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Mercredi 22 novembre 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

Chair: Vic Dhillon
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON JUSTICE POLICY

COMITÉ PERMANENT DE LA JUSTICE

Wednesday 22 November 2006

Mercredi 22 novembre 2006

The committee met at 0932 in room 151.

HUMAN RIGHTS CODE AMENDMENT ACT, 2006

LOI DE 2006 MODIFIANT LE CODE DES DROITS DE LA PERSONNE

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

The Vice-Chair (Mrs. Maria Van Bommel): I'd like to call the standing committee to order. The standing committee is meeting today for the consideration of Bill 107, An Act to amend the Human Rights Code.

Good morning. I want to welcome everyone here this morning. This is our third day of public hearings in Toronto. To make these hearings more accessible, American sign language interpretation and closed captioning services are being provided each day.

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

As well, we also have two support attendants here in the room to provide assistance to anyone who requires it. If you do require it, please let us know.

Mr. Peter Kormos (Niagara Centre): Chair, on a point of order: It's one thing for the government to shut down the hearings after tomorrow, but it's another thing for less than 50% of the government members to even show up for what's left. They have less than 50% of their members on the committee here. Clearly, they don't give a damn what people have to say, even on the two days left of public hearings.

The Vice-Chair: Thank you for your comments, Mr. Kormos.

OPERATION BLACK VOTE CANADA

The Vice-Chair: I'd like to proceed at this time. If I could call Operation Black Vote Canada to the front table here, please. Good morning.

Ms. Delores Lawrence: Good morning.

The Vice-Chair: Thank you for coming this morning. You have 30 minutes to make your presentation. If you use up the entire 30 minutes, there will not be an opportunity for members of the standing committee to make comments or ask questions of you. When you start, if you could introduce yourselves for the Hansard record and then proceed. Thank you.

Ms. Lawrence: Good morning. My name is Delores Lawrence, and I'm the chair of Operation Black Vote Canada.

Ms. June Veecock: I'm June Veecock, a member of Operation Black Vote Canada.

Ms. Lawrence: Operation Black Vote Canada, OBVC, thanks the justice policy committee for the opportunity to appear before it to speak about reform of the Ontario human rights system.

In this deputation, the OBVC does not support the status quo of the human rights system in Ontario. The OBVC supports changing Ontario's current human rights system into one that is responsive to and effective in dealing with and remedying day-to-day discrimination that affects Ontarians, especially anti-black racial discrimination, which disproportionately confronts our black and African Canadian society.

In our deputation, we will provide you with the reality that confronts our people. We will provide you with the reality as to why Bill 107 is not the bill to reform the human rights system and why it will have enormous consequences in reducing human rights protection for racialized and vulnerable persons, and we will offer you our blueprint for human rights reform, a blueprint that we believe the majority of users of the human rights system will support.

The OBVC continues to be gravely concerned about Bill 107. Our concerns are not merely, as the Attorney General asserts, "concerns over nuts and bolts." His analogy is the same as saying that the Pinto only had "nuts and bolts problems." You can remember that the Pinto was introduced and hailed as the car that would be a universally accessible vehicle.

The premise of the Pinto, like that promised by the Attorney General, was that everyone could have access to a car. The Pinto was to be a universally accessible vehicle. We were sold on the idea of having affordable transportation. Hindsight allows us to see what a disaster that Pinto was, and anyone who cares about human rights and knows about the Attorney General's plans to overhaul the human rights system is keenly aware that Bill 107 is a disaster waiting to happen. Bill 107 is Ontario's Pinto.

Even with the proposed amendments introduced by the Attorney General at the start of these proceedings, Ontario's human rights system, as he proposes, will not effectively protect and remedy human rights for vulnerable groups such as ours.

Let me be clear: The OBVC does not speak for black or African Canadians on this issue, but its mandate is to educate black and African Canadians on issues such as this. This is not an issue of who speaks for the black and African community; it is an issue of whether the black and African community will continue to have an effective human rights system in Ontario on which they can rely to protect them from the daily injustices encountered because of the colour of their skin and an equal voice in determining the system that best addresses the forms of discrimination they confront daily in their lives.

Often, when persons from our community take positions or speak out on issues, questions from the majority arise on leadership in the black and African community. Well, it does not matter who leads on issues like this because we will all be judged by the colour of our skin and not on our ability to lead.

As we watch and listen to the debate on reform of the human rights system, we are struck by those whose voices are being heard, those who seem to have access to the Attorney General, those whose views the Attorney General legitimizes as meaningful and those in the mainstream media who support the government on its blueprint for reform.

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The reality is that, despite the Attorney General's claims, supported by a small group of members of the Ontario Bar Association and the University of Toronto's faculty of law and law graduates, many of whom are one and the same, the so-called reforms proposed by Bill 107 will have immense consequences in reducing human rights protections for racialized minorities. If the Attorney General were indeed committed to supporting and protecting human rights, this commitment would be reflected in the organizations that were on the A-list to appear before you on the first few days of this hearing.

While the voices of many lawyers have been heard, the same cannot be said of the voices of racialized people and communities who are silenced daily, the real people who need protection. Instead, under the guise of so-called "reform," the government is setting up a plan of non-action, a plan which diminishes the functions of the Ontario Human Rights Commission by defining away racism and shifting the responsibility of addressing and remedying human rights violations away from the government and onto victims of discrimination.

We are also struck by the fact that the voices who are being heard by the Attorney General are those less likely to use the human rights system because of their power and privilege in this society; yet the voices of the groups most vulnerable to the proposed reforms of Bill 107, such as First Nations peoples, the disabled, black and African–Canadians appear to be silenced.

The Attorney General is not listening to groups who will be most impacted in the proposed human rights system, and whose rights are threatened and will be compromised if Bill 107 were passed. He is not listening to vulnerable Ontarians who use the human rights system daily and who are best able to articulate their experiences in it and what needs to change to make it serve them better. Rather, he is listening to a group whose interests appear primarily to include making the human rights system in Ontario what they believe it should be and who may not ever use it because of their power and privilege, and who stand to gain financially.

We say that he is not listening to vulnerable groups because he has not replied to many questions that the OBVC asked him in June about the proposed human rights system. In a letter to the Attorney General in June, the OBVC told him that in its assessment of the bill, before the black community can feel comfortable that a direct access model will adequately protect their human rights, they needed answers to many significant and troubling concerns inherent in Bill 107. He has not responded to us, so we will ask him again publicly:

What is the estimated cost of the human rights system that he proposes: the commission, the tribunal and the human rights support centre? Will funding for this new human rights system be guaranteed in Bill 107?

In the direct access model, will all Ontarians who file complaints with the tribunal be guaranteed in law a hearing at the tribunal, or will their complaints be subject to challenges by powerful respondents with buckets of money before their complaints are heard or assessed? On what empirical data is the Attorney General relying to demonstrate that the tribunal could be more effective?

On what empirical data is he relying to show that the tribunal will not have backlogs similar to the commission? What is the average length of time it takes the tribunal to litigate a case, especially a race case?

What guarantees in law, procedures and processes will Ontarians have that their human rights complaints will make it through the tribunal gate?

What assistance will ordinary Ontarians have as they become familiar with and navigate the new tribunal model of direct access? If legal and/or other needed assistance will be given to persons accessing the direct access system, at what point along the complaints continuum will they have assistance?

If the complaint makes it through the gate of the tribunal, what guarantees in law will be given that his or her human rights' complaint will not be tossed out before a hearing? What guarantees in law will there be to ensure that cases involving racism and racial discrimination are not summarily dismissed because of alleged lack of evidence?

Direct access to the tribunal: Since the Attorney General and his government are bent on implementing the direct access model of human rights protection in Ontario, it behooves them to come clean and tell the people truthfully how much it will cost for the administration of the direct access at the tribunal, the disfigured commission and the human rights centre. The public also needs to know how long it will really take to process a

human rights complaint at the tribunal from inquiry to a resolution or hearing. How will the disadvantaged obtain evidence from the discriminator or prove his or her case? Since Bill 107 does not guarantee that each Ontarian who files a complaint will get a hearing before the tribunal, what criteria will the tribunal use to dismiss a complaint without holding a hearing?

The reality is that a direct access tribunal system mimics the judicial process. Repeated studies, and the lived experiences of Canadian blacks, have shown that the judicial and quasi-judicial systems institutionalize and perpetuate racism rather than eliminate it. The reality is that few racialized human rights complainants have benefited from a hearing, and that the hearing process has been disempowering, not empowering, for them. A review of race-based boards of inquiry and tribunals shows how woefully inept they have been in understanding and remedying racism. The reality is that having one's day in court is a Eurocentric notion that does not sit comfortably with many cultures. It is a concept that is perpetuated by the white, privileged and predominantly male members of the legal profession, such as those from whom the Attorney General takes advice on human rights reform.

Let me explain how the courtroom and the proposed direct access process, which mirrors the judicial process, fails to ensure that racialized groups receive a fair trial. Given the depth of racism and intractability of racial prejudice, one cannot expect the legal system or, in this case, an adjudicative process that is judicialized, to eradicate the impact of racial discrimination. Recall the report issued on the criminal justice system, which found that racialized communities have, and for good reason, a profound distrust of the judicial system.

The judicial system fails miserably in reflecting the faces of those who are brought before it. Decision-makers, the prosecutors, and even defence counsel, remain predominantly white. Despite the Attorney General's assurances of legal representation, which, if they appear in the regulations is a hollow promise, such representation may serve as a hindrance to the complainant. Legal representation muffles, if not completely silences, the voices and perspectives of the disenfranchised. It ensures that the victim of discrimination has no control over or say in the process. With all due respect, the Attorney General has been unable to eradicate racial discrimination in the judicial system. Why, then, is he insisting on a further judicialized human rights system?

The gutted human rights commission: The reality is that Bill 107 will gut the commission of its effectiveness in addressing discrimination. Retention of the commission to conduct public education and produce policies are worthless exercises, as the structure in which the commission is expected to operate remains undefined. The assurance by the Attorney General that a robust commission will emerge under Bill 107 is a sleight of hand, skilful deception, a neon light flashing "Human Rights Commission" posted on an empty building.

The new human rights system: It is a reality that a healthy economy depends on immigrants and therefore the number of immigrants accepted is being increased. Immigrants today are, for the most part, racialized. Ontario's demographics are rapidly evolving. However, instead of responding to the racial and cultural shifts of its citizenry, the McGuinty government has chosen to regress, to proactively remove the very structure that protects and promotes the human rights of all Ontarians.

Human rights commissions were instituted in Canada some 40 years ago to administer human rights legislation and protect the rights of those who are regarded as different, primarily immigrants of colour. There is agreement from human rights advocates and stakeholders in the present debate on reform that our human rights system needs to change to respond to the changing nature of discrimination and the context in which present day human rights abuses arise; more specifically, that Ontario's human rights system and the protection of human rights need to be modernized to take Ontario into the 21st century.

The reality is that within Canada's racialized labour markets there have emerged specific forms of racism directed at certain racialized communities. Post 9/11, there has been a proliferation of anti-black racism, anti-Chinese racism, anti-Asian racism, anti-Arab racism and lslamophobia. The demographic data of Toronto show that racialized groups will soon form a disadvantaged majority, and with this, we remind the committee members of the Toronto Star's feature on poverty by postal code. The reality is that racism manifests itself in employment, wage and educational disparities. Statistics show that racialized minorities are highly educated, but their human capital is undervalued. They are subjected to racial profiling and are unable to access the socio-political streams that are open to white Canadians.

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As in the marketplace, there are many unions working to represent the interests of racialized members; there are other unions that could do more. There are many reasons why racialized workers benefit from a proactive human rights system that includes a compliance function. Simply put, not all racialized workers (1) want "their day in court," (2) have the means, financially, emotionally or psychologically, to "get to court" or the language skills to navigate the judicial process that direct access requires or (3) believe that punishing the employer by taking them to court will root out deeply held prejudicial attitudes and behaviours.

This government proposes a major overhaul of the Ontario Human Rights Commission. We propose that a major overhaul is extreme and, rather than make the process more effective, will only create, at great expense, a system that mirrors the current one. In fact, Bill 107 has become a smoke-and-mirrors game.

We support the vision of a modern human rights system which is responsive to the needs of all Ontarians, forward-looking, accessible in its fullest meaning, must continue to advance human rights into the 21st century and must continue to be the most effective human rights system domestically, nationally and internationally. Bill 107 does not provide this vision.

Let me outline to you what we believe are the essential elements of a modern and effective human rights system and one that would streamline the current human rights system without huge costs to the taxpayer.

We agree that there are instances in which a complaint should proceed directly to the tribunal. For example, complaints that are not bona fide clog up the system and should not be permitted to do so. Recalcitrant respondents should be taken directly to the tribunal instead of delaying the process by refusing to return and answer to the complaint or cooperate with commission staff.

We do not believe that the tribunal can or should replace a compliance function. For racialized Ontarians, the excising of the compliance function is signalling a new era of neo-liberalism in which the government is removing itself completely from human rights protections.

Ms. Veecock: Some of you may know that I spent many years advocating for the rights of workers as a trade unionist and as a human rights advocate. In these many years, I have had involvement—and I might add, with some success—in Ontario's human rights system and the Human Rights Commission. Some of my observations on this matter are:

There has been a steady erosion of workers' protections in this province, with the diminishing of human rights through Bill 107 as the most recent.

Fading political will to proactively challenge racism has bled Ontario's human rights system. First, under the Conservative government, commission offices outside of Toronto were closed down, replaced with a 1-800 call centre in which calls are timed and limited and people-to-people contact removed.

The commission's accountability has increased. For example, it has introduced mediation as an alternative to dispute resolution.

Under the Liberal government, human rights complaints have increased, as has immigration, but the commission's budget has remained the same. In other words, during changing times, the commission is expected to produce more with the same funds.

We recommend a human rights system in which: (1) the commission is retained, revamped, adequately funded and enhanced to be more speedy and effective in processing individual and systemic complaints; (2) a tribunal that is less judicialized and less process and procedurally oriented; and (3) a legal support centre that provides assistance to complainants in need of support in the commission's process or at the tribunal without economic barriers.

Further, the OBVC supports a human rights system that allows for the integration of individual and systemic compliance and one that processes complaints speedily within it without compromising justice, appropriately remedying discrimination and the achievement of equality. The OBVC requires that Bill 107 impose standards for the speedy processing of human rights complaints.

Our amendments to Bill 107:

(1) Permit the commission and tribunal to report directly to the Legislature of Ontario. Attorney General Bryant's proposed amendment that the commission make a report to the people is superficial, we believe, and cosmetic.

(2) Require the commission to resolve or refer a complaint to the tribunal in one year from the time the complaint is filed with the commission.

(3) Make mediation in each complaint mandatory and with consequences where parties refuse to mediate. Mediation should not be voluntary, and only the commission should be able to decide when it is not appropriate for mediation to take place.

(4) Advance human rights; in particular, an effective commission to ensure continued advancement in the eradication or reduction of racism and racial discrimination through education and public policy development.

(5) Review the human rights system within five years from the date of proclamation of Bill 107.

In our opinion, a modern human rights system must therefore:

—be independent of government and ensure that the commission and tribunal report directly to the Legislature;

—be funded adequately, and such funding for the human rights system guaranteed in legislation;

—give the right of appeal of tribunal decisions;

—give full access to and assist all persons in Ontario to file human rights claims, regardless of geography and financial means;

—educate individuals about their rights and responsibilities in the human rights system and provide adequate assistance or guidance to individuals who may not be familiar with the legal requirements of the human rights system, in particular "new Canadians";

—assist individuals to understand how issues relate or do not relate to the Human Rights Code;

—provide mechanisms for parties in a human rights claim to quickly and amicably resolve the matter;

—provide timely intervention in human rights issues when urgency dictates or an immediate remedy is critical, for example, a disabled black child whose education is disrupted by the lack of appropriate accommodation in the education system;

—be sensitive to cultural and linguistic diversity and provide services in a culturally sensitive manner to all Ontarians, including a range of linguistic, cultural and disability support services throughout the human rights system.

It is our position that a human rights system with the above is a system that would be truly accessible.

We agree with the Attorney General on the importance of adopting a systemic approach to the elimination or remedying of discrimination. We particularly agree that a human rights system must effectively address racial discrimination. Racial discrimination in Canada is like an insidious disease confronting present-day human rights systems, one for which a cure seems elusive in the daily individual processing of human rights complaints.

Unlike other forms of discrimination practised in our society, racial discrimination in a polite country such as

Canada is rarely expressed openly. Indeed, it is often very subtle, often embedded in structures and long-standing institutional practices and norms that inform them and have a racist impact. It is therefore often necessary to collect comparative data in order to find evidence of structural and institutional racism.

It is therefore essential that a modern human rights system retain an aggressive systemic function to get at the insidious nature of racism and racial discrimination. We welcome the amendment which proposes to give the human rights system the broad and requisite enforcement powers to inquire into and proactively intervene to remedy institutional and structural racism and racial discrimination instead of waiting for a claimant to arrive at the human rights system's doorstep to file an individual complaint. We have learned over the years that a case-by-case approach is what builds the backlog.

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A strengthened and modern human rights system must provide for an approach that allows seemingly unrelated or unconnected complaints to be managed together to bring to light everyday issues of discrimination, and that contains mechanisms for inquiring into and resolving complaints with individual and public interest remedies. As such, we believe that the silo approach suggested for this modern system will not provide an effective vehicle for the management and successful systemic outcomes required in a human rights system in Ontario.

The Vice-Chair: You have five minutes left.

Ms. Veecock: In our view, the Attorney General can improve upon the present human rights system by listening to those who use it, by making it modern and effective for all Ontarians, and not dismantling it, as he proposes to do.

Ms. Lawrence: In summary, we ask the Attorney General, why eviscerate or disembowel Ontario's human rights system? Why not build on a system that for the most part works, a system that includes the good work which the commission has demonstrated over the years? Why is he not listening to the many vulnerable voices that use the human rights system, which are telling him that his proposed human rights system in Bill 107 will not work for them? Why does he continue to listen to his friends in the legal profession who are powerful and privileged, who likely do not and will not use the human rights system and who do not know what it is like to live in our black skin?

We believe that this government and Bill 107 are setting human rights back decades, forcing racialized persons to lose what ground they have fought so hard to attain. Compare the judicial system's treatment of a black man who was denied service in a bar at the Montreal Forum in the 1940s to that of the recent incident in Montreal where a black patron was also denied service in a bar. The latter, with the assistance and support of the Quebec human rights commission, had his dignity restored; his predecessor did not.

We are asking the Attorney General and the government of Ontario to improve the human rights system for black and African Canadians whose history in Canada necessitated a Human Rights Commission for over 40 years. We're asking him not to break it by bringing together in a human rights system front-end assessment, information gathering or investigation, the application of policy and current jurisprudence. New successes can be realized in the advancement of the human rights of previously disenfranchised Ontarians, in particular, black Ontarians.

Ms. Veecock: I wish to place on record my personal outrage over the deception of this government with respect to Bill 107 and closure of hearings on this bill. This Liberal government has filed, without warning, an 11th-hour motion to cut off public hearings on the bill and force a one-day debate on so-called amendments to Bill 107, amendments that we have not seen.

We find the Liberal government's action undemocratic and unconscionable. The Attorney General stacked the first days of the hearing with his supporters of Bill 107. Many racialized groups that oppose the bill are scheduled to appear throughout the rest of the month and throughout December, having submitted their requests months ago. They will no longer be afforded the opportunity, after having spent months preparing their submissions. This government shutting down debate on Bill 107 is cruel. It denies those voices most affected by racism the right to make their concerns about the bill public.

Shutting down the hearings is quite ironic, because the government is denying our community and other racialized communities the right to a hearing before this justice policy committee when the government's strongest argument in favour of Bill 107 has been that it supposedly ensures everyone direct access to a hearing at the Human Rights Commission. I guess that, for us, it's direct access to the tribunal but no access to this justice committee. My community has been completely shut out, except, of course, for the very few who support this bill.

I have spent my life in Canada representing many complainants in the human rights system. Yes, at times, I have been frustrated with the long delays in obtaining justice; at other times, I have obtained satisfactory outcomes for complainants, especially with the introduction of the mediation process in the Ontario human rights system.

Bill 107 will not only establish direct access to the tribunal, but as well will facilitate what could be called a human rights industry—an industry of lawyers exploiting my people's pain. Moreover, what I find particularly disturbing is that the minister seems to have listened primarily to powerful and privileged white able-bodied males and females who (1) have never experienced racism or, may I say, discrimination and (2) are positioned to benefit from this bill.

This bill is not about improving access and protecting human rights; rather, it is about contracting out and privatizing the work of the commission while rewarding friends and supporters of Bill 107.

The Vice-Chair: Thank you very much. Your time has expired. I appreciate your coming in to make your presentation.

CANADIAN HEARING SOCIETY, TORONTO

The Vice-Chair: I call forward the Canadian Hearing Society, Gary Malkowski and Susan Main.

Can everyone see the sign interpreter if we have the interpreter standing here? Does that work for everyone?

Mr. Gary Malkowski (Interpretation): Yes.

The Vice-Chair: Thank you. I want to be sure that everyone has access.

Mr. Kormos.

Mr. Kormos: I'm wondering—what do they call these, lapel mikes? Is this what the interpreter needs?

Ms. Susan Main: He will in a minute.

The Vice-Chair: Is that not on?

Interjection.

The Vice-Chair: Is it functioning yet? No. We're having technical difficulties here. If everyone will be patient, I'm sure we will get it going. Is it going now?

Ms. Main: Yes, it is.

The Vice-Chair: Thank you. That's wonderful.

Welcome to the standing committee. You have 30 minutes in which to make your presentation. If you do not use up the entire 30 minutes, there will be opportunity for members of the standing committee to make comments or ask questions. So introduce yourselves for the Hansard record and then please go ahead.

Ms. Main: Good morning. My name is Susan Main. I'm the vice-president of fundraising and strategic communications at the Canadian Hearing Society.

Mr. Malkowski (Interpretation): My name is Gary Malkowski from the Canadian Hearing Society. I'm special adviser to the president of the Canadian Hearing Society on public affairs.

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Ms. Main: The Canadian Hearing Society is the largest agency of its kind in North America, serving deaf, deafened and hard-of-hearing people and their families. We were founded in 1940 and we have 28 offices across Ontario, providing high-quality, 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 health care counselling, employment services, Ontario interpreting services, information and general support services, to name just a few.

In general, the Canadian Hearing Society is pleased that the government wants to improve and strengthen the Ontario human rights system. However, we have some very serious concerns with the direction of the government's reforms set out in Bill 107 and the November 15—as-yet-untabled—amendments, starting with some very serious and perhaps telling oversights in process.

We regret that the Canadian Hearing Society 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. We contrast this with the government's excellent consultations between 2003 and 2005 as it developed Bill 118, the Accessibility for Ontarians with Disabilities Act.

The government's most recent display of respect for human rights is downright counterintuitive. Bill 107 is purportedly about reforming and enhancing human rights in Ontario, yet last night's motion to invoke closure on Bill 107 shuts down public hearings that have been scheduled for months. The vast majority of signed-up presenters—I think there are some 200 individuals and organizations—have had the door closed in their face and denied the opportunity to have their perspectives, experiences and insights shared with you. Standard procedures for debating amendments to the bill at both the committee level and at third reading in the Legislature have each been restricted to one day, November 29. These are normally open-ended processes to accommodate full and fruitful discussion.

It's interesting to note that in today's Star, there is a prominent ad inviting people to make oral presentations on Bill 107. The deadline to contact the committee clerk is December 15th. The ad reads: "The committee intends to hold public hearings in Toronto commencing Wednesday, November 15, 2006. The committee intends to hold additional public hearing in the winter on dates and in locations to be determined."

That this last-minute closure is being invoked in the name of human rights reform is puzzling at best and muzzling at worst.

CHS endorses and agrees with the AODA Alliance's Blueprint for Effective Human Rights Reform in Ontario that was issued on November 6, 2006 and is posted to the AODA Alliance website. Without taking away from the many important recommendations and insights set out in the AODA Alliance's blueprint, the Canadian Hearing Society specifically draws the committee's attention to these points:

There is no commitment to any new funding for an already underfunded, overtaxed human rights enforcement system. Regardless of what bill is adopted, what amendments are made, without adequate funding the whole process is doomed to failure.

The proposed government-funded human rights legal support centre does not commit sufficient funding to fulfill the government's pledge of free lawyers for all. This could lead to victims standing unrepresented before the tribunal, pitted against their opponents, who more often than not are in a position to afford legal counsel.

The services offered by the legal support centre appear to be tiered, ranging from full legal representation to advice to information. What services are provided to a person will be decided by the legal support centre, casting the centre in the role of gate-keeper and quite possibly re-creating the age-old backlog problem that plagues the current human rights system and which Bill 107 is trying to rectify.

Bill 107 repeals the existing Human Rights Code provision that every human rights complainant is entitled to a public investigation.

The non-elected Human Rights Tribunal can override important procedural rights that are currently guaranteed by the Statutory Powers Procedure Act.

Our support of the AODA in June 2005 was premised on the understanding that the investigation and enforcement of that important act would come from the Human Rights Commission. We were assured that there was no need to include enforcement mechanisms within that important act itself because that was already provided for within the mandate of the Human Rights Commission. Bill 107, even with the proposed amendments, does not ensure that even when a victim wins a case, tribunal orders will be fully enforced or complied with. The lack of enforcement gives us great concern.

Mr. Malkowski (Interpretation): Mr. Chair, I wonder if you would be so kind as to ask the members of this committee to put the BlackBerries away for the presentation. I find it quite rude and offensive.

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 individuals 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 note takers, 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. The recent Federal Court of Canada decision requires all federal government programs, offices and services provide sign language interpreters "upon request." The ruling makes explicit the right of access to government. Provincially, the government of Ontario committed to the implementation of the Accessibility for Ontarians with Disabilities Act to ensure that communication access will be in place.

1020

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 OHRC intake forms. There is a lack of funding for communication access accommodations.

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 investigation.

The commission and the tribunal 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 commission 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 commission meetings due to 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 they have high 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. 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 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 commission reporting directly and independently to the Ontario Legislature would be a significant improvement.

CHS strongly endorses the immediate need for a fully public system for investigating, prosecuting and enforcing human rights. The human rights system should:

—protect discrimination victims' existing rights provided in the Human Rights Code;

—ensure increased funding for both the Human Rights Commission and the tribunal;

—remove legal barriers to filing human rights complaints;

—improve the Human Rights Commission;

—streamline the Human Rights Tribunal;

—ensure the human rights system's future effectiveness;

—ensure new legal supports for human rights complainants; and

—ensure that qualified communication accommodation measures are available, e.g., sign language interpreting, real-time captioning and deaf/blind intervening.

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

You're all familiar with the phrase, "One steals from Peter in order to pay Paul." I take $5 out of one pocket and put it into another; I still have $5. Essentially, that's what Michael Bryant is doing. He's stealing money from the commission and giving it to the tribunal, moving money from one pocket to another. There is no new money being fed into the system. How can we possibly improve the human rights system without adding new funding? I don't get it.

The Chair (Mr. Vic Dhillon): Thank you very much. We have four minutes for each side. We'll begin with Mr. Kormos.

Mr. Kormos: Thank you, folks. I want to underscore the message being delivered by the two of you and the two presenters who preceded you, and that is that there are all sorts of people across this province with incredible experience and expertise in combating discrimination who are eager to assist in meaningful reforms to the Ontario Human Rights Commission. It's an insult to slam the door in their faces when it comes to this, the most important part of the parliamentary process, the public hearing part, because, Lord knows, what happens in the chamber with whipped votes is very much predetermined. It's an insult to slam the door in the faces of people who want to participate in the public process. It's just downright plain, damn stupid to not take advantage of their expertise and experience when everybody agrees—everybody—with the proposition that we should all be working to make the Human Rights Commission a more effective, appropriate and relevant body.

Mr. David Orazietti (Sault Ste. Marie): Well, why didn't you do it?

Mr. Kormos: There's some grumbling going on from the government benches. Maybe the grumbler would like to take you on, Mr. Malkowski.

I read the data from the commission—the commission's own data—and unless we've got a fraud being perpetrated by commissioner after commissioner, it shows that, in 2005-06, some 2,260 cases were dealt with; 11.3% were dismissed on the merits, approximately 230 cases. The rest were resolved one way or another. We've been hearing the horror stories. Are they indeed the horror myths? Is, in fact, the commission working a little better than some would have us believe? There's some pretty impressive data, and I'm not going to join the chorus of those who would implicitly, by condemning front-line staff as either being incompetent or corrupt, similarly be condemning their management, their commissioners and their chief commissioners as being incompetent or corrupt.

There's a problem here in terms of the data, friends, and the refusal to carry on with these hearings I think aggravates and complicates the matter; it doesn't mitigate it. Thank you so very much.

The Chair: Thank you, Mr. Kormos.

The government side?

Mr. David Zimmer (Willowdale): Mr. Malkowski, let me welcome you to the committee hearings. I don't know if some of my other colleagues realize this, but Mr. Malkowski himself was a distinguished member of this Legislature, I believe in the early 1990s. Is that correct?

Mr. Malkowski (Interpretation): Yes.

Mr. Zimmer: I think it would be helpful for this committee if you would share with us your experience with human rights reform during that period, 1990-95.

1030

Mr. Malkowski (Interpretation): Our experience during that time and today was that there were many Legal Aid Ontario difficulties because of underfunding. The community legal centres are seriously underfunded, and the Ontario Human Rights Commission is still facing some serious difficulties due to a lack of funding.

During that time, when a lot of the cuts were taking place—and I admit that our government made those cuts, but what's happening with this government is far worse in terms of the reductions to funding, and the staff reductions as well. How can you make improvements to the human rights system without adding additional resources, either human or financial? And so my experience in my government, as you'll see in the Mary Cornish report and her recommendations—it's an excellent report, but there is an awful lot that needs to be updated in order to reflect today's society. The current system of human rights, and in fact the Human Rights Commission right now, is on an upward swing. Things are improving; the system is improving. At the same time, funding is being cut, staff is being cut, cuts are happening everywhere and downsizing is going on at the same time. At the same time, we're seeing improvements to the system.

So there are some real concerns. This article about legal aid: They've got a very serious backlog again. The courts and the Ministry of the Attorney General are also experiencing severe backlogs. So I'm very worried about many of the civil rights violations that are going on, particularly for people who are disabled, particularly for people who are deaf and hard of hearing.

Mr. Zimmer: I just want to get one more question in.

Mr. Malkowski (Interpretation): So they are the most vulnerable. Something needs to be done. We need to do something right now. Please respect the democratic process. I'm asking you to cancel yesterday's motion and allow people with disabilities and organizations to participate in the democratic process. This is the most foundational piece of legislation for the human rights process.

Mr. Zimmer: Just one more point.

Mr. Malkowski (Interpretation): I can't believe that you're doing this. I mean, I cannot believe this ad, the false advertising that's going on. It's fraud. It is a fraud to the public. You've got a deadline of December 15. This was in this morning's newspaper.

Mr. Zimmer: But just for the record, you did recognize the Cornish report as an excellent report, to use your words, and as I understand it, in the government from 1990-95, that report was shelved. So I just point out that at least we're making progress on the Cornish report, which is something that didn't happen with the previous government.

Mr. Malkowski (Interpretation): And I would like to put on the record that the Mary Cornish report in 1990 was excellent. I'm very disappointed—I would like it to be on the record—with all parties in the government who were not championing the human rights issues by failing to provide increased funding. So that's on behalf of both the Conservative and the NDP parties.

I congratulate them for championing the human rights process now. There's no respect for this process. You've got a lot of nerve and are doing enormous damage to the current human rights system, something that's taken years and years to build.

The Chair: Thank you. Mrs. Elliott.

Mrs. Christine Elliott (Whitby–Ajax): Ms. Main and Mr. Malkowski, thank you very much for your presentation. I hope you'll permit me to just turn slightly so that the interpreter can hear me.

With respect to the decision by the Attorney General to invoke closure and to cut off the public hearings here, I'd just like to add to what my colleague Mr. Kormos has indicated. It's not only insulting to all of the groups and presenters who had hoped to make representations here; it's also presumptuous to presume that you will know what each and every group is going to say. I've learned a lot from the presenters we've heard from so far this morning, things that I did not know, things that would be relevant in terms of making a decision. But to say that we've heard from enough groups—"You hear from one, you've heard from them all"—is insulting; it's presumptuous; it's wrong. I agree with you completely.

Secondly, with respect to the issue of the legal support centre, the Cornish report, I agree, had as its centrepiece the need for a fully funded legal support centre, and we certainly have seen no evidence of that. We've seen vague promises from the Attorney General about a legal support centre—nothing concrete. He has put it in the legislation but, for all practical purposes, as you say, robbing Peter: eviscerating the commission, taking whatever money you can from that to put into the tribunal. If you're going to guarantee a lawyer to represent you throughout this entire process, you cannot do that without putting significantly more money into the system, and there's no indication that we're going to see that. The justice sector budget has been flatlined through 2008-09. Legal aid is starving. Where is this money going to come from? You say you don't get it. I completely agree. I don't get it. I suspect Mr. Kormos doesn't get it. The official opposition parties don't get it, and many, many hundreds of groups and individuals in this province don't get it.

We support all of your comments and thank you very much.

Mr. Malkowski (Interpretation): Thank you very much. I would like to appeal to the Liberal members here. I'm asking you to please reconsider and allow individuals of Ontario and organizations to come and speak to this issue. This is the most foundational basis of human rights legislation; it's the most important piece we could have. Please, please, reconsider your position. Stop recycling Bill 118, because without this foundational human rights system—if you pass this piece of legislation, you'll destroy Bill 118, the Accessibility for Ontarians with Disabilities Act. It will then become toothless. It will be a useless piece of legislation. Accessibility will become a joke. So I'm asking you again to reconsider. I recommend that the Attorney General please consult with the former Minister of Citizenship, Marie Bountrogianni, and the Premier of Ontario to learn more about making things more fair and more accessible using that model as an excellent model, and I think it will greatly affect this piece of legislation.

I thought we could put our trust in you and I gave you the benefit of the doubt, and now you've lost it. This is becoming an election issue.

The Chair: Thank you for your presentation.

Mr. Malkowski (Interpretation): Thank you for making this meeting accessible.

The Chair: Is Graham Lawson here? Mr. Lawson is not here, so I want to call Edward Ackad.

Mr. Zimmer: Chair, just because we have some time here, can we have a two- or three-minute adjournment, the mid-morning, post-breakfast adjournment?

Mr. Kormos: It's the middle-aged male syndrome, isn't it, Mr. Zimmer?

The Chair: We'll break for about a five-minute recess.

The committee recessed from 1039 to 1049.

EDWARD ACKAD

The Chair: Welcome back to the committee. The next presenter is Mr. Edward Ackad. Good morning, sir. You have 20 minutes. You may start.

Mr. Edward Ackad: Good day to the committee. Thank you for receiving me. My name is Edward Ackad and I am here to urge you to do the right thing and stand up for the principles of equality and justice by including in Bill 107 a repeal of section 19 of the Ontario Human Rights Code.

I'll give a quote from the Canadian Conference of Catholic Bishops: "Religious discrimination is an offence against the dignity of the human person; a contradiction to the sincere respect which is owed to other faiths, and an offence against charity."

Section 19 of the Ontario Human Rights Code voids equal treatment before the law and is contrary to the very intent of the law. The source of this is subsections 93(1) to (4) of the Canadian Constitution, which enshrined Ontario's religious discrimination in 1867. It is time to change that.

The injustices and human rights violations that must be addressed:

(1) The separate school system can discriminate admission to their publicly funded institutions based on the student's religion up to grade 9. This is an absolute right.

(2) The separate school system can hire or fire teachers based on their adherence to the Catholic faith. This is the subject of a brand new human rights court challenge based on a teacher from Toronto and Ottawa.

(3) People of all or no faiths must subsidize the school teachings of the Roman Catholic Church. The funding formula pays for children on a per capita basis with some modifications for geography and other situations, but not including their religion.

(4) Canada's credibility on human rights issues at the UN is compromised because of Ontario's separate school system. We have twice been found in violation, in 1999 and 2005. In 2005, we were condemned because we didn't do anything about it.

Lastly, probably most disturbingly, the constitutional protection for this injustice may no longer exist, and no one has looked into this.

I will quote from a report of the special joint committee to amend section 93 of the Constitution Act, 1867, concerning the Quebec school system. Some expert witnesses expressed the opinion that Roman Catholic and Protestant denominational school boards and schools would be declared unconstitutional once the amendment was made, unless section 33 of the Canadian charter was invoked. In support of their arguments, the witnesses referred to recent court decisions holding that, without the denominational education guarantees in section 93, publicly funded Roman Catholic schools in Ontario would be unconstitutional because such schools would contravene the Canadian charter's freedom of religion and equality guarantees. These injustices will not be addressed in any way with the proposed Bill 107, and the religious discrimination against 66% of Ontario's population will continue.

Common excuses for inaction: The Constitution obliges Ontario to fund these schools. This I hear a lot. While section 93 of the Canadian Constitution does oblige Ontario to provide Catholic schools—

Mr. Zimmer: On a point of order, Mr. Chair: With due respect, I thought the gist of the submissions was to be on the provisions of Bill 107 and whether that bill should go ahead or not go ahead, rather than—I say this with the greatest of respect—a submission regarding a particular complaint under the act.

Mr. Kormos: Chair, to that point.

Mr. Zimmer: I would be quite interested in hearing the comments of the witness on what he thinks of Bill 107 as a vehicle to resolve these kinds of issues that he's raised.

Mr. Kormos: No, I'm sorry. You don't get to pick and choose, Mr. Zimmer. At debate are amendments to the Ontario Human Rights Code. While I quite frankly do not share this presenter's views on this issue—again, this is bizarre. This goes from wacky to wackier. First you impose time allocation, and now you're trying to shut down people who come here who maybe express an opinion—and I don't know whether you agree with it or not; that's your business. I'm not afraid of this man's point of view. We're discussing the Ontario Human Rights Code. Is he talking about particular sections of Bill 107 as they relate to the structure of the commission? No. But he's certainly talking about the application of the Human Rights Code from his point of view. Damn it, he has a right to be here. Let him talk. Why are you trying to muzzle people?

The Chair: Thank you, Mr. Kormos.

You may continue.

Mr. Ackad: Thank you. To address that, I again ask for an amendment to repeal section 19 specifically.

The Constitution obliges Ontario to fund these schools. While section 93 of the Constitution does oblige Ontario to provide Catholic schools, other provinces have amended the Constitution to abolish this requirement—Quebec and Newfoundland, for instance—through a bilateral agreement with the federal government. So it's possible.

The second argument I hear is that it has been like this since Confederation. This is the tradition argument. By this reasoning, women would not have the right to vote.

Third, Catholics pay for the system themselves, so why should we mind? This is an outright lie. The funding formula, as an example given, does not have a section that allocates money based on school support, making the school support relevant only to the election of school trustees. So everybody pays for the system.

Other motivation: We talk about the e"ducation Premier." It was found by the UN Human Rights Committee that the current system is incredibly wasteful. I will quote from the decision of the human rights committee in 1998: "According to counsel, the additional costs to maintain the separate system next to the public system have been calculated as amounting to $200 million a year for secondary schools alone." As you'll see, my estimate brings that total today to $463 million per year. This is probably the biggest amount of government waste in the system.

I submit to you that the only way a society can be multicultural is to treat all people equally. In terms of religion, this requires that the government be religiously neutral. The only way for our education system to do this is either to fund all religions or none. Funding all religions would be disastrously expensive and would let the provincial government decide what constitutes a religion, and can never be fair due to the population and economic disparities in different religious communities. Also, Newfoundland has tried this experiment and abandoned it. Let us not make the same mistake.

Ontario must follow Quebec and Newfoundland and adopt a one-school-system policy where all Ontarians can send their children, regardless of their religion. Religion is a personal matter and should be left to the parents and/or community of the child. History has shown us that government involvement in religion hurts both.

The government of Ontario must stand up and end this injustice for all Canadians and set an example to the world on human rights issues. Canadians pride themselves on being a world leader in human rights. Let's make that true.

The Chair: Thank you very much. We have about four minutes each, if there are any comments.We'll begin with the government side.

Mr. Zimmer: I understand your concerns on the school funding issue. What I was trying to get to in my earlier comments was, what do you think of Bill 107, as it's drafted, as a vehicle that would enhance the protection of human rights in Ontario?

Mr. Ackad: Considering that 66% of the Ontario population is paying for a system they cannot use, and are discriminated against using it, with section 19 not repealed in these amendments, it's incomplete and should not go forward. This is a huge injustice, and to put forward a human rights bill which does not correct this injustice is incomplete.

The Chair: Mrs. Elliott.

Mrs. Elliott: I don't have any questions. I'd just like to thank you very much for taking the time to present to us today, Mr. Ackad.

1100

Mr. Ackad: Thank you.

The Chair: Mr. Kormos?

Mr. Kormos: You display an ability to stay on message that many experienced politicians haven't acquired after 10, 15 and 20 years. Good for you. It's an admirable trait when you're promoting a particular theme.

Look, I understand the argument. There's a community out there. Heck, I think people with similar views managed to get into the pit bull hearings—didn't they, Mr. Zimmer?—and talk about the same issue.

But look, I hear you. I have no doubt that there are people who agree with you; I don't. Quite frankly, I believe the existence of the so-called Catholic system, the publicly funded Catholic system—and it was publicly funded well within my lifetime; I remember New Democrats playing a leading role in the Conservative government of the day in acquiring full funding for the Catholic system—to be a historical anomaly that nonetheless enriches our publicly funded educational community.

So you and I disagree; that's clear. But I say welcome to the committee, and I thank you very much for taking the time, effort and energy to come here. Once again, excellent spin skills. Staying on point in response to Mr. Zimmer was a model.

The Chair: Thank you very much.

CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION

The Chair: The next presentation is from the Centre for Equality Rights in Accommodation. Mr. Fraser, welcome to the committee. You have 30 minutes, and you may begin.

Mr. John Fraser: Thank you.

The Chair: If I can have your colleague introduce herself for Hansard, that would be good.

Ms. Michelle Mulgrave: Michelle Mulgrave.

The Chair: Thank you. You may begin.

Mr. Fraser: I should mention that Michelle, up until recently, was CERA's manager of human rights casework. She is now working at the tenant duty counsel program, but she has kindly agreed to participate in the submissions on behalf of CERA today, and I am very happy she's here with me.

The Chair: Mr. Zimmer?

Mr. Zimmer: Just a point of clarification so I'm not—did you present last—

Ms. Mulgrave: I was with the Advocacy Centre for Tenants Ontario. I didn't get a chance to speak during that. I was sitting at the far end.

Mr. Zimmer: That's right. Okay. Thank you. I had that in my mind.

Mr. Kormos: That's okay; a whole lot of people won't get the chance to speak at all.

Mr. Fraser: I'd like to thank the committee for agreeing to allow us to speak today, and I'm going to pass it on to Michelle now to talk a little bit about CERA, the organization, what we do and the people we work with.

Ms. Mulgrave: The Centre for Equality Rights in Accommodation is a non-profit human rights advocacy organization established in 1987 to ensure that Ontario's human rights protections in housing are effective for low-income and other disadvantaged individuals and families.

The Chair: Can I have folks slow down the pace for the sign language interpreter?

Ms. Mulgrave: Sorry.

The Chair: No; that's fine. Go ahead.

Ms. Mulgrave: For almost 20 years, we have worked with individuals facing discrimination in their attempts to access or retain housing, providing them with information on their legal rights, negotiating on their behalf with housing providers to change discriminatory policies and practices and representing them through the formal complaint process at the Ontario Human Rights Commission and at the Human Rights Tribunal of Ontario. All of our services are free.

Over the years, we have drafted and filed complaints on behalf of and represented hundreds of people in the human rights complaint process. Currently, we have 16 files which are either open or in the process of being filed with the commission and which represent 31 separate complainants. It is safe to say that no other organization in Ontario has had such extensive experience with the commission process as CERA.

We work directly with low-income and marginalized communities across Ontario and represent individuals from all of the protected groups under the Human Rights Code, including women, young families with children, people with mental and physical disabilities, youth, religious minorities, members of racialized communities, recent immigrants, refugees and people trying to survive on social assistance benefits. Our clients are people with

debilitating environmental sensitivities trying to get their landlords to recognize and accommodate their condition; they are newcomers to Canada who are told they can't rent an apartment unless they are willing to pay six to 12 months' rent in advance; they are single mothers receiving Ontario Works benefits who are turned away from the most affordable apartments they can find because they have children or because they are on welfare, or both. Over three quarters of our clients are women, many of whom face intersecting forms of disadvantage. While we don't screen our clients based on income level, they are overwhelmingly low income, with close to 60% receiving Ontario Works or Ontario disability support program benefits.

In addition to working with individual complainants, CERA spends a significant amount of time conducting public education workshops with a range of audiences, including housing seekers and community workers. We have consistently struggled to explain the relevance of Ontario's human rights process while regularly being confronted with the question: "What's the point? A complaint won't get anywhere." We hear similar sentiments from landlords while in negotiations on behalf of our clients. They often recognize that the likelihood of an individual filing a complaint is improbable and that even if one is filed, it will languish for years at the commission and probably end up among the 94% of complaints that are not referred to a hearing.

Most of the landlords we deal with have the resources to wait out and stall the current process, and they do. Even though CERA's services are free, our clients often do not have the emotional resources to see the entire process through, as most are struggling to survive. For unrepresented rights claimants, the process must be completely overwhelming and impossible to navigate.

It has been very difficult to adequately respond to the widespread cynicism around Ontario's human rights regime. However, our clients do not have options. A family receiving Ontario Works that is consistently turned down for apartments because of stereotypes about people on welfare does not have any other avenue for redress.

CERA firmly believes that it is not a viable option—particularly for the constituencies we represent—to simply allow discrimination to go unchallenged because the system is flawed. Furthermore, the system will only improve if people use it and if those users, consumers and advocates alike, demand change.

As an organization that sees our clients re-victimized in the current human rights system, CERA was delighted when the Ministry of the Attorney General announced its intention to initiate reforms to the current system, reforms that have been advocated by provincial and national task forces and many community voices, including CERA, for 15 years.

Bill 107 is not perfect. However, I echo the words of the chief commissioner of the Ontario Human Rights Commission, Barbara Hall, when she stated in her deputation before this committee that there is no perfect piece of legislation. Creating a strong, fair and accessible human rights system, a system that has real teeth and truly responds to the needs of equality seeking communities, will be an ongoing process. Bill 107 and the recent amendments announced by the Ministry of the Attorney General are an excellent and groundbreaking opportunity to create the kind of human rights system we all want.

I'm going to move into Bill 107 and CERA's comments. Bill 107 proposes a radically new human rights system with three crucial components.

Complainants will have direct access to a hearing before the Human Rights Tribunal of Ontario. This will mean that our clients will finally have an opportunity to tell their story to a decision-maker. Under the current system, it's very difficult for our clients to be able to tell their story to a decision-maker.

The Ontario Human Rights Commission will no longer focus on the processing of individual complaints but will devote its resources to research, public education, policy reform and systemic advocacy. As the manager, I presented a number of human rights and housing workshops. When I was out in the community, I found many newcomers were unaware of their rights under the code. They did not even know the code existed. When I presented at youth shelters, some of the youth in the shelters had never heard of the code. So education is key. The second part of Bill 107, which is that the Ontario Human Rights Commission would focus its energy in the area of public education—is paramount. The third part of the bill, publicly funded legal supports, will be available to human rights claimants.

1110

When Bill 107 was tabled at first reading, CERA and many other organizations that supported the legislation in principle had a number of concerns. We were very pleased to hear the government announce amendments last week which go a long way toward addressing those concerns. Based on our almost 20 years of experience working directly on human rights in this province, CERA fully supports Bill 107 as amended. We look forward to a human rights system in which complainants are given the opportunity, the agency, to control their own complaints and a commission that is able to focus on what it does very well: public education, systemic advocacy and creating public policy.

Mr. Fraser: Thanks, Michelle. I'm now going to go on and talk a little bit about the need for reform of the current process. In discussing this, I could have merely resubmitted a report that we submitted to the provincial standing committee on government agencies in 1994. I could have resubmitted it word for word because, sadly, the issues have not changed. While funding levels to the commission have varied over the years, the underlying structural deficiencies have remained constant.

No one here and no one who has presented is arguing that the current system works for equality seekers. Individuals and organizations, whether they are in support of Bill 107 or whether they are critical of the bill, all

believe that fundamental change is necessary. CERA's experience, the recommendations of the Cornish task force report in 1992, the La Forest report in 2000 and the experiences of many deputants at these hearings point to an urgent need for a new system—a system where all equality seekers have adequate public legal supports, the right to have their complaints heard before a competent Human Rights Tribunal, and where the Ontario Human Rights Commission can devote itself to truly advancing human rights in this province.

In addition to the organizations and the task force that I mentioned earlier, international human rights bodies have also criticized the inadequacy of Canada's national, provincial and territorial human rights systems, including Ontario's. In 1999 and 2006, the UN Human Rights Committee recommended that governments in Canada ensure that "relevant human rights legislation is amended at federal, provincial and territorial levels and its legal system enhanced, so that all victims of discrimination have full and effective access to a competent tribunal and to an effective remedy." As well, the UN Committee on Economic, Social and Cultural Rights, in its second periodic review of Canada in 1998, urged governments across Canada to strengthen enforcement mechanisms in human rights legislation so that "all human rights claims not settled through mediation are promptly determined before a competent human rights tribunal, with the provision of legal aid to vulnerable groups."

CERA has worked closely with the Human Rights Commission for almost 20 years now. While we have sometimes been at odds, CERA has always believed that the commission staff are truly dedicated to the promotion and realization of human rights in Ontario. We do not believe that the failings of the current system can or should be placed at the feet of the dedicated individuals who struggle every day within an unworkable framework. The problems with Ontario's human rights system are endemic and structural.

I quote now from our 1994 submission to the standing committee on government agencies:

"The Human Rights Commission has been set up for failure. It has been given far too many roles to play at the same time. We cannot expect the commission to provide good advice to rights claimants and respondents at the same time, [to control the intake process] of all human rights complaints in the province, to investigate them, to mediate and settle them, to determine whether they warrant a hearing or not, to litigate them before boards and in courts, and to control public education and action on all issues of systemic discrimination.... The present system of human rights [in Ontario] is based on an outdated notion of rights and of rights claimants. It is a paternalistic system that appropriates control of the process from the claimant and invests significant powers in a bureaucracy. In no other area of the justice system is there so little control by the person whose rights are infringed."

Under our current system, a rights claimant must participate as a mere bystander as the complaint works its way through the commission process, from mediation to investigation to conciliation and, ultimately, to a decision, made behind closed doors, about whether their complaint warrants a hearing. To add insult to injury, if the commission decision is negative, there is no avenue for appeal.

This system, as other deputants have affirmed, "offers an inferior standard of justice to equality seeking individuals and groups" and is unique in Ontario's legal system. CERA believes, as we stated in 1994, that Ontario has "moved beyond the time when it was considered appropriate for equality seekers to hand control of their rights claims to a government bureaucracy and wait years to see if they will be deemed worthy of receiving a hearing. Equality seekers are quite capable of identifying important systemic barriers and taking their own equality issues forward if only they are provided with the [legal] resources needed."

We have heard many comments at these hearings on the importance of the Statutory Powers Procedure Act, the SPPA, in ensuring fairness for those who file human rights complaints, from those who agree with allowing exceptions to its applicability to those who want the SPPA to be fully applicable. I am not a lawyer and do not propose to be an expert on the SPPA. However, I do have thoughts on the issue of fairness and those issues that comprise the notion of natural justice. I believe, and CERA's experience is, that the current commission process is fundamentally unfair and that closed-door, private decisions being made on issues that are critical to people's lives, existence and dignity deny individuals due process and natural justice.

The Human Rights Code is a quasi-constitutional piece of legislation. It is the supreme law in Ontario. However, CERA believes that there currently exists a second-class system of justice for rights claimants and that structural inequality has been built into the very system that is intended to promote equality.

Ms. Mulgrave: I will now speak to myths about Ontario's human rights system. As an organization with extensive ground-level experience within Ontario's human rights system, it is important that CERA speak to misconceptions about the commission that have plagued the debates around reform.

Supporting individual human rights claimants is not part of the commission's mandate. The commission acts as a neutral processor of complaints and only becomes a party if a complaint is referred to a hearing before the Human Rights Tribunal, a separate body. As we know, only about 6% of complaints ever get to this stage. Moreover, at the hearing, the commission does not represent the complainant. Commission counsel attends on behalf of the commission and in the public interest. Although the commission's interests and the interests of the complainant will usually intersect, this is not always the case. CERA has been involved in many cases at the tribunal level where the commission took an opposing position to the complainant. Accordingly, a complainant who wants independent counsel to represent his or her interests must

hire a lawyer or rely on an organization like CERA or a legal aid clinic. It is incorrect to suggest that the commission currently provides support for human rights claimants. The reality is that there are virtually no publicly funded supports available for claimants in the current system.

There has also been concern expressed that under Bill 107 applicants will lose the right to a publicly funded investigation of their complaint. Investigations are not conducted for the benefit of the complainant. Investigations are conducted in a neutral fashion for the purpose of determining whether or not a complaint will proceed to a hearing. In the majority of cases, these investigations result in the dismissal of the complaint.

Our clients, when their complaints are dismissed after investigation, have actually invested a fair amount of time. They have experienced discrimination, they've spoken to our organization, the commission has been involved; and then to go through an investigation and to have your complaint dismissed—many of our clients just don't understand why their matter is not considered discrimination. Going through the process of telling their story over and over again, our clients relive their experience, without a resolution.

Finally, there has been criticism of the proposed reforms on the basis that claimants will need, and not have, legal representation. As noted above, complainants need legal representation now. The barriers facing unrepresented complainants in the current system are monumental, particularly if the complainants are low-income or otherwise marginalized. Bill 107, as amended, explicitly provides for publicly funded legal supports. These resources are not provided in our current human rights system.

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Mr. Fraser: While CERA fully supports Bill 107, as amended, we would like to talk about some other proposed amendments that we think would be valuable. As stated earlier, CERA believes that the proposed amendments announced by the Ministry of the Attorney General address many of the concerns we had with the initial bill. However, there are several additional changes which CERA believes will further improve what we feel is a very strong piece of legislation.

The first change relates to the human rights legal support centre. CERA was very pleased to hear that the establishment of a legal support centre providing a full range of services to human rights claimants would be enshrined in the legislation. However, the success of the centre and the broader legal support system for human rights claimants will depend, obviously, on adequate financial resources. To ensure this, CERA recommends that Bill 107 provide for an independent audit of the centre and the broader legal support structures, which would include the adequacy of funding, within two years of proclamation.

Our second suggested amendment relates to making an application to the Human Rights Tribunal. Bill 107 does not permit third parties, such as community organizations, to make applications on behalf of equality-seeking individuals. In CERA's view, this is problematic, as many of the individuals we serve are extremely disadvantaged and not in a position to bring forward complaints, though they may want to. CERA is often in the position of not being able to challenge blatantly discriminatory conduct and policies that are frequently systemic in nature because prospective applicants are unable, for a variety of reasons, to file a complaint. The fact that the Ontario Human Rights Commission, under Bill 107, will be able to bring forward its own complaints is very positive. However, this is not enough. Community-based organizations that work on a day-to-day basis with equality-seeking individuals and communities are well-placed to identify individual cases of discrimination with the potential for systemic remedy. In addition, the commission and community-based organizations may differ in their opinions of which cases are the most appropriate to take forward. Therefore, we recommend an amendment allowing third-party organizations to bring forward complaints.

With respect to the limitation period proposed in Bill 107, the extension of the proposed six-month limitation period for filing an application with the Human Rights Tribunal to 12 months is laudable, and we definitely support this. However, there seems to be no legitimate reason for not extending the time for filing an application to two years, which would be in line with the general limitation period for bringing other civil legal claims in this province. CERA cannot understand the reason for affording human rights claimants a shorter time frame to bring their claims forward.

Bill 107 provides that the Human Rights Tribunal may consider in its adjudication of applications any documents developed and published by the Ontario Human Rights Commission. CERA, along with many other advocates and community organizations, believes that this section of Bill 107 should be amended to make it mandatory for the tribunal to consider commission documents; so "may" should be replaced with "shall."

Finally, we'd like to make a few comments about the proposed anti-racism and disability rights secretariats. Bill 107 provides for the establishment of two secretariats, the anti-racism secretariat and the disability rights secretariat. These secretariats would undertake research, make recommendations and facilitate the development of public education programs, among other things. While there are many commendable reasons for establishing the secretariats, it's CERA's view that ultimately they do not represent a good approach to promoting anti-racism and disability rights in Ontario. One problem is that the secretariats do not appear to have any substantial human rights enforcement or promotion powers. There is a very real concern that anti-racism and disability rights will be relegated to under-resourced and ineffective parts of the Human Rights Commission.

In our opinion, these secretariats also do not reflect the reality of discrimination, and certainly the discrimination experienced by our clients. In our experience, individuals

dealing with discrimination related to their housing frequently experience discrimination on a number of different, interrelated grounds. For example, when an aboriginal single mother receiving social assistance applies for an apartment, she will frequently experience discrimination based on her race and colour, her family and marital status and her income source—all at the same time. The secretariats will create artificial human rights silos, when in CERA's view the commission should be approaching equality rights in an integrative manner that recognizes the inter-sectionality of the various code grounds of discrimination.

Finally, we are not comfortable with the hierarchy of rights that the secretariats establish. For these reasons, CERA recommends that the secretariat section of Bill 107 be removed and the mandates of the secretariats be incorporated into the overall mandate of the commission so that these issues can be dealt with in a holistic manner and in what we believe to be a manner that really addresses human rights violations.

I'm just about at the conclusion. Mr. Chair, can I double-check how much time we have?

The Chair: You have about four minutes.

Mr. Fraser: At CERA, we see the immense social cost of our ineffectual human rights system. We applaud the government for recognizing that the current system offers an inferior standard of justice to equality-seeking individuals and groups. To allow the present system to continue is to send a destructive message that those who face discrimination remain second-class citizens in our province.

CERA believes that everyone involved in this debate is truly dedicated to strengthening our human rights regime. Like many others, we have been dismayed by what has at times been a divisive debate. What we hope can be achieved is a human rights system that truly protects and promotes the rights of those it was intended to protect, the most marginalized and disenfranchised in our community.

Last Wednesday, the chief commissioner of the Ontario Human Rights Commission appeared before this committee and said the following: "I hope that we're all agreed that the status quo is not an option. There's important work to be done, and reform is needed to complete the work.... The commission needs to focus its energy on making social change happen if we're going to achieve a culture of human rights. We need to tackle the big, systemic issues through public inquiries, commission-initiated complaints, public education and outreach."

When the commission itself calls for the kind of change that we see in Bill 107, it cannot and should not be ignored. As have all those individuals in the debate around Bill 107, CERA believes that change is necessary. We also believe that Bill 107, as amended, will effect the appropriate change. Allowing rights claimants direct access to a hearing with publicly funded legal supports and permitting the commission to devote itself entirely to promoting human rights sends a strong message. In CERA's view, it signals that Ontario finally takes human rights seriously.

If we have any more time, I would like to give Michelle Mulgrave an opportunity to talk about some specific examples. Do we have time for that?

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The Chair: Two minutes.

Mr. Fraser: Two minutes.

Ms. Mulgrave: Specific examples—

Mr. Fraser: Just in your experience as a caseworker.

Ms. Mulgrave: As a caseworker, I guess one of the biggest issues for our clients is that they require resolution, and they require the resolution quickly. Many have been forced to move on with their lives with this baggage of a discriminatory experience.

They also struggle with the fact that no one believes them. When they call CERA, we start from the position of, "Give us the information, and we'll speak to the landlord and try to find out what took place." But then, if they do have to file, dealing with the commission at times creates another barrier. So for our clients, being believed, having an opportunity to tell their story to a decision-maker is paramount, and also resolving the matter very quickly allows them to move on with their lives.

So an individual who requires a ramp and asks the landlord, "Can you build a ramp?" and the ramp is not built—a client would have to file a complaint and wait for this entire process without that ramp, and it's not resolved quickly. So we have individuals who are waiting and waiting for accommodation to meet their medical needs while their matter is in queue under the current process.

This bill allows our clients an opportunity to (1) be heard and tell their story to a decision-maker and (2) to potentially resolve the matter in a timely fashion so that they can truly move on with their lives.

The Chair: Thank you very much. That was right on the time limit.

Mr. Kormos: Chair, to legislative research, please: Ms. Drent, first of all, thank you very much, and your colleague Mr. Fenson, for the papers that you provided to us today. The submission of this group, pages 5 and 6, in reference to the investigations by the commission, indicates that in the majority of cases these investigations result in the dismissal of the complaints. The data from the Human Rights Commission indicates that only 11.3% of complaints are dismissed in that manner. Could you please look into this and determine whether or not, again, the numbers from the commission are fraudulent or incompetent or corrupt? I'm alarmed that there's such a disparity between the observations of these people, whom I have no reason to disbelieve, and the report by the commission. This is a shocking—we could have a criminal matter inside the commission. Barbara Hall could indeed be a manipulative commissioner.

The other issue I would put, Chair: I want to file with the committee the letter from Barbara Hall dated November 21, in which she says, "On behalf of the commission, I urge you to withdraw the motion for closure." That's her letter to Dalton McGuinty. I agree with submitters that when the commissioner says something, people

should pay attention. I'm going to give this to the clerk so this can form part of the committee's record.

Mr. Fraser: May I quickly respond to Mr. Kormos's comment about the statistics, just in 20 seconds? I think the confusion may be around—

Mr. Kormos: Come on, some people aren't going to be here at all. Ms. Mulgrave was here twice.

The Chair: I think you've had your 30 minutes. Thank you very much. We have to move on. We're running late.

519 ANTI-VIOLENCE PROGRAM

The Chair: The next presenters are the 519 Anti-Violence Program. Good morning, sir. You have 30 minutes. You may begin.

Mr. Howard Shulman: Thank you. I wanted to provide some background. The 519 Anti-Violence Program runs out of the 519 Church Street Community Centre in downtown Toronto. The catchment area of the 519 includes the Church-Wellesley village, which is home to Canada's largest lesbian, gay, bisexual and transsexual population.

The 519 Anti-Violence Program was established in 1991 to compile reports and statistics of bashing and to advocate and support individuals in Toronto's queer community who have experienced harassment or assault based upon their actual or perceived sexual orientation or gender identity. This program is unique in Ontario, as there is no other agency that specifically deals with these issues. From the start, the 519 Anti-Violence Program has worked with other equity-seeking agencies and groups combating hate.

I'd like to thank you for the opportunity of speaking here today, especially in light of the government's decision to invoke closure on this controversial bill. This has become almost a protocol of the McGuinty government. The government refused to hold open, accessible public consultations on human rights reform before it brought forward this widely-criticized bill, and now they've decided that they do not want to hear from anyone on the long waiting list of presenters, in effect duplicating for many the inherent systemic response they live with every day.

It is utterly unfair to cancel public hearings for community groups and individuals, especially those who have waited for months to have a chance to have their say on this controversial bill. The government should not use its majority in the Legislature to muzzle the many people who have concerns about this bill. Whether the bill is a good bill or a bad bill, people deserve the chance to have their say.

This closure motion is a breach of the government's earlier commitments on affording hearings to everybody who wants to present. Even as late as last week, the Legislature's standing committee on justice policy unanimously approved a report scheduling hearings through December, asking the Legislature to permit hearings to continue into the winter. By that time, some 200 people had signed up. The government has been using tax dollars to advertise public hearings that the McGuinty government is now going to cancel. This is inconsistent with the government's commitments to bring democratic renewal to Ontario.

The motion also appears to call for the entire clause-by-clause debate on Bill 107 to be crammed into a single day at the standing committee. Normally, MPPs at the standing committee are given whatever time they need to debate amendments to the bill. The motion directs that the third reading debate in the Legislature be restricted to a single day. Normally, MPPs are given the time they need to debate a bill on third reading.

When the previous Harris government used such closure motions, the McGuinty Liberals blasted them. They called closure motions undemocratic. The McGuinty Liberals ran in 2003 on a platform of democratic reform. It is a cruel irony that in the name of supposedly giving direct access to a hearing in the human rights system, the McGuinty Liberals are denying a hearing to so many people who want a voice in what Bill 107 does for the protection of their human rights.

Originally, the Human Rights Code did not include sexual orientation; I just wanted to create the context for that. It was certainly something that my predecessors fought hard to win in the 1970s and the 1980s.

For years, it has been clear that the Ontario human rights system needs to be fixed. This is because it has been seriously underfunded for years and needs administrative reforms. However, Bill 107 is itself seriously flawed. It will likely make things worse, not better. I have some suggestions on how I think it can be made better. But even before I do that, I need to tell you that if this government is unwilling to provide increased and sustainable funding for the Ontario Human Rights Commission, anything that follows is me just chatting with you. If the government is truly committed to making human rights a priority in this province, they need to show people the money.

The Ontario Human Rights Code makes it illegal for anybody in the public or private sector to discriminate against a person because of his or her sex, religion, race, disability, sexual orientation or certain other grounds. It bans discrimination in access to things like employment and the enjoyment of goods, services and facilities. It requires employers, stores and others offering goods, services and facilities to accommodate the needs of disadvantaged groups protected by the Ontario Human Rights Code, up to the point of undue hardship.

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If a person believes an organization or individual has discriminated against him or her because of their sexual orientation, race etc., he or she can file a formal document called a human rights complaint with the Ontario Human Rights Commission. In that document, the complainant explains the events that they say amounted to unlawful discrimination.

Now, the Ontario Human Rights Commission's job is to enforce the code. One of its most important duties is to

investigate human rights complaints and to try to negotiate a settlement. Human Rights Commission investigating officers have powers to publicly investigate discrimination complaints.

If the Human Rights Commission investigates a human rights complaint and decides that the complaint has merit under the code, and if it can't work out a voluntary settlement between the complainant and the respondent, its job is to take the case to a separate, independent tribunal, the Ontario Human Rights Tribunal. At the tribunal, the Human Rights Commission is the public prosecutor that prosecutes the case. It sends a publicly paid Human Rights Commission lawyer to present the complaint. Discrimination victims can also bring their own lawyer. It is important to note that they don't have to, though.

Under Bill 1O7, if a person has been discriminated against, they will have to file a human rights complaint with the Human Rights Tribunal. They must investigate their own case. The Human Rights Commission loses its investigation powers.

The 519 Anti-Violence Program strongly believes that Ontario's human rights enforcement system needs to be significantly improved. It is too slow and backlogged. The commission's gatekeeping function can benefit from procedural reforms to ensure that meritorious cases are taken forward to the Human Rights Tribunal. The Human Rights Tribunal also needs significant reforms.

But Bill 107 doesn't provide an effective solution to these problems. It will probably make things worse because it abolishes victims' decades-old legal right to have the Human Rights Commission publicly investigate all non-frivolous rights complaints. It abolishes discrimination victims' right to have the Human Rights Commission publicly prosecute a human rights complaint, if the evidence warrants it and if the parties don't settle the case. In this way, Bill 107 takes away from important rights that lesbian, gay, bisexual and transgender people have fought for for so many years.

The bill would also let the Human Rights Tribunal adopt rules that could deny the time-honoured right of all parties at a hearing to be represented by a lawyer, to call relevant evidence and to cross-examine opposing witnesses.

For the first time, it lets the Human Rights Tribunal charge user fees for going to the tribunal. It could expose human rights complainants for the first time to have to pay for their opponent's legal costs at the Human Rights 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.

Bill 107 would dramatically reduce the right to appeal from the tribunal to the court. Now, anyone who loses their case in the tribunal has the broadest right to appeal to the court. Bill 107 lets the loser go to court only if the tribunal ruling is proven to be patently unreasonable, which is a far tougher test.

Bill 107 will unfairly force thousands of discrimination cases now in the human rights system to start all over again, but without the benefit of the Human Rights Commission's help. Many have spent years trusting that they could continue in the current system.

Contrary to major government commitments, it doesn't ensure that every human rights complaint will have free, publicly funded legal advice and representation. It merely lets the government fund legal assistance if it wishes. It doesn't entrench the government's promised human rights legal support centre. It doesn't require legal services to be delivered by lawyers.

Bill 107 doesn't keep the government's commitment that all discrimination victims will be given a hearing before the Human Rights Tribunal. It lets the Human Rights Tribunal defer a hearing or throw out the discrimination complaint without a hearing.

Bill 107 doesn't eliminate or reduce the chronic backlog of human rights cases. It shuffles the lineup from the Human Rights Commission to the Human Rights Tribunal. It doesn't set enforceable deadlines to ensure cases are heard and decided within a reasonable time.

Contrary to government commitments, Bill 107 significantly weakens and does not strengthen the Human Rights Commission's ability to bring its own cases to challenge systemic discrimination. Now, the commission can launch its own complaints in any case. It has investigation powers to get evidence to support its case. It can seek sweeping remedies to compensate discrimination victims for past wrongs and to prevent future discrimination.

Bill 107 largely privatizes human rights enforcement. It removes the Human Rights Commission from most discrimination cases. This makes the commission less effective and relevant when it does public policy, advocacy and public education.

Bill 107 will dramatically shrink the human rights system's capacity to advocate for and protect the public interest. Now, the Human Rights 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 Human Rights Tribunal hearings. In contrast, under Bill 107, the commission won't be involved in negotiating most case settlements. It won't have carriage of or even be present at many Human Rights Tribunal hearings.

The 519 Anti-Violence Program believes it would be better if the government started this whole process from the beginning, held proper time-limited public consultations and then introduced an appropriate human rights reform bill.

To achieve this, we would suggest the following: first, that individuals should retain their rights to public investigation. The Human Rights Code now 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, interview witnesses, request documents and 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 all 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 with human rights cases, the commission is responsible to find 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 to have a lawyer present at the hearing, call witnesses to testify and cross-examine witnesses who testify against the complainant. However, the complainant doesn't have to do any of this if he or she doesn't want to.

In contrast, Bill 107 would totally abolish the complainant's rights to have his or her case 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 complaint.

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A few very complainants can afford to pay for their own lawyer, their own investigation and their own expert witnesses. They may prefer Bill 107, because it will let them go right to the Human Rights Tribunal. They may want to take their case directly to the tribunal, without the Human Rights Commission's help.

Far more complainants cannot afford lawyers and investigators. Certainly, that has been the case with most of the clients we've had at the 519 Anti-Violence Program. They have been unable to get legal counsel, despite Legal Aid Ontario, which has its own set of criteria that also disallows a lot of people from accessing lawyers. We have been working with the Law Society of Upper Canada in trying to make lawyers accessible, but this can be difficult as well because the lawyers are now working on a pro bono basis. The pro bono system, especially the latest directive from the Law Society of Upper Canada, came when Chief Justice McMurtry basically stated that he was very shocked to see the number of unrepresented clients who were going to court. So this is going to remain an ongoing issue.

Certainly, from the point of view of the 519 Anti-Violence Program and some other agencies that we've spoken with, having access to legal counsel needs to be ensured because, under Bill 107, discrimination victims will have to do their own investigations. They will have to gather their own evidence, identify their own witnesses, and hire their own experts. This creates a serious barrier to vulnerable discrimination victims enforcing their rights. Discrimination victims can suffer serious emotional harm due to the violation of their human rights. The government shouldn't expect such individuals to investigate their own claims, and I believe the prior deputant spoke of that. My background is as a social worker and certainly there is recurring and vicarious trauma as people have to report again and again and again the discrimination they faced. Oftentimes, it can lead to triggering other emotional or traumatic experiences in an individual's life. So it kind of creates that other level of difficulty.

Bill 107 would take away a decades-old fundamental statutory entitlement to a publicly funded investigation. Victims of discrimination should not lose rights in any human rights reform. If the government insists on amending the code to provide so-called direct access to the tribunal, it should give human rights complainants the choice between going directly to the tribunal and asking the Human Rights Commission to investigate and prosecute their case.

If the government is convinced that the so-called direct access route is so attractive, it loses nothing by giving Ontarians the option of either direct access or exercising their decades-old legal right to a public investigation and, where warranted, public prosecution of their case by the Human Rights Commission. If discrimination victims prefer to go to the commission, then the government shouldn't take that right away from them.

The option of giving Ontarians their choice of route is a more reasonable middle ground than the government's proposal of abolishing the public enforcement regime that Ontarians now enjoy and forcing them down a different road.

We believe that the Ontario Human Rights Code should ensure full legal support at tribunal hearings. The current code gives human rights complainants a hearing at the Human Rights Tribunal and the right to assistance in the form of legal counsel serving as the public prosecutor. At tribunal hearings, the commission now has carriage of the complaint. The commission's role is to show that the complainant was the victim of discrimination.

At the tribunal, each complainant also remains a party to the hearing. He or she can participate actively by having their own lawyer, calling witnesses, cross-examining opposing witnesses, and presenting argument to the tribunal.

By eliminating the commission's role in investigating and referring complaints to the Human Rights Tribunal, Bill 107 also eliminates the role of commission counsel as lead public prosecutor at all tribunal hearings into human rights complaints that discrimination victims have brought. This has serious negative consequences, for it leaves discrimination victims without assured, expert, publicly funded legal support at tribunal hearings.

The majority of discrimination victims cannot afford to pay for their own lawyers. Under Bill 107's system, with the Human Rights Commission unable to investigate cases and largely unavailable to prosecute them, it will be impractical for most to pursue a human rights claim without effective legal assistance and support.

Most discrimination victims don't know how to use the human rights system. Fewer will know how to navigate Bill 107's newer system. Many will find the prospect of proceeding alone terrifying. It is unfair to expect any discrimination victims to represent themselves at a Human Rights Tribunal hearing, particularly when they must face the person or organization that has discriminated against them. Again, it brings up the issue of re-traumatizing clients, certainly from the anti-violence program's clientele. A lot of our clients are recently-arrived individuals from places on the globe that disallow homosexuality or that discriminate against transsexual/transgendered individuals, so again, it creates a more difficult barrier for people to get over.

Members of equality-seeking groups have the most to lose if they are denied effective state-funded legal representation by lawyers for their case. As they are among the most marginalized in our society and are over-represented among the poor, for the most part they do not have the resources themselves to undertake or finance the legal advocacy which the commission is now statutorily obliged to undertake at all tribunal hearings.

It is all the more important to ensure that at all tribunal hearings, the complainant's perspective is addressed by a publicly funded lawyer, considering the resources available to most respondents. Landlords, service providers, employers or government departments and government agencies usually have their own lawyer. It is not unusual at tribunal hearings for respondents to be represented by some of Ontario's largest law firms. They vigorously defend the respondent, making every objection and argument imaginable. If the discrimination victim does not have legal support, they will be at a serious disadvantage.

The Cornish and La Forest reports on human rights reform, which the government says this bill implements, emphasize that it is vital for human rights complainants to have effective representation at tribunal hearings. The Cornish report stated that, "The public commitment to funding representation for human rights claims is crucial and should be continued. It represents an important statement by Ontarians that discrimination is a societal problem requiring publicly funded solutions."

Second, many if not most people who make human rights claims need assistance and support. Often they are hurt, angry, confused and afraid. Without assistance, they cannot enforce their rights. Opening up access to a hearing may be a hollow achievement if support and advocacy are not provided.

A third reason why advocacy services are essential is that without them, the hearing process for rights claims at the Human Rights Tribunal will have difficulty functioning efficiently and fairly. While staff of the new tribunal can and should provide information on how their system works, it would be wrong to suggest that they can fill an advocacy role. In order for claims to be processed efficiently at the tribunal, claimants must have access to trained, publicly funded advocacy services.

Properly trained advocates will not only help prepare claims to go before a hearing but will also assist in resolving claims through the various means of mediation. They will refer people to other services if the issue they raise does not come under the code.

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It is also important that at a tribunal hearing the legal support that a complainant receives is provided by a lawyer. Non-lawyers such as paralegals or community legal workers are not able to provide the level of service needed at hearings. As noted above, respondents are typically represented by a skilled, well-financed private law firm.

Bill 107, in effect, takes away a fundamental entitlement to a publicly funded prosecutor. Again, victims of discrimination should not lose their rights in any human rights reform process. If the government insists on amending the code to provide direct access to the tribunal, it must entrench the provision of full legal support by lawyers in the bill. It is important that the bill be amended to make it do what the government says it does. The government's commitments, which are very substantial in scope, have raised community expectations. We believe that there should be guaranteed access to hearings.

Those who support the government's plans for human rights reform argue that the human rights commission does not send enough valid cases to the tribunal for a full hearing. They object to the commission's broad gatekeeping function, which lets it decide whether a hearing is needed. They argue that it is important that all cases which are brought in good faith be fully heard by the human rights tribunal. They have claimed that no one should have their human rights complaint dismissed without a hearing.

The government claims that Bill 107 responds to that line of argument. The Attorney General promised that Bill 107 would give all human rights complainants a so-called guarantee of direct access to the tribunal. He has said that Bill 107 guarantees that everyone will get their day in court; however, Bill 107 does not ensure this. It doesn't do what those who support the government's plans have called for and what the government says it will do.

Bill 107 doesn't ensure a right to a hearing for every complainant. To the contrary, it will let the tribunal dismiss a complaint on several grounds without holding a hearing, including some of the grounds the commission currently uses to dismiss cases without a full hearing. It doesn't eliminate the gatekeeper; it merely moves the gatekeeper to the tribunal and judicializes this function.

To make Bill 107 do what the government claims it does to prevent the undue judicialization of gatekeeping functions and to remove a new procedural barrier at the

tribunal, Bill 107 should be amended to eliminate the tribunal's power to dismiss or defer a human rights complaint without first holding an oral hearing.

Under the current code, the human rights commission must attempt to conciliate a complaint. Amongst other things, the commission offers mediation services. The tribunal also offers voluntary mediation services. Under the current system, mediation is voluntary. Mediation can be very—

The Chair: There's one minute left, if you want to just finish up, please.

Mr. Shulman: Sure.

Under the current system, mediation is voluntary. Mediation can be very constructive and resolve many complaints; however, it is not suitable to all cases. Thank you.

The Chair: Thank you very much for your presentation. Mrs. Van Bommel?

Mrs. Maria Van Bommel (Lambton–Kent–Middlesex): Excuse me, Chair; I'm missing page 17 of the presentation. I may be the only one, but if I could get page 17 of the presentation before the presenter disappears.

The Chair: Does the opposition have page 17?

Mr. Kormos: Yes, that deals with the right to appeal, which is also a recommendation of Barbara Hall, who appears to be increasingly ignored by the government.

The Chair: Thank you.

MARIE BONGARD

The Chair: The next presenter is Ms. Marie Bongard. Welcome to the committee, Ms. Bongard. You have 20 minutes. You may begin.

Ms. Marie Bongard: Do I have 20 minutes to get set up? Hopefully that's extra.

The Chair: Sure.

Ms. Bongard: First of all, I would like to thank you for the opportunity to speak at this hearing. I would first like to apologize for some typing errors that I had, so it had to be redone. I would also like to refer to my first paragraph. I can't possibly read all of the written submission; I don't have the equipment here to read it. Anyway, I would like to refer to my first paragraph on page 1. I wrote this submission on September 21. At that time, I thought the Toronto public hearings had already taken place and I wasn't selected, so I had forwarded a written submission at that time.

I don't have many new points to make, but I would like to draw attention to some of them. I still—is there any water here? Thank you. I still feel that the hearings should have stretched to more centres. Now we're finding out that they're going to be cancelled completely. Many individuals, especially people with disabilities, find it too difficult and too costly to travel. Transportation is certainly a big issue for them. For instance, in my case, because I can't jump in a car and drive, I must depend on public transportation as well as on an attendant. For instance, today, the bus—this was unusual, because every Wednesday the bus lines we use give the ticket at half price, so it was $17. Because I am registered with the CNIB and I'm legally blind, my attendant went for free. We still had the taxis to come from the out-of-town bus terminal to here; that will total $37. This doesn't include the cost of our meals for the day. We left Peterborough at 7:45 a.m., and we won't be able to get a bus out of here until 4:30 tonight. Now, if it had been a regular day, another day, it would have been $34. With the taxis, that's $54. Because I'm privileged with the bus lines I take—in some cases, other disabilities have to pay for the attendant; or there might be a reduction. So someone else might have to have paid $81 plus the cost of meals, and that would be two meals out. I'm sure you can take into consideration what that might have been. That's my feelings about why I feel there should have been more centres involved.

You'll also notice that I have raised many questions throughout my written presentation. It seems that Bill 107 in its present form has many flaws. At the end of my submission, on the last two pages, I have listed points that I feel would make the bill stronger and safeguard the human rights of Ontarians.

1210

To me, the powers of the Human Rights Commission should be increased, not decreased. It is most imperative that the Accessibility for Ontarians with Disabilities Act be protected. Persons with disabilities applauded the government in 2005 when the AODA was passed. It appeared to be strong and effective, with the Human Rights Commission to be the enforcing body.

It was originally brought forward by the Ministry of Citizenship and is now being implemented by the Ministry of Community and Social Services. This, to me, in itself could be a conflict of interest. There could be claims against this ministry because it's the same ministry that also dispenses Ontario Works and the disability benefits, the ODSP.

I feel that the implementation of this AODA should have been given or should have been left with the Human Rights Code or some other ministry that does not have such a direct contact with individuals who may feel they are being discriminated against by that ministry. There should be some outside watchdog.

Yes, I feel that the backlog of human rights claims needs to be dealt with in a more timely manner. That's why I have suggested a 90-day limit to start the process, but it should not be at the expense of a claim not being properly investigated or prosecuted. Claimants need to be protected, not re-victimized. Claims need to be fully investigated and prosecuted and not dismissed behind closed doors. A watchdog such as the Human Rights Commission is needed to carefully scrutinize the process.

The rights of claimants—that's people in Ontario—need to be protected. Claims need to be processed in a fair and accurate manner. Claimants need an advocate throughout the entire claims process—the assistance of a third party or a strong enforcement party. I feel that claims need to be heard. If the Human Rights Code's

powers are reduced, the tribunal has too much power. If amendments such as what I have listed—now, that's items 3, 4, 7, 8 and 9; that's my last two pages—were implemented, it would curb this problem.

I'm also going to mention cost. Under the present bill, it is unclear how claimants will be able to cover the cost of the process. This would be that the right to a public investigation, a public lawyer and a public hearing need to be legislated. The human rights of all Ontarians must be protected. A strong enforcement body will ensure this.

I would like to thank you so much for listening. I also would like to mention that I am a member of the Council for Persons with Disabilities, which serves cross-disabilities in the greater Peterborough area. It's also the advisory committee to the city and county of Peterborough as they implement their portion of the Accessibility for Ontarians with Disabilities Act.

Also, a representative from the Canadian Hearing Society mentioned how difficult it is for them to access government services. I echo that. It is very hard to get anything in alternative format from the government, even though this is part of the AODA.

Thank you very much for listening.

The Chair: Thank you for your presentation. We have about three minutes for each side. We'll begin with Ms. Elliott.

Mrs. Elliott: Thank you very much, Ms. Bongard, for taking the time to come to present to this committee all the way from Peterborough. It is very much appreciated that you did so at considerable time and expense to yourself.

You have raised some very significant issues, issues about which we share your concern, particularly with respect to the fact that not everyone is going to be able to be heard, and everyone has a different perspective to bring to the table. It is most unfortunate that we are not going to be able to hear from everyone, but I really appreciate your being here, bringing your perspective to us. I can assure you we take it very seriously. Thank you very much.

Mr. Kormos: Thank you very much, Ms. Bongard. I appreciate your comments. You've provoked me with respect to two issues. One is the issue of oversight of the commission/tribunal, either in its current form or in any future form. I am going to ask Ms. Drent from legislative research to find out for us if the commission and its tribunal are currently subject to the oversight of the Ombudsman—I don't believe they are—and if there is anything in the new bill that will provide for that. The Ombudsman, for instance, in his proposal around Bill 103, which is the police oversight scheme, suggests that there should be Ombudsman oversight of that quasi-judicial process. He talks about, who's guarding the guards?

The other issue—and I want government members to bear with me for 30 seconds—is your comment about access to government in all of its respects, not just into the building here. Because it's an old building, even that is pretty difficult. We witnessed it last week with respect to Mr. John Rae, who offered up his comments to the committee. He is blind. He couldn't get a copy of the proposal from the Attorney General around the amendments in a way that he could put them into the computer in a text or HTML format—I hope I'm getting that right—so that the computer could read them to him. Ms. Stokes, I've got to tell you, who is the clerk of the committee and the custodian of these materials that are documented, did what the Ministry of the Attorney General, with all its huge resources, couldn't. Ms. Stokes used her talents and skills to get Mr. Rae a copy of that submission in a way that he could read it, being blind.

I put to government members—and I want you to remember this occasion, because I want you to be the watchdog—that a select committee should be set up promptly to talk in a very fair way about access to government in alternative formats. I really believe that. That is something that is non-partisan. It's something that needs a little bit of exploration. People like Ms. Bongard are eager to assist, along with others. It's probably going to cost a little bit of money, but in view of—we've referred to the Eldridge decision of the Supreme Court of Canada. It would serve us well, as legislators, to set up a select committee. We've got a year left of this government, so we've got time to do that.

I don't want to deny you any opportunity to respond, Ms. Bongard.

1220

Mr. Zimmer: Just on that point, there is the committee the Chief Justice has set up that was dealing with this whole access of the disabled to the court system. That is a template.

Mr. Kormos: We can piggyback on that.

Ms. Bongard: May I make one last comment? This not only involves people with disabilities, but you mentioned computers. A lot of seniors don't know how to run a computer, but they still need material in an alternative format, specifically large print.

Mr. Kormos: Large print. You're right, and I appreciate your comments. I hope you have prompted something here today.

Mrs. Van Bommel: Thank you for your presentation. I certainly appreciate the distance you've come to make that.

In your earlier letter to the committee, you talked about the right to appeal a decision. I'll quote from it, just to refresh your own memory: "Under the current system, an individual has the right to appeal a decision if the tribunal rules against them. With Bill 107, it appears this would happen only if the tribunal ruling was blatantly unreasonable." But in previous presentations we heard from people who said that most often the people who appeal a decision are the respondents, people who have committed the so-called discrimination in the first place; they didn't like the commission's ruling so they go forward to appeal it again and draw those people who are the victim of the discrimination through the process one more time. How do you feel about that? I understand the need to appeal a decision, but how do we make sure it doesn't revictimize people over and over again?

Ms. Bongard: They will also be revictimized if they get so far in the process and it is dismissed behind closed doors. I really feel that the utmost for every claim needs to be taken and there needs to be good reason why a claim is dismissed.

Mrs. Van Bommel: Thank you.

The Chair: Thank you very much for making your presentation.

PARKDALE COMMUNITY LEGAL SERVICES

The Chair: The final presenters are from Parkdale Community Legal Services, Ms. Elisabeth Brückmann. Good afternoon, ma'am. You have 30 minutes. You may begin.

Ms. Elisabeth Brückmann: Good afternoon. Chair, I wonder if I could ask you to tell me when I'm halfway through. I'd appreciate that.

First of all, I should apologize. I did not hear all the presentations this morning, and generally I like to hear those so I can avoid being repetitive. I'll ask you to bear with me if I go over something that has been gone over before. Maybe I can add something different to it. But by and large, I think I am speaking to some issues that haven't been raised before that I can speak to as a legal clinic lawyer.

I'm one of the four staff lawyers at the Parkdale legal clinic. I practise employment and human rights law at Parkdale. Prior to that I was in private practice with Mary Cornish at Cavalluzzo Hayes Shilton McIntyre and Cornish. I also note that I am a person with a disability.

It may seem surprising to the committee that I'm here as a legal clinic lawyer practising human rights law at the largest and possibly the best-known clinic in the province and yet I don't support Bill 107. My colleague Cynthia Pay, who is here today, also a lawyer at Parkdale and past president of the Chinese Canadian National Council, also does not support Bill 107.

You were told last week—I was here for it—that 55 legal clinics support this alleged reform. You were given a copy of a letter that called on the government to move forward with the bill, signed by these 55 legal clinics. You heard from Kathy Laird from the Advocacy Centre for Tenants Ontario and representatives from two other clinics, who stated that they, the four of them, were in their presentation speaking for the clinic system. What you weren't told and what isn't mentioned in the letter is whether or not those 55 legal clinics actually have any experience with human rights law. I can tell you that the vast majority of those clinics do not practise in the field at all.

Mr. Kormos: One moment. My apologies for interrupting you. This is very surprising information. I loathe doing this, but Mr. Zimmer indicated he had to leave for a few minutes. I wasn't going to raise his absence; from time to time, any one of us needs to leave briefly. It is incredibly important that Mr. Zimmer hear this. He is the parliamentary assistant.

My apologies, Mr. Zimmer. You indicated that you had to leave for a few minutes. I understand that. But this participant has told us some incredibly surprising information that I really think is important for you to hear.

Mr. Zimmer: My apologies. I had to go to the washroom.

Mr. Kormos: I understand. My apologies for interrupting. I hope we'll indulge this participant, but it's important that Mr. Zimmer hear this. He's the conduit to the AG, to Mr. Bryant. Thank you kindly, Ms. Brückmann.

Ms. Brückmann: Sure. I actually don't recall when you left the room, Mr. Zimmer, so I'll just tell you very briefly that what I was saying is that I'm here as a legal aid clinic lawyer practising human rights law and I don't support Bill 107.

Mr. Kormos: Formerly with the law firm of—

Ms. Brückmann: —Cavalluzzo Hayes Shilton McIntyre and Cornish, where I worked substantially with Mary Cornish.

My colleague, Cynthia Pay, who's here today, is also a lawyer at the Parkdale legal clinic, which I noted is the largest and possibly the best-known clinic in the province, and is also a past president of the Chinese Canadian National Council, and she doesn't support Bill 107.

We were really quite surprised when we saw that 55 legal clinics had signed on to a letter urging the government to move forward with this supposed reform. We were dismayed when a number of our colleagues at other clinics—Kathy Laird from ACTO and a number of others from two other clinics—spoke and said they were speaking for the clinic system. I took a look at the list at the back of this letter. I realized that what was not noted is whether these clinics practise human rights law. I can tell you that the vast majority do not. It's not really surprising, because legal aid clinics in Ontario are extraordinarily underfunded. Clinics across the province lack the resources to assist people with human rights violations because they barely have the staff to help low-income people maintain housing or social assistance. There is just no staff time for human rights. That is particularly so when the current system provides mediation and investigation and, when matters go to the tribunal, the assistance of a prosecutor.

1230

I took a look at the most recent statistics from Legal Aid Ontario. The clinic system is made up of 79 clinics. The latest statistics are from 2005, and the clinic system as a whole took just over 100 human rights cases in all of 2005—111, to be exact. It's not very many at all. Then I looked at the list of the clinics that signed the letter supporting Bill 107. I just started at the top of the list. The Algoma Community Legal Clinic reported no human rights cases in 2005. Brampton Community Legal Clinic reported no human rights cases in 2005. The Chatham-Kent Legal Clinic reported no human rights cases in 2005. The Clinique juridique francophone de l'Est d'Ottawa reported just one human rights case in 2005. The Clinique Juridique Grand-Nord reported no human

rights cases in 2005. I don't think it's necessary to plow through them all, and I certainly don't have time, but the statistics are available and can be reviewed. By and large, the legal clinic system does not have extraordinary expertise in the area of human rights law, yet you're being given the sense that there is enormous support for this bill from experts because 55 legal clinics put their names down.

What is also interesting about the list of clinics who support the alleged reform are those missing from the list. Aboriginal Legal Services is not on the list. The African Canadian Legal Clinic is not on the list. These are specialty clinics located in Toronto, each of which provides service across the province to particular communities. The Metro Toronto Chinese and Southeast Asian Legal Clinic is not on the list. Parkdale Community Legal Services is not on the list. Now, these clinics practise human rights law. I have about 10 cases ongoing right now and the clinics representing racialized communities probably have many more. So you need to take the statement that the clinic system supports Bill 107 with a very big grain of salt. The statement is misleading, as many statements in this debate have been. As I said, regrettably, owing to a lack of resources, the vast majority of legal aid clinics know very little about human rights law.

Along with this, the committee should be very wary of statements which suggest that, by hearing from clinics, you are hearing directly from the diverse communities they represent. We provide legal service to our communities, and as much as possible we try to advance concerns that these communities bring to us, but in no way should we deceive ourselves that we are the appointed spokespeople of our communities. The disabled community provides a classic example. ARCH, the legal clinic which focuses on issues affecting disabled people, is a Bill 107 supporter. Yet the majority of disabled people from this very diverse community who have spoken to this committee, either for themselves or from community groups, are very, very concerned about this bill. Those concerns are not reflected in ARCH's support. The fact is that if you want to know the position of the communities who need the protection of the Human Rights Code, you need to go to those communities directly.

The Vice-Chair: You have about 15 minutes left.

Ms. Brückmann: Thank you.

Sadly, as we know, that is not going to happen. The debate over this crucial piece of legislation, which speaks directly to people's need for equal accessibility, is now inaccessible. A piece of legislation founded on the premise that everyone should have a right to be heard is being rammed through without everyone being heard. The promises we received from the Attorney General that the consultation, notably missing from the beginning of the process, apart from one that was held 15 years ago—those promises that consultation would be held have been broken. I find it depressing and demoralizing and hypocritical. I am also, as a clinic lawyer, desperately worried, because this bill is profoundly flawed.

One of the things that has to be made clear is that, despite the divided opinion over Bill 107, nobody wants the status quo. There is no question that the current system is badly in need of reform. We've heard many horror stories from complainants and from their counsel and I can confirm that I have had similar bad experiences with the current system. But the unfortunate conclusion that people seem to be reaching, after telling you about their terrible experiences, is, "We must then go ahead with Bill 107." It's not a matter of choosing Bill 107 or no reform at all. There are many options for reform. If you had asked me at this time last year—regrettably, nobody did—what should be done to fix this system, I would have said two things: fund the system properly and amend section 36, the notorious gate-keeping function. No system can function without funds. Investigations can't proceed if there aren't enough investigators. It's not really much of a surprise that the current system isn't working. There isn't enough funding. Section 36 is too broad and allows a cash-strapped commission to weed out cases that are meritorious and that it might well not weed out if it had the funds to deal with them. Change section 36 and make sure that every meritorious case, where there is a possibility of success, is heard.

There you go: more funds and fix section 36. It's not that hard.

Now, there are obviously other things. You need more transparency in decision-making. You need more legal support. You need longer limitation periods. Reform is complex and it needs to be thought through. But fundamentally the system needs more funds and the gate-keeping system needs to be changed. So why are we building a brand new system? Why are we tearing down what we have now and building what appears to me to be the Aswan High Dam of human rights? It seems to me that it has a lot to do with these experts. A great deal of reliance has been placed on the information provided by experts, I note in large part behind closed doors.

The Chair: Excuse me. Can I just interrupt? I just want to keep everything consistent here. I had my Vice-Chair step in for me, and there is a bit of a discrepancy between my time and hers. I just want to keep the timing consistent. It's actually now that 15 minutes are up. I apologize for the—

Ms. Brückmann: No, I'm delighted.

The Chair: You may continue. I apologize for that.

Ms. Brückmann: Why are these experts being heard when community members are not? Does part of it have to do with the fact that they are overwhelmingly white lawyers, white lawyers perceived as rational, experienced and unbiased? Are members of racialized communities and disabled groups seen as unrealistic, irrational or even hysterical? From some of the responses I've received when I indicate that I do not support Bill 107, it seems to me that that is the message I am receiving.

1240

The technical briefing held last week into the summary of amendments that are apparently going to be proposed by the Attorney General was overwhelmingly attended by opponents of the bill. We were told again and

again—I kid you not—that smart people had provided the information that had resulted in Bill 107 and the proposed amendments. The suggestion was that the group in the room should defer to their greater wisdom. Unfortunately, the very same technical briefing confirmed our gravest fears over Bill 107. The new amendments appear to make no substantive difference in the bill. We did ask questions about those amendments, and the answers made it very clear that very few aspects of this reform have actually been thought through beyond the propaganda we have heard. It is hard to rely on the "smart people," the experts, when no one at the Attorney General's office can tell us how this reform is actually going to work.

Before I get to some of those practical concerns, I would like to highlight two of the more conceptual problems with the bill. These were noted by two of the speakers who preceded me. I heard Howard Shulman speak at length about this, so I'll try to summarize. First of all, the notion that systemic and individual complaints can be separated from one another is completely unrealistic. I find it very, very hard to believe that there is an expert in human rights out there who would suggest otherwise. I have never presented an individual human rights case that did not have a systemic element, because all individual cases are located in a societal context and that societal context of discrimination is brought to our attention through those individual cases. To attempt to separate the individual from the systemic is to fundamentally miss the point of how discrimination works.

Let's take one of my cases. A young, disabled man of color is attacked by the police. How can we consider this case outside the context of an entrenched culture of police violence against people of colour? How can we consider it outside the police culture of brutality towards people with disabilities? It is simply not possible. It's worth noting that this case was thoroughly investigated by a commission investigator. The commission in fact allowed the complainant to accept a settlement so he could move on with his life, which is what he wanted. But he only did it with the understanding and the commitment from the commission that they would proceed to negotiate with the police force in question to ensure systemic change in the form of new policies and training. Neither the commission nor the tribunal as envisioned under Bill 107 could have achieved this. So the line between systemic and the individual cannot be drawn, and it is a fundamental flaw of this proposed system.

The second conceptual flaw is the shift that Bill 107 requires toward the privatization of human rights disputes. The current system, underfunded and flawed as it is, still conceives of each and every violation of human rights as being a harm to the crown or to society at large. There is a public prosecutor at the tribunal to represent that societal interest in maintaining a society free of discrimination. When I explain this to my students, I compare it to criminal law: The police investigate the crime and, where there is sufficient evidence, the matter is passed to crown counsel for prosecution. Crimes are suffered by victims, but they are also violations against society. There is a deep public interest in maintaining a society free of crime, and a very similar system is currently in place for human rights. There is a slight difference, as noted by Mr. Shulman: In the human rights system the victim remains a party and can participate actively if they are able to do so. But if they cannot actively participate, the public prosecutor is there to proceed against the offender.

I am told that you were informed earlier in these hearings that, by and large, the prosecutors' and the victims' interests diverge. I have never experienced this. The human rights prosecutors I spoke to yesterday about this were absolutely incredulous. I have never seen a case where the human rights prosecutor did not advance the interests of the victim and where the victim did not feel that the prosecutor was advancing their cause. Under Bill 107, the role of the crown is lost. Each complaint loses its systemic context and it loses the societal support provided by the crown. The violations become just another private dispute between two parties; it's a contract dispute or a personal injury. While this neat private dispute may be very attractive to lawyers who want to have their matter neatly bounded, it's not what is wanted by the communities for whom maintaining basic human rights is an element of survival. They need to know that what they suffered is a harm that has been suffered by us all and that we all perceive ourselves as needing the crown to step forward to prosecute.

Conceptually, in two very major ways this bill troubles me. But there are also very real and very pressing practical concerns. For me, the most serious of these is the gaping hole that is the human rights support centre. This centre, we've been told, is the third pillar of a shiny new system, the pillar that will make direct access work. It's the pillar that's going to make our new, innovative system the envy of all. Every time a critic raises concerns about low-income people trying to navigate this new system alone, we are told, "Oh, there will be a human rights support centre and everyone will be supported." It is the answer for everything to do with Bill 107. But what does a pillar look like? We tried to find out at this technical briefing. We don't know, I don't think any of you know, and at the technical briefing it became clear that the Attorney General's staff don't know. When pressed, they said, "It's too soon to know." We were actually told that we needed to stop thinking about worst-case scenarios and be more optimistic—you know, these are the smart people. When we pointed out that we weren't optimistic to begin with and proceeded to ask further questions, we got the same answer. Is there a budget for the centre? They don't know. Has a model been chosen? They don't know. Would it look like a legal clinic? They don't know. The Attorney General's staff does not know, and I find that terrifying. You're being asked to endorse a dramatically different model of human rights enforcement, one that failed in another province, based on "I don't know."

One thing they do know, though, is that not everyone will get representation—they were clear about that—and not everyone will get a lawyer. The support of a lawyer is

crucial. Human rights are very complicated; it's a complicated area of law. Mary Cornish is clear in her report that fully accessible legal representation is needed for direct access to work. She doesn't say "support"; she uses the term "advocacy." Complainants need advocates. Where are all these lawyers going to come from? It's not a common area of expertise. The salaries at legal aid are appalling. And even at those rates, it would cost millions to hire enough lawyers to provide full representation. With the number of complaints, it would take a clinic about 15 times the size of Parkdale, which is the largest clinic in the province. One person at the hearings last week said to me, "Maybe the complainants could have paralegals or even articling students." I don't understand how this can be an improvement over trained commission prosecutors. How does this make for a more equal or accessible system? The respondents will have lawyers.

Shoddy representation aside, we were told that full legal support does not mean representation. I asked, could it mean that someone gets a pamphlet at the door? What about direction to a website, or maybe a written guide to the system telling victims how they can call their own witnesses, how they can cross-examine their harassers and how they can formulate their own legal arguments? We were told that there will be a gradation of services. Some will get representation and some may get brief service, some may get some advice, and I think some people will get a pamphlet at the door. Who decides what level of support people get? The staff at the human rights support centre, I suppose. The 2,500 who initiate complaints—

The Chair: Ms. Brückmann, you have one remaining minute, so if you can just finish up.

Ms. Brückmann: Oh, I should wrap up.

Allow me just to jump to the end. There are other technical flaws I was going to point out, but I'm running out of time. The bill is a disaster waiting to happen. The bill will not make Ontario a leader in human rights. It's going to reproduce the embarrassment that the government in British Columbia faced.

But the political fallout is not my clinic's problem. My problem is going to be the low-income people who come to our door, when all this is said and done, and say, "I went to the commission and they sent me to the tribunal. I went to the tribunal and they sent me to the legal support centre. I went to the legal support centre and they said they couldn't take my case." Then I'm going to have to say to them that I can't take their case either because I'm stretched thin and I can't take any more. I'm going to have to tell them that the human rights protection that they thought they had under the Human Rights Code is meaningless. This isn't just a political disaster; it is a tragedy that robs the people of Ontario of any hope of a functional human rights system.

The Chair: Thank you for your participation.

Mr. Kormos: Chair, may we please request that the clerk assist us in expediting an instant Hansard, a draft Hansard, of the comments of the last presenter?

The Chair: Thank you very much. That concludes our meeting for today.

The committee adjourned at 1254.

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