



---

ISSN 1710-9442

Legislative Assembly  
of Ontario  
Second Session, 38<sup>th</sup> Parliament

Assemblée législative  
de l'Ontario  
Deuxième session, 38<sup>e</sup> législature

**Official Report  
of Debates  
(Hansard)**

**Thursday 23 November 2006**

**Journal  
des débats  
(Hansard)**

**Jeudi 23 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  
Clerk: Anne Stokes

Président : Vic Dhillon  
Greffière : Anne Stokes

---

### **Hansard on the Internet**

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

### **Index inquiries**

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

### **Copies of Hansard**

Copies of Hansard can be purchased from Publications Ontario: 880 Bay Street, Toronto, Ontario, M7A 1N8.  
e-mail: [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

### **Le Journal des débats sur Internet**

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

### **Renseignements sur l'index**

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

### **Exemplaires du Journal**

Des exemplaires du Journal sont en vente à Publications Ontario : 880, rue Bay Toronto (Ontario), M7A 1N8  
courriel : [webpubont@gov.on.ca](mailto:webpubont@gov.on.ca)

---

Hansard Reporting and Interpretation Services  
Room 500, West Wing, Legislative Building  
111 Wellesley Street West, Queen's Park  
Toronto ON M7A 1A2  
Telephone 416-325-7400; fax 416-325-7430  
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation  
Salle 500, aile ouest, Édifice du Parlement  
111, rue Wellesley ouest, Queen's Park  
Toronto ON M7A 1A2  
Téléphone, 416-325-7400; télécopieur, 416-325-7430  
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

## STANDING COMMITTEE ON JUSTICE POLICY

## COMITÉ PERMANENT DE LA JUSTICE

Thursday 23 November 2006

Jeudi 23 novembre 2006

*The committee met at 0933 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'm going to call this to order. Welcome, everyone, to the standing committee on justice policy. We are hearing the public presentations on Bill 107, An Act to amend the Human Rights Code.

### SUBCOMMITTEE REPORT

**The Vice-Chair:** I believe we have a subcommittee report to present. Mr. Zimmer, please.

**Mr. David Zimmer (Willowdale):** Yes. The subcommittee met on Wednesday, November 22, 2006 at 12:30 with respect to matters relating to these proceedings and recommends the following to the full committee:

(1) That all advertising for Bill 107 be cancelled wherever possible and as soon as possible.

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

That's the unanimous report of the subcommittee.

**The Vice-Chair:** Thank you very much, Mr. Zimmer. Mr. Kormos.

**Mr. Peter Kormos (Niagara Centre):** I am confident that the committee will sit to accommodate all of its presenters, notwithstanding that we're going to use up a couple of minutes of the committee's time this morning debating this subcommittee report. I want to make it very clear that as a member of that subcommittee representing the NDP, I of course endorsed the proposition; not that I wouldn't have relished those ads continuing to appear to demonstrate the government's breach of its commitment to people in the province of Ontario, but I wasn't going to do that at what was a distinct cost to taxpayers.

The government, in the course of defending its guillotine motion, its closure of these proceedings, has amongst its arguments stated, "Well, of course, the committee sat

for three days in Thunder Bay, London and Ottawa." Those of us on the committee will remember those days well, if only because of the interesting travel arrangements that were available to us, and it was the staff who suffered far more than we did.

The justice committee had before it several bills: Bill 14, the paralegal legislation, as it's colloquially called, although it dealt with other very important matters as well, and Bill 107. The justice committee can only deal with one thing at a time. Perhaps it's in the nature of politicians that they indeed can't chew gum and walk. The government had to make a choice—in fact, it was clearly Mr. Bryant's choice, as the Attorney General, because both of them were his bills—as to which bill was going to proceed first. Not irrationally, the government, Mr. Bryant, chose Bill 14. I say "not irrationally" because, while the opposition parties did not agree with what Bill 14 ended up becoming, it was necessary for the law society and community colleges, amongst other things, to have Bill 14 if they were going to start to structure and build the training programs, the educational programs designed to give paralegals the educational prerequisites to be licensed by the law society in this new regulatory regime.

We knew and the government knew that there was going to be significant interest in Bill 14, and we accommodated that interest, but for a few who unfortunately didn't submit their names prior to the cut-off point. But I have no doubt when I suggest that had they had their names submitted, they would have been accommodated. The opposition parties knew full well that there was significant support for Bill 14, just as there was significant opposition. It was, again, a very contentious bill. The opposition members were as eager to hear from advocates for the government's position as, of course, we were concerned about the government's position.

In subcommittee, Mr. Zimmer was there speaking on behalf of the government. And in House leaders, we expressed concerns about the rather bizarre request on the part of the government to have but three days of committee hearings in the beginning of August, when the government knew full well—because the opposition parties had made a commitment to the government that we would make best effort to deal with Bill 14 in time to get it reported back to the House after the House returned in September, so that third reading debate could take place and the vote on third reading could happen. And we did make best effort. While it took a couple of days longer

than we expected it to, six-page amendments that had to be read into the record, because that's what the rules are by the government, they didn't help expedite matters, did they, Mr. Zimmer?

**0940**

There had been agreement that, immediately upon the completion of Bill 14, we would begin working with Bill 107. Again, we knew, opposition members knew, that there was serious concern about the proposition. There was concern about the broader proposition—private versus public—as well as the minutiae of things like funding of legal advocacy for human rights complainants.

We also knew there was going to be considerable interest in the committee process. So do you see what happened? When we had the Thunder Bay-Ottawa-London—and opposition members said, “What are you doing? Why do that? We're going to have to do it all over again because you had to advertise across the province to accommodate those people who wanted to appear in those venues.” So that cost the taxpayer 100 grand-plus. The clerk worked very hard at arranging ads in ethnic newspapers, in small-circulation newspapers that were read by ethnic communities, by other communities who would have a natural interest in the legislation.

What do I know? I'm from small-town Ontario, but I suspect that the government thought it could strike a knockout blow in the first round by having—this government was very specific, wanting it in these three cities, no variation. We didn't have any input into what venues, what cities. Government wanted those three cities, come hell or high water. And as I say, I only suspect; I can't even begin to think of what goes on in the mind of Mr. Bryant. I'm not even sure I want to know what goes on in the mind of Mr. Bryant. It could be a scarring experience. But I suspect that the government thought it was going to score a knockout blow in the first round, if you don't mind that analogy. Well, it didn't. The hearings from the government's point of view and in terms of spin were pretty much a dismal failure. And the government knew that we still had to entertain a significant number of people here in the city of Toronto.

We had a subcommittee meeting at which the government agreed, because it was opposition members who said, “Let's get going,” which is how we got started last week, because we already had a list. We didn't have to advertise to get going because we already had people who had expressed interest. So the ads hadn't even appeared yet. We said, “Let's get going, because we don't have to wait for the ads to appear. Madam Clerk, go through that incredibly onerous exercise once again of preparing ads and having them translated,” because when you're publishing in the ethnic press, it's naive to publish it in anything other than the language of that ethnic newspaper or publication.

The government agreed, and in the House leaders' meeting there was agreement, and it was agreed that the cut-off time for requests to appear would be December 15, which is the day after the House rises for the winter break. The government knew, acknowledged, acquiesced,

and supported the proposition that there be public hearings throughout the months of January and February. The government in this committee supported unanimously the subcommittee report, with not a word of dissent, not a single word of caution. This committee unanimously supported the subcommittee report which authorized publication of advertising across the province with a December 15 deadline for submitting one's name, knowing full well the House rises on December 14. That's the calendar.

To somehow peculiarly suggest that, in some way, opposition members did something to force closure is an outright prevarication—that means “lie,” Madam Chair. I don't mind being lied to. I've been in the Legislature for 19 years, and one of the peculiar things about legislative rules is that it's against the rules to call somebody a liar, but it's not against the rules to lie, and people lie every day in the Legislature. It's a fact of life in politics in the year 2006—it is. The apologists refer to it as “spin.” Spin to the extent that it's mere puffery is merely spin. Spin when it goes beyond mere puffery is an outright lie. I don't mind being lied to. As I say, in 19 years here at Queen's Park, I am so used to it, Jesus, it just rolls off my back.

But, by God, Ontarians sure as hell object to being lied to. Voters, taxpayers, hard-working women and men and, more importantly, people who are victims of discrimination count upon their government to design and develop systems that permit them to tell their children that while they were victims of discrimination with respect to racism, with respect to gender, with respect to sexual orientation, their children won't be, because as Ontarians, as residents of this province, as taxpayers, they believed a government that said it was going to let them, the people who know best, participate in the most important part of the parliamentary process.

This is, my friends, I tell you, the single most important part of the parliamentary process. It's not first reading. There's no debate. You present a bill and almost inevitably it's supported. It's not second reading debate, because second reading debate quite frankly is not a debate that's designed to change the minds of other parliamentarians. It's designed to get the message out as to where a particular party, caucus or individual stands on a bill. It's not third reading, because by the time third reading happens, the deal is done. The fix is in.

It's public hearings. It's when folks, just plain folks, whether they're well educated or not, whether they've prepared fancy, expensive briefs that are bound with shiny covers or whether they've prepared handwritten single-pagers or, in the instance of this legislation, it's the people who have been victims of discrimination and the people out there on the ground, fighting and advocating for those victims.

**0950**

It's people like Elisabeth Brückmann from Parkdale Community Legal Services, who blew the whistle yesterday on the government's less-than-ethical gathering of so-called authorities who scorned, demeaned, denigrated and dismissed people who had concerns about this legis-

lation as a solution to acknowledged problems at the Ontario Human Rights Commission. And throughout these hearings there was a persistent slandering and defamation of the hard-working staff of that commission. Day after day, advocates of this legislation talked about the so-called horror stories. And while all of us have had concerns expressed in our constituency offices about unfortunate delays at the Human Rights Commission, problems from time to time with processing complaints, I'm increasingly convinced that some of the most dramatic tales being told here are myths. The government and its collaborators have made a concerted effort to generate a myth around the Human Rights Commission and its staff, a myth that quite frankly allows no other inference than widespread incompetence or outright corruption.

This ain't Telus Corp. It's not a huge corporate body with hundreds of staff; it's a pretty small group of people. You see, Chair, if there's incompetence or corruption by the front-line staff, there's incompetence and corruption by their managers and there's incompetence and corruption by the chairs of the commission. What a ridiculous, what an absurd allegation. It is beyond belief. It is incredulous. That's how this government has been marketing this legislation.

I understand the debate between the public advocacy and struggle against discrimination versus a private advocacy and struggle. As Ms. Brückmann and other observers noted yesterday, it's like the difference between the crown attorney prosecuting a crime in the public interest and the victim of a crime engaging in a lawsuit in a civil court where it's a matter of the victim as plaintiff versus the perpetrator as respondent in seeking damages. That's the fundamental conflict in views here. And that's okay; that's a sound debate. The government doesn't want to have it: "Oh, we've heard it all." Bull crap, because you wouldn't have heard it all if Ms. Brückmann from Parkdale Community Legal Services hadn't happened just to sneak in under the wire yesterday.

The government promised—you agreed—to let front-line workers from the commission come to this committee to respond to the concerns and complaints that have been raised about the performance of the commission. You supported that motion unanimously. But you had no intention of letting those people come before this committee to respond to some of the allegations made about them and their work. You agreed and we agreed that managers should be here, so that they could have a chance, an opportunity, to respond to indeed what have been some rather scurrilous allegations, not about the structure but about the actual performance of individuals, the allegation that people are being inappropriately triaged under section 36, the distinct allegation that Human Rights Commission staff are unduly denying people access to the process; ridiculous comments like those made yesterday suggesting that the majority of claims are denied at the intake process. Again, horse crap. It's 11%.

Go to any police station in this province and ask them how many complaints they get from citizens about purported crimes and ask them what percentage of those purported crimes don't amount to crimes, whether or not

they're sympathetic, such that the police have to tell that person, "No, this doesn't constitute a crime. We can't lay a charge. I'm sorry. It doesn't fit within the Criminal Code."

I'm going to support this subcommittee report today here in committee, but I do it with shame and regret, because we promised people something. We promised them committee hearings during the course of the winter months. We promised them access to this process. We've broken that promise. And in the context of human rights, a struggle against discrimination, this committee, by virtue of the government's closure, has discriminated against some of the most deserving Ontarians. I am ashamed of you. I have not had more regret in 19 years here than I do today. And when we start to see, by virtue of Ms. Brückmann's comments yesterday, some light being shed on some very unethical and inappropriate conduct on the part of this government in the manner in which it has mobilized its supporters in a most dishonest way around this legislation, I'm not afraid to say that the people of Ontario are ashamed as well.

I've got no further comments on this subcommittee report, Chair.

**Mrs. Christine Elliott (Whitby–Ajax):** I'd just like to comment briefly. There's a lot that I could say, but in the interests of respecting the time that we have left on this last day of hearings and for the people who have come to present today—and we do want to hear from you—I would just like to say that I wholeheartedly support Mr. Kormos's comments and to underline the fact that, as opposition members, we would have been more than happy to stay and sit in this committee until the last person wanted to make representations to this committee. Any suggestion that the opposition—particularly the PC Party and, I guess more particularly, I—made a suggestion that we wanted to suspend these committee meetings is absolutely not true. It was completely outrageous to have suggested that I would have said that.

What I wanted was to make sure that all of the presenters here knew what the Attorney General was speaking of when he brought in his so-called amendments, which to me were just mere statements of what his intentions were. It was only fair for the people who were coming here to make their representations that they would know what they were dealing with and the committee would know what they were dealing with. So I had only suggested that we should have that material before us before we continued, which in my mind was a very fair comment. However, I just think it needs to be known that we wanted this process to continue. We would have sat here and would have happily listened, because even as of yesterday, we heard three different perspectives that we would not have heard otherwise, and it's merely fortuitous that these people were able to present before us. So any suggestion that we've heard it all and we know enough to make a decision, I strongly disagree with.

Again, though I too will be supporting this subcommittee's report, it's only in the interests of saving taxpayers whatever money we can save, because obviously

the ads are going to be of no use at this point. It's only in the interest of saving money for the taxpayers that we are going to proceed to support this.

**1000**

**The Vice-Chair:** Any further debate? Hearing none, I'm going to put the question. All those in favour of the subcommittee report? Opposed? That carries. Thank you very much.

This is the last day of public hearings here in Toronto. To make these hearings as accessible as possible, American sign language interpretation and closed captioning services are being provided. To facilitate the quality of the sign language interpretation and the flow of communications, members and witnesses are asked to remember to speak in a measured and clear manner. I will interrupt if I feel that the interpreters are having some difficulty keeping the pace. As well, there are two support attendants present in the room to provide assistance to anyone who requires them. If you do require their assistance, please let the clerk know.

#### ONTARIO MARCH OF DIMES

**The Vice-Chair:** At this point our first witness today is the Ontario March of Dimes. Could they please come forward. Good morning. You have 30 minutes for your presentation. If you use up the entire 30 minutes, then the members of the standing committee will not have an opportunity to ask questions or make comments, but you are free to use it up in its entirety. So if you would, please state your names for the Hansard record and then proceed.

**Ms. Andria Spindel:** My name is Andria Spindel and I'm the president and CEO of March of Dimes. With me is—

**Mr. Warren Rupnarian:** Warren Rupnarian. I'm an advocacy consultant for the March of Dimes.

**The Vice-Chair:** Please go ahead.

**Ms. Spindel:** Thank you, Madam Chair, honourable members and fellow presenters.

We have consulted with dozens of groups and consumers, our own stakeholders, as part of the process of becoming as fully informed as possible about the total implications of Bill 107. As some of you might be aware, we hosted one such session on October 4 of this year to hear and learn from a variety of perspectives on how to improve Ontario's human rights system. We agree that the system needs to be improved.

Our mission at Ontario March of Dimes and March of Dimes Canada is to create a society fully inclusive of people with physical disabilities, so our mission is one of recognizing, protecting and advancing what we see as fundamental human rights: the right to secure meaningful employment, housing, health care; the right to access our public school system; the right to access buildings, public spaces, goods and services without barrier or discrimination; the right to participate in and contribute to Ontario's health, wealth and prosperity.

This bill proposes significant changes to the human rights system in Ontario. Prior to the Attorney General's

appearance before this committee last Wednesday, November 15, we were concerned about the lack of clarity and definition. We are pleased that most of the areas addressed by Minister Bryant improved or eliminated entire sections of the bill and we await receipt of the improved version for review.

Among the remaining concerns from our perspective are these two:

First, we need to ensure that this bill fully describes and provides for financial support for legal representation. The Attorney General's proposed amendment echoes this concern by eliminating the clause to charge user fees. We strongly encourage further clarity on the budgetary implications that arise from this recommendation.

Second, we want to see any proposed reform to the Ontario Human Rights Commission have the assurance of proper enforcement. We understand that the commission will have an enhanced role in educating people about human rights, and we applaud this. We understand that the legal support centre will provide further assistance to people bringing their concerns and complaints forward. We would like to see more definition about the centre and confirm that the commission will have the potency it needs to monitor and enforce human rights. We noticed on the government's website that the commission is empowered to enforce related legislation, the AODA—Accessibility for Ontarians with Disabilities Act—and we support this direction. This act will only be effective if compliance is assured and enforced.

On a further point, as the Attorney General's recent amendments to the bill were only presented before this committee one week ago, we strongly encourage further stakeholder consultation to allow feedback on the soon-to-be-revised bill.

I'd now like to thank you for the opportunity to present and turn to my colleague Warren Rupnarian to provide a bit of insight on Bill 107 from a consumer's perspective.

**Mr. Rupnarian:** Thank you very much. Just to give you an idea of where I'm coming from, I'd like to tell you all a story about navigation.

This morning, I came here as a result of a Wheel-Trans bus. I told the driver, "I need to be dropped off at Queen's Park." The driver dropped me off at the wrong building. Just to get to this room, I needed assistance navigating through the hallways and the different elevators, for as simple a thing as getting to a meeting. Can you imagine the barriers that would be encountered if I had a human rights complaint? I think that there can never be enough guidance for getting from point A to point B, in particular when someone has a special need. So there needs to be a simplification of the process.

Another issue is the funding aspect. How will those who need funding help access those resources, and who will be eligible?

In closing, I'd just like to say that I would strongly recommend that there be review and consultations on the new changes so that stakeholders can have their voices heard.

**The Vice-Chair:** Any further comments?

**Ms. Spindel:** We are happy to take any questions. Otherwise, I think you have a copy of our submission today.

**The Vice-Chair:** Thank you very much. That leaves about eight minutes for each of the sides. Mrs. Elliott, we'll start the rotation with you.

**Mrs. Elliott:** We share your concern with respect to the legal support centre. That was one of the reasons why we wanted to see the text of the amendments, so that we would know exactly what the Attorney General proposed. We heard from Ms. Brückmann yesterday—Mr. Kormos has referred to her testimony—and you may have appeared at the technical briefing that I understand was held with the Attorney General's staff following the statement by the Attorney General in this committee on November 15. They were told at that time that it hadn't been fully determined, but that for sure not everyone would be receiving legal representation from a lawyer. Yet the Attorney General has said twice in the Legislature that people will be represented by a lawyer. So I think you're right to be concerned about that. I think we all should be concerned about that if we look at the budgetary implications and how it's actually going to happen, because it sounds really good, but I share your concerns.

**Ms. Spindel:** I think that is the gist of what we're speaking of.

**Mr. Kormos:** Welcome back to Queen's Park. Yesterday, some comments prompted the observation—and I was pleased that Mr. Zimmer expressed a strong interest in the proposition of a select committee here at Queen's Park that would examine issues of access, both physical access to the building and, as importantly, if not more importantly, access to the material that's generated here. Unfortunately, discrimination by white, middle-aged, middle-income people is—I don't know—to us what the seal hunt is to Brigitte Bardot. It's true. It's that bleeding-heart liberal, "Oh my, discrimination is bad. Shame, shame. Nobody supports it." Yesterday—I believe it was yesterday; if not yesterday, it was certainly during the course of these committee hearings—reference was made to how politely Canadians discriminate. We're oh, so polite as we discriminate against people.

It is regrettable that it appears the commission's role as a prosecutor is going to be eliminated, because I've reached the point in my—I've been here through the struggles around disability legislation, and I acknowledge and recognize the support that the community of advocates for Ontarians with disabilities had for the most recent Ontarians with Disabilities Act. Of course, there was a strong connection between their support for that bill and the maintenance and strengthening of the Human Rights Commission.

**1010**

I believe more people should be bringing discrimination complaints against the Legislative Assembly, literally. Unfortunately, the Vaid decision I made reference to—and it's not resolved. Vaid, of course, is a federal

matter regarding the federal Human Rights Code, where the federal Parliament is claiming privilege in response to a claim of discrimination. Vaid was a driver for the Speaker of the House who alleges that he was discriminated against on his dismissal. The federal government has been fighting this tooth and nail—interim interlocutory matters—all the way to the Supreme Court of Canada, arguing privilege; that is to say, "We are not subject to the federal Human Rights Code." Pretty Goddamned outrageous.

So I'm concerned about complaints against the province of Ontario in the Legislative Assembly because I fear that the Legislative Assembly would similarly hire high-priced lawyers and use your money to argue privilege—and I'm not about to trivialize the relevance of privilege.

We have also been referred to the Eldridge decision. It was Gary Malkowski who brought that to our attention again. I'm not sure that the system proposed is going to facilitate it. I'm not sure that clinic lawyers, legal aid certificate lawyers, are going to be able to take on the province of Ontario and its deep, deep dockets—to wit, your pockets—that allow it to pay for huge legal teams.

Physical access to this building, access to written materials for blind people—for instance, Gary Malkowski was in the chamber the other day and, if not for Laurie Scott, a Conservative MPP who I didn't know knew sign language, but God bless her—if not for her efforts, Gary wouldn't have been able to hear anything that was going on.

Should a person have to call ahead and say, "I'm deaf, and I'll be at Queen's Park a week from now at exactly 3 p.m."? Should a person have to book ahead to be able to listen to the debate at Queen's Park? I don't think so.

**Mr. Rupnarian:** I don't think so either. That service should already be there without even asking.

**Mr. Kormos:** Exactly

**Mr. Zimmer:** I'm sorry; I didn't hear that.

**Mr. Rupnarian:** I said, I don't think so. That service should already be there without even asking. It's a human right.

**Mr. Kormos:** And it could be done as simply as having teletype up in the visitors' gallery, can't it?

**Mr. Rupnarian:** Sure.

**Mr. Kormos:** In large enough size—but for the fact that some people are both deaf and blind, and they have to communicate with tactile communication.

However much I wish that the Legislative Assembly would have its ass hauled before tribunals left and right on issues of discrimination, my fear is that the likelihood of that happening as a result of Bill 107 has diminished significantly.

It was the commission that went to bat for kids with autism. No single parent could have gotten together the incredibly expensive expert evidence—and again, the government fought tooth and nail—successive governments, okay? Let's be fair. They fought that litigation tooth and nail, but the parents won at the Human Rights Tribunal because the commission prosecuted, because the

commission acquired the expert evidence and because the commission spent the hours and hours that no legal aid certificate—look what legal aid is already proposing, Mr. Zimmer: putting a cap on certificates for criminal trials. Aren't they? Yesterday's newspaper: Legal aid is talking about putting a cap on criminal trials.

Mr. Bryant, yesterday, was obsessing with process: "Oh, we have too much process. We're too much process-focused." We heard that from Judge Moldaver the other day, too. That's right-wing talk for "Let's get rid of fairness." Too much process? Well, by God, I believe in process. I believe in process in the criminal system, because it's what makes sure that innocent people don't get convicted, although from time to time innocent people do get convicted, don't they? And I believe in process when it comes to the prosecution of human rights claims, because, by God, I don't want somebody who isn't guilty of discrimination to be found guilty of discrimination, but I don't want somebody who has discriminated to not be identified and stopped in their tracks.

I wish you folks well with the new legislation. I'm worried about it.

**The Chair (Mr. Vic Dhillon):** Thank you very much. Government side.

**Mrs. Maria Van Bommel (Lambton–Kent–Middlesex):** I just want to say, thank you very much for coming in this morning. I certainly hope you'll be able to get home very easily. Thank you.

**Mr. Rupnarian:** Thank you very much.

**Ms. Spindel:** Mr. Chair, if I could just wrap up with saying that I think what we're looking for is further clarity and definition around the funding mechanism, around the enforcement, and to reiterate what Warren has said, a clear, defined navigational process for this particular legislation, but as he said, also for just general access. The situation this morning was one where he could not navigate around the building, with all good intent. There needs to be more consideration there.

I would like to ask one question, if I could: Will the revised bill with all of the amendments be available for consultation?

**Mr. Kormos:** It's a fair enough question. Perhaps the parliamentary assistant can answer that.

**Mr. Zimmer:** I will take that matter under advisement.

**Ms. Spindel:** Thank you for your time.

**Mr. Kormos:** It was a fair question; it wasn't a fair answer, Mr. Zimmer.

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

#### ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

**The Chair:** The next presenters are the Ontario Secondary School Teachers' Federation. Good morning.

**Ms. Rhonda Kimberley-Young:** Good morning. Thank you for the opportunity to present today. My name

is Rhonda Kimberley-Young and I'm president of the Ontario Secondary School Teachers' Federation. With me is Maurice Green of Green and Chercover, our legal counsel.

The Ontario Secondary School Teachers' Federation was founded—I apologize; I'm probably speaking too quickly—in 1919 and represents over 50,000 members in education across Ontario. They include public high school teachers, occasional teachers, educational assistants, continuing education teachers and instructors, psychologists, secretaries, speech and language pathologists, social workers, plant support personnel, attendance counsellors, university workers and many others in education.

The OSSTF has recognized the need for change in our human rights system in Ontario for over a decade, but this recognition should not be taken as *carte blanche* to make change for change's sake. Revitalizing and substantially overhauling the human rights system in Ontario is a task which requires the balancing of profound and important rights. It cannot be done without a view to the long-term viability of any changes we may make to the system. For this reason, while OSSTF welcomes the engagement and opportunity that Bill 107 represents, we do so with some caution.

OSSTF, along with its friends in labour, have long played a key role in the struggle for human rights in our society. We have a history of working with the broader community as well and have helped form awareness of the importance of human rights issues in our daily lives and, very importantly, in our schools.

#### 1020

When we first made submissions to this government in June of this year, we noted that, "Many groups and individuals share the view that our current system for human rights enforcement and the recognition of complaints needs reform. Delays in receiving a hearing by individuals and the absence of effective remedies are a sad fact of our present system. It is important, however, to approach a solution which does not abandon all aspects of this entity in Ontario."

We highlighted several points in our initial submissions which this government should address through the bill, and I will recap some of them here.

We need a well-resourced and focused commission, working in the best interests of the public in a proactive manner, tackling issues of systemic discrimination. We are pleased, then, to see today that the recently tabled amendments will clarify and expand the public interest role of the commission by giving it the power to bring its own applications to the tribunal whenever it's in the public interest to do so. We are also pleased to see that the amendments would give the commission a statutory right of intervention in any hearing in order to enforce the public interest that is integral to human rights. Further, the proposed amendments strengthen the commission's investigative and public interest powers as an essential component of its public interest mandate.

Second, we believe the government should clearly identify the resources available to a complainant and

guarantee that publicly funded representation be available to anyone presenting a complaint to the tribunal. The proposed amendments, as they've been described by this government, would entrench the existence of a human rights legal support centre to provide information, support, advice, assistance and legal representation. Any person who is, has been or may be an applicant seeking a remedy at the tribunal should be eligible for these services. The minister would fund the legal support centre and the services should be available where needed across the province. This is a substantial step forward to ensuring access to justice for the most vulnerable members of our communities.

Third, the tribunal must be properly resourced with skilled human rights adjudicators. The proposed amendments require all members of the tribunal to have human rights expertise.

Fourth, no legal fees or costs should be assessed against the complainants as this would have the consequence of limiting the ability of many to have a just hearing of their complaints. Bill 107 would remove the power of the tribunal to award costs against an unsuccessful complainant and the proposed amendments would eliminate the tribunal's power to charge fees.

Fifth, we believe that the bill should ensure that rules and regulations made by the tribunal are the subject of consultation with the public and the affected communities.

We were pleased to hear of tribunal chair Michael Gottheil's indication to this committee that public consultation on rules and procedures will be an integral part of the tribunal's work if the bill passes.

The bill, with these amendments, constitutes a bold move forward in bringing change to a tired system. The amended bill recognizes the continuing and revitalized role for a commission focused on the public interest, and a substantial and new role for the tribunal to provide access to justice for all Ontarians. But this is a unique opportunity in the 40-plus-year history of human rights in Ontario. We can and should make changes to the system that will carry us forward for years to come.

To this end, we renew our call on the government to further amend the bill to provide for the following: to ensure that the tribunal has the resources and flexibility to provide regional hearings. In a province as large as Ontario, sometimes access to justice means exactly that—simply being able to geographically access justice. When the tribunal is dealing with complaints from some of the most economically and socially vulnerable people in our communities, it's no answer to give them a hearing in Toronto if they are from Sioux Lookout or Kenora or Cochrane. We must ensure that geography does not become a barrier to equality and equity.

Second, expand the secretariats already provided for in the bill to add a secretariat for dealing with discrimination based on sex, sexual orientation and gender identification. Contrary to the opinions of some governments, women have not yet won all the battles for equality. There is a continuing need to ensure that progress made

is not rolled back and to address new situations. Furthermore, the areas of discrimination on the basis of sexual orientation and gender identity represent a new frontier for human rights and one that has yet to be fully explored in the research and jurisprudence. These are areas which require a secretariat.

Third, expand the commission's powers to give it a strong enforcement role by authorizing it to monitor and enforce remedies which the tribunal orders.

In conclusion, we would argue that the status quo is unacceptable. The changes proposed in Bill 107, with the proposed amendments and the additional amendments of which we have spoken today, present a viable alternative to a flawed system. Real, meaningful and timely human rights are essential if we are to create a strong, vibrant and diverse society in Ontario, but more importantly, they are a legacy to our children. The time has come to move forward with this legacy and pass a Bill 107 which is amended to address those concerns.

I thank you very much and I would also say, as one of the education unions/teacher federations in this province, we certainly would look forward to working with the commission to promote human rights to the next generation of Ontario citizens.

**The Chair:** Thank you very much. We have about seven minutes each.

**Mr. Kormos:** You omitted to mention Craig Brockwell.

**Ms. Kimberley-Young:** We have two other guests here from OSSTF: Domenic Bellissimo and Craig Brockwell from our provincial staff.

**Mr. Kormos:** And Craig has always been very effective and helpful to us here at Queen's Park.

I understand your perspective. The Cornish model, which isn't adopted in its entirety, but generally the theme of the Cornish model relies upon—the essential part of it is the assurance of legal representation for complainants. As I say, I read the pondering of putting a cap on Criminal Code, criminal defence legal aid certificates, and it sounds good to the people funding legal aid, but it doesn't sound so good if you're the guy or gal up there on a charge that could send you away for 25 years before you're eligible for parole, especially if you're innocent. And let's not try to pretend that we don't prosecute innocent people in this province, Mr. Zimmer.

So we're worried, because although we don't agree with the Cornish direct-access model, we do understand that if it's to work at all, it has to have this full funding. Unfortunately, we have no idea. The government has made no indication of where the money is going to come from, how it's going to be structured. Are you familiar with the Office of the Worker Advisor?

**Ms. Kimberley-Young:** I'm not, but I'll defer to my colleague who is.

**Mr. Kormos:** Maybe you have better luck with them than I do, but when I send constituents to them, there are waiting lists of a year and two years before their cases can get embarked on by the underfunded Office of the Worker Advisor. Am I way out to lunch on that?

**Mr. Maurice Green:** No, you're not. Unfortunately, it doesn't matter which government—and I've been practising since 1972. With great respect to all governments, they never fund these types of institutions properly, and it is extremely frustrating. And you wonder why, in the criminal sector, young lawyers don't go and do that—because they can't afford to or it just doesn't pay—and therefore you end up with people entering and doing that type of work who really don't have the expertise. That would be a worry of mine in terms of the human rights area as well. Surely people who have human rights discrimination cases are equally entitled to good counsel and experienced counsel. That means funding it properly.

**Mr. Kormos:** I'll tell you how I did it. When I practised criminal law as a socialist, I charged the paying customers enough so that I could do a fair amount of pro bono work. But I'm not sure how many socialist criminal defence lawyers there are in Ontario.

**Mr. Green:** Well, a lot of law firms do that, and we act for unions, as you well know. I think most of our clients know we also do a lot of pro bono work.

1030

**Mr. Kormos:** Are you a socialist?

**Mr. Green:** I have an English accent.

**Mr. Kormos:** Thank you very much for your participation. You know that you are third-to-last of people or organizations that are going to be allowed to make comment on this bill.

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

**Mr. Zimmer:** I want to thank OSSTF for its careful consideration and its support of the legislation, albeit with the caveats, and I've made a note of the caveats. Thank you for your careful consideration. I think Mr. McMeekin has some questions.

**Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot):** I appreciate the specific recommendations, Rhonda, that you've made this morning. I think they are useful to us. There was a new one there that we caught about the secretariat around sexual orientation, which I think we need to look at.

I'm intrigued, though, because there has been some criticism with respect to the hearings. I note that we've had five days of hearings now, I believe, on this bill. We've heard from a lot of really good people. Hopefully, we'll get a chance to hear from a few more today.

You indicated that the OSSTF has had concerns about human rights for the last decade—

**Ms. Kimberley-Young:** Decades.

**Mr. McMeekin:** Decades, so I'm wondering, is this the first time you've appeared before a justice committee to talk about human rights legislation?

**Ms. Kimberley-Young:** No. I would hate to try to list pieces of legislation to which we may have made submissions, but there have been many pieces of legislation where we have certainly identified rights issues.

**Mr. McMeekin:** I'm thinking specifically of amendments to the human rights commission. Has that happened with any other government that you're aware of?

**Ms. Kimberley-Young:** We're unaware of a similar piece of legislation being debated.

**Mr. McMeekin:** That's what I thought. Was the social contract a human rights issue from the OSSTF's perspective?

**Mr. Kormos:** God bless Bob Rae.

**Mr. McMeekin:** Was it?

**Mr. Kormos:** Revealed as being one of yours.

**Ms. Kimberley-Young:** I was not a provincial representative at the time. Certainly I had my own view as a teacher at the time.

**Mr. McMeekin:** Just an—

*Interjection.*

**Mr. McMeekin:** I'd interrupt Mr. Kormos and his harangue. I just want to make the point that a previous government, on such a significant issue, one that caused me actually to leave the New Democratic Party and become a Liberal, I was so concerned about the abrogation of human rights—

**Mr. Kormos:** And now Bob—

**The Chair:** Mr. Kormos.

**Mr. McMeekin:** On the Liberal side—

**Mr. Kormos:** It hurts.

**Mr. McMeekin:** It hurts. I know we're touching a sensitive nerve here.

*Interjection.*

**The Chair:** Mr. Kormos.

**Mr. McMeekin:** Self-righteousness tends to come around to bite those who tend to practise it, admittedly most eloquently. But it was a human rights issue, clearly. The previous government had public hearings which they cancelled after the first day because the heat was so strong. I just wanted to make that observation.

I appreciate your coming out and doing the sharing that you have today. Like you, many of us on all sides of the House have legitimate and real concerns about human rights, and we're going to move this thing forward. I appreciate your coming out and your helpful suggestions. You've really modelled how to do this well. Thank you.

**Mr. Kormos:** If Bob Rae is the leader of the Liberal Party, I'll be campaigning in—

**Mr. McMeekin:** I know you don't have a good relationship with Mr. Rae. That's clear.

**Mr. Kormos:** Of course not; he's a Liberal.

**The Chair:** Mr. Kormos, order, please.

**Mrs. Elliott:** I would just like to ask a quick—

*Interjection.*

**Mrs. Elliott:** If I may, I'd like to ask the presenters a question. I'm interested if you can give me your views on some concerns that have been expressed by previous presenters about the separation of the investigation of complaints not being handled by the commission anymore and the idea that you can't separate systemic issues from individual issues and it will be more of an individualization—some people say privatization; I think of it more as an individualization—of matters before the tribunal, that there isn't a mechanism for the commission really to get hooked into those systemic issues under the

new system. If you could give me your views on that, I'd appreciate it.

**Ms. Kimberley-Young:** I'd be happy to, and I will defer some of those comments to my colleague, Maurice Green. But in terms of the amendments we've seen and some of the amendments we're proposing, access is a key issue that we are very concerned about: access to the supports, the resources, counsel and so on for any individual, as well as the geographical barriers and things that we identified here today. I will defer to my colleague to address more specifically the difference between the tribunal and commission roles.

**Mr. Green:** I agree that obviously underlying pretty well every act of discrimination is a systemic aspect, but you can't delay every single complainant's action to deal with it in a systemic way. You've got to deal with the person who's discriminating against you in a very real, quick way. It doesn't do much for a employee, when they're about to be fired or are being harangued and bullied and discriminated against, to say, "We have to have a broad-ranging inquiry into that employer." They come to a lawyer or to whoever they can for assistance and say, "How do we deal with this quickly and not have my life one hell because I'm being discriminated against?"

So you need to separate, and one of the big problems we face, whether we're defending people in front of the Human Rights Commission or are acting for them, whether it's pro bono or for paying clients, is the interminable delay in investigating. That's not to put any blame on individual people or the commission. They've hired generally fabulous people. They just have too heavy a caseload. It comes back—I hate to say it—to funding. If you don't fund the organization properly, how can they do the work? If you don't have enough police folks on the streets, how are you going to police?

**Mrs. Elliott:** I guess the concern is how the commission will gather the statistics to understand the trends in systemic discrimination if there isn't a mechanism to directly hook them into what's going on at the tribunal. That's the concern that has been expressed to us.

**Mr. Green:** It seems to me that under the amendments there is that clear ability. The commission is entitled to intervene in any matter, which is quite proper, and to take on the broader issues when it deems it appropriate. Legally, the basis is there to do it; hopefully, they will. Like every change to the system, it always looks good on paper. The question is, is it going to be carried out in practice?

**Mrs. Elliott:** That's exactly it: a more practical connection. Thank you.

**The Chair:** Thank you, folks.

**Mr. Kormos:** McMeekin, unlike you, you gutless wonder, I voted against that—

*Interjections.*

**The Chair:** Order, Mr. Kormos. Order.

**Mr. McMeekin:** We've touched a sensitive nerve.

**The Chair:** Order.

**Mr. Kormos:** "And I would have voted against it had I been there." You gutless wonder.

*Interjection.*

**Mr. Kormos:** I had the courage to vote against my government when it was wrong. You're a trained seal.

**Mr. McMeekin:** You're blaming your father again.

**Mr. Kormos:** You're a trained seal. You want to talk a big game. You go around whispering to opposition members, "Oh, if I had been there, I would have voted against the time allocation motion."

**Mr. McMeekin:** It's just all Bob Rae's fault; all Bob Rae's fault.

**Mr. Kormos:** You're a gutless wonder. You're a friggin' embarrassment to you, your party, and to your constituents. "Oh, gee, if I had been there, I would have voted against it." Oh, yeah. That's tough.

**Mr. McMeekin:** We've touched a sensitive nerve, Mr. Chair.

**The Chair:** Mr. Kormos, our next presenter is on the line, so I'd appreciate your co-operation. I don't think this is necessary or productive, so I would advise you to please remain in order.

#### RESEARCH AND DEVELOPMENT INTERNATIONAL INC.

**The Chair:** The next presenter is Angela Browne, and I believe she's on the phone. Hello, Angela.

**Ms. Angela Browne:** Hello. How are you doing?

**The Chair:** Good. This is Vic Dhillon. I'm the Chair of this committee. Welcome. Good morning. You're with an organization, so you have half an hour. You may begin.

**Ms. Browne:** My name is Angela Browne. I have a company where I work with people with disabilities. I live in the Niagara region, but my work involves issues affecting the whole province. I also represent individuals and organizations before the various tribunals, Small Claims Court etc. throughout Ontario. I also provide consulting services to various interest groups and associations about how proposed or actual legislation may impact on their work.

For example, I did a lot of work with a lot of people who were putting together their presentations for today. Most of the people I worked with were neither pro nor con this legislation. They each had something important to say, which is why I'm a little disappointed that everything was invoked by closure, because I think that a lot of what they had to say was very important. They're very different, a lot of them, and they offer very different perspectives.

**1040**

My specialty areas are human rights, social policy, employment/labour law and disability issues. I am presently writing a book on the ethics of disability advocacy, as well as in the process of publishing a number of articles on related issues in a number of online and offline publications.

I cited my consulting company as the presenter this morning because of my 20-year history of working with a variety of disability organizations and representing persons with disabilities before various bodies. At present, there are several cases before the commission that I'm working on regarding various clients' interests. Over a third of the clients I have right now have disabilities, and I feel that I can speak with confidence on their perspective on a number of issues pertaining to Bill 107.

When this bill was first announced, I had serious concerns about how it was going to be implemented. One of my questions was and continues to be whether this bill is going to be another gift to lawyers. First of all, I feel that Bill 14, which you're all familiar with, was a big gift to lawyers. Unfortunately, it passed, but I really feel that there could have been a lot more amendments that could have been satisfactory to the various communities that appeared before the committee on that issue. As somebody who is not a lawyer but who has successfully worked on human rights cases for over the last 20 years, I hope that I can continue to work with claimants at all levels of their involvement with the commission and the newly revamped tribunal. I have concerns regarding the legal support centre. I want some guarantees that I can do this work and that this work will continue to be done.

My second question rests with systemic issues and how they impact on an individual level. As a person with a disability, despite my high level of education, work with senior management and consultative capacities in the past, I'm not optimistic about job opportunities in the future for persons with disabilities. The code's requirements are not enforced in the recruitment, selection, hiring and promotion policies of many employers that may otherwise offer a good salary. Policies that may not have discriminatory intent but do screen people with disabilities out of well-paid employment is the norm where I come from. As I am getting on in age, as many of my peers are, we do not have 20 years to see things change. Mortgages and families need to be paid for today, as well as 20 years from now. Because of my concerns in the systemic area, I'm pleased to see some amendments being made to empower the commission to do more systemic work, albeit with some concerns, which I'll outline later.

Finally, I have some concerns regarding funding. Funding for people with disabilities always seems to be among the first things that are cut when budgets are reviewed. For example, people living on Ontario disability support benefits need a strong advocate to put their concerns forward to appropriate government bodies. I have been doing that sort of thing over the past few years, much of it at no pay. However, I continue to be disappointed with the response of the government, which continues to force people with disabilities to live substantially below the poverty line and choose between decent housing or food on the table. People on ODSP, as you know, are now forced by stealth to engage in workfare-type activities. While the legislation does not force them to work, many of them find they must in order

to bring the amount of money they have up to a level where they can survive, regardless of whether the person can work or not or find an appropriate job that will accommodate their needs. Because of these concerns, I have similar concerns that the commission, tribunal and legal support centre will not be given the resources they need to carry out the work they will now be empowered to do.

Amendments: I'm pleased the Attorney General is open to putting out some amendments to this bill, particularly around some of the most contentious issues that have been hotly disputed, part of the growing concern about the new human rights process. This is very important, as the Ontario Human Rights Commission and the Human Rights Tribunal of Ontario are of utmost importance to upholding and enforcing the rights to which a substantial number of my clients, as well as myself, are entitled to before and under the laws of this province. I hope the Attorney General will propose further amendments which reflect the concerns of the disability and low-income communities, members of which are the most likely to require the intervention of human rights legislation now and in the future. However, as I have not been able to secure the language of these amendments, I can only re-emphasize many of these concerns and urge the Attorney General to ensure that the language is consistent with the true intent of the proposed amendments and will not be another way to privatize or decrease access to the primary vehicle of human rights enforcement in this province.

First I want to talk about the Human Rights Commission.

(a) Systemic discrimination: The bill appears to put a stronger focus on the systemic issues. Over the years, in my view, not enough systemic issues have been investigated and brought to the tribunal. According to the bill and its amendments, it is assigning the commission to focus on systemic issues, as well as to educate and promote human rights in Ontario. The commission should be able to make its own applications to the tribunal as a party to any application, as it deems fit. This should include investigation and warrant powers in its review of systemic issues. This gives the commission a specialized role before the tribunal when it is, for example, impractical for hundreds of people to lay similar complaints to the same respondent or similar respondents. A good example of a systemic issue is transportation access, as this impacts on many different potential complainants. The commission should be able to investigate, conduct its own research, consult experts and use this information to prosecute respondents at the tribunal level.

The commission should also have the power to intervene at the tribunal in the hearing of another matter. For example, if I am presenting a case before the tribunal about transportation access issues impacting a client of mine, the commission should be able to intervene and bring a systemic perspective to the tribunal, as well as make recommendations that would be in the public interest and enforce it, as well as any other remedy that the

tribunal may otherwise award my client. The commission should also have the authority to accept submissions from organizations or individuals for consideration with respect to what systemic issues it will take on, in addition to having its own authority to find and litigate such issues.

If a systemic case is considered, the commission should be able to publish its intent on its website and other media that would potentially attract interested parties to provide input and expertise into the process, e.g., cases, research, statistics, expert testimony, etc. In complex cases, organizations should be able to access funds to provide this expertise and research to the commission, and subsequently the tribunal, to enable such issues to be heard in their proper forum.

In order to properly act in this role, the commission would receive notice of all applications to the tribunal, have access to any of the documents filed in the applications, as well as having a right to intervene. If the case is by a private individual or organization, the commission would seek that party's consent for its intervention. Investigation powers should be maintained and be enforceable at the level of provincial offences court, for example, before justices of peace, if the other side isn't complying. And the power could also be vested in the tribunal for all parties, including the commission.

In addition to the right to file systemic complaints and intervene in existing applications, the commission should also have a budget to conduct research and policy papers based on rulings by the tribunal and the courts. These papers would serve as guidelines in further development of cases, both on an individual and systemic basis.

(b) Commissioners: All commissioners should be appointed on the basis of merit with respect to their personal knowledge and expertise with respect to human rights issues. These appointments should not be limited to lawyers, although lawyers with a specific expertise in human rights policies should also be considered. It is best to develop a broad base of interests and experience around that table. As the majority of complaints appear to be from people with disabilities, at least half of the commissioners should have specific expertise in the area of disability issues and how they interact with human rights. If it is possible, persons with disabilities who also have this expertise should be considered. Other areas such as ethnicity, religion and gender should also be included as well, as cases involving these other issues require some expertise too.

(c) Advisory committees: The bill intended the commission to be authorized to appoint advisory committees on particular issues. Advisory committees would be helpful in the commission's research and investigative functions. For example, if the commission were examining practices engaged towards persons on social assistance that may potentially be covered by the code, a group of persons that would include people in receipt of assistance, legal clinic staff with expertise in a particular area, as well as community group representatives would have an interest in consulting on these issues, to review such

practices. Members of the advisory committees would be chosen by advertisement on its website, through community groups, government offices etc., and appointees would be given an honorarium and expenses for their time. There must be an effort to be geographically representative and diverse in terms of interests to ensure that good input is given.

(d) Accountability: I like the idea that the commission will now be directly accountable to the Legislature as opposed to a particular ministry. I appreciate that amendment being made because I feel that will improve some of the aspects of the legislation and perhaps make it less political, as it could potentially become.

#### 1050

Human Rights Tribunal: Bill 107 provides for direct access to the Human Rights Tribunal for any individual or other complainant. The idea for this direct access is supposed to help clear backlogs of commission-mandated reviews of complaints that can take up to five years if the issue is going to be referred. However, my concern here is that it's simplistic to believe that opening direct access to the tribunal is automatically going to clear up the backlog. It is said that there are over 2,500 new complaints in the system each year, and with these amendments, these numbers are likely to grow. For certain, if direct access is the way to go, if that's the way the government wants to do it—I'm not sure it's always the only way to go—staffing of the tribunal must ensure that it is capable of efficiently dealing with this significant caseload and possibly an increased caseload as time goes on and people become more aware of their rights.

One key issue that is currently clogging up the commission is understaffing and under-resourcing. For one complaint I had, it took until its fourth year in the system to even have it appointed to an investigator. After this investigator was seized of the matter, he was then moved to another part of the commission, and it took another three months to find a new investigator, who was fortunate enough to quickly take the matter to conciliation. We were fortunate as well that the respondent party at that point was interested in settling. This particular complaint was filed in the spring of 2002. It was finally settled at the conciliation meeting before the new investigator in November 2005 and finalized by the commission in 2006. For another complaint I filed in November 2005, it was quickly referred to mediation, where an all-day meeting settled it in February 2006. If we were not able to settle the matter that day, I'm sure our client would have had to jump through hoops for at least another two to three years or more, despite the fact that we had an excellent prima facie case that would work before the tribunal under direct access.

I have other matters still in the system; for example, two filed in March and another in June this year, as well as two others recently. It took the commission almost four months to mail us the reply by the respondent for one of my March complaints, even though the respondent did reply within the prescribed deadline. When I asked what was going on, they told me there was not enough

staff to handle the caseload. They apologized immediately and e-mailed somebody who then mailed me a copy of the respondent's reply. I believe that if they had enough resources, we would not be having these situations. I believe that they would have been able to quickly do their job and do things. But I'm telling you, this same scenario could easily be played out in the tribunal if it is not well staffed and resourced to handle direct access. I am emphasizing this because once the new system is in place and promotes new direct access, many more people will be bringing their complaints forward.

A substantial amount of transitional funding must be considered as well, as many complaints are now being processed through the commission's current system. If they're going to be brought to the tribunal at some stage, there needs to be a way of assessing where each complaint is and who is responsible for the carriage of the file. Perhaps transitional funding to allow the commission to process the complaints more quickly would be favourable, while new complaints would be filed after a certain date to start with the new system. As older complaints are dealt with through the commission and leave the system, are settled or get referred to the tribunal, no additional complaints could be started at the commission level. And as each complaint makes it through all the hoops under the transitional funding, resources devoted to these complaints could then be shifted over to the tribunal to capture the new complaints.

A maximum time period should be set in legislation or regulations with respect to each stage of processing the complaint. For example, a complaint is received and reviewed; it should be served in no more than 14 days. A reply to a complaint should be submitted within 30 days. A rebuttal should be made within 20 days etc., with some flexibility to accommodate individual needs. The tribunal should be geared to deal with each complaint from the date it is filed until the final hearing at the tribunal within 12 to 18 months maximum. For priority cases, the time frame should be much shorter.

While I realize the tribunal will likely conduct its own consultation with interested parties following the passage of this legislation, I have some other comments to make about the role of the tribunal.

(a) Rules of practice of the tribunal: If this legislation is passed, work will need to be done with regard to practice directions. Consultation with representatives and others with an interest in working at the tribunal should take place immediately to ensure that a number of matters are attended to, such as self-drafted complaints. People should not always have to worry about submitting things in the proper form or having their complaints dismissed because it is not in the proper format. There should be some guidelines to indicate what should be in the form and what should be in the complaints, so that when people self-draft, they would make sure they include it, and not be thrown out just because somebody missed one dotting of an i or crossing of a t. Many practitioners, even complainants themselves, prefer to draft

their own complaints on their computers, as it is easier for them. Also, there should be forms to download for those who like forms to be downloaded. So there should be some flexibility.

I notice that time frames have been extended from six months to one year following the most recent act of alleged discrimination or harassment. I thank the Attorney General for considering this extension. However, there are sometimes cases where an extension of even that time limit is required. The commission often exercised its discretion in certain cases to permit a complaint to be filed past the six-month time limit, but this discretion should be issued in guidelines under practice directions. There should be an application to extend time frames if the party needs more time. For example, there's a process in the Criminal Injuries Compensation Board for this.

Mediation should be voluntary and also be included in the rules of practice. In the current situation, many complainants are intimidated or frustrated into taking inadequate settlements because they know that if they do not accept the settlement, they'll be in for a four- or five-year fight. In other situations, mediation may not be possible between a complainant and respondent due to the severity of the issues involved.

In the Ontario Rental Housing Tribunal, there are trained mediators who attend each hearing block and avail themselves to parties who may also wish to settle the matter by mediation. The tribunal may choose to retain expert mediators to serve this purpose. Many current commission staff have this expertise and should be re-employed in the role at this tribunal.

With respect to any voluntary mediation, the date for mediation should be set separate and apart from the date of the hearing, unlike with the Ontario Rental Housing Tribunal, because otherwise it gets backlogged and disorganized, and there could be problems with confidentiality.

Dismissals of a complaint should only be contemplated for good reason; for example, the commission has clauses 34.1(a), (b) and (c), as well as section 36, as a tool to discard a complaint that may be out of jurisdiction, frivolous, vexatious etc. If there are plans to empower the tribunal to dismiss complaints, the complainant must have written notice with specific reasons as to why the tribunal wants to consider this action. If the complainant disagrees with this action, he or she must be given an opportunity to have a hearing on the matter. The reasons for dismissals as drafted in the legislation should be clear and not open-ended.

Hearings and other procedures before the tribunal should be set up to accommodate persons with disabilities and certain other issues, such as if their first language is not English or French. The Social Benefits Tribunal has developed a policy of accommodation for appellants before their body; similar rules should apply to the tribunal as well. As the person starts to fill out their complaint, their accommodation needs have to be identified and provided as necessary. The proposed legal

support centre should have the resources as well as the authority to bring in language interpreters, including ASL, as required to ensure that access is provided right from the beginning.

**Priority status:** There should be guidelines for people who want to have their complaints heard in priority. If the complaint is heard too late when something needs to be heard immediately or dealt with immediately because sometimes a person is in danger of eviction or of losing their job, there should be some guidelines about how a person could ask for priority status.

Appeals from the commission and the tribunal are important. There should be some access-to-appeal routes. For example, WSIB has appeals strictly on the question of law, and some tribunals have it if the appeal and the decision were patently unreasonable. Those two reasons should be reasons for appeal. If the tribunal makes a decision that a person is not happy with, then those are the two reasons that can be brought to an appellate court.

Tribunal members should be knowledgeable and experienced in human rights. Again, some should specialize in commonly filed issues such as disability-related cases. Further, some appointees could be lawyers; others don't necessarily have to be. Those appointed to the tribunal must have at least a university degree and some proven experience or expertise in human rights.

The tribunal members should be trained. There should be an extensive training period for each tribunal member because of the sensitivity of the issues they're dealing with. Justices of the peace receive extensive training in their roles. I don't see any reason why tribunal members of the Human Rights Tribunal shouldn't also need this training.

The tribunal adjudicators should also be independent. They should be appointed for fixed terms to avoid political influence. They should have the confidence that they have independence with regard to the decisions they make, free of external influences. Some adjudicators can be part-time, others full-time. Each should have the resources of the tribunal at their disposal. Some can specialize, for example, in certain kinds of cases—employment, disability, transportation etc.—or they can have more than one specialty.

#### 1100

**Issues regarding the legal support centre:** In recent amendments, it was promised that a legal support centre would be included to ensure that complainants have the legal support and advice they need right from the start to file their complaints, all the way through to representation at the tribunal. I am pleased that the Attorney General is at least thinking about this issue, as removing this function from the commission would naturally necessitate another source of legal support for complainants, most of whom do not have the resources to pay for their own legal counsel. The authority of investigation and enforcing warrants must also be available to legal representatives working on any case. The tribunal should be able to order disclosure or access, for example, if a respondent is not co-operative. Resources should also be

available for the purposes of securing expert witnesses, medical documents or other evidence that would support a complaint at the tribunal or pre-hearing level.

However, my concerns about the legal centre would be as follows:

(a) **Funding:** How much funding will it receive? Has the Attorney General's office considered how much money it will cost to employ the number of lawyers and paralegals it will require to support the legal support centres to function, especially if you're going to be providing legal counsel to all comers, regardless of income or representation from trade unions? Particularly, the legal support centre can only be effective if it has the resources it needs in order to do this job.

(b) **Structure:** With an average of 2,500 complaints coming in per year, plus many more with direct access, how much staff will realistically be required to carry out this program? If it is under-resourced, potential bottlenecks will be created at the start of the process, when many people may have to wait until a legal representative is free to serve them, something not uncommon at legal clinics.

(c) **Non-lawyers:** They should be able to continue to represent complainants or respondents before the tribunal, provided they have experience and understand their role at this forum. I'm very concerned about comments made by members of organizations like the Ontario Bar Association and others who may want to restrict this representation to only lawyers. Non-lawyers and lawyers can be employed by the legal support centre. Both types of professionals must have training and familiarity with human rights law and be willing to be trained in the practice rules for the tribunal in order to practise before the tribunal. The tribunal will be depriving the public of years of substantial knowledge and input with respect to human rights expertise by individuals who have already been involved with the system for years, but who are not lawyers. Further, inclusion of non-lawyers will be a cost-effective way of maximizing value for dollar for legal services provided to users of the legal support centre.

(d) **Geographic representation and access:** This is an issue for which many people will need assistance. We need regional offices so that there are legal support workers in Niagara region, Owen Sound, Barrie and Toronto, just so that people could be able to walk in, telephone, fax or TTY access for someone in the same region. Talking to someone on the phone is not the same as meeting somebody in person and being able to start right at the complaint issue.

I suspect that there probably would be at least three legal representatives or consultants plus one administrative assistant per legal support office. The role of all legal staff would not just be preparing for hearings, but would be assisting people in drafting complaints, answering questions, properly serving respondents, following up with respondents etc., as well as assisting a person through the complaint process, up to the tribunal if necessary. That could be set up like the workers' advocacy centre for the WSIB or it could be set up where the gov-

ernment contracts with private parties in different regions to provide services. I provide services to people already; I already have an accessible office. People can come to my office and something like that could be contracted to, as well as other firms in my region. That would be cost-effective as well for the ministry because you're just paying people to do things per service.

Another way is setting up a central legal support centre with authorized providers at the local level that would liaise with the centre and accept clients as demand is made of the program. This is similar to the rights adviser program under the Psychiatric Patient Advocate Office. Providers bill the program at set rates as they do work and follow through with their clients all the way to the tribunal, if necessary. The central office will be responsible for training, provider support and administration of the program.

In any case, however the legal support centre is set up, people should also have the option of hiring their own representative if they should so choose, or use the centre's resources, depending on personal preference.

In summary, the key to making this proposal a success would be to: (a) ensure that transitional funding is available to the commission and tribunal to move through existing complaints in the system; (b) develop transitional directives to ensure that existing and new complaints are dealt with from the correct forum and all files are properly reviewed to ensure that the correct party has carriage of the matter; (c) empower the commission to initiate, intervene or accept submissions from third parties on systemic issues to litigate through the system, and fully resource the commission to do so, including soliciting full input of respective communities and expert panels; (d) ensure the tribunal is appropriately resourced to take on its new role and to handle the substantial numbers of complaints that are likely to remain in the system or join the system after this bill is proclaimed; (e) ensure that both commissioners and tribunal members are well qualified, with particular expertise in human rights issues, as well as having several commissioners with expertise and experience with disability matters; (f) non-lawyers as well as lawyers should be considered for both positions; (g) the legal support centre should be fully resourced, accessible and geographically located throughout the province to enable community-based legal support and representation in this specialized area; (h) non-lawyers with experience in the human rights area should also continue to be allowed to represent complainants or respondents at the tribunal level, as well as be employed by the centre; and (i) individuals and organizations should continue to have a choice to seek representation through the centre or to hire their own lawyer or paralegal.

But, most importantly, if the three pillars of this new system are not properly funded and supported, direct access will not be a reality and similar problems we're currently experiencing at the commission will be simply passed to the tribunal.

Thank you for allowing me to speak today.

**The Chair:** Thank you very much. We have about a minute for each party. Mr. Zimmer.

**Mr. Zimmer:** Thank you, Ms. Browne. I just want to make one point here. On page 10 of your submission, talking about qualification of tribunal members—

**Ms. Browne:** Yes.

**Mr. Zimmer:** Those appointed to the tribunal must—must—have a university degree. I'm surprised to see that in your submission, and I've got to express my concern about that.

I don't know what is so magical about having a university degree that qualifies, or the absence of one that would disqualify, someone for a position like this. I think the important thing is that they have a sensitivity and understanding of human rights.

I, for one, come from a family of several siblings. I was, because of circumstances, fortunate enough to get a university degree, and my life took a turn. I have siblings who went in another direction. That's just the force of circumstances. Under your proposal, notwithstanding their understanding of and commitment to human rights, they'd be barred from the tribunal. There are legislators who have and have not university degrees. I have to say I find it strange coming from an advocate of human rights, as you are, that you would include that artificial barrier to participation in the tribunal. I just wanted to note that for the record.

**Ms. Browne:** Well, I have several university degrees, and I haven't been able to get work. However, I can understand your point. It's taken.

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

**Mrs. Elliott:** Thank you, Ms. Browne, for your very comprehensive and thoughtful presentation. There's one thing that I would just like to point out. You noted that one of the amendments suggested that the commission would now be accountable to the Legislature. In fact, it doesn't actually say that, but I think it should. Certainly that would be something that we would propose as an amendment, that it should be accountable to the Legislature in the same way that the Ombudsman is.

Secondly, I share your concern with respect to the third pillar being the fully funded human legal support centre. Although I do have a concern about how it will be funded, what form it's going to take and how it's going to operate, I share the concerns that you do. So thank you very much for highlighting that.

**Ms. Browne:** Definitely. When you don't give a specific number or a specific staffing level, I'm always concerned that this is going to be turning out to be the same problem that we currently have.

**Mrs. Elliott:** I agree. Thank you.

**The Chair:** Mr. Kormos?

**Mr. Kormos:** Howdy, Ms. Browne.

**Ms. Browne:** Hi.

**Mr. Kormos:** I'm inclined to agree with Mr. Zimmer. The vast majority of members of the Legislature have university degrees, and I don't know; I'm not sure it has necessarily enhanced the quality of decision-making here at Queen's Park.

Look, I just want to thank you very much. You've always prepared extensive and well-researched material in the context of submissions you've made to any number of legislative endeavours here. I am sorely disappointed that the government appears hell-bent on adopting the so-called direct-access model; I don't think it's the way to go. But having interpreted their closure motion as a strong signal in that regard, you've made some valuable comments that Mr. Zimmer has faithfully recorded on his BlackBerry. He assured me that that's what he was doing with his BlackBerry, and I know he does. He uses his BlackBerry to record comments made by submitters like you.

**Ms. Browne:** Oh, he does, eh?

**Mr. Kormos:** Yes, he does. Thank you, Ms. Browne.

**Ms. Browne:** Well, I do certainly hope that these points are taken. It just seems that the government is very, very eager to move forward on the direct-access model. As I said, it's not necessarily the only model or necessarily the best model, but if they're willing to move forward on this, I feel that my suggestions are probably the best to make this model work most effectively.

**Mr. Kormos:** You've got some strong points. I hope the ministry takes them into consideration.

**Ms. Browne:** Thank you very much, Peter.

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

1110

#### MULTIPLE SCLEROSIS SOCIETY OF CANADA, ONTARIO DIVISION

**The Chair:** The next presenters are from the Multiple Sclerosis Society of Canada, Ontario Division.

**Ms. Cathy Topping:** Thank you for the opportunity to present the views of the Multiple Sclerosis Society of Canada, Ontario Division, on the proposed changes to the Ontario human rights system. My name is Cathy Topping and I am a volunteer for the MS Society from St. Thomas. With me is Deanna Groetzinger, MS Society vice-president of government relations.

Another MS Society volunteer had the opportunity to present to this committee during the hearings in Ottawa this summer. At that time, we called our presentation "Rights in Jeopardy," and frankly, I was hoping that we would be able to change the title of our presentation today to something more positive. Instead, the title reflects the questions that continue to arise as we review Bill 107. Although we are pleased with some of the amendments that the Attorney General tabled last week, we'll have some comments about the amendments in a few minutes. But first, some background about the major concern that we still have with Bill 107.

I have had MS for 29 years, and over the past 20 years I have worked for greater accessibility and inclusion for people with disabilities in St. Thomas. As part of my work, I have been able to turn to the Ontario Human Rights Commission to resolve an issue in my home community.

Some background: I learned that a large department store on the outskirts of St. Thomas would not allow public transit buses to stop in front of the store. Instead, they had to stop on the street, which was a considerable distance away across a busy parking lot. This situation was truly dangerous for everyone, but especially people who use wheelchairs, scooters and canes. A friend who is blind and whose wife uses a wheelchair filed a human rights complaint. This in itself was an ordeal, since he was first told by Human Rights Commission staff that it wasn't a human rights issue. We persisted and an investigation was started.

The case reached mediation. Imagine how I felt when we entered the room and found the company property manager, her supervisor and a company lawyer lined up against my friend and me in my role as his consultant. But I soon realized that mediation is not the same as litigation and, in fact, the mediator was committed to finding a solution that was equitable to all. Thanks to some creativity, it was agreed that one of the public transit buses could stop in front of the store with connections to other city buses.

I wish I could tell you that we have a happy ending and that people with disabilities are using public transit in St. Thomas every day to reach this store safely and effectively, but unfortunately the city decided that instead it would prefer that people with disabilities use Paratransit, at greater cost to themselves and to the city. At this point, we have filed another human rights complaint—again, I should add, with some difficulty, because the Human Rights Commission staff in Toronto initially insisted that the issue was not one of human rights. However, it was, and continues to be, a learning experience. What impressed me was the mediation process and not having to feel that my friend and I were on our own when faced by experts and lawyers who lined up against us.

I'll now ask Deanna to review the proposed amendments to Bill 107 and provide our further recommendations about the need for mediation to be included within the Ontario human rights system.

**Ms. Deanna Groetzinger:** Thanks, Cathy. The MS Society has provided input for improving Bill 107 several times throughout the consultation process, and we are pleased that a number of our recommendations have been included in the proposed amendments.

We asked that all human rights complainants be guaranteed the right to publicly funded legal representation at all tribunal proceedings. The proposed amendment which establishes in the legislation a human rights legal support centre appears to meet this recommendation. The MS Society is pleased that this support centre is legislated, which provides it much greater protection from the whim of future governments and Attorneys General. We would like to stress, however, that the human rights legal support centre must be well funded from the very beginning and in the following years to ensure that complainants get the support they need. I'll return to that point a little later.

We urged that human rights complainants not be charged user fees or be made liable for the legal fees of those who have been charged with discrimination. The proposed amendment removes the ability of the tribunal to charge user fees or to award expenses, so we are pleased with this important change.

We also recommended that Bill 107 ensure that the Human Rights Commission maintain a true investigative and support function for human rights complainants by providing meaningful investigative and enforcement powers to the disability rights and anti-racism secretariats. The amendments to improve the commission's investigative and public interest powers appear to meet this goal.

The amendments to require appointees to the commission and the tribunal to have expertise and experience in human rights and to reflect the diversity of Ontario are positive and just make common sense, as does having the commission and the tribunal report directly to the Legislative Assembly.

We certainly very much applaud the extension of the limitation period to file a human rights complaint from six months to one year. In fact, we strongly suggest that this period be extended to two years, which is the period for many civil suits. However, there is still room for improvement.

I'd like to bring the committee's attention back to Cathy's account of the importance of mediation in the case in which she was involved. One of our major concerns with Bill 107 as initially presented was the removal of any kind of mediation from the human rights complaint process. In our view, involving the Human Rights Tribunal as a quasi-legal entity from the very beginning might make dealing with complaints unnecessarily adversarial.

With that in mind, we reviewed with considerable interest the recent amendment that would allow the tribunal to be able to make rules of practice and procedure, including alternatives to traditional adversarial or adjudicative procedures. If this indeed opens the door to a mediation process that is focused on finding equitable solutions and not on minute interpretations of fact, then the MS Society supports its inclusion. The devil, as usual, is in the details. The MS Society urges this committee to examine that part of Bill 107 very carefully and to further amend the bill to provide a mandated mediation procedure.

I want to come back to the funding issue. We've heard constantly this morning that the proposed human rights legal support centre must be well funded for it to be able to function effectively for Ontarians with human rights complaints. The Ontario Human Rights Commission was frequently and rightly criticized for failing to process, investigate and support human rights complaints. It has been criticized for being an inefficient gatekeeper and, worse than that, for being patronizing and removing control from human rights complainants. The proposals in Bill 107, as amended, should provide a better way to handle human rights issues in Ontario, but if this and

future governments do not commit to appropriate funding, then unfortunately we will be back where we are today.

#### 1120

With that in mind, we urge this committee to ask the Attorney General to tell you—to tell all of us—how much funding will be available to the human rights legal support centre in its first year of operation and to provide projected funding for the following five years. We need to know that now, as a measure of the government's commitment to a truly effective human rights legal support centre. Telling us to wait for the budget is just not good enough.

Finally, along with countless others, the MS Society is very disappointed in the government's move to invoke closure on Bill 107, which prevented many organizations and individuals from providing valuable recommendations about how to improve Bill 107. This decision was counter to the promise made earlier that there would be full and extensive consultations this fall.

Cathy and I are pleased to be with you today. We are very sorry that many others do not have this opportunity. So today, we ask the committee members here to use their influence to convince the government to allow these hearings to continue as promised.

Opposition members have offered to quickly debate the legislation early next year following a full schedule of public hearings. This is a reasonable compromise, in our view, and we hope committee members will urge the government to accept.

Thank you, and we look forward to your questions and comments.

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

**Mrs. Elliott:** I have to say I'm in complete agreement with you, especially with respect to the legal support centre. It is the linchpin, the fundamental piece of this legislation that has to be right in order for it to be successful. Yet while we've heard the Attorney General promise that everybody is going to have representation by a lawyer, he has also been quoted as saying that he's not putting more money into the system. So we're really left in a quandary. We don't really know what the intention is, and we've had no indication of where the funding is coming from, how much it's going to be or even what form the centre is going to take. So I completely agree with you on that.

Secondly, with respect to the compromise position you just proposed, I also think it's quite reasonable. It was put forward by my party leader, John Tory. It's not going to delay the process unduly. It will give us the opportunity to hear from the hundreds of people, frankly, who want to make presentations. I have to say that I'm learning something different with each presenter. I'm learning another aspect to be considered. The mediation process that you have raised is significant and something we've not heard very much about.

To me, it's a reasonable compromise. Mr. Kormos and I are prepared to sit all day—extended hearings. We

think it's vital that we hear from everybody on this. So again, I would also urge the government committee members to take that forward. It's a reasonable accommodation, and I'd urge you to consider it in the interests of all the many people who want to be heard.

**Ms. Groetzinger:** Thank you. We certainly learned a lot this morning, sitting in as we were able to from 9:30, listening to all the presenters. So I urge the government side to take that back.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** Thank you, folks, very much. You should know that this isn't a new offer. It had been the agreement to sit through the winter break and have this matter ready for third reading and reported it back to the House for the session that commences on March 19. House leaders had agreed to that as recently as three weeks ago. So the time allocation motion came as a surprise—I say it came as a surprise; I could sort of read the writing on the wall.

Let's talk about your proposals around mediation. I'm a big fan, believe it or not, of dispute resolution and I think that, properly done, competent mediation is an incredibly effective tool. One of the problems that people have with the commission is that 11% or so of claims are denied pursuant to section 36. Effectively, these are people—again, we haven't had a chance to discover how capable that decision-making has been—who are being told, "Sorry, your claim, your grievance, doesn't fall within the scope of the legislation." The fact is that it's a law; it's the Human Rights Code and it outlines what constitutes discrimination. If you don't fall within the legislative categories, then you may well have been discriminated against, but not pursuant to the Human Rights Code. The commission has resolved over 40% of all cases with mediation. My concern with the proposal is this: The tribunal says that it will include mediation as a dispute resolution process, but before it can be allowed to do that, there has to be agreement that the complaint falls within the literal scope of the act such that the tribunal has jurisdiction. Do you understand what I'm saying?

**Ms. Groetzinger:** Yes.

**Mr. Kormos:** Yes, it is important that there be a capacity to resolve concerns, disputes, grievances about discrimination even if they don't fall within the letter of the law. This is what I think you're saying. The commission had a far greater capacity to do that than the tribunal will, because a respondent who is brought to the tribunal will be able to raise immediately—you want direct access; you got direct access because the respondent has direct access too—an objection to the tribunal's jurisdiction. It can say right off the bat, "The tribunal has no jurisdiction over me because the complaint, as written, doesn't fall within the scope of the act." That, in my view, is going to exclude a whole lot of the iffy cases—and I don't mean iffy as to whether or not there's discrimination, but iffy as to whether or not the act technically applies—from mediation sponsored by the commission/tribunal. That is truly, truly regrettable.

For instance, you talked about the city case, the city bus pulling up in front of the doors of the shopping plaza, the mall. Clearly, a commissioner had made a determination that, however regrettable that choice was by the city or mall, it wasn't something that was covered by the act—and fair enough. But, at the same time, mediation was available to the parties, and you got a resolution. That's a good—

**Ms. Groetzinger:** Sort of, yes.

**Mr. Kormos:** But otherwise nothing would have happened, right?

**Ms. Groetzinger:** Right.

**Mr. Kormos:** Because the argument was that it didn't fall within the literal scope of the legislation. This is the beauty about mediation: The parties can devise incredibly creative solutions by putting their heads together and working collaboratively, like we do here in the committee—I was being sarcastic—and finding solutions to a problem instead of relying upon an adversarial-based system. No matter how much the tribunal says it's going to relax rules, etc., it's still the adversarial system. That's, I think, important if you're talking about the broader-based, systemic discrimination where you want to have hard, universal, province-wide decisions or decisions that impact on the province. But when you've got these one-offs that may not fall under the letter of the law, they'll be tossed out of the tribunal in a New York minute, because the respondent is going to argue—the first instance—"No jurisdiction." The tribunal has to say, "Oops. No matter how flexible our rules are, we've got no jurisdiction. Ciao, see ya later, so long, been good to know ya." So I think you make an incredibly valid and important point about the incredibly important role of effective mediation. Unfortunately, notwithstanding the arguments that are being made, the direct-access model may well curtail mediated resolutions, and that's a problem. I don't know—because there's nothing in the amendments that addresses that, and nobody is talking about creating an alternative stream that should be literally an alternative stream that's legislated that says that you perhaps opt for mediation. There's nothing in the law that permits that now.

1130

**Ms. Groetzinger:** That's right, and that's exactly why we raised it today. While we saw the amendment about the tribunal being able to make different rules of practice as a really good step forward, perhaps opening the door to this, I see the role of this committee, as you go forward examining the bill, hopefully more than just today—if we get that change started, at least making some recommendations or making an amendment to the bill to actually include in there some type of mediation; I think that's really the major point that we want to bring forward today.

**Mr. Kormos:** And you make that point well.

**Ms. Topping:** Also, when we were at the tribunal, and it's a major shopping store in Ontario, the mediator said—

**Mr. Kormos:** Wal-Mart did it again?

**Ms. Groetzing:** No.

**Ms. Topping:** No, we didn't say that. They said that this could be a class action suit across Ontario, and it could have been.

**Mr. Kormos:** You see, the problem is that it can't have been, because you don't have access to the courts on discrimination. That's the problem. You're precluded from using the civil courts. The Human Rights Tribunal has exclusive jurisdiction over human rights complaints unless they're ancillary to another action. In other words, if you got hit by a car, walking from the bus stop to the front door—huh, Mr. Zimmer?—then you might be able to add the discrimination claim on as part of it. The bill preserves that ancillary tort, if you will. So you guys are bang on on the mediation stuff. I don't think the government has addressed that.

**Ms. Topping:** Hopefully they will.

**Mr. McMeekin:** My good friend Peter Kormos makes some good points about mediation in affirmation of your obvious flagging of that issue. Hopefully the government will listen on that, so I want to thank you for that.

The Muscular Sclerosis Society of Canada has a long and very distinguished history of championing human rights issues for not just the persons associated with them but for all challenged folk. I can recall, some 30 years ago when I was the youngest member of Hamilton city council, that I had a chance to work with the MS Society and other societies to champion the introduction of the DARTS system in Hamilton. To this day, there continue to be some challenges with that system, so I appreciated your story very much as well.

You've commented that you've had the opportunity to have input several times through the process; that clearly shows. I appreciate your positive comments about the proposed amendments and your very reasoned and assuredly positive comments about mediation about how we can make the system better.

Is there anything else you want to say about mediation or about specific changes in that area that you want your government to hear today?

**Ms. Groetzing:** I think the part that impressed Cathy and me, when we were viewing what happened in this particular case, was the fact that it wasn't turning on minute legal details—not to say anything against lawyers, because the system obviously needs lawyers.

**Mr. McMeekin:** You want the benefit of the doubt.

**Ms. Groetzing:** Yes, but the mediator was able to bring a broad range of thought to it. It wasn't just turning on legal points, but there was a thinking-outside-the-box kind of issue. I don't know how that can be legislative, but I think a process can be legislative.

Cathy, was there anything in particular that you felt?

**Ms. Topping:** I felt comfortable with the mediator when I realized that the lawyers and the other people there were on the same plane as I was.

**Mr. McMeekin:** As one who has had some training in mediation, I think that process is really important, and I appreciate the comments that you've made. Thank you for your great advocacy work. I appreciate it.

**Ms. Groetzing:** Thank you.

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

**Mr. Kormos:** I do want folks to say hello to my good friend, my new good friend, Ted McMeekin, who interestingly reveals himself as having an interest in dispute resolution.

*Interjections.*

**Mr. Zimmer:** Mr. Chair, can we take a few minutes?

**The Chair:** Sure.

**Mr. Kormos:** Middle-aged-male break?

**The Chair:** We'll take about a three-minute break.

*The committee recessed from 1135 to 1141.*

#### LOW INCOME FAMILIES TOGETHER

**The Chair:** The next presentation is from Low Income Families Together.

**Ms. Josephine Grey:** Good morning. First of all, I want to thank you for the opportunity to present. I gather it's a fairly privileged position at this point, unexpectedly. Actually, the change to the process has changed my presentation somewhat. I want to apologize for not having a document for you. I was beginning to work on such a thing, but my computer crashed on the weekend and that was the end of that.

**Mr. McMeekin:** I know the feeling.

**Ms. Grey:** Yes, very frustrating. I'm going to be pretty much off the top of my head. However, I'm going to raise some issues that have been disturbing myself and my organization for a very long time.

I am a mother, a widow. I've been raising my children in a poor community for over 20 years, and I've had several instances where I felt very strongly that I would like to be able to take a case to the Human Rights Commission because of very clear forms of discrimination that myself, my family or others in my community faced.

I'll back up a little bit because I think this is an important point. I don't think you're going to hear this from everybody else, or if perhaps there were more hearings, you might have, but at any rate, while I have issues with Bill 107 and definitely issues with the process, I want to go further back and discuss an issue that myself and my organization have had with the commission and the code for a very long time.

As I was saying, I've raised four children on my own in a poor community for over 20 years, and there have been a number of instances where I felt that perhaps the only recourse or remedy for the situation I faced would be logically the Human Rights Commission, particularly because of its accessibility. However, the code doesn't actually cover most or many of the situations that I faced. The problem is that the code leaves out a very specific group, and that group is people living in poverty. The problem with that is, when a lot of people face discrimination because of poverty, they look around for something in the code that they can attach to in order to be able to take a complaint, and because the discrimination actually was poverty itself and the other ground, be it age or disability or whatever, was not necessarily the specific

cause of the problem, the case becomes weak. Although the discrimination was very clear, the problem is very clear, it's definitely systemic and definitely needs to be resolved. So then we have a lot of cases coming through where the ground being used is actually a proxy for the real issue. Personally, I found it offensive and abhorrent to be required to do that in order to challenge something that was clearly directly based on my economic status.

To give you an example: I'm a social housing tenant. I'm a rent-geared-to-income tenant. There were times when I paid as high as \$1,400 and \$1,500 a month for my kind-of-four-bedroom unit. When I was clearly facing discriminatory practices in terms of maintenance and the way I was being treated by my landlord and you could see the vast difference between the way I was being treated and the people paying market rent were being treated, I just didn't want to have to pretend that it was my racial background or come up with some kind of fudgy proxy for the fact that no, I'm being treated poorly because I'm an RGI tenant, which is because I'm a poor person, which is because I'm a single parent, whatever. The problem is that poverty is often caused by subtle systemic discrimination, but once poverty becomes the core of the issue, it's moot.

How serious is this? It's so serious that, because there is nowhere, in domestic law within Canada, protection for people who are discriminated against because they are poor, I was able to take a report about this province, about human rights violations in the area of economic, social and cultural rights, directly to the United Nations in Geneva. That's a very unusual path to be able to take. You usually have to exhaust all domestic and regional remedies first, but we haven't signed the OAS economic, social and cultural rights covenant and we don't have any domestic protection, so I'm able to go directly from my house to Geneva.

That's embarrassing, I'll tell you, because most countries in Europe will include economic status in their codes. In fact, most countries in the southern hemisphere will acknowledge poverty as a ground. But here we are in the wealthiest country practically in the world and we refuse to acknowledge poverty—well, we tend to refuse to acknowledge its existence, but this spreads throughout our system and creates a huge flaw.

So I've had a big problem with the commission for a long time because I didn't want to play. I didn't want to pretend that there was another issue. Now I'm formally considered disabled and I'm in a position where I can actually take a complaint to the commission to resolve the fact that I've been living in miserable conditions for over 20 years and it has had a devastating impact on myself and my family. Frankly, I'm more thinking that maybe I should do a lawsuit because there has been a lot of damage, but it's a pity that I have to wait until my kids have been screwed up, my family and my life have been screwed up and I now probably justifiably could be compensated by a lot of money. I shouldn't have to go through that and go that route and take a lawsuit when I should have been able to originally go and make sure I

was treated fairly in the first place. I think that's a big problem, and I shouldn't have to wait till I'm disabled by the situation to have a ground to go to the commission.

One of the main reasons I wanted to do it is because I wanted everybody living in housing to be treated with some respect and dignity and have their housing be safe and workable. My water doesn't work at least half the day, every day. My power spikes or goes out. That's why my computer crashed and I can't bring you a document: because it spikes and goes out regularly.

I have no fire safety exit. I have a leaking roof. I have mould. There are so many problems in my house. My house has been broken into over 15 times. I've been robbed repeatedly because it's not secure, but none of this matters because I'm just an RGI tenant and that's because of poverty, and this commission couldn't do anything for me. So you have a problem.

However, I don't expect this process or this bill to address that. What I would like to see, however, is an honest commitment by this government to human rights in this province to the extent that we could be certain that the government would consider such a thing and figure out a way to close that hole, close that gap.

I will remind you that state parties to the Covenant on Economic, Social and Cultural Rights include provincial governments, and this province has done absolutely nothing, although we've gone three times now to Geneva to show how Canada and the provinces are utterly failing to protect our economic, social and cultural rights in many ways. So that was really the main issue I wanted to raise in this discussion around Bill 107 and the commission.

#### **1150**

However, to back up a little and get back to the matter at hand that most people are discussing, I want to add my voice to some of the issues that have been raised, particularly with the process. One thing that made me feel there was a reason to have faith in government back in the late 1980s and early 1990s was that I observed a process of legislative reform that I think really seriously made an effort to consult stakeholders, to consult people affected. It was social assistance reform. This was of course stopped in its tracks and basically done in by the federal government's change to the Canada assistance plan and everything. However, what I observed in Ontario was an honest-to-God effort to involve people who were directly affected by the system, who were clients, people who worked within the system who were part of the delivery, people who had expertise about the system, whether they be lawyers or whatever. It was a broad process. It involved a variety of different methods to gain input, and I think something on that scale is required for this.

I think we're talking about not just a body, a mechanism; we're talking about something that contributes to our whole identity as a society. We're talking about something that can give people a sense of faith in government and government, in the remote idea of accountability. I think people's view of politics, democracy and

governance is becoming more and more cynical, more and more despairing, and at this moment of all moments in our history as a country, it is really dangerous to be looking for a quick fix, for a way to just make this efficient and convenient, a budget-cutting exercise, which as far as I can see is all that it's about.

This is a dangerous thing to do. We already have a lot of anger and cynicism around governance and politics in this province. I think this is going to leave scars on our body politic that will take forever to heal, because if people are not heard, if they're not engaged, if they're not involved, if they don't feel like they were part of this process of bringing about a human rights system that's meaningful, we're not going to have a working democracy for quite some time. Those who care the most about participating in democracy tend to also care very much about human rights and how they're managed. If we want to have that kind of acrimony and anxiety and distrust continue on for decades probably, this is a good way to do it.

I myself am really frustrated. I was already a bit frustrated about the whole process, but when I found out that the people who work within the system have not been given a voice, have not been given access to this process and not been consulted, I was appalled. I could not believe that. So I went and consulted. I'm a person who wants to be a client. I'm on disability, but I can pick up the phone. I consulted with people who work within the system—subtly, because I didn't want them to feel like they were doing something they shouldn't do. I consulted them as a potential client with what the issues are that they face. I said to them, "I've been told I can come to the commission, but it's going to take me about five years. That's too long. My conditions need to change sooner than that. What's going on here? What is the problem?" They were very clear about it. They feel they would be able to handle my case but there aren't enough resources or enough people.

That's a simple thing. This is not complicated. If you want the machine to run—I hear this metaphor about the engine in the car needing to be fixed. First of all, if you run an engine on low gas and without oil, it breaks down. This is what appears to have happened to me. I'm not saying it's flawed—and I don't like section 36 either. I think there's a lot of issues with the gatekeeping. However, it was pretty clear that a person like myself would have been able to have a resolution to my issue were there enough resources there, now that I'm disabled. Let me just make that point.

That was really obvious to me, that people within the system are the people you should be talking to, at least in part. Don't tell me there's a conflict of interest. I think a lot of the people who have been able to give a lot of input to this did have a conflict of interest. The people who work within the system have, no more so than they did, and they're the ones who know best. If we go back to the engine analogy, when you're fixing a car, surely you talk to the driver about the problems they're experiencing on the road. Furthermore, if we're going to have this whole

exercise to fix the engine, and that's allegedly the whole problem, doesn't it need fuel once the engine's fixed and don't we need to know that we're going to have a steady fuel supply so there's actual funding to make this thing run?

One thing I'm really concerned about is, there's been a growing trend in our governments to say things that they don't back up with actual delivery, that they don't back up with accountability mechanisms, that are not backed up with fact, and this is very frustrating. When I go outside of Canada, people say, "Oh, it's a wonderful multi-cultural country," yada, yada, yada. Actually it's become a wolf in sheep's clothing, because so much of what we claim to do in this country no longer actually applies. It doesn't actually work on the ground. I don't want to see Ontario introducing a Human Rights Commission that's just more of that.

I also want to point out that if we have a huge caseload and a huge backlog, that's because there are a lot of bad laws. There are a lot of problems systemically that are creating an awful lot of cases, and you're not going to fix them on a one-at-a-time basis. You cannot resolve these issues by having one case after another after another, which is expensive, time-consuming and allows the problem to continue for a very long time.

You have to have a strong systemic reform component in this commission's setup. If you don't have that, you're just wasting a lot of time and money, but more importantly to myself and my community, you're ruining a lot of people's lives. If you don't take a systemic, preventive approach, people's lives go down the tubes while we're waiting for enough individual cases to back up, that finally somebody decides there's a problem. You cannot govern like that. That is not democracy. That is not how governance should work.

Back to the legislative reform I observed. There was an understanding at the time that if you want a system to work, you have to have quality control. You have to be able to change regulations based on flaws that are exposed by continuous checking of how something is functioning. The Human Rights Commission is very helpful for that. And it's not just within government and it's not just things like the social assistance system or the housing system that the Human Rights Commission could be doing a lot to resolve. It's also issues that I've seen a lot of lately; for instance, large corporations running telephone services.

A woman I know who got a cellphone for herself and her daughter and was unable to pay the entire bill is continuing to be charged every month for the service and the interest on the debt while not receiving the service. This is a single parent trying to raise her daughter, self-employed, and she's going broke. She's not able to make her other payments and obligations because a corporation decides that it can gouge her in this fashion.

People in these kinds of situations don't think about going to the commission as a way to solve this because they don't feel or believe—again she's being dealt with this way. It's a poverty issue. They can take advantage of

her poverty to gouge her, knowing she can't come up with the full payment, but she doesn't think about the commission as an answer to this. So what you then have are people with all these little things that pile up. Sometimes they're from large corporations that aren't being held accountable by anybody; sometimes they're from large, flawed systems that aren't being managed properly. These things accumulate and ruin people's lives—they really do. And then what happens? The government has to step in and clean up the mess. The government steps in and pays for the hospital bills, the foster care, the prison, whatever it is.

So what is being created by moving back and moving away from being seriously accountable, from actually taking human rights seriously and from actually being willing to go through the entire process of ensuring that it's a proper system? All we end up with then is endlessly more problems, endlessly more of a social deficit and endlessly more cost that you somehow have to scramble to fulfill, or you just decide to sweep it under the carpet and ignore the fact that you have a growing population of people who are invisible, desperate, all over the streets, losing their minds, homeless etc.

That's what I see. Maybe you don't see it, but you don't live in my neighbourhood. You don't go out late at night in my neighbourhood. You don't see what I see. I know the people I see on the street shaking from drug addictions, etc. I know what their lives were like 15 years ago, and I know how they got to where they are today and why nobody knows they exist and nobody cares. It's because we have lost accountability in human rights, because the previous government created vast amounts of damage to my community, to my family, to people like me.

Here we are at a moment where you, this government, have an opportunity to begin to clean up the mess, to use a real system to actually turn this ship around, and what? We're going to just flush the whole process down the toilet and come through with a quick fix that makes it look good on the surface, so that people who wouldn't need it and wouldn't know about it will say, "Oh, look what they did. Isn't that great?" Meanwhile, the problem will continue worse than it was before.

From what I can see of Bill 107, why is this tribunal not bound by the Statutory Powers Procedure Act? How can any judiciary or judicial process not have those kinds of boundaries or those kinds of requirements? What's the criteria for selecting the people on the commission or the tribunal? How do I know that if I do bring it to the tribunal or the commission, I'm going to be actually adjudicated by people who know what they're talking about, who will understand my situation at all? How do we know that? How is anybody who actually needs it going to trust this thing, knowing that there are all these holes and gaps?

To me, this bill simply raises more questions than it answers. The fact that it's raising more questions than it answers, knowing full well how legislative reform can and should be done, gives me such a bad signal that all I

can think about is, "Okay, if I want my things resolved, how am I going to sue?" Well, the government is going to pay a hell of a lot more if I sue than if I go for a systemic solution that maybe compensates me a little bit and ensures that the problem no longer exists and no longer continues. I think that's a real pity, a real shame.

I've heard a lot of frustration from people working within the system, from people trying to access the system. There's no question that it needs to be done, but I want to see it done right. I think if you can figure out a way to make sure people actually have all the information they require, like reopening these hearings, with all the talks that everybody needs to have in order to be able to comment on it—

**The Chair:** Ms. Grey, we have a vote coming up in the House, so I'm going to interrupt you there and allow you to continue once we come back, which will be in about 10 minutes. So I'm going to break for 10 minutes and then we'll be back.

*The committee recessed from 1202 to 1213.*

**The Chair:** We're going to resume our hearing. Ms. Grey has 10 minutes left. I'd ask her to continue.

**Mr. Kormos:** You saw the vote? That's what we do. That's why we're paid the big bucks.

**Ms. Grey:** What did you vote on?

**Mr. Kormos:** We voted on a very good piece of legislation—

**Ms. Grey:** It looks like it, because somebody actually agreed.

**Mr. Kormos:** —because I supported it.

**Ms. Grey:** Okay. I think was in the middle of tearing a strip off. I got stopped in my tracks a little bit.

I'm very concerned about this notion of having the commission do advocacy and education. I don't think that's really what we want a Human Rights Commission for. We used to have a voluntary sector that did pretty good advocacy, but according to new funding guidelines and Revenue Canada restrictions and the like, it has become incredibly difficult for anybody to do advocacy. However, I don't think having a Human Rights Commission diverted to that function is very helpful.

The Canadian Human Rights Commission does a lot of advocacy and education, and frankly, nobody really knows anything about them. They have no power; they affect nothing; they help no one. That, from what I've seen, is an example of a commission that does advocacy and education. It's pretty useless, really.

There are lots of people who can do education. I've spoken to the teachers' federation in the past, and I know they've been interested in doing it through the school system, for example. That would be really great, because I find it extraordinary how many elected officials and representatives have no idea about human rights. They don't know what our international commitments are; they don't know what our code is about; they don't know how it works. So advocacy and education are absolutely crucial, but the Human Rights Commission is not the place to do it, as far as I'm concerned. When it comes to perhaps educating a corporation that it should treat its

clients and customers with respect, that's great, but I'd rather that they actually be able to enforce it.

Employment equity is an example. There was all this talk about—well, it's back to this voluntary versus mandatory sort of argument. What we've seen is a lot of the push toward volunteerism and asking big institutions and corporations to voluntarily do nice and good things. That just doesn't work—it doesn't happen—and what you end up with are endless battles, but a lot more victims who don't go to battle. That's the bottom line.

Without an employment equity law, we have seen a vast increase in employment discrimination, which has led to a horrendous disparity with people of colour and immigrants of colour being shut out of professions that they're qualified for, even though we bring them here on that basis. So what we have is a whole bunch of people who are highly qualified, who could be paying lots of taxes and having great lives, but instead they're suffering, they're frustrated and humiliated, their lives are going down the tubes, and their kids are running amok—trust me—in my neighbourhood. And why? Because no one is obliged to actually make an effort to ensure that people who have come from away and are of colour and have long last names and funny accents actually get hired. That's what happens when we go with voluntary instead of mandatory, and then we're not going to have some way to systemically resolve that kind of issue? I think that's a disaster—a disaster.

Speaking of which, people who are suffering from discrimination and suffering the results of being treated badly by large institutions—we talk about this legal support centre. I'm very concerned about that. I think people need choices as to how they're going to be represented. People need to know for a fact that they're going to be represented. If it gets into some kind of nonsense about people maybe having to pay other people's legal costs, that will definitely shut out—most people would never even consider going, and that will be the end of that right there.

If it's going to be an actual Human Rights Commission, it has to be accessible, it has to be fair and you have to know that you're going to be represented or you can have help. You can't have people being turned away because the staffing within the commission has to reach a numerical target and therefore they'll not necessarily take the time required to help somebody with their case.

One of the things that really concerns me most about this is that a weak complaint is one thing, and turning down a weak complaint is one thing. But very often what we have is a weak complainant. It's ironic, because one of the most common results of having your life ruined by a large institution or corporation is that you become less capable, less aggressive, less assertive, less able to defend yourself over time. If you've been worn down by this kind of thing, you need somebody to support you in a good way; you need somebody to take the time to tease out what is strong about the case.

A person who is the most vulnerable is going to be a person who needs more help and likely has a very strong

case. But if you don't have the appropriate sort of supports and the appropriate kind of representation, they're not going to get what they need. That also means that perhaps they need to have the option of working with somebody from their own community whom they trust and feel comfortable with, who may or may not be a lawyer. That's sometimes really important to people.

#### 1220

I haven't actually represented someone, but there have been many times when I've helped someone through an issue or situation and I was the only person that person would turn to because they trusted me in the first place. I'm sure that's a similar kind of thing that faces people going to the commission. If the commission actually takes human rights seriously, it will recognize that many of the people who need the commission the most are those who are the most vulnerable and therefore need effective support. I'd like to see that guaranteed.

That's the problem with this: There are no guarantees, there are no timelines, there are no commitments, there are no targets. In my experience, there's never an example of an effective reform process that doesn't include those things. If we're going to have a commission that's improved, a tribunal that works, if it's not going to be the kind of thing we saw with the Social Benefits Tribunal—for a while under the Harris government, there was a bunch of appointed people on that tribunal who had no clue about social assistance, knew nothing about poverty, knew nothing about the fact that no one in this province could actually afford to have any of their basic needs met, given the cost of living and such. We had a tribunal where one or two guys who had been appointed as patronage, or whatever they call it, would go out and wreck somebody's life because they didn't care and they didn't know.

I don't want to see that kind of thing happen. I'm not saying this government would do that, but if you leave it open; if we don't have guarantees, rules and criteria; if we don't have some independence in selecting the people who are going to make these judgments, that's the risk we face. I've seen a lot of people's lives ruined by the sheer ignorance of people who were put in the position to make life-and-death decisions for people who are vulnerable, and that can't happen. That can't be, especially in a country like this that has the capacity and resources to be a good example, which leads me to something that I think is also really vital that we can't forget.

Unfortunately—it used to be fortunately—much of the world looks to Canada for leadership specifically around human rights. We have a reputation. We have been involved in many exercises in many countries to strengthen their human rights systems. What kind of hypocritical, ridiculous nonsense is it going to be if we allow this to continue the way it's going: a process that's incomplete, that isn't actually honest, that isn't involving the people who need to be consulted, that isn't taking the time to really go to the communities that need this commission the most and find out what the barriers are, and then it's likely going to produce, therefore, a shell game, a

facsimile of a Human Rights Commission? It would be bad enough if we weren't supposedly a world leader in actually doing human rights work and being a human rights example, but because we are, it's all the more important.

I'm just asking that the government reconsider closing the hearings, that the government reconsider how this process is being undertaken. First and foremost, I'd like an opportunity to come back and present when I can see the actual wording of what is being proposed because, personally, I am not going to even bother until I know exactly what it says. You cannot comment in a vacuum.

Vague promises are not enough to have a consultation on. They're not enough for public hearings. If you ask me, if you really look closely I'd say it was a violation of administrative law. Administrative law requires that people actually look at a bill and its wording and its full text in order to consult on it, and then we take it through to the next step of the process.

I think the idea here should be to figure out how we can save face perhaps, but move on and make sure we have a fully amended bill that is then given a full set of public hearings, full consultation, including people who are vulnerable so that we can make sure the barriers people face, like the one I raised and that I bet half you people never even thought about, that if you're just a poor person, you've got no access and this means nothing to you anyway. Go around and find out about how that works.

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

**Mr. Kormos:** On a point of order, Chair: I'm shocked that Ms. Grey would suggest that legislators should read bills before they vote on them.

**The Chair:** Thank you very much. The next presenter is Aba Hammond.

**Ms. Grey:** By the way, can I just please leave one thing that I did bring and maybe somebody could make a copy? It's the Covenant on Economic, Social and Cultural Rights—the short, plain-language version, easy to digest. It will show you that in fact all of you are bound by it, and if you want this to work, you'd better respect it because otherwise I'll be going to Geneva again.

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

ABA HAMMOND

**Ms. Aba Hammond:** Hello.

**The Chair:** Hello, Ms. Hammond.

**Ms. Hammond:** My name is Aba Hammond and I'm representing myself as an individual woman with friends, but at this point it's purely on my interest as a Canadian citizen and what I perceive as the distinction between the existing Human Rights Code and what it actually does to women like myself and what this new one would supplement or not. But I'll stick to what it has done so far.

My Canadian experience as a woman living among other immigrants in a minority sense with non-literacy

and non-affluence and isolation based on marginalization as a result of many factors reveals many things to myself, because my—I have to wear my glasses just so that I don't get too much distracted. As a person who came to Canada as a sponsored fiancée, I departed from that basis into a place where I never knew existed, and what I found was highly troubling and problematic; however, I had to work through my traumas in order to at least return to a sense of order. I trust that with me knowing better as a woman, without family and other support systems that persons relatively young usually have, I felt I must speak for my daughter because she was born here, but these behaviours that I face would be visited upon her.

Human rights in principle exist in Canada among the general mainstream, but in the immigrant society attacks on the definition of what citizenship is, the obligations to continued citizenship and knowledge about the Canadian Constitution affect how people treat each other. This is due to many factors, but what I see as most literacy- and poverty-based.

The second aspect is, these behaviours allow for infringement on individual rights and behaviours that normally wouldn't happen. For example, people feel it is their right to attack others, their right to freedom of expression, freedom to assemble, freedom to associate, to worship and congregate with equals with the open-mindedness required for living as individuals and then as a collective without causing human suffering. The denial and misrepresentation of the geopolitical and economic also show dimensions of the place where I came from into Canada. The construct of Africa being a vacuum and a timeless zone without social hierarchies and economic sustenance already greatly influences how people choose to act and behave towards persons like myself. It creates abuse, intolerance, violence and physical attacks.

There is also the retardation of social progress and class mobility by exposing knowledge in other secrets, by profiling and by distortionist tactics, and usually it's in isolation. I have been under that, so I know that for a fact.

Since 1978, I like Canada, but I felt regressive because, coming here as a young teen, just at the end of it, I felt that a marriage would sort of shelter and bring a progressive aspect to my life and some amount of stability, which I never felt would be otherwise. But I faced discrimination, perpetual exposure to the ravages of newcomers and hatred and appropriating of my knowledge and experience in a consumer-based rather than sustaining community.

1230

I also had interference with mate selection, functioning with my own children and my achievements towards self-actualization through work, sustained efforts in education and otherwise to devalue and shrink that into a place where there are moral recriminations rather than paying attention to individual legal ramifications of citizenship or immigrant status.

Again, the exposure to the eyes of those, for instance, leaving a marital home that is owned to a rental accommodation, people hide cameras in places and expose your

nakedness to others as a means of shaming and violating or trying to humble you. It's also attacks through mental—in addition to profiling—brainwashing sessions repeatedly at night by trying to take back what is white or non-African, which is very problematic because the very definition of personhood is rooted in social contexts that are restrictive to the individual rather than the onlookers.

There was no representation whatsoever of peers, of those of like-mindedness or those who've had similar experiences. Rather, there were what you call simulations based on having watched, and mind-reading and re-enacting. That's quite devastating to any human being, to be told your secrets, to be told your personal life by those you have welcomed or given permission to be near you and, on top of that, to be insulted and harassed repeatedly.

There is police brutality. In the minority-based representations that are funded by government under the existing rights system, there are no persons of my background—none whatsoever. If they do show up, it's pitting rural against urban and the inclination to support or even pay attention to what they call "stories," but actual experiences of a woman trying to remain respectable under very difficult circumstances, having predatory behaviours and opportunism all over, are lost and not considered.

There are manipulations as a result of trying to seek a way of ordering what seems to go awry in the context of a Canadian rather than an African import of reality, which I'm not familiar with, which I do not know about and which I've been forced to or been forced by brainwashing which attempted to dilute my memory or remove my memory and replace nightly, and it's been going on for many, many years.

I have to go on public transit systems, and there is a linguistic barrier. I'm a bit emotional now, but I'm sticking to reason. There are lots of linguistic barriers and it determines how we behave. For instance, if there's a need to deconstruct thought and put it into racial terms, I beg to differ because even to conceive of thought, you need to have language and the language of your sleep and your dreams is your language of inheritance or action.

Again in the publicly funded services for minorities, like the law, which seeks to deal with landlord and tenant actions and abuse, there's always the need to bring a black male or, in job search, to just stand and block the way, or regionalism, such as West Indian, all others, and if an African shows up, it's not as an equal whom one could relate to, but one who would chase you out with abusive words and systemic violations.

So there is a problem under the existing system with the non-sequitur form of thoughts. I beg to add that because I am not here to change anybody's way of thinking, but it truly has affected my life. It has removed me from affluence into poverty. Even though I have Canadian experience and education and exposure to all the things that make me—and also in my previous background—function at a level that would enable me to be financially independent, this sort of behaviour curtails my marketability, because it watches, and when it profiles, it shows

up and distorts and disrupts every commercial activity. Voice-overs took my son away from me etc.

It is not rooted in the currency of actual moment and place and the legal definition of "community," which is one that supports and shares and comforts and allows you to be the best you would be in a legal sense first, because moral issues and faith are personal, but it assumes the role of god—with a small "g"—and tries to limit even as it is limited by its own origins. So, in effect, where you live becomes your stopping point. Rather than a place of rest, it becomes a place of decimation and de-skilling, if I may use the word. If you have education past grade 12, it's a place to take it out of you.

I am very cautious because I'm not at the point of pointing fingers at individuals, but the police in my neighbourhood—I was harassed by a group of black people on a TTC bus. I called for the police, and when the police came, they reacted opposite to my expectations and I was physically thrown on the ground, so I do have a back injury. It's the second physical throwing on the ground by a male. I've been back in Ontario—this is my fourth year—and I've been physically thrown on the ground twice in public. So I have a physical injury, but I do not want to claim ODSP because I'm not only too young; I have skills and I would like to work rather than retire, because I haven't earned what I could have.

Now, the strategies to obtain information, profiling and all that, violated my fundamental human rights. I had an abortion as a married woman. I had to, and I explained to the doctors in Vancouver, and subsequently things did happen to me that, as a very young mother, I wasn't aware of being enacted around me. I do not want to go into details, but I've suffered extensively as a result of this form of violation and intrusive attacks into my body. I've been raped many times, not by consent or association but by being in places where I never knew such things happened, and the assumption of blackness being that of the void and a place where no rules apply.

I could go on and on, but I took an interest in this bill because it's significantly clear to me the politics that gave birth to the Darfur crisis in terms of being an African born at a certain time in west Africa and a certain amount of protection. I could relate to the Darfur region crisis, where women and children suffer, and all the other regions, but in Canada it's highly unacceptable due to the representation of Canada. I remember from the Lester B. Pearson years, which I'm very proud of, through the Trudeau era to the present. I look at the men and women with great respect and affection, although some people within the greater communities seem to think that our citizenship could be recalled at any moment and our properties and rights taken over by draconian measures.

I'm here to add my voice. Most of my friends have left Canada and I have lived in isolation for four years. Nobody's visited me. I face 24/7 voice-overs and brainwashing, and I wouldn't want to go into how it came about.

I also went to Africa in 1999-2000. I stayed three months. For every month, I stayed a week in hospital, so I was in for nearly a month, nearly killed, and rallied,

taken over by a group of persons who feel that blackness ought to be a certain way, without education, especially women.

I am very concerned that global politics, with its sinister dimensions, will have a foothold in Canada to the point of annexing our citizenships to other causes outside the land of Canada and exposing people like myself to the violence that comes with those regional conflicts.

I beg this honourable Parliament and its members to consider their responsibility and their privilege as champions of democracy and the democratization process that they are part of and to please be mindful of those who do not have the family, the wealth or the protections that could usually be made available by hard work, but, because all things are being sacrificed to other issues, to please rise above the regionalisms. I came to a Canada that was a beautiful land. The standards here were the highest that I could ever find for single people and students, and at present, students, professors—and I'm not one—and all people that I see and pay attention to do suffer quite a lot. It's not just impoverishment, but it is robbing from the children in the strollers.

I would also like to say that the only revolution worth fighting for is one that pays attention to the quality of life and the progressive needs of women, children and fathers.

This is my perspective and this is why I came here, to speak as an individual but in a community that seems to be disintegrating, where people feel it is their right to attack people, not on the actual basis of actual evidence or behaviours but to play judge and jury based on their whims of who ought to be white or green or blue. It's quite problematic because my legal entrance into Canada did not give that addendum to my citizenship or my landed immigrant status.

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

**Ms. Hammond:** Thank you, sir.

**The Chair:** That concludes our meeting for today. We'll be meeting next Wednesday at 9:30 a.m. in this same room. Thank you.

*The committee adjourned at 1242.*

## CONTENTS

Thursday 23 November 2006

<b>Human Rights Code Amendment Act, 2006, Bill 107, Mr. Bryant / Loi de 2006 modifiant le Code des droits de la personne, projet de loi 107, M. Bryant.....</b>	<b>JP-957</b>
Subcommittee report .....	JP-957
Ontario March of Dimes .....	JP-960
Ms. Andria Spindel	
Mr. Warren Rupnarian	
Ontario Secondary School Teachers' Federation .....	JP-962
Ms. Rhonda Kimberley-Young	
Mr. Maurice Green	
Research and Development International, Inc. ....	JP-965
Ms. Angela Browne	
Multiple Sclerosis Society of Canada, Ontario Division.....	JP-971
Ms. Cathy Topping	
Ms. Deanna Groetzinger	
Ms. Josephine Grey.....	JP-974
Ms. Aba Hammond .....	JP-979

### STANDING COMMITTEE ON JUSTICE POLICY

#### Chair / Président

Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)

#### Vice-Chair / Vice-Présidente

Mrs. Maria Van Bommel (Lambton–Kent–Middlesex L)

Mr. Bas Balkissoon (Scarborough–Rouge River L)

Mr. Lorenzo Berardinetti (Scarborough Southwest / Scarborough-Sud-Ouest L)

Mr. Vic Dhillon (Brampton West–Mississauga / Brampton-Ouest–Mississauga L)

Mrs. Christine Elliott (Whitby–Ajax PC)

Mr. Frank Klees (Oak Ridges PC)

Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot L)

Mr. David Oraziotti (Sault Ste. Marie L)

Mrs. Maria Van Bommel (Lambton–Kent–Middlesex L)

#### Substitutions / Membres remplaçants

Mr. David Zimmer (Willowdale L)

#### Clerk / Greffière

Ms. Anne Stokes

#### Staff / Personnel

Ms. Margaret Drent, research officer  
Research and Information Services