the test.

**Mr. Illingworth:** —to that stage, but that was my concern with that.

**Mr. Zimmer:** Your concern is well taken. But the judicial review, of course, will deal with errors of process. The facts on a tribunal finding will stand. Section 46 will be amended to provide proper legal service for the complainants. Thank you very much for attending.

**The Chair:** Mrs. Elliott.

**Mrs. Elliott:** Thank you very much for your presentation, Mr. Illingworth. With the presentation you've made, you've raised some excellent points that really go to the heart of the concerns that several members of the committee have with respect to this legislation, and that is with respect to who will be representing you and what sorts of qualifications people will have as they come

forward before the tribunal and whether they're going to be lawyers who are qualified in human rights legislation or what exactly their qualifications will be. Currently, that is very vague, and I understand that it is meant to be amended. But that is one big part that is left as sort of an open-ended question mark.

Secondly, with respect to the tribunal, of course, as you know, the tribunal can also form its own rules for how it will conduct itself, and that's another big area of concern about exactly what types of decisions it will make and how it will go about its work. Also, with a "patently unreasonable" test for going to judicial review, for all intents and purposes, there really isn't a right of appeal.

So I applaud you for bringing forward those matters. They're all very important and, in my view, they all need to be dealt with in far greater depth as we move forward in this process. I thank you for bringing them forward to us today.

**The Chair:** Thank you very much.

#### POLICE ASSOCIATION OF ONTARIO

**The Chair:** Next we have the Police Association of Ontario.

Good morning, gentlemen. If we can get your names for the record, you may begin any time.

**Mr. Bruce Miller:** Thank you. My name is Bruce Miller, and I'm the chief administrative officer for the Police Association of Ontario. I was also a front-line police officer for over 20 years prior to taking on my current responsibilities. With me is Dan Axford, who is the administrator of the London Police Association, is a member of the board of directors of the Police Association of Ontario and also a front-line police officer for over 20 years.

The Police Association of Ontario is a professional organization representing 30,000 police and civilian members from every municipal police association and the Ontario Provincial Police Association. The PAO is committed to promoting the interests of front-line police personnel, to upholding the honour of the police profession and to elevating the standards of Ontario's police services. We have included further information on our organization in our brief.

The need for legislative change in the area of human rights has been a matter of discussion for a number of years by many interested groups. We appreciate the opportunity to provide input into this important process.

The proposed legislation, as you know, would reform the complaints process so that discrimination claims would be filed directly with the Human Rights Tribunal of Ontario. The Ontario Human Rights Commission would shift its focus from adjudicating complaints to organizing proactive campaigns to prevent discrimination.

**1100**

The trend in legislative amendment in other jurisdictions is to leave human rights commissions re-

sponsible for public education and for promotion of human rights, but to remove human rights commissions as gatekeepers in the complaints process. The Police Association of Ontario supports the concept of direct access and is pleased that the government has moved on this important issue.

The PAO supports the legislation and its principles in general terms, but would like to comment on several issues related to two specific areas. The first surrounds funding. We would like to clearly state at the outset that the Police Association of Ontario believes that adequate funding for the commission and its related bodies is essential to the functioning of the commission. We believe that funding should be available to support complainants in bringing matters forward for attention. We would caution, however, that such funding must be limited to complaints of a serious nature involving the public interest and that such complaints must have a sense of legitimacy and province-wide application.

We share the government's goal to modernize and strengthen Ontario's 40-year-old human rights system by resolving complaints faster and more effectively and to better respond to modern human rights issues. However, criteria and guidelines must be put in place to avoid funding every complaint. This area must be addressed and cannot be left to the tribunal's discretion. Taxpayers must have assurance that only serious and legitimate complaints are being brought forward for review, and that frivolous and vexatious complaints are being dismissed.

The second area that we would like to comment on is the need to limit avenues of complaint. The avoidance of a multiplicity of proceedings and getting the complaint to the correct venue go hand in hand with the need to limit funding. We will be commenting on this subject, as it has a significant impact on policing.

Within the realm of policing, it should be noted that citizens in Ontario already have access to a police complaints process which can result in discipline and even dismissal where violation of a citizen's human rights warrants.

Police personnel in Ontario are highly trained professionals. Their job is to identify, respond to and deal with people engaged in unlawful activities. Police officers are duty-bound to investigate, make arrests and lay charges on a daily basis. These duties are prescribed in legislation.

Our association is on record as supporting civilian oversight of policing. Police personnel are currently subject to rigorous public oversight. The oversight function is provided by members of local police services boards; elected municipal and provincial officials; special-purpose bodies, including the special investigations unit, the Human Rights Code and the Ontario Civilian Commission on Police Services; and coroners' inquiries, public inquiries, criminal and civil courts. We have been and continue to be actively involved with government and other stakeholders in discussions on how to improve Ontario's police complaints system. As an association

committed to excellence in policing, we are always willing to participate in a process that ensures that all Ontarians have faith in their police service and the system of civilian oversight.

The PAO does believe that the number of venues open to an individual to file a complaint should be limited. Currently, police officers are subject to a public complaints process, civil actions and potential criminal reviews, as well as complaints filed under the Ontario Human Rights Code. These avenues of pursuit may be undertaken simultaneously or one after another. We believe that this places an undue burden on the police officer affected. It also places financial burdens on the local police association, police service, the municipality and ultimately the taxpayer. We recommend that the government explore how to limit the exposure of police officers who must navigate these varied processes.

The proposed legislation allows for the tribunal to dismiss a proceeding in the following circumstances—I've listed the circumstances under the proposed act in the brief, and I won't repeat them here.

I certainly would like to comment on clause (g), which states, "the tribunal is of the opinion that another proceeding has appropriately dealt with the substance of an application." We are concerned that clause (g) is too open-ended. The use of the word "dealt" would apparently not apply to proceedings that are ongoing. We would suggest that the language be amended as follows: "the application raises allegations that are the subject of another proceeding," or, "the application raises allegations that may be the subject of another proceeding in a more appropriate forum." This would allow for the dismissal of an application if:

(1) the substance of the allegation is raised in another proceeding. The proceeding needn't be completed. This is to avoid multiplicity and to make complainants choose one forum;

(2) the substance of the allegation is more appropriately raised in another forum. Again, there would be no need to have the other proceeding completed, but this would help to avoid multiple proceedings and would also prompt the tribunal to encourage itself to be limited to matters where they are acting on serious and substantive matters impacting human rights.

Reasonable restrictions to avoid multiple and unnecessary proceedings must be established to ensure reasonable limits on costs for both applicants and respondents.

In closing, we would like to make it clear that the Police Association of Ontario endorses the principles in Bill 107 and supports its speedy passage. We do believe that reasonable limits should be put on funding for complainants. We also strongly believe that the multitude of avenues of complaint should be limited.

We'd like to take the opportunity to thank the members of the standing committee for allowing us to appear before you once again and for your continued support for safe communities. We'd be pleased to answer any questions that you may have.

**The Chair:** Thank you very much. We'll start with the government side. About seven minutes each.

**Mr. Zimmer:** Thank you for your presentation. I know that you didn't want to waste time and didn't get into section 41, which sets out the tribunal's authority to dismiss a proceeding, but I think it's important to get that into the record, so I'm just going to read that in:

"41(1) The tribunal may dismiss a proceeding, in whole or in part, without a hearing, if,

"(a) the proceeding is frivolous, vexatious or is commenced in bad faith;

"(b) the proceeding relates to matters that are outside the jurisdiction of the tribunal;

"(c) some aspect of the statutory requirements for bringing the proceeding has not been met;

"(d) the application is made under section 35 and the facts alleged in the application, even if true, do not disclose an infringement of a right of the applicant under part I;

"(e) the application is made under section 36 and the facts alleged in the application, even if true, do not disclose infringements of a right under part I that are of a systemic nature;

"(f) the application is made under subsection 45.1(3) and the facts alleged in the application, even if true, do not disclose a contravention of a settlement; or

"(g) the tribunal is of the opinion that another proceeding has appropriately dealt with the substance of an application."

Those strike me as good safeguards to have in place in terms of dealing with matters that should not be before the Human Rights Commission or tribunal. Do you agree with that?

**Mr. Miller:** I agree with you 100%. Our only suggestion is in regard to clause (g), where we think that the language can be tightened up. In some cases, as I stated before, police officers are subject to where a person or an individual will go before body after body after body pursuing the same issue time and time again. It's a very costly process. It's stressful on the officer and frankly it doesn't serve justice. Certainly it's something that's recognized in the criminal courts, where people are charged and, if they're acquitted, that's the end of the event. We see so many different venues where people will be the subject of a public complaint, they'll be the subject of a lawsuit, they'll be the subject of a criminal investigation and of all the different oversight bodies. We're saying that people absolutely have the right to complain, and police officers should be held accountable. But at some point, there has to be a stop put to the multiplicity of hearings available, in fairness to both the officer and ultimately the taxpayer as well, because there are huge costs associated with these hearings.

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I think clause (g) goes some way to address it. We just looked at the language, and we think that the language we are putting forward would allow the commission to still meet its goals and to speed up the process and to be fair to all parties.

**Mr. Zimmer:** All right. Thank you very much.

**The Chair:** Mrs. Elliott.

**Mrs. Elliott:** Mr. Miller, with respect to the different venues that are available to complainants to proceed with complaints with respect to police officers, do you have any idea how many of them actually raised human rights complaints as opposed to any of the other avenues that they might pursue? Or do people often try all of them at once, or consecutively? What's generally been your experience with that?

**Mr. Miller:** Certainly the majority of citizens, once they've had their complaint dealt with in some forum, are satisfied that justice has been served whether or not they agree with the result. But we do have people who will just try one venue after another, and it just becomes so costly, so time-consuming and so stressful it really serves no purpose at all. Certainly, we do have people complain with the police complaints process. There may be a human rights connection; there may not be. After that's finished, then they go on to the next forum. At some point, the multiplicity of proceedings has to be limited.

I realize the government can't address the criminal courts and the civil courts, but we think that there is a good opportunity here, with two similar processes in terms of police complaints and human rights, that the complainant should, with some assistance, go to the correct forum and then not have the opportunity to go on to the next forum if he or she is dissatisfied with the decision.

**Mrs. Elliott:** I just have one other question, and it's with respect to the funding availability. Your presentation seems to indicate that you feel that funding should be limited to complaints that are perhaps more of a systemic nature rather than individual complaints, that there should be some province-wide application. Is that not correct? Could you clarify for me on that, please?

**Mr. Miller:** That's correct, but also they have to be substantive in nature. I think we all realize that with unlimited funding we'd just see a multiplicity of complaints. We have to ensure that they're substantive in nature and should be pursued.

**Mrs. Elliott:** If there were a complaint that was more individual in nature but didn't have that sort of province-wide application or being more of a systemic issue, would you still advocate funding for that individual?

**Mr. Miller:** I suppose province-wide application, when you're dealing with human rights, is a difficult question to answer because very often they do have a province-wide application. We just think—you can correct me if I'm wrong—that's it's something that the bill has been silent on in terms of criteria, that something needs to be put in place just to control unlimited funding, because we all know that unlimited funding would be disastrous for the taxpayer.

**Mrs. Elliott:** We certainly don't have much information on that, period, at this point, do we?

**Mr. Miller:** We just wanted to alert the committee to that concern. It's something that the Legislature might want to look at.

**Mrs. Elliott:** Thank you very much, Mr. Miller.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Thank you, gentlemen. Your points around clause 41(1)(g) are interesting, especially because section 41 only gives the tribunal the power to dismiss, as compared to dismiss or stay, which is something that perhaps, when we get to clause-by-clause, should be worthy of some discussion, because the tribunal doesn't have much choice either. The tribunal either dismisses or allows the claim to stand/proceed.

I'm wondering whether you'd be interested in power that would dismiss, because that would seem to be logical if in fact it already had been dealt with in an appropriate way. But if it hadn't been dealt with yet in the other forum, a staying, if it was discretionary, would permit the tribunal to simply say, "No, you're not going to go any further here until you find out what happened there." And, depending on what the other forum was, that could give the tribunal an ability to say, "No, it has been dealt with." Do you understand what I'm saying? That then would take it to the point where it has been dealt with. What's the phrase, Mr. Zimmer? You would be estopped. Is that what lawyers say?

**Mr. Zimmer:** As between lawyers, that's what they'd say.

**Mr. Kormos:** I think so, yes. You would be estopped. Thank you very much. And that legal advice was worth exactly what I paid for it, yes.

Is that of any interest to you?

**Mr. Miller:** I have two comments. First of all, our concern is not whether it has been appropriately dealt with or whether it's ongoing. But the question of whether a stay should be added there, frankly, I'd like to check with our solicitors on the matter and get back with some written submissions to the committee.

**Mr. Kormos:** I think that would be interesting. Your proposal number 2, "If the substance of the allegation is more appropriately raised in another forum," rings as something that appears in legislation already. Mr. Fenson, perhaps you could locate that for us with the help of legislative counsel, because I believe those phrases, that language, is used in some other existing legislation or procedures.

Your position on the commission: I've got to tell you, I was impressed and amazed at the fact that the commission deals with, what, give or take 50% of all complaints without them even going to the tribunal, through alternative dispute processes, mediation, simply having the parties reconcile, any number of ways. That seems to me to be a pretty important function, and saying that, in addition, your concern about frivolous and vexatious complaints that may not meet the test—that are de facto frivolous but don't meet the legal test for frivolous, right? That creates a grey area. Wouldn't the commission be in a very good position to deal with those and protect people from a lengthy tribunal process when in fact a more informal process may well suffice and resolve the issue? Doesn't the commission have value in that regard?

**Mr. Miller:** We think the proposed legislation is going to work well. We see it really as basically a transferring of responsibilities in some aspects from the

commission to the tribunal. We think that the goal of trying to speed up and expedite the process is a worthy one.

**Mr. Kormos:** Do you think the commission has any value in the work that it does now?

**Mr. Miller:** You're asking me a broad overview question. I think there are problems with the commission and with the current Human Rights Code. I think the legislation goes a long way to addressing it. I think we all recognize that a lot of it is going to depend on the quality of people who are put on the tribunal, as with any tribunal. The area that the government is moving to is one that other jurisdictions have looked at. There have been lengthy consultations on this subject, as you know, going back to the 1990s. This approach seems to be well-founded.

**Mr. Kormos:** But does the commission have any value to the extent that it mediates and resolves 50% of all complaints without them even going to the tribunal? Do you think that's a valuable function?

**Mr. Miller:** If it is a valuable function—I think you could also look at incorporating some of the same things with the tribunal as well.

**Mr. Kormos:** Did you hear the proposals for options, in other words, for a person to elect to either go directly to a tribunal with their own lawyers and investigation or to use a commission? Do you have any comment on that?

**Mr. Miller:** Once again, it's something we'd like to review with our solicitor. But at first glance, certainly the current model and separating the adjudicative process, investigative process and policy process seems to be the way to go, which the government is doing with this legislation.

**Mr. Kormos:** Thank you kindly. We look forward to your solicitor's views on those two points.

**The Chair:** Thank you very much.

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JACQUIE CARR

**The Chair:** Next we have Jacquie Carr.

**Ms. Jacquie Carr:** Good morning. Thank you for hearing me today.

**The Chair:** You may begin.

**Ms. Carr:** Thank you. My name is Jacquie Carr. I'm here representing myself today. Although I'm here by myself, I'm connected to individuals and organizations who have informed my understanding of and are variously engaging some element of human rights in Ontario today.

My active interest in human rights began 10 years ago at the time of my mother's death. My mother, Theresa Vince, was murdered in the Sears store in Chatham by her boss and store manager 16 months after having made a complaint of sexual harassment and poisoned work environment. Needless to say, this was a devastating tragedy for me and my family, including my sister, Catherine Kedziora, who is presenting—

**The Chair:** Ms. Carr, can I just interrupt? Can you just back off from the mike, please?

**Ms. Carr:** Sure. Is that better?

**The Chair:** That's better.

**Ms. Carr:**—including my sister, Catherine Kedziora, who is presenting here today at 1 p.m., and as a result it became important to me to work for change. Since that time, I have been involved in human-rights-promoting activities and have been connected to many good-minded people who do the same, two of whom include Michelle Schryer from the Chatham-Kent Sexual Assault Crisis Centre presenting here today at 3 p.m., and Marianne M. Park, a consultant who is presenting here at 4 p.m.

I have provided an attachment of my personal background. I don't want to spend my time going into the details of what I've done, but if you are interested in knowing a little bit more about how I'm connected to human rights, it's available to you.

Of all the projects and actions I have been involved in, what I'm most proud of, and which is the most invisible on paper, is providing support and advocacy to people who need so much more than the current Human Rights Commission system offers them. At present, I work in community outreach and development at a neighbourhood resource centre, providing, among other services, support and advocacy to poor, vulnerable and marginalized populations in the city of London.

I support the idea of reform. I support Bill 107 in principle, with amendments. It is abundantly clear to us all that the current system is not working. We have been hearing examples of how arduous accessing the commission is. The commission, as it is today, is overburdened and backlogged. It can take up to five years to complete an investigation and another one or two years for the tribunal process. This seven-year process represents the lucky 6% of individuals who get to the tribunal.

Its role as a champion and advocate for human rights is in conflict with its administrative roles as neutral investigator and as gatekeeper to tribunal hearings. Too often, instead of championing people's complaints, the commission tells them no, they do not have a case, and no, they will not help them. They make these decisions behind closed doors, with no ability of the parties involved to participate. It is very disempowering. The gatekeeping process causes a lot of distrust towards the commission. In 2002, approximately only 9.5% of all callers who spoke with a service inquiry rep about complaints of sexual harassment were sent an intake package. That means 90% were turned away.

Even though in theory it's supposed to be a lawyerless process, in reality those who have a lawyer or advocate do significantly better at being sent intake packages, having complaints accepted, getting beyond the first-step mediation—which to me is a dumping ground where most cases go to either be superficially settled or to die—and if they make it beyond, to a tribunal and possibly mediation after a full investigation, they do better at getting more meaningful resolutions.

The current regime does have barriers that are amplified for the very population the code seeks to protect. One small example I can recall is of a woman whom I

met when I was working at the London Sexual Assault Centre. She was a newcomer to Canada and was being badly sexually harassed by her supervisor. I suggested that one of her options was to make a complaint with the commission and coached her on how to push past the gatekeeping process that happens during these calls. She tried but was told on her first call that she did not have a case. Despite an absolute right under the law to file a complaint, she was denied right away. So next she tried calling again, but this time she called from the centre and introduced me to speak with the service inquiry rep, and then was sent an intake package to begin her complaint. It should never have happened that way. She should have gotten that package on her first call, when it was her making the request. She told me she would not have known to try again after being turned away. If she hadn't had an advocate, her complaint would have ended at the first phone call. This kind of occurrence is common.

Reform can correct these problems. Bill 107 guarantees that claimants will have direct access to a tribunal hearing. The commission will no longer decide which complaints go to the tribunal for hearing. Bill 107 strengthens and clarifies the commission's role as a strong advocate by eliminating its duties as a neutral fact-finder and gatekeeper in individual cases. Bill 107 gives people control over their claims and the ability to fully participate in the investigation, mediation and settlement process.

The following are my recommendations for amendments to Bill 107.

With regard to legal support services, I would like to see strengthening of the commitment to guarantee legal representation for all by changing the word "may" to "shall."

Specify what legal support includes by adding the words "information, advice, legal assistance and representation."

Ensuring access to legal support services is pivotal to building a stronger, more equitable human rights regime. This has always been one of the missing links for individual complainants. Even with direct access to a tribunal hearing, the process is far from lawyerless. Truly, the need is greater, as claimants will take on the responsibility to investigate and compel evidence from those who have violated their human rights. Not many of us are hard-wired with the knowledge and experience required to navigate investigations, conciliations, mediations and settlements. Individuals need advocates too. If the commission will be directing its advocacy duties toward issues related to systemic discrimination, it is imperative that an individual has an advocate who is answerable to him or her.

Legal support services should include legal aid clinics, other community-based advocacy organizations and specialized centres for human rights information and action. To be effective and accessible, they must be properly funded. Please include language to guarantee this.

Legal aid clinics are well able to provide some of this service as long as their eligibility criteria are relaxed to

allow people to qualify, as in the cases of sexual harassment and gendered discrimination.

Expand specialized centres for human rights information and action to include offices that deal distinctly with workplace harassment and discrimination. We have very good specialized offices, such as the African Canadian Legal Clinic and ARCH. An office dedicated to workplace human rights violations only makes sense. Two thirds of Ontarians are of working age. When human rights violations occur at work, they not only infringe on the dignity of the individual and create a hostile environment, but they jeopardize that person's long-term financial security. In my experience, there is a specialized set of knowledge required to support people who are being discriminated against at work. There are labour laws to be considered, unions to negotiate with and potentially intersecting human rights violations occurring. For example, a black woman with a disability working in a unionized work environment will have intersecting violations to resolve based on race, ability, gender and possibly others. If her union is not supportive, she will face the added challenge of negotiating their co-operation. Unionized workers should be able to access these services and not be turned away.

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State that support would be available "to any person who is or has been a claimant," as per the language in former section 86(q) of the Workers' Compensation Act.

Include language that provides for an annual review of the support being provided.

Based on these principles, I propose revised language to section 46.1:

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

"(3) On an annual basis, a person appointed by the minister shall review the functions and operation of this system and shall advise as to the sufficiency of resource allocated to this system, the functions assigned to this system and the scope of individuals who have access to the services provided."

Recommendations pertaining to the commission:

Reporting to the Legislature, which would affect sections 29(i), 31.2 and 57 of Bill 107: The commission should be independent of the government and should report directly to the Legislature.

Qualifications of commissioners: Include language that requires that persons appointed as members of the commission have demonstrated "active involvement and lived experience in human rights" and are "knowledg-

eable, with a proven commitment to human rights." Include language to ensure diversity of the commissioners and that they are representative of the community.

The Anti-Racism Secretariat and Disability Rights Secretariat: Many concerns have been raised by disability rights advocacy groups about the structure and intention of the secretariat. The committee should hear from members of both affected communities as to how best to address their issues in the new system.

Duty to co-operate with the commission: Bill 107 should impose a duty to co-operate with a commission inquiry, investigation or review and a duty to provide relevant documents or records as requested by the commission. In the event of non-co-operation, the commission should have the right to file an application with the tribunal to obtain an order to require the production of whatever documents or records have been refused.

Broaden the scope for investigation and intervention: The current language limits the commission's ability to bring its own application to the tribunal to cases that "are of a systemic nature." The commission may be unduly restricted by this language. Before a full hearing of the facts takes place, it would be difficult for the commission to meet these criteria. Allow instead the commission to bring an application before the tribunal if the commission is of the opinion that the application would be in the public interest. Add a paragraph that provides for the consent of the claimant as an important factor as to whether or not the commission should be granted intervention.

Recommendations for the tribunal:

Qualifications of tribunal members: Again, language should be included in the bill that requires that persons appointed would have "experience, expertise and interest in, and sensitivity to, human rights."

Application forms: Currently the language reads that applications "be in a form approved by the tribunal." I would like to see language provided that guarantees that no application will be dismissed solely on the basis of failure to provide the proper forms.

Application timelines: Extend application timelines beyond six months. It's time to change this arbitrary and ineffectual restrictive timeline. Often people experiencing workplace sexual harassment need more than six months to come to terms with what has happened to them, be able to name it, and heal enough from the psychosocial wounds to have the courage to do something about it. The timeline should be two years, consistent with the general standard for civil claims.

Procedural protections: Protections should be in place before the tribunal can summarily dismiss an application. As the language stands in Bill 107, the tribunal can immediately dismiss an application without the requirement of a hearing. Replace the word "hearing" with "full hearing on the merits" and include language that guarantees, where the tribunal is considering early dismissal, that the claimant be entitled to make oral submission to the decision-maker. Provide for procedural fairness; include the right to notice and an opportunity to address

the decision-maker in a preliminary hearing. Require the tribunal to provide reasons for any summary dismissals. Avoid the same dynamic of dismissal powers that is the main criticism of the current commission.

**Right to choose alternative dispute resolution:** The language allows the tribunal to use ADR methods. Language should be added to provide claimants the right to choose ADR or a hearing as a method of resolution.

**Procedural fairness versus efficiency:** While it is important to ensure complaint processes are dealt with in an efficient and timely manner, it is imperative to ensure fairness and that complaints are considered on their full merits.

**Considering commission documents:** Replace the word “may” with “shall.” Under the new structure, the commission will be an expert research and policy-making body. The tribunal should be required to consider the policies and documents published by the commission.

**No right of appeal:** The broad right of appeal that currently exists under the code has resulted in path-breaking tribunal decisions being overturned on their way up the judicial ladder, and often only being restored at the level of the Supreme Court of Canada, at great expense and delay to the claimant, and often nullifying any meaningful remedy because of the delay and expense, even if the decision is ultimately restored. Other tribunals, such as the Ontario Labour Relations Board, are respected and their decisions overturned only if they are blatantly unreasonable. The Human Rights Tribunal is held to a far more stringent standard, which means the court can overturn tribunal decisions solely based on a difference of view of the matter. The reason for an expert Human Rights Tribunal to deal with harassment and discrimination came about because of concerns that courts were not properly addressing discrimination issues. To institute greater deference to tribunal decisions, it becomes imperative that members of the tribunal meet strict qualifications requirements, as indicated earlier.

**Fees:** Access to a hearing should be without cost. Costs amplify barriers for the most vulnerable. Remove the authority for the tribunal to charge fees for expenses. However, in some circumstances it would be okay for the tribunal to attach a cost to investigations for respondents because of their non-disclosure.

**Transferable powers of remedy:** Allow any tribunal to have the power to award remedies on the same basis as the tribunal under section 42 of the act, in accordance with the limits of the tribunal’s remedial jurisdiction. This helps solve the problem of partial remedies on the part of the court. Currently, the court can provide remedy for injury to dignity, feelings and self-respect, but not for compensation for lost earnings as a result of discrimination. This is a very important part of a person’s claim. Human rights tribunals can also include non-monetary remedies that are so important to individual complainants, but courts cannot. Civil actions can be more comprehensive and meaningful if the power to award remedies is based on the same powers as the tribunal.

In conclusion, I applaud Attorney General Michael Bryant for introducing a bill to amend the Human Rights

Code. Bill 107 effectively opens the debate and opportunity for public input into much-needed reform. I thank the standing committee on justice policy for your diligence in this public debate process. I have set before you recommendations for changes to Bill 107 that I believe are necessary in order for human rights protections to be fully accessible and effective for all.

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Most importantly, I ask that the bill include language to ensure mandatory funding for legal services; that there be no user fees; that greater powers to intervene in hearings be assigned to the commission; that greater limits, in accordance with procedural fairness, be assigned to the tribunal’s powers to summarily dismiss claims; and that stringent qualifications be followed for commission and tribunal members. Thank you.

**The Chair:** Thank you. You were just right on. There is no time remaining for questions, so thank you very much.

## BARRIER BUSTERS

**The Chair:** Next is the group Barrier Busters; Tracey Roetman.

**Ms. Tracey Roetman:** Good morning.

**The Chair:** Good morning, Ms. Roetman. You may begin any time.

**Ms. Roetman:** I don’t like this and I’m not really comfortable talking about needless pain. I have come to know a lot of good, knowledgeable people. My grandfather was a World War I vet and my father was a World War II vet for Canada. I have a stake in this country and I have a stake in this province and I believe, with what is going on in the world, we should define ourselves as good and decent human beings. I will go on fighting for what is right, but I want you to back me up. I want what is fair and good and honest. Let’s define who we are as a country and as a province. We are smart, working and tolerant, and we are asking, but we’re inviting everybody to do the same.

I am going to share with you some of the things I have observed about the rights and the lack of rights of people with disabilities with whom I have worked. I have experience as a volunteer and as a staff person in the field of accessibility, and as a long-time advocate working to improve the lives of people with disabilities. I ask you to have an open mind and to listen carefully to the concerns I will be expressing and also to the real-life situations of not only myself but others with disabilities in my community who can’t be here today.

As pointed out so clearly in the Ontarians with Disabilities Act and the Accessibility for Ontarians with Disabilities Act, the province recognizes that widespread attitudinal barriers not only exist but need to be identified, removed and prevented in the future. Others often do not say or do the right thing much of the time, even though they may believe in it psychologically and even when they are legislated to do so. Attitudinal barriers are often a result of a lack of understanding of the other

person's situation or perspective. Many people don't like to admit they don't understand, which often creates a defensive point of view.

I am concerned about those of you who will be making the decision about what Bill 107 contains, as you may not understand the extent of the discrimination, the struggles for basic rights and the lack of opportunities people with disabilities face each day. You need to hear about the real-life experiences of ordinary people with disabilities.

If you're not experiencing discrimination personally as a result of being a person with a disability, the only way you can understand how the legislation will affect many people with disabilities in this province is for you to listen. Begin to understand the situations we face and then put legislation in place which will make our lives better, not more complicated. We don't need more barriers created; we need barriers removed.

Having a disability costs money. I can explain my own situation. It cost my family \$70,000 just to get me into my house. Tires for my wheelchair average about \$500 every three months. My new accessible van averages about \$1,000 a year in repairs, just for my ramp. I could never afford to pay a lawyer to represent me every time I face discrimination as a result of my disability.

You can't comprehend what people go through when their lives are totally disrupted as a result of a disability until it happens to you. The first five years of my disability were the most difficult. I went from being a totally independent, able-bodied person to a completely dependent, disabled person. Not only did I have to come to terms with my loss of independence and suffer low self-esteem, but my way of doing ordinary things was totally changed forever. I couldn't get up by myself, dress myself, bathe myself, feed myself. The pain was incredible, and not just the physical pain. The change in my quality of life was overwhelming. I no longer was the mother, the wife, the friend or the person I once was. I was struggling and my family was struggling. We were all going through grieving.

In the five years that I was confined to my bed, life was difficult, and more difficult than it needed to be. In the midst of this, I faced a constant battle for adequate home care with the community care access centre, a battle we neither needed nor wanted. We were told that I did not fit into the guidelines or criteria that home care had. I was told I had to sign up to go on a waiting list for a long-term-care facility, which neither my family nor I wanted. I was told I had to sign up to go into a supportive housing unit or my care would be cut. Did I want to give up our family home? Of course I didn't. Did I feel I had a choice when it came to where I lived? No. I felt incredible pressure to do what I was being told to do, to accept what was someone else's solution to the long-term impact of my disability.

The community care access centre then asked my 17-year-old daughter to stay home from school and take care of me. I explained that this was not an option; she was already struggling with the significant changes in our family life. Shortly after that, they had a meeting with me

and my daughter. She tearfully told them she was neither giving up her school nor leaving her family home. There are no words to explain what this did to me. I could not agree to do what they asked because my daughter's future was at stake. I felt that both my daughter and I were being treated unfairly. Did they have the right to deny her an education because I had become disabled? Did they have the right to deny me the services I needed to be as independent as possible? You answer these questions. Should I have taken this circumstance to the Human Rights Commission in order that we both be treated with fairness, equity and dignity?

I was not sure about what to do next, but fortunately for me, the March of Dimes outreach service entered our lives, and what a difference that made. I was able, with assistance, to gradually gain more independence and to once again become a mother and a wife. When your kids and your husband are your primary caregivers, it affects the relationship in a big way. They stop thinking of you as a mother or a friend or a lover, and to them, you don't seem like the same person you once were, before you had a disability. And you're not.

#### 1150

You will understand when I say that no one with a disability wants to file a human rights complaint. They neither have the time nor the energy. Just managing to live day to day is in itself a huge struggle.

Many of us, myself included, deal with ongoing health issues and unforeseen challenges as a result of our disability, which are difficult enough to accept. But when we must also navigate alone—because there seems to be no clear information, and it's like they want to keep it a secret—the complicated system of government bureaucracy to figure out how to receive assistance to manage on a daily basis, we need to have our rights guaranteed in law without additional stress and complicated processes.

Emotionally, dealing with my disability and health issues often becomes overwhelming. Not only have I lost much of my privacy, but my family and home life are much more complicated and my health issues impact how I'm able to cope. The loss of independence I still struggle with requires that I am constantly told how I will be taken care of. Many daily decisions are made by others. While these decisions are essential, I have very little control over many of them. I face countless needless barriers, and I am often discriminated against simply because I'm in a wheelchair. I don't think I could handle the emotional stress of having to launch a human rights complaint myself against an organization, which would result in a long, complicated and stressful process—and I'm a strong individual.

As I got better and got out in the community, no matter where I went I was continually told about other people's struggles and challenges. A schizophrenic tearfully told me of his 93-year-old mother who was unable to take care of his father. The mother was told by the community care access centre that they could receive no help because the son was able to provide care. This man was desperate, and his pleas were falling on deaf, uncaring, hardened ears. Did this help lessen the son's

stress? Is this an example of a family member capable of providing care? Should the son or the mother have taken on the additional burden of having to launch a human rights complaint by themselves?

A neighbour of mine who has an extremely bad heart condition has a spouse who developed Alzheimer's. He was told that he could take care of his wife alone. He tried and shortly afterwards had another heart attack. Space was found for her in a nursing home. The man had to drive 80 miles daily to visit her, when all he had been asking for was a few hours a week of home care so he could have assistance to support his wife.

Why are caregivers put in the position of having no control and no rights to decide what is best for their loved ones? The community care access centres should be adding services, not cutting them. Many long-term facilities and other institutions have long waiting lists of people who neither want to be there nor need to be there. In many cases, all the family needs is a few hours a week of home care for their loved ones to remain independent and happier in their own home, surrounded by supportive family members. As well, this solution is less expensive for everyone in the long run.

Another individual who had been receiving three hours a week of home care for nine years was told she no longer qualified. Many people are told government cut-backs are responsible for these changes. When they placed this emotionally upset woman in a home, she steadily declined, stopped eating and was dead in three months. How many more people must die before the law ensures people have the help they need without having to launch human rights complaints?

I advocated for a mother with two severely disabled sons, ages eight and 10, who requested housing through Ontario Works. Dad had left, which is often the case. Both boys had a life expectancy of 16 years, and their health was continually deteriorating. All she wanted to do was give them an accessible home with a yard and a decent quality of life for the time they had left. Should she have had to launch a human rights complaint to ensure that she and her sons with disabilities have the right to accessible housing? I don't think so. Families already burdened with the stresses of overwhelming illnesses and drastic changes to family structure need proper support and the right to accessible housing.

Parents of children with disabilities are put in the position of having to give up their jobs in order to care for their children. I know several people in this position in my own community. They continually struggle to find sources of support: financial and respite care. They advocate for their children, often on a daily basis, with the school system, the government and service agencies. They have neither the time nor the energy to launch a human rights complaint, and their children's needs come first.

We know that over the next five years—sorry, we're having technical problems.

1200

**Mr. Kormos:** Chair, there has been much comment on the contrast between the existing Human Rights Code

and the appeal provisions as compared to the judicial review powers or appeal available under the new act. Could the research officer give us some background on what types of tribunals are ones where the decision is final but for the Statutory Powers Procedure Act as compared to litigious or court-like tribunals where the right of appeal is deemed an inherent part of the process, as compared to the restricted judicial review? Do you understand what I'm asking for? What types of appeal processes apply to which types of tribunals in the general, broadest sense, and what's the rationale for the limited power of appeal in an administrative tribunal as compared to the very broad power of appeal, let's say, in a court process, be it civil or criminal?

**The Chair:** If you could continue—

**Ms. Roetman:** I'll continue with what I have because they don't seem to be able to get this on screen.

We know that over the next few years one in five Canadians will have some form of disability. When I think of the numbers, it affects me: one in five. That's my immediate family; that's my closest friend. I believe that to think you're not going to be affected by a disability is naive.

I receive referrals for individuals with disabilities who need help navigating the system to access the services they need. I try all avenues I know, and some people's situations still fall through the cracks of the system. I often refer them to agencies and other organizations and sometimes it's a really easy fix. Sometimes the challenges the individuals are facing are monumental, and help just doesn't seem to be there. How can we, as a society, guarantee that people with disabilities have the same rights as everyone else without having to launch many human rights complaints?

**Daniel:** I started working with Daniel in the fall of 2004. Daniel could be any one of us. Daniel suffered a work-related accident. Daniel was a kind, caring, modest man who was thankful for the smallest thing anyone did to help. After years of trying to navigate accessible housing and home care and not receiving the help he needed, Daniel died homeless and alone. Although I know I did all I know how to do, I wish I could have done more and feel the system let him down. I wish I could be having a coffee with him today and that he could be making plans for getting his health back.

Daniel, my friend, I'm sorry we were unable to do something sooner, for I believe that if we could have, you would be with us today. You will live on in my heart, and you will be my inspiration to work hard to do away with the lack of support, assistance and services.

Did Daniel not have a right to accessible housing and home care?

**Billy:** Four years ago, Billy was at work and had a tragic accident that left him paralyzed from the shoulders down. Billy came home four years ago with written instructions on how to address his health issues. He knew the outcome if he did not receive immediate care. Three months ago, I was called when the doctor in emergency would not follow the specialist's instructions, something

that could have killed him. When you are paralyzed to that degree and your body gets an infection, you get a killer headache, your blood pressure shoots up to the point that it could kill you and you need medication immediately. The doctor on call refused to even read the papers from Lyndhurst. Advocating saved his life, but he is still waiting to be flown out of the Sault so that they can resolve the cause of the infection. He has been in the hospital for the past three months and has been waiting to be sent to either Ottawa or London for specialized care. Needless to say, he's getting weaker and weaker. Should Billy launch a human rights complaint while in a serious medical crisis because his rights to medical care and to be heard are being ignored? Many people with disabilities are treated as though they are uneducated, ignorant of their own needs and helpless. This is a serious attitudinal barrier.

People who interact with the public, particularly those people involved in health care, must learn how to treat people with disabilities with dignity and respect. This is the individual's right. As stated on the Ontario Human Rights Commission's website, "Protecting human rights is everyone's responsibility. We all have an obligation to respect each other's human rights and to speak out against discrimination and harassment for ourselves and for others." I quote from the policy: "Respect for the dignity of persons with disabilities is the key to preventing and removing barriers. This includes respect for the self-worth, individuality, privacy, confidentiality, comfort and autonomy of persons with disabilities."

Rhonda was labelled as "retarded" or, more correctly, as developmentally delayed as a child and spent most of her life in an institution, something she still has nightmares about. She has cerebral palsy. Her speech is impaired, as is her movement, but her IQ is higher than most people I know. Her courage and tenacity have been an inspiration to all of us who have had the pleasure to know her.

At a forum on accessibility issues, Rhonda stated, "Although I have a disability, I have great ability. I am happy to be here this evening and thank you for the opportunity to voice my concerns. I, like a number of individuals, am dependent on Parabus for transportation. I serve on a number of committees and volunteer. It is enormously frustrating booking busing. There have been a number of times when I've arrived hours ahead of time for a meeting and left a meeting before it's over. I was so upset at one point that I thought of quitting, although others talked me out of it. You need to understand that for those of us who are dependent on this system it's humiliating and yet another situation where the impact leaves us feeling a child-like dependency. It reinforces the second-class citizen feelings and limits our opportunities, robs individuals of dignity and keeps us from enjoying community life. We have no desire to be housebound. We would appreciate you addressing this issue."

**1210**

I think this situation shows that Rhonda is clearly not developmentally delayed. Does she not deserve assist-

ance now to overcome the early difficulties she faced? If the human rights legislation protects the rights of people like Rhonda to an appropriate education and assistance, as required, without having to go through a long, complicated, time-consuming and costly process, there will be more opportunities for people with disabilities to be productive members of their communities and children will be treated with the dignity they deserve.

Sylvia, or Sy to her friends, was also born with cerebral palsy and started out at five having to attend a school 80 miles from her home because there was only one school in 200 miles that took on special-needs students. Every Sunday night for years she cried herself to sleep.

Years later, Sy went on to get her honours degree in English, and she now writes a column for a local newspaper on disability issues. Sy receives \$400 a month from ODSP. Since she graduated from university several years ago, the government has continued to harass her non-stop for repayment of her student loans. Tell me, how is she to do this on \$400 a month? Should she repay the loan and not eat? This kind of treatment doesn't respect her dignity, doesn't give her credit for her intelligence, tenacity and strength of spirit, and it is insensitive and demeaning.

Ron, in April 2005, was crossing at the international border at Sault Ste. Marie, Michigan and Ontario. His mother was born in the US. He was denied entry into the United States. He was going to travel down I-75 and re-enter Canada at the Sarnia/Port Huron international border. He and his friend were going to visit relatives residing near Sarnia. The duration of time within the US would have been no longer than approximately six to seven hours between Sault Ste. Marie and Port Huron, going down and coming back again.

At the American border, Ron, the driver, and his passenger were told to empty their pockets and wallets for inspection while the vehicle was being inspected. In their possession was identification, Canadian currency, cigarettes, personal belongings for the trip as well as the driver's personal medication. All customs officers, for the most part, were friendly. When asked what the driver's medication was, without hesitation Ron explained that he was HIV-positive and that his medication was part of an antiretroviral therapy. Immediately, the officer holding the medication and another officer examining the passenger's ID placed the objects on a nearby table and, palms facing upward, slid the objects away from them. The officer inspecting the vehicle was told to discontinue inspection and all the officers went behind closed doors. The two individuals undergoing this routine check were left for approximately 10 minutes, supervised by surveillance cameras. Upon their return, access to the United States was denied. Ron and his passenger were escorted to a detainment facility for questioning. Interrogation began regarding ownership of the vehicle and Ron's true identity. Disturbing phone calls were made to his elderly mother, investigating her American citizenship.

It is understandable that during a routine border investigation criminal records are searched for; however, neither party had a criminal record. Ron was then taken privately into a room while his passenger was left sitting in the public office where other travellers were entering and exiting at will. The passenger asked how long the wait was going to be and if it was possible to make a phone call to inform family members of the detainment. The response was, "Shut up and sit down before things get really uncomfortable." The passenger was ignored from that point onward.

**The Chair:** Ms. Roetman, sorry to interrupt. Your time is just about up. Could you please summarize in a couple of minutes?

**Ms. Roetman:** Sure. I'll let you read this at your leisure.

Most individuals with disabilities have neither the time nor the energy, and a lot of individuals like myself don't have the money, because being disabled is expensive. I would like you to remember these individuals and protect their rights. Although my background is in inspecting buildings for accessibility, advocating has taken up a big part of my life, and it's all unpaid hours. These people have nobody else. It's a complicated, convoluted system. We need to make the laws stronger, not weaker, because even though people believe it's right, until they're mandated to do it, they won't.

I would like to close with a presentation that we developed in the Soo, because I think it's really effective. I think this is what you guys need to think about when you're making changes to this bill.

*Audio-visual presentation.*

**The Chair:** Thank you very much.

We'll be recessing for an hour for lunch. We'll meet back here at quarter after 1.

*The committee recessed from 1222 to 1322.*

#### CATHERINE KEDZIORA

**The Chair:** Good afternoon. Our first presenter this afternoon is Catherine Kedziora.

**Ms. Catherine Kedziora:** Good afternoon.

**The Chair:** You have 20 minutes. You may begin.

**Ms. Kedziora:** Thank you. I'm feeling a little bit like a fish out of water, so please bear with me. As you know, my name is Catherine Kedziora. I have come here today representing myself and a portion of my family.

My interest in human rights began some 10 years ago with the death of my mother, Theresa Vince, at the hands of her boss, the manager of the Sears store in Chatham, who had been sexually harassing her for at least two years prior to her death. During the process of the inquest into her death, I became aware that there were flaws in the way that our Human Rights Commission handles or, in some cases, doesn't handle complaints of sexual harassment.

One of the things I've come to learn is that Canada—and it doesn't give me any joy to say this—ranks fourth in the world for sexual harassment complaints. That is

startling to me. I also know that 75% of female high school students report incidents of sexual harassment and gender discrimination in the halls and the classrooms of our schools. That, to me, is unacceptable. I also am aware that out of 100 persons who file a complaint of sexual harassment, only 9.5% are sent an intake package, which means that 90% of the complainants are turned away without due process, so to speak: without an investigation, without a hearing and, for lack of a better phrase, without any justice. Of that 9.5% who are lucky enough to receive the intake package and are lucky enough to be able to go forward, they are bogged down in a seriously backlogged system and can wait up to five years to get an investigation and then another one to two years for the tribunal to process everything and get to a hearing. So you're looking a seven-year process, which represents only 6% of the individuals who make complaints.

This would have been no remedy for my mother because from the time she made her first complaint to Sears Canada she was dead within 16 months. She never even would have gotten, I'm sure, past the intake package stage, if she were to even receive one, nor would it have been a remedy for Lori Dupont, who was dead within a year. And it is certainly not a remedy for a single mother I know who was fired from her job four months ago due to pregnancy-related restrictions and absenteeism. She just received a phone call for the first time from the commission last week telling her that they're looking into her complaint—not that she was getting an intake package, not that she was getting a hearing. Nothing was moving forward, just that they were looking into her phone call.

This is a woman who is still experiencing serious pregnancy-related issues and who, under doctor's orders, has been on strict bed rest. She has no job, no source of income, and now she is dealing with the added stress of an overburdened and basically unsympathetic commission. I have to ask myself why, because I've asked that to myself several times in 10 years. I don't have any answers yet and the commission hasn't been able to give us any answers over the course of the 10 years.

It's my full belief that it's the commission's role to advocate for human rights, but far too often, instead of people's complaints being heard, they're dismissed via the use of some obscure code denying complainants their right to a hearing. These decisions are not made in full view of the public eye but behind a closed door and in secret, stripping the persons involved of their right to a fair, expeditious process. This is not justice, this is not advocacy and this is not a remedy for the people of this province.

What it equates to is a natural disdain and distrust towards a commission that in its fruition was meant to serve and protect the rights of Ontarians, not dismiss them. It is unfathomable to me that a complaint can be arbitrarily dismissed based on an initial phone call or that complainants not receive an intake package because the initial phone call is still under review, as with the case of the single mum I spoke of.

I thank God and I praise the efforts of advocates out there. They are very few and far between. She is lucky enough to have in her life some advocates who care enough to intervene on her behalf or this mum would have fallen within the 90 percentile, and I'm not convinced she still won't.

There's an old saying: If it isn't broken, don't fix it. I cannot in good conscience apply that to our Ontario Human Rights Commission, but it is my belief that Bill 107 can correct the problems I've laid out. It will guarantee full and direct access to a tribunal and eliminate the excusing of complaints by the commission. Bill 107 will help renew the public faith by putting the commission back in the role of an unbiased fact-finding body and, most importantly, give people back their control and offer them the ability to participate fully in the process rather than stand idly by while the process happens to them, leaving them frustrated, hopeless and demoralized.

I know people are going to want amendments, but there are only a few that I'd like to offer to you for consideration. Under legal support services, I would like to see the language strengthened on the commitment to the guarantee of legal representation for all. This should include, but not be limited to, legal aid clinics, community-based advocacy organizations and specialized information centres geared to human rights actions, offering specialized legal counsel by qualified people in the areas of sexual harassment and gender discrimination with guaranteed full funding.

**1330**

No one should ever be turned away from the process for any reason, including funding. I'd like it made more distinctly clear that no user fees should be applied to anyone using these services. I'd also like to see the language "full hearing" replace "just hearing" when dealing with complaints to the commission and the tribunal, which eliminates the ability of either body to dismiss a complaint without process, as well as removing the tribunal's ability to exact costs on complainants. Costs should only be levied, in my opinion, if a respondent does not offer full disclosure and purposely hinders the process.

I know there are going to be a lot of people from all walks of life who will be adding their voices to this process. There will be people who oppose Bill 107 for being exclusive. I don't believe, in the heart of the bill, that it is. I believe the intent is meant to be inclusive and, in my opinion, it gives a way for opponents to the bill to find their way within it. Finally, there will be people who have more knowledge, more statistics, more experience than myself, and I'll leave it to them to pick apart all the wording issues. I'm here today as a person who wants to offer a submission based on my years of knowledge and experience. In that experience, I've come to a startling conclusion: As it stands today, our Human Rights Commission offers few remedies to Ontarians.

I wish to express my deepest gratitude to Ontario Attorney General Michael Bryant for introducing Bill 107. It was that act which gave rise to the opportunity

that I have here today to lend my voice in some small measure in support of Bill 107. I want to thank the standing committee for the opportunity to speak and be involved in the public debate process of Bill 107. I wish to say that it is my firm belief that for human rights protection to be fully accessible and effective the bill's language should include legal funding. Representation and services must be made available to provide information and advice. No user fees should be attached. The minister should develop a system of high-quality support, ensuring:

- funding throughout the province which is subject to an annual review;
- the commission report directly to the Legislature;
- exact qualifications are met for members appointed to the commission and the tribunal that include but do not limit them to experience, interest, sensitivity and expertise in human rights.

I am cautiously hopeful regarding this process and pray that the committee continues its open-mindedness and takes full advantage of the expert opinions brought forward to you by the people of each community while you move through this editing process on Bill 107.

Finally, change is not easy but it is important, as it keeps us moving forward into the future—and the future does bring hope. It is not something to be feared but should be embraced. Bill 107 is, in my opinion, a positive change and should be embraced as a firm step forward for human rights. Thanks.

**The Chair:** Thank you very much. We'll begin with Mrs. Elliott.

**Mrs. Elliott:** Thank you, Ms. Kedziora, for your very thoughtful presentation. You raised some really important points, I think, one with respect to the issue of backlog. That's certainly reducing the efficacy of the commission, which needs to be dealing with complaints on a timely basis. I also have heard time and time again of complaints that have taken years to get to even the issue of dealing with them.

Secondly, your point with respect to people having the ability to have their complaint dealt with on the merits—the issue that I'm struggling with is with respect to whether the direct access model is going to be the answer to it. My concern is that though the individual will have their complaint being heard, I wonder what you see as the commission's role with respect to systemic discrimination issues. Would you like to see the commission have a more enhanced role in terms of looking at complaints of that nature, or do you think they could also be dealt with by the tribunal?

**Ms. Kedziora:** I believe the commission should be involved as a body of fact-finding. So the issue of systemic discrimination should probably fall within the tribunal's—

**Mrs. Elliott:** Jurisdiction?

**Ms. Kedziora:** —jurisdiction. Thank you very much.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Thank you very much for coming here today. It's going to be a lengthy debate. It's going to

carry on well into September after the House resumes, because of course the government had to pick whether it wanted to prioritize Bill 14 or Bill 107, and it picked Bill 14. So we're here in London today. We're going to Ottawa tomorrow and then Thunder Bay. Then the rest of the break, in terms of committee hearings, is going to be spent with Bill 14. After the House resumes—when, September 23, Chair?

**The Clerk of the Committee (Ms. Anne Stokes):** September 25.

**Mr. Kormos:** —on September 25, we'll be back on Bill 107. Thank you very much.

**The Chair:** Mr. Zimmer.

**Mr. Zimmer:** Thank you very much. We heard from your sister this morning also. I do want to thank you on behalf of the Attorney General for the support you've shown for this legislation and also for your very helpful suggestions on how it might be made even better.

In that regard, I want to read you a commitment the Attorney General made in the Legislature. It's in Hansard. I'm reading an excerpt of it here. It's dealing with section 46.

“Section 46 of the bill does make reference and entrenches the first-ever human rights legal support centre, but the McGuinty government recognizes the need for clarity and endeavours to bring even greater clarity to this bill, long overdue, and this reform, long overdue. So to answer the question directly, we do intend proposing amendments at the appropriate time to section 46 in order to bring even greater clarity, not only to section 46 but to the entire human rights process, and we look forward to hearing from all Ontarians and all members of the committee on that front.”

In effect, what you're doing today by taking your time and organizing your thoughts and sharing them with this committee is assisting the Attorney General when he presents the amendments to the bill, which are designed to make it an even better piece of legislation. Thank you.

**Ms. Kedziora:** Thank you very much.

**The Chair:** Thank you for coming this afternoon.

**Ms. Kedziora:** Thank you for your ears.

LORIN MacDONALD

**The Chair:** Next we have Lorin MacDonald. Good afternoon. You can start.

**Ms. Lorin MacDonald:** Good afternoon. Thank you for allowing me to present. My name is Lorin MacDonald. I'm a law student here at the University of Western Ontario. I have a severe to profound hearing loss, and so I'm certainly no stranger to the effects of discrimination and barriers as a person living with a hearing loss and a disability in our province. I've also had the opportunity to study legal aspects of the legislation in my studies. Certainly, as far as I'm concerned, human rights legislation is just secondary to the Charter of Rights and Freedoms. I've taken a great interest in Bill 107 and what it offers.

Everyone agrees that reform is necessary. I don't think anyone will dispute that fact. Where we differ is in what kind of reform is needed. I think that's why we're having these public hearings now and why over the course of the three cities you're going to visit you're going to hear from a wide range of people from the different communities who are the major users of the Ontario Human Rights Commission. They're going to be speaking out, I would assume, majorly against Bill 107 in their opinions on how it can be strengthened. There's a reason for that. I think it's important to listen to the feedback from these consumers who are going to be using the Ontario Human Rights Commission.

1340

I want to say that I agree with the general positions that have been put forward in the AODA Alliance's draft submission on Bill 107. I don't want to get into going over a lot of their points, because it just becomes redundant. You're going to hear a lot of that over the course of the three cities that you're going to visit. But I will give you a personal story, because I think that's the thing that's going to mean the most to you, when you do hear the personal stories of people who have been through the discrimination and who have used the Ontario Human Rights Commission in the past. Those are the things, I think, that are going to hit home to you, that are going to be the things that you are going to remember the most when you've finished with this process.

I can tell you I have it on good authority that I myself could not afford to hire a lawyer, nor would I feel comfortable investigating my own complaint, if Bill 107 goes through and the effects, as it stands right now, happen, because I'm in the process of going through a situation right now where that's what would happen if this goes through. I can tell you that the situation that I have is something that has been ongoing, and I have tried my best over the last four years to resolve it on my own. I'm a law student, so I'm pretty well versed on how to articulate, how to work with the system, how to present a case, how to use precedent, how to bolster support for my position—and I'm getting nowhere.

So I'm thinking, how would other people with disabilities, who perhaps are not as able as I am, who are not as strong self-advocates as I, fare in such a situation? I'm thinking “not as well,” because I can tell you from personal experience that it's been extremely difficult for me to go through this process over the last four years. It's not over yet. I've been very fortunate that I have a lawyer now who has been generous with his time to take this case on for me on a pro bono basis, because I'm a law student. I cannot afford a lawyer on my own, to pay a retainer. If I were to take this to the Ontario Human Rights Commission under Bill 107, if it passes, I would have to pay a lawyer to do this. I can't do that. I'm not in that kind of position. So I'm thinking, for a person with a disability who is not as capable as I am or who doesn't have the skills that I may have, what kind of position would they be in? That's why I'm trying to look at other

persons who are not in the same position and how they would fare. That's the concern I have. I think in London for the rest of today, and in Thunder Bay and Ottawa, you're going to hear a recurring theme.

I also would like to remind you that all of you are elected MPPs, and I believe this is going to become a voter issue and that you're going to hear from the communities that you serve and the ones who are affected by Bill 107, much like the AODA back in 2004. I'm sure you did hear from the communities that were concerned about how the AODA was shaping up. I was very involved with that whole process, and I can tell you that it was very, very moving to see how that whole process came together, how we had the disability community, government and the private sector all working together. It was a tremendous, tremendous day when that bill was passed. I was in Queen's Park when perhaps several of you were in the Legislature when all voted a resounding yes, not only verbally but with sign language. I can tell you, that was the most profoundly moving day of my life.

To get to that point, it took tremendous partnership; many of us were concerned because we had raised with the McGuinty government, "Wait a minute; there's no enforcement mechanism in this bill." We wanted to see something in there, because what if there's a problem? We wanted to make sure that there was some kind of mechanism. We were told not to worry about that because, "You will always have the Ontario Human Rights Commission there to take your complaint, to investigate, to prosecute whatever; that would never go away." So even though the AODA didn't give us everything we needed, we felt that it was still pretty good legislation and we threw our support behind it. So when that day happened in May 2005, it was profoundly moving. I know that many of you were in that room and gave your support to that bill.

So imagine my tremendous disappointment when the Attorney General put forward this Bill 107. I didn't understand what was going on, because I thought, "Here's the government that's taking away a lot of the tremendous goodwill that it had built with the community"—with the disability community, at least. We very much wanted to work with the government of the day because, remember, this had been years and years of disappointment with the Conservative government before you—before the Liberal government. My apologies to the NDP government, which certainly has been a tremendous champion of disability rights, and the Conservative government, not so much. Apologies to those who are here at the table.

We were very hopeful that this time the government of the day, being the Liberal Party, was really going to work with the disability community. We dared to believe that this was finally the partnership that we were looking for, and then Michael Bryant put forward this bill. We thought, "This can't be right, this must be some misunderstanding or some partnership gone wrong," or whatever. However, we're still very hopeful, with these public hearings and what you're going to hear over the

next few days, that it's not too late. This bill is not a fait accompli; there's still much work that can be done to rectify this. So I know that you will be hearing much over the next few days.

My belief is that Bill 107 needs to be seriously amended. At the end of the day, I think complainants need to retain their right to a public investigation and they need to have full legal support at tribunal hearings. That's pretty much my bottom line.

The breach of understanding that happened between the AODA and Bill 107 needs to be cleared up, because you've got a lot of members of the disability community in Ontario who are quite disillusioned. This is the community that gets disillusioned time and time again. That should not be happening. I think we are often the most marginalized in Ontario. This is an Ontario that the Premier says works for everyone. Again, I can tell you on good authority, from personal experience, that it doesn't. It still does not work for people with disabilities, and it needs to stop; it needs to stop now. There's no reason why people with disabilities in this province—it seems to be the last frontier when it comes to civil rights. You would not think of treating women in a certain way; you would not think of treating aboriginal peoples in a certain way; you would not think of treating visible minorities in a certain way. But when it comes to people with disabilities, it seems to be okay to still give them the short end of the stick when it comes to their rights. There is absolutely no reason, when it comes to a province as rich as this, why this should be allowed to continue.

**1350**

So I implore this province and those around the table who have the power to do so to listen to what you're hearing over the next few days and seriously consider our feedback and do what you can. We all agree that reform needs to happen—no question. But let's do it right. It has been 40 years since we've done these reforms. What's the rush? Take your time; do it right. Make it fairer for everyone who comes to the table and make it the right thing for everyone who uses the Ontario Human Rights Commission.

**The Chair:** Thank you. We'll start with Mr. Kormos. Any questions?

**Mr. Kormos:** How much time do I have? Err on the side of generosity.

**The Chair:** A little over two minutes.

**Mr. Kormos:** Ms. MacDonald, thank you very much. I get excited when I meet young, bright lawyers and law students. There are a few of us who were young law students at one point in time, but we're well beyond that stage.

**Mr. Zimmer:** The question is, are we still bright?

**Mr. Kormos:** I left the "bright" part out. I don't want to speak for anybody, least of all myself, in that regard.

Thank you very much for coming in. We're going to move on to Mr. Zimmer, and he, dollars to doughnuts, is going to look at his BlackBerry and pull out—but the Attorney General promised the funding in the House, as if somehow promising it in the House gave it any more impact as compared to saying it anywhere else.

One of the big complaints I get in my office is availability of legal aid. Your income is so low to get a legal aid certificate, and even at that—for instance, family law legal aid certificates: Family law lawyers won't take them because they're capped. They won't provide for enough preparation time.

So I appreciate Mr. Bryant. I watched his lips move when he made that promise. I appreciated him promising it, but the devil's in the details. I want to know—and maybe you do too—are there going to be a legal aid certificate? Are there going to be legal aid panels? Are there going to be clinics? Heck, if it's going to be a clinic, why not just keep the commission and the prosecutorial role that the commission plays? I'm anxious to hear what Mr. Zimmer has to say to you about how this support—is everybody going to be entitled to it or is there going to be a means test? These are the questions I have. Do you have any of those concerns?

**Ms. MacDonald:** I think the concern with Bill 107—and we've certainly heard this—is that the only people it really benefits are the lawyers. Shocking, eh?

**Mr. Kormos:** Once again.

**Ms. MacDonald:** Yes. Another concern I've had is that we're hearing a lot of promises from the Attorney General that there will be more amendments forthcoming, but the community hasn't seen anything, so how can we fairly comment or feel assured that we're going to get what we need if there's no clarification and if we're not getting the full picture? We're not feeling confident about the bill.

I hesitate to say “smoke and mirrors” because that's not fair. I desperately want to work with the government, because it did a lot of good when we were formulating the AODA. That was a tremendously positive experience for the community. I sit on the customer service standards development committee with the AODA. We've just rolled out our first standard and we're very, very happy with it. That was a very positive experience. I elected to sit on a standards development committee within the government because I wanted to be part of that process inside the government. I didn't want to be on the outside, because I very much believe in working on the inside. So with this process, I want to do the same, working inside the government. But when it comes to this bill, I'm not seeing any of our questions being addressed. How can we comment or feel any kind of assurance until we get some of those answers? As law students, we're being taught we can't address anything if we have nothing to look at.

**The Chair:** Thank you very much. Mr. Zimmer?

**Mr. Zimmer:** Just to respond to your comment—and I thank you for your support and the constructive criticism that you offered. We want to work with the community to make this an even better bill.

You offered the comment that the community hasn't seen anything by way of amendments yet. Let me just say this. First, I did have my BlackBerry out before and I read the commitment the Attorney General made in the Legislature, for instance, on section 46, to ensure that

there was sufficient, proper and effective representation. He also went on in that quote to say that he was entertaining amendments to clarify a number of matters and make the legislation even stronger.

I should say that that commitment the Attorney General made in the House was in response to a question from Deb Matthews, who is here at this table as the member for London Centre. Deb Matthews raised this concern in the Legislature, and the Attorney General answered her and the Legislature directly with his commitment.

What these hearings are all about, of course, today in Ottawa, tomorrow in Thunder Bay, and then hearings in Toronto, the extensive written submissions that we've received, the advertisements that we did asking people to attend here, to send in their written submissions—the work of this committee is to listen carefully to everything that stakeholders such as you say. This committee, when it completes its hearings, will meet and report to the Legislature. I expect that that report to the Legislature is going to contain a number of suggestions to make it an even finer piece of legislation. So together with this all-party committee's recommendation and the Attorney General's commitments that he made in the Legislature, I'm sure we will address your concerns.

**The Chair:** Mrs. Elliott?

**Mrs. Elliott:** Ms. MacDonald, totally as an aside, I just wanted to say, as a fellow Western law school grad, I hope you're enjoying your law school experience. I think it's a pretty great school, so I hope you're enjoying that.

I would also like to thank you for your presentation, highlighting as it does the essential points that we really don't have a lot of information on, specifically section 46 and the issue of legal representation, a legal support centre. We really don't know what kind of shape that's going to take, and I think it would be helpful if the Attorney General could clarify at least that point because it's such a large part—the third pillar, with the commission and tribunal—that I think needs to be clarified in order for any meaningful input to be made.

Lastly, I appreciate your comments about how the disabilities community is often the one lost in the shuffle. I think it's important that we give priority to all human rights complaints, including the disabilities community. I think we need to take that into consideration as we go forward. Thank you very much for your presentation.

**The Chair:** Thank you very much.

1400

#### NEW VISION ADVOCATES

**The Chair:** The next group is New Vision Advocates. Representing them is John Paul Regan. Good afternoon. You have 30 minutes. You may begin.

**Mr. John Paul Regan:** Good afternoon, ladies and gentlemen. My name is John Paul Regan. I am the co-chair of the New Vision Advocates.

Thank you for this opportunity to have input into the proposed changes to the Human Rights Code. I'm here

today representing people with intellectual disabilities who are members of the New Vision Advocates, supported by Community Living London. New Vision is a group of over 35 people who have an intellectual disability who have learned about their rights and to speak up for themselves. We have advocated for ourselves with MPPs, community groups and the city of London to ensure that our voice is heard about our opinions on issues that are important to our group members.

We appreciate the committee is listening to our message today. We feel it is important to speak out on proposed changes to Bill 107, the proposed Ontario Human Rights Code Amendment Act.

This act sets back the rights of people with an intellectual disability to have a statutory guarantee that discrimination complaints will be investigated through a publicly funded investigation and to have legal representation at Ontario Human Rights Tribunal hearings. Many organizations and people with disabilities fought over 20 years ago to have this guarantee.

Our concerns are not just for people with an intellectual disability but for all people who would be vulnerable under the proposed new direct access model. We congratulate the government for wanting to reform the human rights system to ensure better access to justice, speedier resolutions of claims and more support for complainants. After reading the proposed changes set forth in Bill 107, it is clear that the above goals will not be met.

We do not understand how taking away the Ontario Human Rights Commission's power to investigate, mediate and, if necessary, prosecute human rights violations will give people better access to justice. How is forcing vulnerable people to investigate their own claims and hire their own lawyers providing more support?

Many people with intellectual disabilities are on fixed incomes. Many people will not have the financial ability to hire their own lawyers, nor do they have the resources to investigate their own claims. People with disabilities have been advocating within their communities and with government to create a barrier-free Ontario. The changes to the Human Rights Code as outlined in Bill 107 will, in fact, create more barriers for people to overcome in order to ensure their rights are respected.

Although I have never had to make a complaint to the Human Rights Commission, it would be comforting to know that I would be supported through the complaint process. Bill 107, as it stands, will make it very difficult for most people with disabilities to fight against discrimination since they would have to use the new direct access system for the Ontario Human Rights Tribunal. How do we navigate a system we truly know little about without the support and guidance that the Ontario Human Rights Commission currently offers with lawyers and funded investigations? People on fixed incomes can't afford to hire their own lawyer or have the resources to investigate a human rights complaint. People don't have the investigative powers that the present OHRC has. People don't have the resources or supports to battle with

large institutions, which have many more resources. People would be overwhelmed fighting on their own.

We need support to launch a human rights complaint if our rights have been violated. I am a member of the accessibility advisory committee with the city of London. This committee is maintained to find ways to implement the Accessibility for Ontarians with Disabilities Act at the local level. The goal of the AODA is to have a barrier-free Ontario in 20 years. It was recommended in developing the AODA that it have publicly funded complaints investigation powers. The government said it was not needed in the AODA as the Ontario Human Rights Commission would handle any complaints. These new changes under Bill 107 would weaken the AODA and set back the rights that people with disabilities won 20 years ago under the Ontario Human Rights Code.

For New Vision Advocates members, it is important for us to speak out about our rights. Our goal is to promote our right to being full citizens in our communities and to educate the public about inclusion for all people with a disability. We have completed presentations to many community groups to promote these ideas. However, our message will not always be heard. When people or organizations do not listen and discriminate against us and other vulnerable persons, we need the support of a publicly funded Ontario Human Rights Commission to investigate our complaints and provide legal representation. We cannot do this on our own, for the reasons we have already mentioned. New Vision Advocates agrees with the Accessibility for Ontarians with Disabilities Act Alliance position on Bill 107. We strongly recommend that their proposed amendments to Bill 107 be followed to guarantee the rights of people with disabilities. I would like to thank you again for listening to me this afternoon.

**1410**

**The Chair:** Thank you very much. We have about six minutes each. We'll begin with the government side.

**Ms. Matthews:** First, John Paul, let me say thank you so much. You do such an admirable job of advocacy in this community, and your work has really made a difference. I just want to thank you for all you do, and especially for coming here today.

I want you to know that your concerns have been heard. You may know that I had several people approach me on some of the issues that you've raised today. I asked the Attorney General in the Legislature if he would clarify the intent of the government to ensure that people do have the legal representation they need, and he has given that assurance. This committee, in its wisdom, will craft the amendments that will make sure that the issues you have raised are in fact entrenched. So the bill will be better because of the work that you and others have done, and I want to thank you for that.

I think you will agree, and maybe you'd let me know if you don't, that the current system doesn't work. The current system is cumbersome, and very, very few people who have complaints ever get to the tribunal stage. So I think we all agree that work needs to be done to make this a Human Rights Code that we're all proud of and that works for us as Ontarians.

I also want to assure you that that investigative function that you talked about is not being eliminated; it's being streamlined so that the investigations will be done once and there won't be a duplication the way there is now, so that we can get to a resolution of the complaints. The people will have justice in a more timely fashion, and I think we all agree that that's one of the major objectives of this legislation.

So thank you again. Your work is very much appreciated and very much respected.

**Mr. Berardinetti:** I also wanted to thank you today for coming out. We do appreciate your input.

As you've probably heard, we're going to be going to other cities, to Ottawa and Thunder Bay. One of the things we're going to do afterwards when we come back to Toronto is go through this legislation clause by clause, and there are members of the government not just here, and members of the opposition here as well, and also some of the lawyers who work for the government who are listening to the comments. When we go through this clause by clause, section by section, hopefully some of your points and those made by others will be brought forward and looked at, and possibly some amendments could be made. So we'll wait and see what happens when that comes forward, but thank you for your presentation.

**The Chair:** Mrs. Elliott.

**Mrs. Elliott:** Thank you very much, Mr. Regan, both for your presentation as well as for the advocacy work that you do. It is really important and will continue to be so as we work forward with this legislation, because I think it's by no means certain that what we have right now is what we'll end up with. I think we will certainly be advocating for some significant amendments, and your presentation today has certainly helped us to clarify some of those issues. I thank you very much for that.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Thank you very much, Mr. Regan. I appreciate your input into this process, but I've just got to give a little bit of a contra perspective here. We're not one happy family. You see, the government has one, two, three, four, five members on this committee; the opposition has a total of three members on this committee. So it's not a matter of sitting down politely and saying, "Well, what do you guys think?" "Oh, no, please. What do you think?" "Oh, no, Ms. Elliott, what do you think?" I'm speaking from the government's perspective. No. The government will get its marching orders. That's why there are government staff members here. There's a few hundred thousand dollars worth of political staffers here in the audience. They're keeping tabs on the government members to make sure that they follow the government line. Mr. Zimmer is doing an excellent job. I want political staff to report back that Kormos praises Zimmer—there's one of the staff members there—for doing the best he could under the circumstances, because the new approach, Mr. Regan, is the kinder, gentler approach.

You see, first the government was really vilifying people who opposed Bill 107, as if somehow we were opposed to expediting human rights cases. That was

hogwash. I say that this is a very serious issue. I haven't heard Mr. Bryant explain who is going to get lawyers, whether there's going to be a means test, and how many hours, if they're a legal aid certificate lawyer, they're going to be allowed. Is there going to be a roster of qualified human rights lawyers? Because there are some out there—not a whole lot, but there are some very qualified lawyers. Is it going to be done through clinics? And I don't understand how the investigation is going to take place if you have to hire your own lawyer and prepare your own case. Nuts.

The problem is, people who discriminate aren't about to sit down and sign a confession in front of you, right? If somebody discriminates against somebody else, contrary to the Human Rights Code, they're not inclined to write a letter saying, "I have discriminated against Person A, B or C in the following manner." What they do is cover their butts, right? They defend themselves. They try to do everything they can to avoid having a finding made against them.

Just like you, I've got some real problems with the bill, and know the government will control the amendment process because they've got the majority. That's the way it's been for the 18 years I've been at Queen's Park, and I suspect, unless we have a minority government next time around—which would be an interesting proposition, a fascinating prospect—it will be that way for the next 18 years. So I appreciate your input, your perseverance, and those of others like you, all people who have participated in the hearings, but know there's going to be some bitter debate—trust me—come September when we do clause-by-clause. It's not going to be touchy-feely; far from it. Thank you, Mr. Regan.

**The Chair:** Thank you very much for presenting this afternoon.

#### PAT CASE

**The Chair:** Next is Pat Case.

Good afternoon, sir. You may begin.

**Mr. Pat Case:** Thanks very much for setting up these hearings. I wanted to say first of all that I sent a set of written submissions in a bit late on Friday afternoon, so you don't have them in front of you. What I've been told is that you will eventually get them. There are 13 pages of submissions that I sent in.

Let me just say that when you read the submissions, what you'll recognize is that I've spent the 13 pages talking about changes that I think need to be made to the bill—together, of course, with suggestions that have been made by a wide number of other people—in order to bring about the best system possible. I haven't spent a whole lot of time in the submissions speaking in laudatory terms about the bill, but that shouldn't be taken to mean that I don't support the bill. I do, in fact, support the bill.

I'll speak now to some of the issues that are in my submissions, but I'm going to spend most of my time speaking about my own experience with human rights

law in Ontario and why I think the current system needs change, and needs change rapidly.

My experience with the code goes back to about 1980, when I became a school trustee at the Toronto Board of Education and was involved at that time with race relations at the board of education. It wasn't until about 1988, however, that I actually began my own sort of practice, if you like, with human rights law. I finished law school and went back to the Toronto Board of Education as an employee in the equity office at the board, where we handled case-by-case work. My work right now is as the director of the human rights and equity office at the University of Guelph, where, of course, again I handle case-by-case human rights matters.

**1420**

As you can see from the little send-up thing, I'm the past chair of the Canadian Race Relations Foundation—more human rights work. I've been the co-chair of what's known as the equality rights panel of the court challenges program of Canada, which is not bound up as much with provincial human rights work but certainly with section 15 of the charter, in addition to which I should mention that over the last number of years I have taught human rights law at the University of Guelph in two courses and I also teach a course called Law and Poverty at Osgoode Hall Law School. So it's with that accumulated experience that I come to you about the code and about the current establishment.

I've been a net user, if you like, of human rights services in the province for quite some time, and that has to do with my phoning up the commission for advice on particular matters from time to time—I should say fairly frequently—speaking to people in the policy division and submitting policy drafts. I've always thought that when we came out with a policy draft at the university or the board of education, a good place to go would be the commission, to submit the draft to people for a smell test, right? You know, “What's going on here? Is this any good? What are the kinds of things that you would advise us on?” and so on. The commission has worked well with organizations that I have worked with in that respect.

The practical matter, though, comes down to this for me: The commission, as currently constructed, attempts to serve too many masters and mistresses all at the same time—just too many.

Let me give you a really practical example that came up fairly recently. We are in the throes of reviewing our human rights policy at the University of Guelph. There's a built-in three-year review. We're in the throes of reviewing the policy right now. What we wanted to do was to partner with the commission in this review, have people from the commission work with us on the review. This would be great for the university. It would be great for the commission as well, because I note that the commission doesn't actually have any partners in sectors across the province. It doesn't have any partners in the university sector, partners in the public education sector, partners in industry. This would be great, we thought, both for the commission and for ourselves, to develop

this partnership so that we could go out and say, “Hey, we partnered with the commission in developing this policy,” and the commission could say, “Hey, we've got some best-practices stuff here from the University of Guelph. It might go up on the website.”

Sorry to tell you, folks: It can't be done. And you know why? A very simple reason, and that is that the commission must take every case that comes in the door, every complainant. So picture this—and it makes total sense, right? If the commission had worked with the University of Guelph in the revision of its policy and then a complainant went from the University of Guelph to the commission, fill in the blanks. The complainant is going to say, “Hang on a second here. You're in bed with the university. You've already said that their policy is okay. How can I get a fair shake from you people?” Right? So the position that the commission is in at this time is one in which such partnerships would put it in a conflict of interest with its own mandate, which is to take cases on an individual basis, and that, to me, is just ridiculous.

The commission must be working in partnership with all sectors of society in Ontario in order to bring about change. It must be working with organizations to develop best practices in order to show those off and to show to people in various other parts of the province, “This is not rocket science. You don't have to fear this stuff. You can learn from other people.” That, to me, needs to be one of the principal roles of the commission in human rights in this province. As the people's tribune in the province for human rights, that would be its role. Its role would be taking the high road—“What are the best principles? How do we put forward those principles?”—and not taking sides necessarily in battle as between an employer and an individual.

Having said that, however, I do think that as far as casework is concerned, the commission must retain some residual ability to pursue cases; that is, to pursue the enforcement of the principles of human rights within the province. How can that be done? It can be done by the commission, as it's laid out in the bill, having the ability to bring cases before the tribunal, a power that I view as being particularly powerful if it's coupled with the power that exists in the bill right now of review and with the ability to come up with section 14 special programs, suggestions, workarounds for organizations.

Look at it this way: The commission comes to the University of Guelph to do a review of our employment practices and they find that these practices are wanting. They say, “Okay, look, here are some of the things you can do by way of special programs under section 14 to fix that.” If the University of Guelph doesn't fix it, the commission then should be able to go to the tribunal and say, “Look, we went in there. Here's the report we generated based on our interviews with the people at the University at Guelph and based on our investigation of the employment systems in the university. Here are our suggestions as far as special programs are concerned. They didn't follow them. The outcomes are the same. We want an order from you to enforce those recommend-

ations.” And I think that is just. That would be something that would be in order to do.

Here’s a little wrinkle, however. My work with systemic discrimination over the years has taught me a number of things. There are some cases that you can look at right off the bat and say, “Okay, in this case, you can see how it might affect whole groups of people and be a public interest matter.” There are some others where that’s simply not as easy. You’ve got to do some grunt work to be able to see what the link is. I’ve had experiences of that both at the board of education and also at the University of Guelph, where it was really necessary for the office to take a number of cases in the area, develop our expertise with what was going on there and then be able to put your finger on it.

Here’s an example: It may be the case that an individual complains about not being promoted to a particular position in an organization. You take a look at the interview materials and it’s impossible to see any discrimination on the face of it. A second individual comes forward, and now you’re beginning to develop an aggregate of cases, people saying the same thing. A third person comes forward, and now what I’m going to do is, I will ask for the people in control of the hiring to give me some statistics to show what has happened in the last X number of cases of people who have been promoted. It’s possible—this in fact occurred—that over the course of a 30-month period and the number of people who were promoted to a particular position, we were able to identify a pattern of behaviour within the institution. No one case would have thrown that up; a number of cases did.

I do think it’s important for the commission to retain its ability to conduct intake in specific areas so that it can develop that expertise and pursue public interest work. One of the problems that arises for you, however, is, how do you structure that and confine it so that all of a sudden that doesn’t become the ability to take on another 20,000-odd cases? I think that can be done by being very careful about the drafting. What we’re talking about here is work that might involve strategic cases in defined areas, coupled with a requirement for the commission to report annually to the Legislature—whether it’s an agency of the Legislature or not—however you might decide that should happen. At least legislators will be able to say, “Wait a second. This could be, as far as the commission was concerned, a bona fide area of inquiry,” or, “What the commission is simply doing is spreading itself too thin again,” and some advice to them about pulling themselves back. So I think that there are checks and balances that one might be able to build in to make sure that sort of thing doesn’t happen.

#### 1430

An absolutely critical part of this change must be the development of the legal support centre with arms across the province. What I think would assist the legal support centre and its growth from a doctrinal point of view, as far as human rights law and practice is concerned, is if it were linked to one or other of the law schools in the

province so that students from one or a couple or a few of the law schools were attached to the clinic. Where there are clinics in the province—Western, Queen’s, Ottawa; U of T has two clinics; Osgoode has two clinics—it’s clear that the presence of second-year students, with their level of excitement, their level of investigation, their level of wanting to get at the task, has brought about significant law reform and significant amounts of work on behalf of clients in particular neighbourhoods.

I think that importing that model into the legal support centre would be a very positive thing, but I think too that what you should look at is how to bring on board those law clinics where there are students currently in various parts of the province. One of the effects of that would be to immediately grant access to people right across the province. Some of these clinics already do some human rights work; Ottawa takes human rights cases, for example, and I think Windsor takes some human rights cases as well. What it would do in those other clinics is immediately develop resources that would be available for the communities in those large centres of the province.

This is, I guess, a bit of a slight on colleagues in the legal profession, but a number of years ago the Law Society of Upper Canada did a survey to discover what lawyers knew about the Ontario Human Rights Code and how they saw it applying to their firms. You’re smiling; you may remember. It was abysmal. It was just awful. The lawyers knew so little about the code. They didn’t know or believe even that the code applied to their own practices as far as sexual harassment was concerned, disability discrimination and so on. One of the clear effects, it seems to me, of building in a student aspect to this project would be to send people out there with a greater appreciation for how human rights law and practice affect themselves, their clients and the community at large.

This isn’t going to be a make-work project for lawyers. I’ve heard people make that comment before. When this bill passes the Legislature, there will be no more people out there who can all of a sudden afford lawyers to do human rights work. I don’t believe for one moment that this change is going to be putting money in lawyers’ pockets or generating or spawning work for lawyers, but I do think that the change can bring about some positive effect with respect to the way that lawyers work in the province.

Just on a couple of final matters: One of them has to do with the independence of the commission, something that I think is critically important. It may be the case that it’s not possible to have the commission reporting directly to the Legislature—I don’t know—but certainly measures can be taken, amendments can be made to the bill that would result in the commission working at being perceived at and indeed working at a much greater arm’s length from the government, so that it can be free to act as the people’s tribune, so it can be free to act in a way that will be critical of government with respect to human rights violations or potential human rights violations.

That is a trust that you as legislators must have in the commission.

Finally, with respect to resources, I've heard some disturbing rumours, if you like, lately that the tribunal is under some constraints as far as resources are concerned. I think one of the things that you need to do is make sure that that simply doesn't happen under the new regime. This will not work unless the resources are there for the commission and the tribunal to work. The tribunal shouldn't be scrambling for space and it shouldn't be scrambling with backlogs. So whatever has to be done to make sure that doesn't occur needs to take place.

That's it for now; thanks. But when you get my submission you'll see that there are a number of other issues canvassed in much more detail with respect to specific amendments.

**The Chair:** Thank you very much. We have just over a minute, so if everyone can just quickly make their comments, that would be good.

**Mrs. Elliott:** Thank you very much for your presentation. You've raised some different issues, in a sense, from some of the other things that we've heard this afternoon, Mr. Case. I'm particularly interested in your view of the role of the commission in the future and the necessity for the commission to be able to advocate and to promote public education and so on and work on best practices, yet at the same time still have the ability to investigate selected systemic issues. How would you see that operating in practice? Would it be a question of building a Chinese wall, a firewall kind of thing, between the two sections so that they don't interact to deal with that whole issue of conflict of interest?

**Mr. Case:** Yes, that's right—

**The Chair:** A quick response, please, Mr. Case.

**Mr. Case:** Sure. If you take away the major responsibility for intake—they must now take in anything that comes. If you take away that major responsibility, it seems to me you get rid of a large part of the perceived and the actual conflict of interest.

**Mrs. Elliott:** Thank you.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Thank you kindly. You make reference to lawyers being unfamiliar with the Human Rights Code. Hell, most of the lawyers I know don't think the Employment Standards Act applies to their practice, in terms of the wages they pay and how many hours they expect their staff to work.

**Mr. Case:** That may well be true too.

**Mr. Kormos:** Specifically—because you raise issues around the issue of conflict of interest; fair enough—what about, though, the fact that our Environmental Commissioner is selected by motion of the Legislative Assembly; the Ombudsman is selected by motion of the Legislative Assembly? In other words, they are independent of the government; they are accountable to the Legislature. Why shouldn't the Human Rights Commissioner, especially in terms of the advocacy role that you advocate and that I think most of us agree with, be a tripartite—in the current context—appointment, rather

than serving at the pleasure of the government? Wouldn't that create a genuine arm's-length role?

**Mr. Case:** In principle, I have no problem with that, but there are others who work within the government system in Ontario—the Ombudsman's office, for example; your Environmental Commissioner—whom you don't expect that of, necessarily. So I'm not sure why in this case.

**Mr. Kormos:** But they're independent; they're selected by the assembly.

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

**Mr. Zimmer:** Thank you. Your last point about ensuring that the commission has resources to carry on its function is a good one, and I can assure you that this government is mindful of that and that's a part of the process that we're undertaking. The government of the day in 1993-94 cut out, as a cost-saving exercise, \$1.5 million from the commission's budget, and in the following year, 1995-96, cut out another \$1 million. That's the kind of thing that we want to move away from. So your last point is particularly well taken.

**Mr. Case:** You can have the best system on paper that you like, and then strangle it from a resource point of view.

**The Chair:** Thank you very much, Mr. Case.

1440

#### PSYCHIATRIC PATIENT ADVOCATE OFFICE

**The Chair:** Next we have the Psychiatric Patient Advocate Office. Good afternoon. You may begin, but first, if you could introduce yourselves for the record.

**Mr. David Simpson:** I'm David Simpson, the acting director of the Psychiatric Patient Advocate Office.

**Ms. Lisa Romano:** And I'm Lisa Romano, legal counsel at the Psychiatric Patient Advocate Office.

**Mr. Simpson:** Good afternoon, Chair and members of the committee. I would like to thank you for the opportunity to present to the committee today and to be part of the discussion on the reform of the human rights system in Ontario. I would also like to recognize the courage of those who have appeared before you today as individuals to share their stories, their passion for human rights, and for wanting to make the world a better place than they found it.

The Psychiatric Patient Advocate Office is an arm's-length office of the Ministry of Health and Long-Term Care. The patient advocate office provides individual advocacy, rights protection and rights advice to clients in the current and former provincial psychiatric hospitals through its community-based rights advice service, and rights advice in nearly all of the psychiatric units of schedule 1 hospitals across Ontario. For more than two decades, our office has advocated strenuously on behalf of consumers of mental health services in an effort to address significant rights issues and make systemic change.

Consumers of mental health services continue to face formidable barriers to inclusion in communities throughout Ontario and have limited opportunities for employment, education, housing, and financial and social support. Myths and misconceptions about mental illness are plentiful and dangerous. Stigma, discrimination and the failure to adequately accommodate disabilities contribute strongly to the disempowerment and marginalization of individuals with mental illness. Discrimination is often subtle and insidious. For our clients, the consequences can be devastating, detrimentally affecting their health and well-being. Discrimination is pervasive because we are not yet an inclusive, accepting and understanding community.

Our clients, in striving toward recovery and wellness, want nothing more than to live their lives free of discrimination, to exercise the same legal rights as others and to be welcome and included in their chosen communities. Some of our clients, because of their illness, cannot pursue a formal complaint through this complex and bureaucratic system unless they have appropriate supports. At times, our role is to give a voice to those who are disenfranchised merely due to their membership in a vulnerable group; namely, people with a disability. These are the very people who require strong and effective rights protection mechanisms. Sadly, some of the proposed changes to the human rights system in Bill 107 will not advance the rights of our clients or Ontarians in general.

Our office believes that the government could, with the investment of additional resources, enhance, modernize and strengthen the current commission so that it is better able to fulfill its mandate and function. For example, with extra money, the commission could establish a more efficient process to triage complaints, establish a process for dealing with urgent or significant human rights issues, develop a comprehensive case management system, strengthen its investigative function, develop a process for the identification and resolution of systemic complaints, and provide public education to Ontarians. Timelines for the resolution of complaints should also be defined in law. With further investment, Ontario could have a progressive and enriched human rights complaint process without the need to simply make change for the sake of making change, as proposed by Bill 107. The commission will never realize its full potential unless it is adequately resourced to take on the challenges and opportunities it is provided by the people of Ontario who approach it for assistance and support in pursuing their legal rights.

It is our opinion that the current system is effective, albeit under-resourced. If all cases proceed directly to the tribunal, as envisioned by Bill 107, it will simply shift the burden of the current system. The tribunal should be the final step in the process where the parties and the commission have been unable to resolve a human rights complaint to the satisfaction of the parties following voluntary mediation, investigation and conciliation. The tribunal should be available to deal only with the most

serious human rights violations and abridgement of rights. This two-tier approach has been effective in charting the course of human rights in Ontario.

By repealing and replacing part III of the code respecting the commission and abolishing investigations in favour of a direct access model, human rights advocacy is being privatized. Victims of discrimination will be forced to investigate and prove their claims. Consumers of mental health services will be extremely disadvantaged by the proposed changes. Many of our clients have intersecting or cross-sectional claims, meaning that persons are members of more than one historically disadvantaged group. For instance, individuals with a dual diagnosis—a developmental disability and a mental illness—often experience discrimination with respect to access to supports and services that meet their unique needs; or consider the obstacles facing a female with mental illness who also happens to be a member of a religious minority. These individuals are twice or even three times as marginalized, making a human rights complaint exponentially overwhelming.

In those rare cases where a victim is able to overcome these obstacles, the remedy he or she will be seeking will probably be an individual, not a systemic, remedy. Presently, one of the primary functions of the commission is to represent the public interest. With the proposed changes in Bill 107, the new gatekeeper will become the tribunal, as opposed to the commission.

While our office applauds the Ministry of the Attorney General for attempting to reform the human rights system, and we welcome improvements, there are many problems with Bill 107 that prevent it from achieving its goals. Our submission and recommendations articulate our concerns and offer possible solutions to the government of Ontario.

Our submission is divided into two sections, the first section being positive changes to the current human rights system, and the second section called “Problems with the proposed human rights system.”

Lisa will take us through the first section.

**Ms. Romano:** So just to clarify, the first section is based on the premise that the commission remains intact, as it is. We are going to outline why we feel that’s important and the changes that can be made to the current system to enhance its efficiency.

Currently, every person who files a complaint with the commission has the right to an investigation of his or her complaint. The commission has a wide array of investigatory powers, ranging from the inspection of documents, entering buildings, questioning individuals to obtaining a search warrant if necessary to obtain evidence. Based on the outcome of its investigation, the commission may or may not refer the case to the tribunal for a hearing. Although the commission does not represent the complainant, the commission assists the complainant with the litigation process by preparing witnesses, pleadings and motions, as well as calling evidence. At the hearing, counsel for the commission litigates the case in the public interest and acts as a public

prosecutor by attempting to prove that the complainant suffered discrimination. The complainant may retain his or her own lawyer, if he or she chooses, but it is not strictly necessary.

Bill 107, however, eliminates the complainant's right to an investigation—

**The Chair:** Just to interrupt, can you please slow down the pace for the translation.

**Ms. Romano:** Sorry; my mistake. I tend to speak too quickly.

**The Chair:** Go ahead.

1450

**Ms. Romano:** Bill 107, however, eliminates the complainant's right to an investigation and significantly reduces the power of the commission to advance the public interest before the tribunal.

As noted earlier this morning by a speaker—and I regret that I didn't catch the person's name—the current human rights system is analogous to victims of crime who approach the police for assistance. The police investigate the case for public interest reasons as well as the personal interest of the alleged victim. Their methods of investigation include collecting evidence, reviewing documents, talking to suspects and witnesses and, if necessary, obtaining search warrants. If the evidence is strong and indicates a reasonable belief that a suspect committed an offence, the police will lay charges. Crown attorneys then represent the public interest via the prosecution of the crime to deter others, punish the perpetrators and gain redress for the victim.

If we compare this criminal process to human rights enforcement, the commission investigator is analogous to the police since it gathers evidence, reviews documentation, interviews witnesses and respondents, and may even obtain a search warrant. On the basis of the information acquired during the investigation, the investigator will try to conciliate the dispute, and if this is unsuccessful, the case will be referred to the tribunal.

We think it's safe to say at the PPAO that it's inconceivable that the police would ever stop investigating complaints made by victims of crime if the government wants to eliminate investigation for victims of discrimination.

The dismantling of the commission will have a profound detrimental effect on human rights advocacy. By forcing complainants to conduct their own investigations and present their own cases to the tribunal, some individuals will be faced with an insurmountable barrier. Requiring victims to investigate their claims forces some individuals to return to a discriminatory environment and to be unnecessarily re-victimized. Many complainants may not have any friends or family to support them emotionally through this journey, causing them undue stress and potentially impacting their personal health and well-being.

The PPAO is also concerned that some of our clients may not be able to conduct their own investigation because their mental health history may be used against them to undermine their credibility.

Bill 107 disregards the tremendous inequities that are found in the very law that is supposed to protect rights and deter discrimination. Currently, the decision of whether a complaint will be referred to the tribunal is made behind closed doors, and complainants are given very few reasons for the decision by the commission. The PPAO does recommend that the parties be given comprehensive reasons for the decision not to refer a decision to the tribunal—or if it is referred to the tribunal, they should be given the information—and access to the information upon which the decision was based.

It is also acknowledged that some complainants would prefer to proceed directly to the tribunal without having an investigation. So in the hope of reducing delays, the PPAO does support giving choice to complainants as to whether their complaint is investigated immediately by the commission or if it goes straight to the tribunal.

The PPAO also believes that potential complainants should receive more supports throughout the human rights enforcement process. There should be qualified intake staff to support complainants, answering questions and providing information about both the commission and the tribunal. Front-line workers should also help complainants frame allegations and complete the necessary paperwork to initiate complaints. The work of front-line staff is important since potential complainants act on this information, influencing whether a complaint is pursued or whether they would seek other avenues for assistance. Obviously, to meet these requirements and do the job to the best of their ability, front-line staff should meet prescribed qualifications and be carefully trained. It is also crucial that a person at this juncture have an opportunity to seek a legal opinion as to the merits of their case. After receiving advice, some individuals may choose not to go forward to the Human Rights Commission.

Many consumers of mental health services are in receipt of social assistance from the government due to their mental disability. They cannot afford to hire private legal counsel, and Legal Aid Ontario provides limited legal assistance if they are eligible. A person complaining of discrimination should not be required to pay for their own lawyer to advance their case through the human rights process. Instead, complainants should have access to publicly funded legal counsel, if they choose, throughout the process to ensure that their human rights are properly enforced.

I'm going to skip to page 6 of our written submissions and discuss the Disability Rights Secretariat. Bill 107 establishes a Disability Rights Secretariat whose functions are research, education and other tasks as dictated by the chief commissioner with respect to discrimination on the basis of disability. The PPAO believes that this secretariat is a toothless tiger because it cannot initiate its own reviews or investigate complaints. To be effective, its mandate must include monitoring, investigation, compliance and enforcement functions. The secretariat must also be able to intervene in cases at both the commission and tribunal levels with a view to promoting systemic,

lasting change in the area of disability rights. This secretariat should also work closely with those who have responsibility for implementing the Ontarians with Disabilities Act to coordinate strategies that protect and promote the rights and entitlements of individuals with mental illness. Also, Bill 107 only allocates six members to the secretariat. We feel that number is insufficient, considering that more than half the claims being launched before the commission involve disability as a ground of discrimination.

With respect to commission and tribunal members, Bill 107 discusses their appointment and term of office but it doesn't address the qualifications of members. This is a major oversight given the important role played by members. The PPAO believes that persons should be appointed due to their relevant experience and demonstrated commitment to human rights, as opposed to political affiliations. Members should be recruited and appointed via open and transparent processes that reflect the gender balance and diversity of Ontario. The ensuing body of competent and skilled members will enhance the efficiency, quality and expertise of the tribunal and the commission. Citizens of Ontario would have renewed confidence in both of these human rights bodies.

I'm just going to discuss training and education very briefly. Members of both the commission and the tribunal will encounter many different people from many, many different walks of life in their work, and all staff members of the commission and the tribunal should receive initial and ongoing training respecting mental health, mental illness and addiction. A culture of understanding and acceptance of mental illness is essential if we want to be an inclusive and caring community.

We've heard this from a few speakers today, but the PPAO also believes that the commission should report to the Legislative Assembly. That would guarantee autonomy and political independence. I'm just going to repeat a quotation from Barbara Hall, the current chief commissioner. She has stated publicly that, "International guidelines clearly indicate the preference requiring the commission to report to the Legislature to avoid the perception of financial and administrative control by government over the activities of a human rights commission." It is troubling that the commission is not independent since in a large proportion or a large number of the complaints that go before the commission and the tribunal the respondent is the government, requiring the commission to sometimes make adverse findings against, in effect, its superior.

I'm going to discuss third-party applications briefly. Neither the code nor Bill 107 allows third parties to lodge a complaint on behalf of an individual. This right is reserved only for individuals or groups of individuals who have a common question of law or fact or the same alleged perpetrator. The PPAO recommends that Bill 107 be amended to include provisions for the commission and tribunal to accept complaints from third parties. Over the past two decades we—and I mean the PPAO—have witnessed many rights infringements that go unchecked simply because the individual does not have the capacity

to make a complaint in their own right. For example, individuals with dementia, acquired brain injury, a developmental disability, an addiction or serious mental illness may experience a human rights abuse but not be able, due to their mental illness or disability, to pursue a complaint. In that regard, we feel that stakeholders should be consulted and standards be developed to define circumstances where complaints by third parties could be accepted.

I'm also just going to briefly mention advisory groups, and that's on page 10 of our written submission. The PPAO wholeheartedly supports the creation and involvement of advisory groups, as they can offer invaluable input to the commission. Specifically, we feel there should be the creation of an advisory group committed to mental disability comprised of a majority of consumer-survivors, as they provide important expertise about the mental health and addictions system. We also feel that there should be provision in the new law about remuneration for advisory group members, to cover their travel expenses and time.

We are concerned because Bill 107 simply states that the chief commissioner "may" establish advisory groups. We feel that the language of the bill should say "shall" establish advisory groups.

#### 1500

Also on page 10 of our written submission, we talk about limitation periods. Both the code and Bill 107 stipulate that a person can only bring a complaint within six months of the alleged discriminatory behaviour. There are some exceptions to that, but that's the basic rule. We at the PPAO feel that the current and proposed legislation contravene the general limitation period that's set out for most civil actions in the Limitations Act. Although the code and Bill 107 permit an extension of time in limited circumstances, it is discretionary and not guaranteed.

A short limitation period is particularly onerous for our clients or consumers of mental health services. Due to the cyclical nature of many mental illnesses, some clients may not be able to assert their rights for an extended period of time. This short timeframe precludes many individuals from exercising their rights. Due to the pervasive stigmatization and lack of respect for the rights of consumers, some victims may not even realize they've suffered discrimination until a later point. Others may have realized that their human rights were violated but were too scared or vulnerable to take action at that time.

On page 11 we discuss enforcement. Neither the code nor Bill 107 provides mechanisms for the commission to enforce its authority. This is maybe one contributing factor to the delay in the current investigation process. We feel there must be mechanisms for enforcement to ensure full compliance and compel parties to take action. The PPAO supports increased powers to the commission to make binding compliance orders and impose penalties on parties who fail to co-operate with the commission. The commission needs the necessary tools to do its job properly and to emphasize the significance of the com-

mission's role, and this is whether it's under the current system or under Bill 107.

On page 12 of our written submission we discuss a review of the legislation. Bill 107 mandates a single review five years after the effective date of the implementation of the changes resulting from Bill 107, and then there must be a report prepared. The PPAO agrees that it is crucial to have a review of the new system, but we feel that five years is too long to wait for a review. So we propose that an initial review be conducted two years after Bill 107 comes into force and that there be subsequent reviews every three years thereafter. We also feel that it's important that there be consultations with stakeholders during this process. We also think that the person responsible for the review should not be a minister but an executive council appointment. These reports should be prepared in a timely manner and they should be presented to the Legislative Assembly and made available to the public.

Finally, I'm just going to speak about statutory timelines, which is on page 13 of our written submission. We feel that both the code and Bill 107 are lacking statutory timelines with regard to any steps in the human rights process. To be effective, there should be timely resolutions, obviously. This we think could be accomplished more easily if there were timelines in the legislation. The government should work with stakeholders to develop appropriate timelines to prevent a backlog of cases.

I'm going to let Mr. Simpson continue.

**Mr. Simpson:** I'd just like to take a couple of minutes here to talk about some of the issues with the proposed human rights system as envisioned in Bill 107.

On page 13 of our submission we talk about the intervenor status of the commission. Currently, the commission has a mandate to prosecute every case before the tribunal, in addition to raising systemic issues. Section 39 of Bill 107 delineates the parties to an application to the tribunal. It does not automatically grant intervenor status to the commission. Since the commission is no longer able to act as a public prosecutor under Bill 107, the PPAO thinks it is imperative that it at least be able to intervene in cases that may have wide-ranging effects. It is illogical that the commission, despite its proven expertise in human rights and discrimination law, is not afforded any special status with respect to interventions. If the commission must argue for intervenor status in every case it wishes to pursue, it will delay hearings and prolong legal arguments by the respondent, who would not support intervention for political or self-interested reasons.

In order for the commission to be aware of noteworthy cases where it might choose to intervene, the tribunal must be required by law to notify the commission and provide sufficient information about all cases scheduled for a hearing.

Under rules of practice and procedure, on page 14: Currently, the tribunal is entitled to make rules governing the practice and procedure before it, pursuant to section 25.1 of the Statutory Powers Procedure Act. Section 34

of Bill 107 now specifically allows the tribunal to make rules of practice, including the ability to not hold a hearing, to limit the extent of parties to present evidence and make submissions, and to prescribe alternative procedures to traditional adjudicative practices.

It is the PPAO's position that the power of the tribunal to make these rules is overbroad. Rules of administrative boards are developed and approved by internal staff. As rules of practice are flexible and subject to change, there is the possibility that they are vulnerable to the agenda of the tribunal staff or that they may be inadvertently creating barriers to access for specific vulnerable populations.

There is also no requirement in Bill 107 for consultation with stakeholders. The development of rules governing its practice should be done in consultation with all stakeholders and implemented only after a required consultation period, similar to that enshrined in other provincial legislation. For example, other statutes require public notification and a consultation period of 60 days prior to any changes being made. We would support similar language being enshrined in this bill as a way to promote both transparency and accountability.

We also comment on mediation, on page 15. We recognize that voluntary mediation can be extremely efficient. We believe, though, that it's not appropriate where there is a power imbalance between the parties, because forced mediation can have the effect of re-victimizing the complainant or replicating the injustices that they have already experienced.

On page 16, the discretion to not hold a hearing: I'd like to draw your attention to this. Pursuant to section 41 of Bill 107, the tribunal has unfettered discretion to dismiss proceedings without a hearing in whole or in part if, among other things: the proceeding is frivolous, vexatious or commenced in bad faith; some aspect of the statutory requirement for bringing the proceeding has not been met; the facts alleged in a complainant's application are true but do not disclose a rights infringement; and the facts alleged in the commission's application are true but do not disclose a rights infringement.

Further, section 34(2)(a) permits the tribunal to make rules of practice whereby the tribunal is not required to hold a hearing. This has the potential of screening out certain types of complaints or complaints from certain types of complainants that would result in the denial of access to justice and the pursuit of the protection of human rights.

On page 17 we also comment on the awarding of costs. The current code does not permit cost orders to be made against a complainant if the tribunal dismisses the complaint. It does allow costs to be awarded if the complaint was trivial, frivolous, vexatious or made in bad faith or if undue hardship was caused to the respondent. Our concern here is that the awarding of costs could potentially act as a barrier, because some people may decide not to pursue a complaint for fear that if costs are awarded against them it would cause them financial hardship. So we are completely opposed to the awarding of costs in these circumstances.

On page 19, we also talk about user fees. The code does not provide for any user fees but section 45.2 of this bill permits the tribunal to charge fees for expenses incurred in connection with a human rights proceeding. Bill 107 does not permit a waiver of these fees based on financial hardship.

We strenuously object to the imposition of fees as they create yet another barrier to justice, contrary to the purpose of the code.

**The Chair:** If you can just conclude; you have about a minute left.

**Mr. Simpson:** Okay. User fees, in conjunction with other financial burdens in Bill 107—the cost of personal investigation, lack of clarity regarding legal assistance, the possibility of cost orders—will dissuade victims of discrimination from applying to the tribunal.

At a minimum, if this section is not struck from the legislation, the legislation must specifically state that recipients of government assistance will never be charged fees for any purpose.

In conclusion, we believe that the solution to the problems with our human rights regime is simple: Increase funding and resources to the commission to enable it to fulfill its statutory mandate. The commission's budget has remained static for a decade despite an increasing number of complaints. If we are to ensure that all Ontarians have "all human rights for all," then we must make investments in the very system that is to support them in realizing their rights and moving us forward to becoming a more understanding, tolerant and accepting society, free of discrimination and rights abuses.

Thank you very much.

**The Chair:** Thank you.

1510

#### CHATHAM-KENT SEXUAL ASSAULT CRISIS CENTRE

**The Chair:** Next we have the Chatham-Kent Sexual Assault Crisis Centre; Michelle Schryer.

**Mr. Kormos:** Chair, while these people are seating themselves, if I could request of legislative research—and I'll speak with Mr. Fenson and elaborate—if we could have a list of the critiques of the commission as it is now. We heard a number of them: delays, mishandling of cases, misinterpretation of them. If we could have a list of those things, because, before the end of this week, I will be moving a motion to invite Keith Norton and Barbara Hall to the committee to ask them to respond to those respective criticisms. I think that would be a valuable exercise. Thank you, Chair.

Sorry.

**Ms. Michelle Schryer:** That's okay.

**The Chair:** Good afternoon. You have 30 minutes, and you may begin.

**Ms. Schryer:** Good afternoon, and thank you for the opportunity to appear before the committee regarding this issue of utmost consequence.

The Chatham-Kent Sexual Assault Crisis Centre is a front-line, grassroots support and advocacy organization that directly serves women who have experienced the impact of violence, including sexual assault/harassment/abuse, and works towards the elimination of gendered violence.

CKSACC services are accessed by women whose vulnerability can leave them easy targets, not only of sexism but of racism, heterosexism, ableism, classism and many other societal prejudices based in phobia and misogyny. They include women with disabilities, lesbians, poor women, women who are members of racialized groups, immigrant women, First Nations women, single moms, young and old women, women whose first language is not English and women who are otherwise marginalized, for example, sex trade workers and women who have experienced institutionalization. I'm sure you can appreciate the added complexity of claims by women whose experience of discrimination and oppression is intersected in more than one of the above.

The CKSACC is a member in good standing of the Ontario Coalition of Rape Crisis Centres, OCRCC, the body that advocates on behalf of thousands of women across Ontario.

Our interest in appearing before the committee is deep-seated and grounded in very real and direct experience with the commission and women, as described above, who have sought to regain dignity and wholeness, and find remedy through the current Ontario human rights process. It also stems from insight and knowledge gained during the inquest into the workplace murder of Theresa Vince, whose sexual harassment by her direct supervisor ultimately ended, as you know, when he killed her. As part of a small coalition with our local labour council and women's shelter, the CKSACC was a party who had standing at the inquest.

In addition, the CKSACC was delegated by the Ontario Coalition of Rape Crisis Centres to attend, with counsel, the Ontario Court of Appeal when it successfully applied to intervene on behalf of a woman whose complaint of workplace sexual harassment was dismissed without an investigation by the Ontario Human Rights Commission. Lessons learned through the proceedings of both the inquest and the Court of Appeal have reinforced our determination to see the realization of legislative change that will improve and better protect the dignity, safety, human rights and lives of Ontario women and others. This legislative reform is way past due.

I support the submission of Theresa's family, whom you've already heard from. I know that you are now keenly aware of the horrifying and exceptionally poignant example of Theresa's murder and why legislative reform is not only needed but long overdue.

One thing I don't believe was mentioned this morning or earlier this afternoon is that Theresa Vince was not the first or even the last woman in Ontario to be murdered by her harasser after experiencing workplace sexual harassment. As you did hear earlier today, we learned at the inquest into Theresa's murder that the current human rights process is ineffective in addressing complaints of

workplace harassment and in providing meaningful, timely remedy for complainants.

Despite knowledge and awareness gained through the inquest about numerous legislative shortcomings—shortcomings that we now know can have an extremely negative, dangerous and potentially lethal ramification for workers who experience harassment on the job—there has been absolutely no legislative change to effectively address issues of discrimination and inequality, which are at the very root of harassment. We are encouraged to finally see some forward movement in this regard, and we're confident that an amended Bill 107 will help to advance equality and the protection of human rights in Ontario. We are immeasurably relieved that government has finally taken the issue of human rights reform seriously enough to do something about it. Clearly, ongoing government inaction and forgotten jury recommendations will not serve to protect or keep people alive.

As I have indicated, we have seen women tragically die in our region, while the current human rights system can do nothing to immediately stop the harassment or provide much-needed remedies. Theresa Vince, shot to death in her workplace by her boss, was one in a line of women. Lori Dupont was stabbed to death in her workplace less than nine months ago by a doctor who had sexually harassed her on the job. The current system, with the commission acting as gatekeeper, cannot stop the harassment in a timely way and it does not keep women safe in their jobs, or alive. We believe that Bill 107 can make a positive difference.

While the CKSACC assists women who have human rights claims, the women do not usually experience the commission as being supportive to them. To the contrary, many view the commission as adversarial. Few get through the process without external support, and most often the claim never makes it through the commission gates. This is the case even when we are able to engage outside help from private bar lawyers who assist women with their claims on a pro bono basis. Bill 107 would help to uphold the integrity of the commission as the protector of human rights in Ontario.

In our experience, most women feel completely disenfranchised by an outdated, paternalistic process that takes over control of their discrimination claim and their experience. Once the complaint is filed, that's it. The commission takes full charge and the women are left feeling powerless, as they did during the incidents that gave rise to their human rights complaint in the first place. Some give up out of a sense of futility, or they find the process too revictimizing. Claims are dismissed even though we fully believe them to be valid. Other women feel pressured into settlements that don't come anywhere near addressing the real harm done to them, but they feel threatened that if they don't accept the settlement, the commission will dismiss their complaint and there will be no validation of their experience at all.

#### 1520

As has been stated throughout the day, all of this occurs behind closed doors, with decisions being made in

private by people these women never meet or see, without a hearing and without any ability for the complainant to appear or participate in the process. It seems no wonder, then, that of all complaints to the commission, only about 6% end up being referred to a hearing. That percentage is even lower regarding complaints of sexual harassment. The obvious consequence is the lack of enforcement of fundamental legislative protections against discrimination and harassment. Simply put, the current human rights laws in Ontario have no teeth. What message does that send to offenders?

It stands to reason that if existing enforcement mechanisms to protect human rights aren't working, the message to offenders is that they have a pretty good chance of offending with impunity. If the vast majority of human rights complaints are never adjudicated by a board of inquiry, what deterrent is there to offenders?

Currently, there appears to be no clear consequence to human rights violators, or to institutions or structures that support them by allowing a poisoned environment. Based on our experience, it is our firm position that the current human rights complaints process with the commission as gatekeeper is not working. Bill 107 has the promise and potential to rectify this.

Direct access to a hearing, for example, would eliminate the currently duplicative process of investigation. It would most certainly assist the women we serve by demonstrating respect for their experience and ensuring that they have the ability to participate in the process.

In addition to the problems I have already articulated regarding the current process, there are many other serious issues for you to consider in your deliberations. For example, according to the Human Rights Code, everyone has the right to work in a poison-free environment, free from discrimination and harassment. This includes third parties who may not be the direct victims of harassment but who nonetheless experience the negative impact of a poisoned environment. Yet we know of workers—and others, quite frankly—whose third-party complaints never made it past the initial phone contact when they were told that they didn't have a basis to file a complaint because they weren't the direct target of the discrimination and harassment.

Based on our considerable experience in supporting women whose human rights complaints were accepted and filed, we know that the investigation process itself is ridiculously long—as we have already heard today: easily up to five years. Please keep in mind that most complainants will never reach the tribunal process. For those of us at the CKSACC who work with women who have experienced the impact of human rights violations, it seems unusually cruel, and certainly unnecessary, to put them through such a difficult and lengthy process that will most likely end in the dismissal of their complaint. Bill 107 would effectively address this problem.

For those complainants who do reach a hearing, it can easily take another two years or even longer, and then they literally have to go through the same process twice.

They endure the initial investigation that takes place at the commission gate, and then they go through the investigative process again at the tribunal.

It is mind-boggling that the same or very similar work done as part of the investigation at the commission gate is done again at the hearing with the tribunal. How can we possibly justify forcing complainants to endure such an arduous and stressful ordeal, especially, as I have said, knowing that the odds are the complaint will likely be dismissed without a hearing?

The Chatham-Kent Sexual Assault Crisis Centre supports in principle the human rights reform that an amended Bill 107 promises to bring, because we believe that complainants have the right to a hearing without being stopped at the commission gate.

We support Bill 107 because we believe that complainants, as well as the accused, have the right to participate in the process that will determine the outcome of the human rights violation complaint. We support the bill because we are opposed to unnecessarily prolonging, by up to five years, the uncertainty and anxiety for the complainant, as well as the accused, by forcing the duplication of a lengthy investigative process. We support the bill because we view the Ontario Human Rights Commission as a body that ought to represent fairness and equality, a body that advocates for human rights, a body that should not be experienced as adversarial by complainants or by those accused in the process.

We support Bill 107 in principle because our experience tells us that the current system is failing dismally. It discourages legitimate human rights complaints from being filed or pursued, and it leaves many feeling revictimized. It fails to effectively protect the fundamental human rights that everyone in Ontario is entitled to. That said, our support is conditional upon assurance that government will keep its promises to ensure that all claimants are well supported and well represented through a publicly funded system.

Done well, we believe that the legislative reform of Bill 107 will strengthen, in a very real and meaningful way, the protection of fundamental human rights in Ontario. We would be adamantly opposed to any government downloading of its responsibility to ensure that each and every complainant has genuine and easy access to a full and fair process regarding human rights violation complaints. For example, trade union members need to have the same access to government-funded resources, supports, services, advice and legal representation as non-trade-union members. In our view, any movement whatsoever towards a two-tier system of human rights enforcement in Ontario would be nothing short of a denial of human rights protection.

It goes without saying that adequate resources must be allocated to ensure that all claimants throughout every part of the province are well informed, supported and legally represented throughout the entirety of their claim. We would strongly oppose any requirement for user fees, including fees for expenses incurred—a little is a lot when it's all you've got. The protection of fundamental

human rights should be publicly funded. I would agree, however, with costs being applied to respondents who prolong and complicate proceedings through non-cooperation and non-compliance.

A review of human rights services should be conducted on an annual basis by an outside audit as a means of assessing, monitoring and helping to ensure barrier-free, fully accessible, high-quality service delivery.

There is no denying that there has been controversy regarding Bill 107. We have certainly taken pause in this regard, and I personally have had opportunity to debate it with others whom I hold genuine respect and appreciation for. Through our difficult discussions, I have inevitably learned that the opponents I have discussed Bill 107 with do not have any direct experience in filing complaints with the commission or in supporting complainants through the process. It has become abundantly clear to me that many misconceptions exist about the current process. Without exception, opponents I have been in discussion with have held the impression that all complaints currently filed with the commission are guaranteed an investigation and that Bill 107 will diminish that guarantee.

The current system does not in fact guarantee an investigation. I know this with absolute certainty because, as I alluded to earlier, I, on behalf of the Ontario Coalition of Rape Crisis Centres, unfortunately had the opportunity to attend the Ontario Court of Appeal when we successfully applied for intervenor standing in a case where the Ontario Human Rights Commission dismissed a woman's complaint of workplace sexual harassment without an investigation. Thankfully, the woman won her appeal, and the commission was ordered to go back and investigate. In fact, many complaints are currently dismissed without an investigation.

Again, our position is rooted in very real experience, and on that basis we do in principle support Bill 107.

#### 1530

Having said that, in creating a new system, we believe it is incumbent upon the government to build in a mechanism of accountability that will respect and satisfy affected communities under the Human Rights Code. We believe that such a mechanism should be and would be most respectfully developed in consultation with them. Hard-won gains by marginalized community groups and advocates must not be compromised or diminished in any way.

The CKSACC does not by any stretch want to see a weakening or dismantling of the Ontario Human Rights Commission. To the contrary, our interest is in seeing the commission function effectively as a true advocate and proponent of human rights. We believe that Bill 107 will help to accomplish this.

Through testimony from the director of the public policy and public education branch of the Ontario Human Rights Commission, we learned at the inquest into the workplace murder of Theresa Vince that there was a structural problem with the commission. We believe that effective functioning of the Ontario Human Rights Com-

mission could be significantly improved through Bill 107.

For example, restructuring of the commission could allow for improving the commission's ability, as recommended by the Theresa Vince inquest jury, to study statistical information from complaint data and use it to trace and identify the possibility of links between complaints and a problem work environment. The inquest recommendation noted that if numerous complaints arise from the same workplace, this will alert the Ontario Human Rights Commission that there may be a workplace problem that should be investigated.

We view the commission as a body that should have the ability, and in fact has a responsibility, to bring its own applications, and Bill 107 has the potential to strengthen this aspect of the commission's role. In addition, the commission should be able to intervene in any other application. Its participation would be influential in ensuring that the public interest is served and public-interest remedies achieved.

The commission should have full authority to compel evidence in this regard, including relevant documents or records. A very clear and effective process to ensure compliance should be developed in this regard.

The commission should step up its educative role to raise awareness about human rights issues of discrimination, harassment and related areas. Again, we believe that Bill 107 has the potential to strengthen this aspect of the commission's role. This function ought to include annual initiatives planned for significant dates throughout the year, such as the International Day for the Elimination of Racism in March, Aboriginal Solidarity Day in June and so on.

Groundwork for other educative opportunities by the commission has already been laid. For example, the private member's bill introduced to proclaim the first week of June as Sexual Harassment Awareness Week recently passed second reading and is now in the hands of the justice committee. This would marry quite nicely with the Theresa Vince inquest jury recommendation for the commission to "develop an advertising campaign that would promote public awareness and education. The public needs to be informed of their rights and what services the commission offers." Similarly, the commission could develop campaigns specific to areas of discrimination other than gendered harassment.

Furthermore, in a research and policy-making capacity, the commission would be in an improved position to develop, update and publish policies, policy information and documents that would be easily available and accessible to the tribunal during deliberations.

History and experience have shown that racism, sexism, classism, heterosexism, ableism and so on are systemic in nature and pervasive in societal structures and institutions. In order to ensure its independence, we believe the Human Rights Commission should report directly to the Legislature. Moreover, we believe that specific qualifications and considerations for appointments to the commission should require a demonstrated

commitment to equality, inclusion and diversity. A proven track record of involvement in human rights issues should be mandatory for successful appointees. It should go without saying that the commission itself must be representative of the broad Ontario community. It follows, then, that members of the Human Rights Tribunal must also possess a demonstrated interest, knowledge, understanding and sensitivity regarding issues of oppression and equality. Members of the tribunal must have proven expertise and experience in human rights and justice issues, and of course, they must represent the broad Ontario community.

As previously mentioned, there has been a denial of due process for parties that have contacted the commission with third party complaints. We find this intolerable and strongly urge that Bill 107 specifically address this issue to ensure that Ontario human rights are upheld. This includes the ability of community organizations and equality-seeking groups to file applications on behalf of their constituents. Discrimination is harmful whether or not one is the direct target of it. Everyone has a part to play in stopping the spread of poison in this regard, and third party claims should most definitely be encouraged, supported and processed.

Hopefully, it has been clear throughout this submission that while the CKSACC supports the premise of Bill 107, amendments are required to strengthen it and ensure that it truly upholds the human rights of every person in Ontario. In addition to the issues already identified, there are a couple of practical matters that require your careful consideration as you deliberate. As Jacquie Carr mentioned this morning, Bill 107 currently requires that applications "be in a form approved by the tribunal." We believe the bill must contain language to ensure that a human rights violation complaint will not be dismissed solely on the basis of failure to use the correct form.

In addition, the proposed bill would impose a limitation of only six months to file. We do not agree that this short time frame is reasonable or, in some cases, even possible. As research supports, victims coping with the impact of discrimination and harassment are unlikely to come quickly forward; quite the opposite, in fact. Accordingly, the period of limitation should be increased to two years, and even then, there should be a process built in for making application to extend the time limit where need be.

In all cases, complaints should be duly considered and complainants afforded the courtesy of due process. No complaint should be dismissed, as they are now, without at the very least affording complainants an oral hearing where they have the ability to participate in a fair process, where they have direct access to the decision-maker. We view the current practice of behind-closed-door decision-making as unfair and disrespectful of complainants who file human rights violation complaints in good faith that justice will be served.

In closing, I want to reiterate the importance of government making good on its promise to establish centres throughout the province that will provide a high quality

of information, support, advice and legal representation to human rights violation complainants, and those centres need to be easily accessible. In memory of those whose lives have ended as a final result of discrimination and harassment, especially Theresa Vince and Lori Dupont, and for the countless others who have experienced the impact of discrimination and harassment, we hope that wisdom will guide you, and we wish you well in your deliberations.

Thank you, and thanks also to our great interpreters, who have been doing a great job today.

**The Chair:** Thank you very much. There's about a minute each, so if we can have brief questions and remarks.

**Mr. Kormos:** Thank you, ma'am, very much. Clearly, one of the tensions is between the concept of the litigation as a private litigation versus public litigation. I hear you, I understand the argument, but in our criminal system, for instance, police do not always lay charges even when there's a complaint, because they conduct an investigation and use discretion. Even when charges are laid, crown attorneys don't always prosecute charges, because they use their discretion. I suppose it becomes bad when they're using that discretion simply to reduce the caseload, that's when it becomes dangerous.

If I may, Mr. Fenson, I would like to know what the Human Rights Commission has—are there goals for how many cases have to be cleared without litigation?

1540

**Ms. Schryer:** May I comment on that as well?

**Mr. Kormos:** Yes, but is there any evidence from within the commission that they're using this "triage," as somebody referred to it, as a way of simply reducing caseload or are they applying rational analysis to the cases?

**Ms. Schryer:** I do have a concern about the analogy, because I know that the criminal law process has been so unfriendly and so revictimizing that only about 6% of women ever report incidents of sexual violence against them. I have painful experience that tells me that it is not a friendly process. I would not like to think that victims who have legitimate issues would be reluctant to go forward to the Human Rights Commission because it's also viewed as unfriendly. That's one comment that I really feel strongly should be made.

**Mr. Kormos:** I want to find out if there's any evidence from within the commission.

**The Chair:** The government side. Mrs. Van Bommel.

**Mrs. Maria Van Bommel (Lambton-Kent-Middlesex):** Thank you for your submission. You mention in the submission that victims go through two processes: They go through the commission and then they go on to the tribunal and have to go through the investigations again. In your experience, as a crisis centre, have you ever had a complainant back away from the process halfway through or have you had to work to continue to encourage them to go through this, and do you think that by giving them direct access you can reduce some of that and actually enable them and empower them more?

**Ms. Schryer:** In our experience, many women have backed away and stopped the process because it has been too revictimizing, it has just been too difficult or they have felt unsupported. I mentioned that many women have felt that the Human Rights Commission has been adversarial, when in fact the contrary should be true. So many times there have been women who have decided not to proceed, and I do believe direct access would be helpful in that regard. Women who do make it to the tribunal experience that they're going through a duplicative process, in terms of the investigation especially, but also in terms of mediation. When someone has waited and spent seven or eight years going through a process and then they end up in a mediation process where the settlement is so poor and does not address the harm that has been done to them, it's really, really difficult and painful and revictimizing.

**The Chair:** The opposition. Mrs. Elliott.

**Mrs. Elliott:** I think we've all sensed through your presentation this afternoon the frustration that so many of your clients have felt in terms of trying to approach the Human Rights Commission; first of all, having their complaints dealt with in a timely manner, and secondly, even just wanting to be heard and just trying to get through those barriers. Like you, I share the reservation that the so-called "direct-access" model will actually provide relief from that situation because of the fact that even with the tribunal, there's no guarantee of a full and fair hearing, subject to all the rules that can be made.

**Ms. Schryer:** What hopefully would be fairer is that the complainants would have access to the decision-makers, that they would be able to participate in the process rather than have decisions made and never have the opportunity to be part of the process. Decisions are made based on evidence from witnesses that the complainants never know about, so there isn't a sense that a fair process is happening.

**Mrs. Elliott:** If I could just make one further comment with respect to concerns that the commission will be able to continue to investigate systemic discrimination, workplace harassment—sometimes with tragic consequences—I guess that's another area of concern because, again, that's not completely guaranteed with respect to the new legislation, and I agree with you that we need to make sure that happens so that the situation that has happened with Ms. Vince and Ms. Dupont doesn't happen again.

**Ms. Schryer:** I agree that Bill 107 needs to have language that will ensure that the commission does have the ability.

**The Chair:** Thank you for your presentation.

#### CANADIAN HEARING SOCIETY, LONDON

**The Chair:** Next is the Canadian Hearing Society.

**Mr. Kormos:** Chair, while they're seating themselves, if I may ask Mr. Fenson, is there case law in Ontario that indicates that a violation of the Human Rights Code, a breach of the Human Rights Code, creates a cause of

action, as in tort? In other words, have our courts indicated that it does, or have they gone so far as to indicate that it doesn't? That's in the Ontario context. Could you give us some brief background on the US context and whether violation of human rights legislation creates a cause of action in tort, please?

**The Chair:** Thank you.

Good afternoon. If I could have you identify yourself for the record, please.

**Ms. Marilyn Reid:** Hi. Yes, I'll start off the introductions. I'm Marilyn Reid and I'm the regional director of the London office for the Canadian Hearing Society.

**Mr. Gary Malkowski (Interpretation):** Hello. I'm Gary Malkowski. I'm the public affairs consultant to the president and CEO of the Canadian Hearing Society.

**The Chair:** You may begin.

**Ms. Reid:** Thank you. Just by way of introduction, the Canadian Hearing Society, CHS, is the largest agency of its kind in North America serving deaf, deafened and hard of hearing people and their families. Founded in 1940, CHS has 28 offices across Ontario, including our regional office here in London. We provide high-quality and cost-effective services in consultation with national, provincial, regional and local consumer groups and individuals. We are a multi-service agency, offering 17 different programs to address a broad range of hearing health care and social service needs. These services include hearing care counselling services for seniors, Ontario interpreting services, employment services, information services, general support services and connect mental health services, to name but a few.

**Mr. Malkowski (Interpretation):** In general, CHS is pleased that the government wants to improve and strengthen the Ontario human rights system. However, CHS has very serious concerns with the direction of the government's reforms set out in Bill 107 and with the process by which this bill has been brought forward.

We regret that CHS was not consulted by the Attorney General before he announced his plans for reforming the Human Rights Code. We also regret that the government did not take up the proposal to hold an open, accessible, public consultation before introducing Bill 107. By contrast, the government held excellent consultations in 2003 through 2005 as it developed Bill 118, the Accessibility for Ontarians with Disabilities Act.

CHS endorses and agrees with the concerns with respect to Bill 107's content which the AODA Alliance has thoroughly set out in its draft submission to the standing committee on justice policy, which is available at [www.aodaalliance.org](http://www.aodaalliance.org).

CHS also agrees with the proposed amendments set out in the AODA Alliance's draft submission. I will not repeat all the contents of that document, but I would like to highlight our key concerns and recommendations. These recommendations are offered only in the event that the government decides to proceed with Bill 107 instead of starting over again with designing reforms to the overall human rights system, which would be our preferred course of action.

In general, Bill 107 should be amended to ensure:

(1) that it does not take away any rights that the Human Rights Code now provides;

(2) that it does what the government says it does;

(3) that it does not breach the government's promise to Ontario's disability community for a strong and effective enforcement mechanism to support the Accessibility for Ontarians with Disabilities Act, namely, the continued availability of the Human Rights Commission's investigation and enforcement powers.

**1550**

Without taking away from the many important recommendations for amendments set out in the AODA Alliance's draft submission, CHS specifically draws the committee's attention to these recommended amendments.

(1) If the government insists on implementing its direct access proposal, the bill should be amended to let complainants choose to take their case right to the Human Rights Tribunal or to opt for the Human Rights Commission to investigate their case, and to prosecute if evidence warrants. People should have the right to choose to use the commission's process of investigation and prosecution.

(2) The bill should be amended to strengthen, not weaken, the Human Rights Commission's enforcement powers, including expanding its role to monitor and enforce tribunal orders and to plan for removal and prevention of barriers in the human rights process.

(3) The bill should be amended to protect discrimination victims from financial barriers like user fees.

(4) The bill should be amended to ensure that cases now in the human rights system are completed under the current code and do not have to start all over again under Bill 107.

(5) If the Human Rights Commission's full mandate over investigation and prosecution in any case involving disability rights isn't preserved, the bill should be amended to establish a strong, effective, independent enforcement agency under the Accessibility for Ontarians with Disabilities Act, including the power to receive, investigate and prosecute disability discrimination cases.

(6) The bill should be amended to give the Disability Rights and Anti-Racism Secretariats meaningful enforcement powers.

Additional ongoing concerns regarding access for people who are deaf, deafened and hard of hearing: For deaf, deafened and hard of hearing complainants and respondents, full participation in the human rights complaint process is fundamentally linked to ensuring clear, accurate, professional, two-way communication. When the appropriate accommodations are not in place, full participation by this population is de facto compromised.

The Ontario Human Rights Commission lacks clear policies and procedures for providing access and accommodation for deaf, deafened and hard of hearing participants in the human rights complaint process. We have identified major barriers and gaps in accessibility for deaf, deafened and hard of hearing complainants to

the services of the Ontario Human Rights Commission and the Human Rights Tribunal of Ontario.

For example, American sign language and la langue des signes québécoise interpreters, real-time captioners, computerized notetakers, assistive listening devices and other means of communication assistance are not being provided, even for the most essential services. These forms of access are being denied despite a clear statement from the Supreme Court of Canada in the Eldridge case that equal access is guaranteed by section 15(1) of the charter. Recently, the government of Ontario committed to the implementation of the Accessibility for Ontarians with Disabilities Act to ensure that communication access will be put in place.

Most legal clinic offices, lawyers and paralegals are not able to assist deaf, deafened and hard of hearing individuals who have limited English literacy skills and do not understand the Ontario Human Rights Commission intake forms. There is a lack of funding for communication access accommodation. Many deaf, deafened and hard of hearing individuals, especially those who are marginalized, face communication barriers during the process of filing a complaint, intake, interviews, mediation and the investigative process.

OHRC and HRTO face chronic funding limitations that lead to unnecessary delays in the handling of human rights complaints. We are aware of a number of deaf, deafened and hard of hearing complainants who have experienced these delays. In addition to the standard waiting time, deaf, deafened and hard of hearing individuals inevitably end up waiting even longer than average because of the need to book sign language interpreters or real-time captioners. Consumers fear the cancellation or postponement of their scheduled OHRC meetings due to a lack of availability of appropriate communication accommodation. Cancelling or postponing commission or tribunal sessions would mean an additional wait of at least three to six months just to set up another meeting or hearing.

Limited financial resources and insufficient staffing levels lead to problems with the effectiveness of the Ontario Human Rights Commission. For example, in some human rights cases involving deaf and hard of hearing complainants, the Ontario Human Rights Commission lawyers have been so backlogged that deaf and hard of hearing complainants have been forced to hire their own lawyers to ensure that they have quality legal services.

In some cases, deaf, deafened and hard of hearing commission complainants are not able to afford qualified lawyers to represent their complaints while the respondents, who are often well-resourced governments or large companies, are able to afford expensive and well-qualified lawyers to represent them. The proposed change in Bill 107 that eliminates investigations presents a serious barrier for deaf, deafened and hard of hearing complainants. Many legal aid services across Ontario will not take on human rights cases, leaving these complainants with no representation when trying to fight big companies or governments.

Another issue is the potential conflict of interest that can arise due to the current reporting structure. As it stands, the Ontario Human Rights Commission reports to the Ministry of the Attorney General, which could compromise complainants' cases against a specific ministry's policies or procedures. A more objective reporting structure that sees the Ontario Human Rights Commission reporting directly and independently to the Ontario Legislature would be a significant improvement.

**Ms. Reid:** In conclusion, certainly CHS strongly endorses the immediate need for establishing an enforceable and effective Ontario Human Rights Code Amendment Act. It is important that Bill 107 include an enforcement mechanism, quality assurance and sufficient resources to ensure that qualified accommodation measures are available, such as sign language interpreting, real-time captioning, deaf-blind intervention. The legislation needs to have authority and be suitably funded so that proper systems can be set up to monitor and enforce the Ontario human rights system by strengthening the Ontario Human Rights Commission.

Bill 107 will clearly be inadequate unless amendments, as recommended by the AODA Alliance, are made before third reading. Bill 107 falls significantly short of what is needed to strengthen and improve the effectiveness of Ontario's human rights system.

CHS is prepared to work closely with the Ontario Human Rights Commission or any future human rights system to develop appropriate policies and provide much-needed awareness training for human rights personnel to ensure that deaf, deafened and hard of hearing individuals can be full participants in any human rights proceedings in which they are involved.

It seems that our presentation builds on the themes that have been presented previously today. The fact that these issues have been raised again and again supports the importance that these issues do need to be addressed. Thank you.

**The Chair:** Thank you very much. About six minutes each, and we'll start with the government side.

**Mr. Kormos:** Mr. Zimmer, you can have my time if you'd like.

**Mr. Zimmer:** All right. I get all your time?

**Mr. Kormos:** Yes, as long as you allow Mr. Malkowski to answer.

**Mr. Zimmer:** Thank you very much for your comments. As the parliamentary assistant to the Attorney General, let me assure you that I will convey those comments to him on behalf of the Liberal side of this hearing. But even more importantly, the role of this committee is to listen carefully to everything that was said.

In response to your point, the disappointment that you expressed about not being consulted, that's what this committee hearing is designed to do. We're sitting here in London today, tomorrow we're in Ottawa, Thursday we're in Thunder Bay. We've advertised widely about these committee hearings. There are further committee hearings in Toronto when we return from Ottawa, London and Thunder Bay. Notice was given extensively

in the provincial newspapers throughout the province advertising the hearings and the legislation, and inviting written submissions or attendance. We do have your very detailed submission. To date, we've consulted since the bill was introduced with many, many stakeholders.

This morning I read in an excerpt from the statement the Attorney General made in the Legislature in the spring—in June, I think it was—in answer to a question from Ms. Matthews, who is the MPP for London North Centre at the end of the table. Ms. Matthews shared many of the concerns in that question that you have today about consultation and, more importantly, amendments that the government might take after consultation and considering the submissions and what we hear on these committee days. I don't know if you were here this morning, but I will paraphrase what that statement was. It was a clear statement in answer to Ms. Matthews's question and a clear commitment that the government was prepared to consider and indeed the Attorney General quite specifically committed to some amendments having to do with legal representation for people with matters before the commission.

**1600**

To your point, we are trying to consult widely. The job of this committee, after the committee hearings have finished and after all the written submissions have been entertained, is to have a discussion and make recommendations to the government about what should go ahead in the nature of amendments. But be assured that this committee and the government and the Attorney General's office have an open mind on many of these matters that we're hearing about today. In the audience, we do have representatives from the Attorney General's office on the civil service side and on the political side. So we are taking a comprehensive look at all of the matters that are coming before this committee.

**Mr. Malkowski (Interpretation):** I'd like to respond to that. There are two problems that we have identified. The first is specifically with Bill 107. There are problems with the way it is written and with the expectations of it. We missed an opportunity in its creation to have any input as it was being developed or in the initial stages. That was definitely a problem.

The second point is, we'd like to see a following of the same policy of in-depth public consultation that occurred with Bill 118. There was plenty of time in advance of that bill being developed for input on the writing of it, and we congratulate the government for the work that they did in preparing it. We're in a conundrum because, while it was well written and well consulted in its development phases, it has been undermined by this bill, taking away the powers of Bill 118.

We haven't seen any amendments at this point that have been suggested by the minister. What kind of amendments they're intending to put forward haven't been made available and we haven't seen anything. What enforcement mechanisms, what powers will be given to the commission, we don't know, nor what kind of legal representation people are going to be receiving. While

the commitment has been made, we don't know what that's going to look like. I saw him when he made that statement in the House, but it really doesn't mesh with what we've been discussing this morning. That's an issue that we want to emphasize.

**Mr. Zimmer:** The point of the public hearings is to gather these responses and then have this committee make its recommendations about amendments to the Attorney General and to the government of the day. So after we've heard from everybody, amendments will be put forward.

**Mr. Malkowski (Interpretation):** What is the time frame for the writing of the amendments to Bill 107? What kind of timelines are we going to have for public consultation into that amendment-writing process?

**Mr. Zimmer:** We're hopeful that the end piece of this new human rights legislation is some time in the upcoming legislative session which is starting in September and probably concluding around Christmas, just before Christmas or early in the new year. So we have a process of four or five months ahead of us.

**The Chair:** Mrs. Elliott?

**Mrs. Elliott:** You have raised some significant concerns that, as you've noted, have been mentioned by a number of other groups, which does highlight the seriousness of the concerns that you have and the need to be careful in terms of dealing with this legislation as we go forward and take the time to do it right, to consult with all of the groups that need to be consulted. I certainly share your concerns with respect to those issues.

The other issue, though, that you have brought forward is some of the concerns that are particular to the Canadian Hearing Society with respect to communication access. I think it's been very helpful for you to bring up those particular concerns for us to consider as well, so I thank you very much for that.

**Mr. Malkowski (Interpretation):** I'd like to make mention of a point. The Charter of Rights and Freedoms takes precedence over any other piece of legislation, so it exists already. Based on that, there is really a questionable point to writing a lot of amendments. The decisions on how people need to be treated are determined in the charter. We now have also the AODA, which provides us with a piece of legislation, although it has no regulations at this point. That people should be going to the Supreme Court over and over again is a redundancy that we really don't need. The point that I want to make is that these violations don't happen again and that things are encoded very clearly as to how they need to be handled, particularly when they've already been decided in the Supreme Court.

**Mrs. Elliott:** I would just say that I think we need to make sure that we recognize that in this legislation as we move forward with it, probably more in terms of procedural issues and making sure that the supports are there rather than having to fight the same battle time and time again.

**Mr. Malkowski (Interpretation):** Right.

**The Chair:** Thank you. Mr. Kormos.

**Mr. Kormos:** How much time do I have?

*Interjection.*

**Mr. Kormos:** No, you didn't use all of it. I've got more left. How much time do I have, Chair?

**The Chair:** About eight minutes.

**Mr. Kormos:** Thank you very much. The AODA appears to be proposing a system whereby a complainant can elect to either use direct access in a system which some of us would call a private system or to use the public advocacy of the commission. Is that an accurate understanding of at least that recommendation?

**Mr. Malkowski (Interpretation):** It's really important that there's a range of options made available and that the resources are put in place so that individuals have choices. That includes the Human Rights Commission as well. There are a lot of people who cannot afford their own private legal services, so if there's a legal support service provided as the third pillar, then there has to be public money guaranteed. It's been stated for the first couple of years, but what's going to happen after that? Again, there hasn't been anything mentioned specifically around how that's going to happen, any guarantees. There are many "mays" that are in the bill, a lot of things that may happen or may be done, but it's very vague and uncertain.

**Mr. Kormos:** You're well aware of the efforts by the commission on behalf of kids with autism. My fear is that without a commission, with only direct access, those kids and their families, for but one example, could well be left behind in litigation that is very complex, that requires a lot of expert witnesses, volumes and volumes and volumes of reports and studies and also, of course, a need for huge levels of investigation. Do you share that perspective?

**Mr. Malkowski (Interpretation):** If individual complaints are not dealt with by the commission and are dealt with only by the tribunal—they currently have six staff at the tribunal and the commission has somewhere in the neighbourhood of 35 staff, so in total you're talking about 41 staff as part of the two branches. You can transfer those staff to different departments, but you're still going to have the same number in total, 41 staff. You're still going to have the same number, and you also have the same budget, so it's just moving it around; it's just a shuffle and possibly creating a number of red herrings in the process for people. The problem will not be resolved by handling it that way, so it's important that the Human Rights Commission and the Human Rights Tribunal of Ontario have the appropriate funding and have the human resources in order to expand the staffing and guarantee the legal representation for all human rights complaints that are brought forward to the tribunal.

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**Mr. Kormos:** Have you dealt with the commission as a complainant or as an advocate for complainants?

**Mr. Malkowski (Interpretation):** Yes, I have. I am a user of those services.

**Mr. Kormos:** One of the participants here earlier this afternoon suggested that people who oppose Bill 107,

like you, are people who have never had to deal with the commission. Is that an entirely accurate comment on that participant's part, on that witness's part?

**Mr. Malkowski (Interpretation):** I'm sure it's a very individual experience. In our experience with deaf and hard of hearing complainants, the system needs improvements for it to be effective. The limited resources that they have available are problematic. People who haven't experienced going through the process with the commission probably should be talking to those who have, and they might have a clearer picture of what that process is like.

**Mr. Kormos:** An observation that all of us are compelled to make on a daily basis is that notwithstanding the charter of rights, notwithstanding court rulings, notwithstanding the Human Rights Code, discrimination is pervasive. I just, in closing, want you to tell these folks what's happening right now, however incredible it is that we have to struggle for this, for deaf, deafened and hard of hearing people in the movie industry.

**Mr. Malkowski (Interpretation):** Well, I'm wearing my CHS hat today, and so as an individual I would prefer not to comment on a human rights case that is currently before the tribunal. But in general, what's happening for people who are deaf, deafened and hard of hearing is that they are experiencing discrimination on many fronts, and many of them become overwhelmed because they are dealing with personal issues, employment issues, issues of accommodation in many, many situations, and they become overwhelmed by this. Thousands of them are just not willing to file complaints, because they have no guarantee of legal representation in the process. Now with Bill 107, that increases concerns for people who are disabled, including those who are deaf, deafened and hard of hearing, in terms of what the future is going to look like in those processes. What we need is to see guaranteed, appropriate legal representation and communication access being appropriately provided to prevent the discrimination happening in the system and to reduce discrimination in general.

With the AODA legislation currently without regulation, now we're also talking about it being without enforcement as well. Bill 107 is a key piece there. So the AODA would become a joke. I mean, it looks like a circus.

**Mr. Kormos:** Thank you. I suppose the last comment I have to make—because I appreciate you're wearing the Canadian Hearing Society hat; I'm not—is that I urge my colleagues here to go to the website [www.cmnc.ca](http://www.cmnc.ca) for some remarkable advocacy on behalf of the deaf, deafened and hard of hearing in something so taken for granted by so many people as a movie theatre. It's remarkable that that struggle has to take place in the year 2006, after a charter of rights, after a Human Rights Code, after Supreme Court rulings.

Thank you, both of you folks.

**The Chair:** Thank you very much.

**Mr. Malkowski (Interpretation):** Thank you. I'd like to put one more comment on the record. I want to thank

all of you at the standing committee for making this environment accessible. You've got it not only closed captioned on a large screen, but also on the small screen here for the people deposing. Congratulations and thank you.

MARIANNE PARK

**The Chair:** The next presenter is Marianne Park. Good afternoon.

**Ms. Marianne Park:** Good afternoon.

**The Chair:** You may begin.

**Ms. Park:** I want to thank you for this opportunity. My name, as was said, is Marianne Park. I live in Woodstock, Ontario. I have the distinction of being a woman with a disability, and I also have worked in the violence against women field now for probably longer than I care to remember, but at least 20 years. I have also had the privilege of serving on a number of boards which are actually going to be making submissions to this committee in the weeks to come. I serve on ARCH Disability Law Centre. I serve on the board for DAWN, DisAbled Women's Network Ontario, and I also serve on the board for the Income Security Advocacy Centre, ISAC, and they will be making a presentation.

So I've been very blessed in that I've had an opportunity to look at a lot of different opinions on Bill 107—reams and reams of material—but I'm speaking to you as an individual, and an individual who has assisted a number of complainants through the human rights system around the issue of workplace harassment. Consequently, that's who I'm speaking on behalf of: a number of the folks I've assisted, and just my own observations.

I want to commend the government for its intention to alter a seriously backlogged system that is in need of overhaul, and that's just enough said there. However, there are a few issues that I want to address. Now, we could go through line by line—I realize there's not the time—but there are a couple of issues I wanted to make very clear. There are three actual issues that I'll be commenting on, but some overarching issues.

One overarching issue is the need for accessibility, to make the system accessible and usable by everyone in the province, but particularly by women with disabilities—my constituency—and of course women who are deaf, deafened and hard of hearing as well. Because the one key to the issue of human rights violation is the issue of intersectionality. It's a very specialized knowledge, intersectionality, and it's a very complex issue, but it has to be taken into account almost with every complaint. Not just those of us who are marginalized experience that intersectionality, but there are many intersections in everyone's lives. But for those of us who are marginalized, oftentimes that's where the violations of our human rights will take place, in those intersections, and it's impossible to segregate out. If I am marginalized or if I'm discriminated against, is it because I'm a woman with a disability or is it because I'm a woman or is it because I live in a rural area or I don't have access to power or whatever it is. So that's very key, and it's a

very specialized knowledge, just as the pool of knowledge around the issue of disability is a very specialized knowledge that needs to be woven into the fabric of Bill 107.

I believe that the commission, the system, should be independent and should report directly to the Legislature. I believe that there should not be user fees for applicants at all. Yes, I think it's a fine idea that respondents who delay the process are assessed with fees, but no user fees for applicants, because it is very difficult for many of us to get up the nerve, if you will, to embark on a very arduous process as it stands now. And even in the ideal situation, all things being equal, if Bill 107 was amended and it was just the best system going, it's still a very arduous system for folks to navigate, particularly if you are marginalized. The last thing you'd have to be concerned about, I would hope, would be user fees.

So the three issues that I wanted to really home in upon: One is the appointment of public members to both the commission and the tribunal, and if indeed there are advisory groups. The other issue is the disability secretariat. And finally, the legal support centre.

Around the appointment of public members to the commission or the tribunal, I believe that it needs to be a fair and open process, not a political reward. Individuals need to demonstrate a proven track record with an interest in human rights. I think preference, in all honesty, should be given to folks who have had a lived experience around that issue of human rights, but that they have a demonstrated track record. Once someone is appointed to the tribunal, then most definitely they should be willing to submit to a performance appraisal before they are reappointed to the tribunal.

If indeed advisory committees are struck, then those advisory committees folks need to be compensated through per diem and expenses for their effort and for their work. I think that advisory committees could be a very helpful tool, particularly around the issue of workplace sexual harassment because it's a very specialized knowledge. Although at face value it seems very easy—it's just a power imbalance—there are many complexities. So I think that would be one area where an advisory committee would be very helpful.

**1620**

That public appointment process, as I say, needs to be fair, needs to be open. In turn, as with everything with Bill 107, the overarching issue is that it needs to be accessible. That is one issue.

The other issue is the disability secretariat. I can see the logic in having the disability secretariat. However, my concern is that this, as it is currently stated in the bill, will become a dumping ground for any disability issue, something that will be underfunded. It will allow the government and others to escape accountability, because we do know that the Ontario Human Rights Code is the underpinning for the Accessibility for Ontarians with Disabilities Act. That's very, very key.

We also know that presently, overwhelmingly, the number of cases that go into the process are around the

issue of discrimination and disability, just as, unfortunately, I know of a number of cases around the issue of workplace harassment that never make it out of the gate because the issue is so complex and the system is so difficult to navigate.

But harkening back to the disability secretariat, that is my concern, that as it is presently structured, it would be a dumping ground, and hence nothing would really be accomplished other than the ghettoization of those of us with disabilities. I think that we need to be cognizant of the inclusion aspect. I believe, as I said, that disability is a very specialized knowledge, just as knowledge of the deaf culture is very specialized knowledge, just as workplace harassment is very specialized knowledge. But it's much better, through the intersectional approach, to have that woven into all aspects of the system rather than it being segregated in one system.

Finally, the other issue that I want to speak about is the legal support centre. I think that one amendment—and it's a small word change—will be very helpful. It should be altered so that instead of saying everyone “may” have access to the legal centre, it is “shall” have access to the legal support centre. Anyone you speak to who has had a successful outcome with the Human Rights Commission process has not done it on their own. They have done it with advocates; sometimes a paid advocate, sometimes folks like myself or, like you heard this morning, Jacquie Carr, folks who do it on a volunteer basis because it's the right thing to do. But if they have a successful outcome, they have an advocate. That's why it's very important that there be that advocacy role.

I'm a big believer in the LaForest report that looked at the issue of case managers, so that once you started into the system you would have a case manager that followed you through the system and assisted you in the system. That's a great idea. But if you're going to set up a legal support centre, I urge that it not be folded into and downloaded into the existing clinic system through Legal Aid Ontario. It needs to be a separate stand-alone clinic. That clinic system is now overburdened presently and grossly underfunded. Consequently it can't be expected that clinics will take on extra work. But whatever legal support system is set up, it needs to be province-wide, it needs to be accessible. It needs to be so that someone who needs to access that because of a human rights violation, whether they live in Summer Beaver, Walsingham, Ottawa, downtown Toronto or here in London, has a level playing field and the same type of access.

I can't stress enough that, yes, you need supports and you need a support system, but that has to be adequately funded. That's key. For myself, that's the most disconcerting thing: I haven't really seen the nuts and bolts as to (1) where the money is going to come from and (2) what's it actually going to look like and how this is going to unfold.

I realize, as with many things, particularly with government, things happen in the fullness of time. I understand that completely. But I think that is one of the great things that many in the community are uneasy about:

How is this going to happen, when is it going to happen and what will it look like?

In conclusion, I want to again thank you for the opportunity of speaking. I also want to say that human rights is a very important issue to all of us here, not just those of us who are marginalized, sometimes on a daily basis. I want to commend the government for its efforts and I also wanted to say that I'll be anxiously awaiting what the outcome will be after your consultation and what this bill will finally look like. Thank you.

**The Chair:** Thank you. Approximately three minutes for each side, beginning with the opposition. Mrs. Elliott.

**Mrs. Elliott:** Thank you, Ms. Park. I appreciate your comments with respect to the vitally important aspect of ensuring there is appropriate legal funding so that everyone who needs representation will have it. As you know, section 46, as it's presently drafted, doesn't give us any sense of comfort with respect to that issue. It only indicates that the Attorney General can make arrangement with provision of legal services, be that legal aid, a legal support centre or whatever. All we have so far is a statement by the Attorney General that there's going to be a legal support centre. That's going to take a great leap of faith for me, for one, to get to that point where I'm going to be comfortable with it without it being enshrined in the legislation. I suspect that many of the participants and many of the people who have presented here today feel the same way. That's just a comment.

I did have one question with respect to the intersectionality approach that you're discussing. Would you rather see the secretariats themselves not proceed and have a different approach being taken at the commission level? Could you expand on that a little bit, please?

**Ms. Park:** I would say, if the secretariats are to proceed, although I would proceed with great caution, I'd rather just see the commission have the ability to strike panels of inquiry into issues. But I would think that they need to be fleshed out much better than they are now. There also needs to be more thought given to that intersectionality too. How is a woman of colour who has a disability going to be experiencing the system, rather than “Where do we put this issue?” That's what my concern is, that it'll just be almost like turning out biscuits: “You have this distinction, so you need to go there and you need to go here.” That's my concern.

**Mrs. Elliott:** You just can't drop it in one box.

**Ms. Park:** That's right, exactly.

**Mrs. Elliott:** It needs to be looked at across a broad spectrum. Thank you.

**Mr. Kormos:** Thank you, Ms. Park. Very potent comments. I suppose, very quickly, address two things. One is the legal support centre. I think most people share your concern or apprehension; for instance, the Office of the Worker Adviser. For all of us in our constituency offices, that's probably amongst the top five of complaints, because those people are so understaffed, under-resourced, and they do, effectively, in the context of workers' comp what this legal support centre would do with human rights cases. But the backlogs to get into the Office of the Worker Adviser are months and months,

almost years in some areas, never mind then workers' comp. So there are some real problems there.

Access—it's just never-ending, the issues. Bill 14, to the credit of its authors, amongst other things, reforms JP appointments. This is new legislation; it hasn't been passed yet. It provides that if a JP, a justice of the peace, becomes disabled once he or she is a justice of the peace, then the Chief Judge can order such supports as are economically feasible for that JP to continue to do his or her job. However, there's no provision for somebody who is applying to become a JP. Again, to the credit of the authors, they tried to address the issue but they missed the bull's eye. They want to show concern and support for persons with disabilities, but if there were true recognition of the valuable role that all people can play, the support would be there for the people applying for the job of JP.

**Ms. Park:** That's true.

**Mr. Kormos:** Again, it's interesting that the authors of this bill didn't emulate the drafting in Bill 14, because there is no reference in the appointment of tribunal members under the new act to ensuring that persons with disabilities will have as much access to that job as any other persons, with supports being guaranteed. Your comments provoked that recollection on my part of that part of Bill 14. We're going to be talking about that in due course too. But here's an opportunity to—dare I say it?—put your money where your mouth is. This will come up in clause-by-clause, you can count on it. Thank you very much for your comments.

**The Chair:** The government side. Mr. Berardinetti.

**Mr. Berardinetti:** I just wanted to thank Ms. Park for her comments here today. They've been duly noted. When we go through the process later on of doing clause-by-clause, hopefully some of your comments will at least be debated or maybe even incorporated—I can't say that for sure, but at least debated—during that part of our committee hearing. Thank you very much.

**The Chair:** Thank you.

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#### ST. THOMAS AND DISTRICT LABOUR COUNCIL

**The Chair:** Next is the St. Thomas and District Labour Council. Good afternoon. If you could state your name for the record, sir, you may begin.

**Mr. Bob Howes:** My name is Bob Howes. I reside in the city of St. Thomas and I am a declared candidate in St. Thomas for the municipal elections being held on November 13, 2006. I am presenting today on behalf of the St. Thomas and District Labour Council, of which I am an executive member.

I can't help but comment on the article that ran in the London Free Press on Saturday, August 5, titled "Rights Overhaul Planned," in which MPP David Zimmer gave his view of the summary of changes to the Human Rights Code through Bill 107. At first glance, I realized that the changes being proposed had very little thought put into

them and appear to be a quick-fix solution orchestrated by the McGuinty government without any input from the community or the special-needs groups they are so likely to affect. The McGuinty government needs to listen and take guidance and input from the affected communities and organizations that represent them at the grassroots level.

It is not difficult to foresee that the current proposed changes will further marginalize immigrants, people with disabilities, racialized people, women, aboriginal people and other disadvantaged groups.

The article further states that the human rights system will be improved by creating a new human rights legal support centre that would provide information, support, advice, assistance and legal representation for those seeking a remedy at the tribunal. Nowhere in the proposed act is there a guarantee that these services will be publicly funded or that it will ensure public accountability.

Zimmer also said the new system will provide "two pipelines" for issues to be resolved. This brought back memories of a similar ineffective model that was implemented in British Columbia. The dismantling of the British Columbia human rights system resulted in a two-tier, semi-privatized human rights system in which complainants with financial resources could hire lawyers to help them navigate the complex process while marginalized people are left on their own.

It is crucial that all people from the community are able to access fully funded public legal representation throughout the human rights process. This must not be left at the discretion of government funding. The human rights legislation must state clearly that all costs will be covered. The burden of financial responsibility should not be placed on the complainant.

In a rush to make changes to the human rights legislation, this government has ignored the community. Bill 107 erodes the basic premise that we are a country that values human rights. Bill 107 in fact creates another barrier. The members of our community in Ontario who need access to the human rights system to resolve discrimination do not need barrier after barrier. All they need and want is dignity and justice. It would be better for the government to start from scratch to draw up a new bill.

I have reviewed the draft submission prepared for the standing committee on justice policy on Bill 107 to be submitted by the Accessibility for Ontarians with Disabilities Act Alliance, and I fully endorse this package. It is available on the alliance's website, and you have all received a copy of this presentation. That address is in this presentation.

Ontario's human rights enforcement system needs to be significantly improved. It is far too slow and backlogged. This has occurred because it has been seriously underfunded for years and needs new administrative reforms.

Bill 107, in its current form, is seriously flawed. It does not solve any of these problems. It only makes things worse.

(1) It takes away a victim's right to a public investigation of their human rights complaint by the Human Rights Commission, armed with its investigation powers. It strips discrimination victims' right to have the Human Rights Commission publicly prosecute their case if the evidence warrants it and if the parties don't voluntarily settle the case. If this bill passes, victims will have to do their own investigation and prosecution or find someone to do it for them, probably for a fee.

(2) Contrary to government commitments, it does not ensure that every human rights complainant will have publicly funded legal advice and representation. It just lets the government fund legal assistance if it wants. Funding cuts can be a provincial election or a cabinet shuffle away. It does not entrench the government's promised human rights legal support centre. It does not require that legal services be delivered by lawyers.

(3) It lets the tribunal charge user fees. It could let the tribunal force human rights complainants to pay their opponent's legal costs at hearings if they lose. At present, the tribunal can only order the commission, not the complainant, to pay the legal costs of the party accused of discriminating. This bill will make discrimination victims afraid to bring their case forward.

(4) It lets the tribunal make rules that strip the right to be represented by a lawyer at a hearing, to call relevant evidence and to cross-examine opposing witnesses.

(5) It dramatically reduces the right to appeal from the tribunal to court. Currently, anyone losing at the tribunal has the right to appeal this decision to a court of law. Bill 107 only lets the loser go to court if the tribunal decision is patently unreasonable, a far tougher test with no real definition.

(6) It unfairly forces thousands of discrimination cases now in the human rights system to start all over again in the new system, without any help from the Human Rights Commission. Many victims spent years trusting that they could use the current system. What will happen to them now?

(7) It does not keep the government's commitment that all discrimination victims will have a tribunal hearing. It lets the tribunal reject a case without a hearing.

(8) It does not reduce the backlog. It shuffles the lineup from the Human Rights Commission to the tribunal. It does not set enforceable deadlines to ensure that cases are promptly heard and decided.

(9) Breaching government commitments, Bill 107 weakens the Human Rights Commission's ability to bring forward its own cases to challenge systemic discrimination. Currently, the commission can launch a complaint in any case, not just systemic cases. It has investigation powers to get evidence. It can seek sweeping remedies to compensate discrimination victims for past wrongs and prevent future discrimination. Bill 107 only lets the commission launch its own investigation in systemic cases. It does not define "systemic." It is based on the false idea that cases are either individual or systemic. It strips the commission's investigation powers. It stops the commission from seeking remedies to compensate victims for past wrongs.

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(10) It largely privatizes human rights enforcement. It removes the commission from most discrimination cases. This makes the commission less effective when it does public policy, advocacy and public education.

(11) It dramatically shrinks the human rights system's capacity to protect the public interest. Right now, the commission can seek remedies both for individual discrimination victims and to address the broader public interest. It can do so when settlements of cases are negotiated and at tribunal hearings. Under Bill 107, the commission will not be involved in negotiating most case settlements. It will not have carriage of or even be at many, if not most, tribunal hearings.

(12) With Bill 107, the McGuinty government seriously breaks faith with 1.5 million Ontarians with disabilities. In the 2003 election, Premier McGuinty promised a new disability act with effective enforcement. After the election, the McGuinty government rejected disability community requests to create an independent agency to enforce the new disability act. The government said it isn't needed since persons with disabilities can use the Human Rights Commission's complaints process to enforce their rights. The disability community applauded the new 2005 disability act, though it created no new independent enforcement agency. Now Bill 107 takes the Human Rights Commission's enforcement teeth away.

Bill 107 does not correct this breach of faith by setting up a weak Disability Rights Secretariat. This new secretariat has no public investigation or prosecution powers. The commission currently has a stronger version of that secretariat in place now.

My recommendations to the McGuinty government:

(1) to hold open and accessible hearings with all workers and community members, particularly those who are continuously disadvantaged by discrimination issues;

(2) to properly fund the commission in a sustainable manner;

(3) to amend this legislation to make the Human Rights Commission accountable to the Legislature in order to ensure independence;

(4) to significantly reduce processing time of complaints. Mediations should be completed within three months, complex investigations should be completed within one year, and a tribunal decision should be rendered no later than two years after the filing of the complaint;

(5) to put procedures in place that ensure that complaints involving minimal investigation, crisis situations and significant public interest are fast-tracked through the system. These procedures also need to ensure that complaints that require investigation have access to publicly funded investigators through the commission;

(6) to ensure that in every case, the Human Rights Commission is actively involved, both at the settlement negotiations and at the hearings, to advocate for the public interest and for public interest remedies;

(7) to give the commission the power to enforce and monitor the settlements issued by the tribunal; and

(8) to implement a long-term plan to prevent discrimination and reduce the number of individual complaints. This plan should include a significant increase in the number of commission-initiated complaints, public education activities and other systemic initiatives.

What we need from you: It would be better if the government started from scratch and held a proper time-limited public consultation and then introduced an appropriate human rights reform bill. However, if the government presses Bill 107 forward, the bill should be amended to address these themes: to ensure it does not take away any rights the Human Rights Code now gives; to ensure it does what the government says it does; and to ensure it does not breach the Ontario government's understanding with Ontario's disability community over enforcement of the Accessibility for Ontarians with Disabilities Act regarding continued availability of the Human Rights Commission's investigation and enforcement powers.

Therefore, amendments are needed to:

(1) let the complainants choose to take their case right to the tribunal or opt for the Human Rights Commission to investigate their case and to prosecute if the evidence warrants;

(2) guarantee all complainants a publicly funded lawyer at all tribunal proceedings;

(3) ensure that all complainants opting for direct access to a hearing get a hearing within 90 days of filing their claim and that the tribunal cannot dismiss or defer a case without having a hearing, and to impose enforceable deadlines for major steps in the proceeding;

(4) ensure hearings are fair; for example, to stop the tribunal—the judge—from also being the investigator;

(5) strengthen, not weaken, the commission enforcement powers, including expanding its role to monitor and enforce tribunal orders, and to plan for removal and prevention of barriers in the human rights process;

(6) involve the commission in all cases, at settlement discussions and at tribunal hearings, to advocate for the public interest and for public interest remedies;

(7) give the Disability Rights and Anti-Racism Secretariats meaningful enforcement powers;

(8) make the commission meaningfully independent of government;

(9) let complainants retain their right to appeal to court if they lose at the tribunal;

(10) ensure the public has input into any tribunal rules;

(11) make mediation available, without forcing it on those not wanting it;

(12) protect discrimination victims from financial barriers like user fees;

(13) ensure that cases currently in the human rights system are completed under the current code; and

(14) ensure annual public reviews of the code's effectiveness.

I want to thank this standing committee for your ears and your time, and I sincerely hope that you will take my comments with you throughout this process and back to

the cabinet and caucus for the positive review and changes I feel are needed.

**The Chair:** Thank you very much. We'll begin with Mr. Kormos, about four minutes each.

**1650**

**Mr. Kormos:** I just want to acknowledge and indicate that Bob Howes's submission to this committee this afternoon is a demonstration of how incredibly effective he would be as a member of the St. Thomas council. I wish him well in that regard. We need labour people at all levels of government.

You appear very much to endorse the proposition by AODA, amongst others, that there be choice on the part of a complainant, that the complainant have a right to either access the tribunal privately with his or her own counsel and forgo the role of the commission, or enter through the commission entry door and use all of the resources of the commission. Am I clear in that regard?

**Mr. Howes:** Pretty clear.

**Mr. Kormos:** My understanding from the stats is, gosh, that half—maybe more than half—of all complainants have their complaints resolved by the commission simply through discussions with the other party, through mediation, any number of processes. Do you regard that as a pretty valuable function on the part of the commission?

**Mr. Howes:** Yes.

**Mr. Kormos:** Because the observation is made by you and others that all those complaints that are not being resolved by the commission—if there's a lineup at the commission now, there's going to be an even longer lineup at the tribunals. What's your perspective in that regard?

**Mr. Howes:** I'd actually have to think about that one. I guess it depends on how well funded these tribunals are. I think that the Human Rights Commission as it stands right now is underfunded and I think that's why there is such a backlog in cases. I think there need to be some administrative reforms looked at that would address your backlog in cases.

**Mr. Kormos:** Thank you kindly. You've been a very effective spokesperson for your community and people from all backgrounds here today, and once again I wish you well in your municipal electoral bid.

**The Chair:** Thank you. The government side.

**Mr. Zimmer:** Are you with OPSEU? What union are you with?

**Mr. Howes:** I am with the Ontario Public Service Employees Union.

**Mr. Zimmer:** Just to use the model that OPSEU has for complaints, they have a complaint tribunal and members can put in a complaint. I understand that it's a direct access model, so everybody in OPSEU has direct access to your complaints tribunal. Is that correct?

**Mr. Howes:** I would have to look that up.

**Mr. Zimmer:** My understanding is that OPSEU members have direct access to their complaints tribunal.

**Mr. Howes:** We have direct access.

**Mr. Zimmer:** Yes. So wouldn't you like to see a model like that available to everybody else in Ontario? I just leave the thought with you. Thank you.

**Mr. Kormos:** He's already indicated he supports [*inaudible*] and he supports the option—

**Interjection:** Let him answer.

**Mr. Kormos:** I'm just trying to help Mr. Zimmer, because Mr. Zimmer clearly didn't hear Bob when Bob was articulately expressing the position of his labour council.

**The Chair:** Are you finished?

**Mr. Zimmer:** No. OPSEU has a direct access model in their complaints tribunal. Would you like to see a direct access model for the rest of the people in Ontario?

**Mr. Howes:** I would like to see a model like I just explained to you here in this presentation.

**Mr. Zimmer:** Not the OPSEU model?

**Mr. Howes:** I don't know.

**Mr. Zimmer:** Thank you.

**The Chair:** Mrs. Elliott.

*Interjections.*

**Mrs. Elliott:** Mr. Howes, I'd just like to follow up on one of the points that you made, and that's with respect to streamlining the process so people can have their complaints resolved as quickly as possible. I think most of the criticism that's been raised so far with respect to the current system is that it takes too long and that people have the perception that they're not being heard, that they feel they're not receiving the access to justice that they want. Yet as we look at this legislation, it doesn't really deal with that. It doesn't really deal with the over 2,000 backlogged complaints that we have, doesn't really indicate that there's going to be a faster resolution. There are no timelines built into the tribunal process and so on.

I guess with your position you're saying that people would probably want to choose whatever way they can both have their complaint resolved in an efficient manner, quickly, and also be able to be heard in the way that's most important to them, either by way of an investigation by the commission or with respect to a hearing before the tribunal, and choice is going to be important to ensure that. Is that fair to say?

**Mr. Howes:** That's fair to say.

**Mrs. Elliott:** Thank you very much.

**The Chair:** Thank you for your presentation.

BILL HILTZ  
JOYCE BALAZ

**The Chair:** The next presenters are Joyce Balaz and William Hiltz.

**Mr. Bill Hiltz (Interpretation):** Hello. I am Bill.

**The Chair:** Can I have your attention just for a second? If you can introduce yourself, and you may begin. You have 20 minutes. You'll have to speak into the mic.

**Ms. Joyce Balaz:** That's what he was doing. He said, "Hello. I am Bill."

**The Chair:** Okay. Just so that the sign—yes.

**Mr. Hiltz (Interpretation):** Joyce will help me.

**Ms. Balaz:** For good reasons; you can see why.

As Bill said, this is Bill Hiltz. I am Joyce Balaz. I'm here to support Bill in his efforts. Bill is completely non-verbal, and by using his various specialized methods of communication has worked on this submission with me. Therefore, this submission is being brought forward on behalf of both of us.

Bill and I have been actively advocating for equal rights for all persons. We believe very strongly that all people have the right to be contributing members of society and that no one should be defined by their disability. Every individual must be considered a person first.

We agree that people of differing abilities have different needs and that they should not be discriminated against because they have differing abilities. We are here to share with you the reasons why we feel Bill 107 will further discriminate against people with differing abilities and how it will seriously diminish the ability of someone in Bill's situation to win a judgment in a human rights case.

In order to do this, it is necessary to relate to you one of our many experiences. Bill relies on the meagre income support of \$730 per month provided by the Ontario disability support program, ODSP. Of that monthly amount, \$596 is allocated to his room and board lodging, leaving \$134 per month for all of his other expenses. We ask committee members to think of how quickly and easily \$134 per month is spent.

While Bill is one of the lucky individuals who also receive assistance through the developmental services program, many people with differing abilities do not. Financial hardship is very common to individuals who rely on ODSP for their income. Unfortunately, while Bill does receive other assistance, the developmental services support Bill receives does not currently fund legal services; therefore, legal services must come from whatever is left of his \$134 per month.

**1700**

A few years ago, the agency which provides service to Bill, in order to exercise a clause in their service agreement, denied Bill the use of his familiar communication partners on two separate occasions. It was the opinion of the service provider that they were meeting Bill's needs because they were providing Bill with alternate communication partners. However, none of them were conversant with Bill's specialized methods of communication, and none were experienced with Bill's health issues, which seriously affect his ability to communicate at any given time. This effectively left Bill in a very vulnerable situation with no one who truly knew how best to support Bill. To make this a little clearer for members of this committee, it would be like us speaking to you in a language you do not understand without the benefit of an interpreter.

I'd just like to make a little demonstration. I'm going to ask two or three people a question using Bill-speak.

You need to answer us using “yes” or “no.” Do I have volunteers?

*The witness signed.*

**Ms. Balaz:** I just asked you if you want to go horse-back riding.

So in this situation, had Bill been asked a question that related to his support, such as, “Are you being abused?” “Are you happy where you live?”—without that knowledge, they could not interpret what Bill had said. That just gives you a little example of what we’re talking about here.

This was just one example of the problems that we were experiencing with the service provider at the time, and we felt very strongly that we needed legal advice and some legal help to get us through this terrible time. So we tried. We contacted a lawyer, but because of the high cost of legal services—specifically, we were quoted \$150 to \$300 per hour—we found that this was not something we could afford. We were given the name of somebody in the legal aid clinic who could help us. Trying to make contact with that person was a nightmare. It took two to three weeks of constant attempts on our part to connect with him. At that time he told us, “I can’t help you. I don’t have the expertise in the disability field.” We contacted ARCH, which is the legal resource for people with disabilities, and we were advised that they would only be able to act as a resource to another attorney. So we were caught in a Catch-22 situation: The lawyer didn’t have the necessary experience or knowledge to assist us, and the disability lawyers did not have the ability to take on our case. We finally connected with another lawyer in Orillia who agreed to work on a pro bono basis to assist us, but then, when it came down to the wire, they became overloaded and could not. We tried every angle we could think of to get adequate legal representation, to no avail. While we consider ourselves fairly adept at navigating the various systems to obtain necessary supports, trying to obtain adequate legal representation seemed an impossibility, yet legal representation is mandated.

Herein lies our belief that Bill 107 creates a major barrier for individuals with differing abilities. Among the many other challenges people with differing abilities face, their financial resources are not great enough to be able to do their own investigation, to be able to gather evidence, identify witnesses and hire experts. Under the new system, in the situation recounted above, had we decided to pursue our belief that Bill’s human rights had been violated and attempted to bring forth a human rights complaint, the service provider would have had well-paid legal representation to counter our complaint, while we had none. Could you see me going to the service provider saying, “I need legal fees to fight you”? It’s not quite feasible.

It is our understanding that the current Human Rights Code gives every discrimination victim who files a timely and non-frivolous complaint the right to have the Human Rights Commission publicly investigate his or her human rights complaint. If a complaint cannot be

resolved between the parties through mediation, the commission must investigate the case.

Section 33 of the code now gives the commission extensive investigatory powers, including the ability to enter businesses, to interview witnesses, to request documents and to seek a search warrant to compel access to relevant documents and other physical evidence.

Under the current code, based on its investigation, the commission is required to decide whether a Human Rights Tribunal hearing is warranted in a case that isn’t voluntarily settled by negotiation. The commission can refer the case to the tribunal for a full hearing on the complaint. At the Human Rights Tribunal hearing, the commission is the public prosecutor. The commission has carriage of the case to prove that the complainant was the victim of discrimination. The commission interviews and calls the witnesses. The commission is supposed to argue that the discrimination took place. The prosecutor therefore effectively represents the complainant’s interest as well as that of the public. If expert witnesses are needed, which is increasingly the case in human rights cases, the commission is responsible for finding appropriate experts, to hire and pay them, and to present their evidence. Expert witnesses can be very expensive.

Under the current code, the complainant has the right also to have a lawyer present at the hearing, to call witnesses to testify and to cross-examine witnesses who testify against the complainant. However, the complainant doesn’t have to do any of this if she or he does not want to.

In contrast, Bill 107 would totally abolish the complainant’s right to have his or her case publicly investigated by the Human Rights Commission. Bill 107 would repeal section 33 of the code. That takes away from the commission its power and duty to investigate human rights complaints. Bill 107 would force all discrimination victims to go directly to the Human Rights Tribunal, without a prior Human Rights Commission public investigation of their human rights complaint.

While the Attorney General has guaranteed that there will be access to legal representation, our experience tells us differently. It is nice that the Attorney General is making this guarantee; however, history is full of promises broken. There must be a legislative and service framework to back up this guarantee, and Bill 107 certainly fails to provide that. We should have been able to access legal aid to assist us, but we were not successful. Presently legal aid attorneys are unable to effectively cope with the number of cases and do not have the expertise in the disability field to provide effective representation. While supports are mandated in many ministries, the reality is that there is not sufficient funding to provide necessary supports to everyone who needs them, and therefore those who will have adequate financial resources will be those who are most successful in obtaining judgments in legal issues.

We would like to quickly mention the Ministry of Community and Social Services and the Ministry of Health and Long-Term Care as examples of the serious underfunding which exists within this government.

Waiting lists for services in both these ministries are long. It took us six long years of hard advocacy to obtain the supports necessary to provide the quality of life Bill now has. Finding their way through existing bureaucratic red tape costs individuals and their families dearly, emotionally as well as physically, clearly depleting their time and energy, which would be better spent supporting their loved ones. It is clear through our experience that those people who can best navigate the system usually obtain the necessary services. Yet these ministries are mandated to provide services equally to all. What about those people who are differently abled who are not as capable of navigating the system? Will a new human rights support centre be any different? The proposed changes would exponentially increase institutional barriers, particularly for the differently abled.

A Toronto Star June 5, 2006, editorial substantiates our belief, as it pointed out some of Bill 107's serious flaws in this regard. It stated in part:

"But Bryant still needs to fill in some crucial details.

"First, he must assure Ontarians that all legitimate claims would have a fair hearing regardless of the financial resources of the complainant by making concrete provisions for publicly funded legal support.

"Second, he must show he has budgeted enough money for the staff and resources required to make the new system really work.

"Under the current system, the commission shepherds complaints through the process. That means people with little money do not have to hire a lawyer because they can rely on the expertise of commission staff.

#### 1710

"Under the proposed system, a new human rights legal support centre would offer 'full legal support,' including representation at hearings, to people who file human rights complaints at the tribunal. Bryant says there would be no means test. He also says services would be delivered by lawyers. But the catch is that he has not worked out yet whether they would work at legal clinics, in the private sector or for government.

"This uncertainty around the legal support centre is troubling. The proposed legislation does not explicitly provide for such a centre, let alone spell out what services it would offer. This is too important to leave until later. It must be settled as soon as possible. Ontarians must have confidence the new system will be accessible to all, regardless of their income.

"Vagueness about the budget only adds to the uncertainty. The government now spends \$13 million a year on the human rights system. It has pledged up to \$2 million extra for the transition period. But it has yet to spell out how it will divide the cash between the revamped tribunal and commission, and the new legal support centre. Critics fear there will not be enough money or staff to help people with claims navigate the system.

"Vulnerable people should not have to take it on faith that Queen's Park will protect their interests. That's why Bryant must address these uncertainties as soon as possible so that his well-intentioned attempt to improve a

broken-down system will have the confidence of all who use it."

Additionally, Bill 107 permits the creation of serious new financial barriers to access to justice for discrimination victims because, for the first time, it permits a human rights complainant to be charged tribunal user fees and to be ordered to pay the respondent's legal costs.

The current code doesn't authorize the commission or tribunal to charge discrimination victims a user fee for filing a human rights complaint or for having a hearing before the Human Rights Tribunal. Moreover, the Human Rights Tribunal is not empowered to order the complainant to pay the respondent's legal costs, even if the tribunal decides that the respondent didn't discriminate against the complainant.

The complainant's current freedom from exposure to user fees and from being ordered to pay the respondent's legal costs at the tribunal is an extremely important element of an accessible human rights system. Many, if not most, discrimination victims are low- or middle-income earners. It is important for committee members to understand that the majority of Ontarians do not earn the salaries of MPPs. Most of us are middle- to low-income earners. We don't work on Bay Street and we don't attend \$500-a-plate political fundraisers. We are the caregivers, the support workers and the service providers. We are women, youth, seniors, new Canadians and all the other faces of Ontario. I myself would certainly be considered a middle- to low-income earner and would be extremely hard-pressed to manage costs for my own defence if necessary. Bill and I are two individuals in our riding affected by this, but we are two of many thousands more who will be directly impacted in a negative and undemocratic manner by Bill 107.

Legal costs: Under the current code, cost orders cannot be made against a complainant whose case is lost at the Human Rights Tribunal. In addition, under the current code, if a respondent goes to court, either on appeal or via a judicial review application, it will name the commission as a party to the court proceeding. If the commission defends the appeal or judicial review application and is unsuccessful, it is the publicly funded Human Rights Commission, not the complainant, whom the court typically orders to pay the respondent's court legal costs. Those court legal costs can amount to thousands and even tens of thousands of dollars.

Bill 107 gives the tribunal sweeping power to make procedural rules. Under this power, the tribunal could make rules that let the tribunal order the complainant to pay the respondent's legal costs if the respondent wins the case at the tribunal.

Under Bill 107, the Human Rights Commission will no longer be a party to many, if not most, tribunal proceedings. Under Bill 107, if the complainant loses his or her case at the tribunal, it will be only the complainant, and not the commission, who could be exposed to pay the respondent's legal costs. If the complainant wins at the tribunal but the respondent successfully challenges this victory in court, again it will be the complainant, and not

the commission, who will be exposed to pay the respondent's court legal costs.

In Bill's case, he has \$134 per month after paying his room and board. If Bill were to be placed in a situation where he was made responsible for a respondent's cost of, let's say, \$10,000, it would take him six years and three months to repay that using his entire \$134 per month, leaving him no spending money at all. Would the committee members subject themselves to such hardship?

This amounts to punitive charges for what is now a public service and, as a result, this financial risk could deter many discrimination victims who have a good case from filing a human rights complaint. They will have no assurance in advance that they won't have to pay thousands of dollars in legal costs if the tribunal isn't convinced that the respondent discriminated against them.

User fees: Under the current system, a complainant pays no user fees to access the human rights enforcement system. For the first time, Bill 107 would permit the tribunal to charge discrimination victims and others user fees. This too will be a potentially serious deterrent to discrimination victims enforcing their human rights, especially for the poor. These twin financial deterrents fly in the face of the government's stated objective for Bill 107, that being to increase access to justice for discrimination victims.

The reality is that people who are differently abled such as Bill, who depend on ODSP, and the many others who live in poverty or those of low and middle income will never be able to afford the same legal representation as the respondents. This creates an unbalanced system, resulting in hopelessness for victims of discrimination. It undermines the very cornerstone of equality that our democratic system is supposed to embody. How will discrimination ever end?

In conclusion, Bill 107 will effectively create additional barriers for people of differing abilities. While we commend the government for trying to fix a backlogged system, Bill 107 is a glaring example of the results of developing government policy, hastily constructed, without the input of the individuals it is meant to protect at all stages of the process. It is clear that given the stated opposition to Bill 107 by both opposition parties, the government has also failed to take into consideration the constructive criticism of elected representatives whom the people of Ontario chose to balance the government agenda.

This is the reason we have come forth today: to inform this committee as to how Bill 107 will affect our chances of ever being able to successfully bring forth a human rights complaint so as to effectively right a wrong perpetrated against a person because of differing ability. For this reason, we wish to publicly announce that we have read the draft submission prepared by the Accessibility for Ontarians with Disabilities Act Alliance and fully support their recommended amendments to Bill 107 to the standing committee. The address is in our brief. What we ask is that Bill 107 be amended to ensure that

all people, regardless of their financial situation, are afforded the right to have their human rights complaint publicly investigated by the Human Rights Commission, as is currently the process.

Bill and I wish to thank you for taking the time to listen today, and we implore you to seriously consider how the proposed changes to the Human Rights Code act would affect you if you were poor and/or differently abled. Please put yourself in our situation and ask yourself how you would manage should the proposed changes be implemented without any amendments. Would the committee members truly feel comfortable investigating their own human rights issue complaint? Please listen to the voices of the people who are most likely to be a complainant in a human rights issue. Let us all work together to stop discrimination of any kind.

**The Chair:** Thank you very much. There's no time remaining.

**Mr. Kormos:** May I have unanimous consent to sit for five minutes?

**The Chair:** Do we have unanimous consent? Another two minutes each? Agreed? Okay. We'll start with the government side.

**Ms. Matthews:** Thank you very much for coming today. I know what strong advocates both of you are, and I really want it appreciated. I know it's a big chore to come today, to prepare the presentation, and it's very much appreciated. Your comments will most definitely be taken into consideration.

I want to assure you about a couple of things. One is that the investigation process will continue; it will just be streamlined. So people will still have support in their investigation. It will be streamlined: It won't be two separate investigations, it'll be one, so that will actually be more efficient. It will be better for complainants and it will take less time to get resolution. It's important for us that people get speedy justice.

The other thing is that I raised the question in the House with regards to legal support and was assured very, very clearly by the Attorney General that there will be an amendment that will ensure that people will get the support they need to achieve justice. Your concern has been heard and assurances have been given. So be patient. This does take time, and we will address your concerns. Thank you very, very much for being here.

**Mrs. Elliott:** I share your concerns with respect to the legal supports: to make sure that people are heard and that their complaints are brought forward as best they can with the representation that people need when they need it. I also appreciate your specific perspective on the financial issues that people are faced with, from a very real perspective, and I think that puts things in a really different light for those of us here at the committee. I know it has probably been very difficult for you to be here today, but we certainly appreciate it. Thank you both very much.

**Mr. Kormos:** Mr. Hiltz and Ms. Balaz, you seem to have a far clearer comprehension of the public interest role that's served by the commission than, quite frankly,

some of the members of the committee appear to have. Let's understand, the reason why the new legislation awards costs is because you don't have a commission vetting cases, deciding which ones have a greater likelihood of succeeding as compared to those that don't. In the existing system, the commission has to be very careful about which cases it takes to the tribunal because it can be the victim of an award of costs. That means there's a greater emphasis on resolution before the tribunal stage. When you have direct access, you've got to have a system of costs because there's no other way to deter people from pursuing cases that they know have little likelihood of succeeding—and you're right, that's a disincentive. It turns it into a crapshoot.

The salary up at Queen's Park is in the top 5%—we're at the lower end of the top 5%, but we're in the top 5% of income earners in the country. Should they suffer discrimination, most of the folks there can probably deal with it pretty effectively in their own right.

My office has dealt with the concerns of persons who are non-verbal who are victims of abuse and sexual assault. They're targeted, because the criminal justice system can't accommodate people who are non-verbal

and who need interpreters. Crown attorneys are scared out of their wits by it. Police don't know what to do, even the best-intentioned police. Surely—and I'm not saying we should be proud of how the criminal justice system has yet to understand the needs of these victims so that they get justice—in a Human Rights Commission process, we can ensure that built into the system are those elements of the commission that do the very things that Ms. Balaz and Mr. Hiltz cry out for.

The clause-by-clause consideration is not going to be a tea party. We're not friends. We're collegial, but we're not friends. The government has a majority. They will call the shots. The opposition caucuses are going to do their darnedest to get amendments passed, but it's going to be several mean, tough days of clause-by-clause consideration, because the government holds all of the cards.

**The Chair:** Thank you, Mr. Kormos. Thank you, committee members. Special thanks to the sign language interpreters for coming today. This committee stands adjourned until 9 a.m. on August 9, tomorrow morning, in Ottawa.

*The committee adjourned at 1723.*







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