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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)**

**Wednesday 29 November 2006**

## **Journal des débats (Hansard)**

**Mercredi 29 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

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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  
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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**

Wednesday 29 November 2006

Mercredi 29 novembre 2006

*The committee met at 1000 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 Chair (Mr. Vic Dhillon):** Good morning, everybody. Sorry for the little delay. Welcome to the standing committee on justice policy. We're here today to consider Bill 107 clause-by-clause.

Are there any questions, comments or amendments, and, if so, to what section?

**Mr. Peter Kormos (Niagara Centre):** As everybody regrettably knows, this is the only day of clause-by-clause consideration because of the government's closure motion, because of the government's guillotine on debate, on participation, and even on clause-by-clause. The motion that was passed by the Liberal majority requires this committee to sit this morning, to commence with clause-by-clause, and that means consideration of the bill itself and of any amendments. There are numerous amendments that are going to be moved.

The time allocation motion imposed upon us by the government majority requires us to sit this afternoon. As I recall—the clerk will correct me if I'm wrong—at 5 o'clock all amendments are deemed to have been moved. Any outstanding amendments won't even be read onto the record, and then the committee is required to commence voting on them. So the committee will be forced to vote for or against amendments that have not been read onto the record, amendments about which there was no opportunity for questions by opposition members as to their intent and rationale and the motivation of the mover. That's what time allocation means, and that's what it does to parliamentary discourse.

I do not, New Democrats do not, and a whole large portion of the provincial community does not believe in the privatization of human rights advocacy. There are others who do; these are the direct-access people. I understand the argument and I respect the argument. I disagree with it. I respect it. It is an argument. It's an argument that was advanced by Mary Cornish back in 1993. I disagreed with Ms. Cornish then and I disagree

with her now, but I understand the argument. Quite frankly, I was as pleased to hear from advocates who presented us with intelligent, rational arguments for that position as I was to hear from people who, like New Democrats, believe in the maintenance of a public prosecutorial system. Of course, the time allocation motion means that we don't get to hear from either of them.

It was remarkable that towards the very end of the government-forced closure, even as ads were appearing in the Toronto dailies telling people they had until December 15 to apply to appear in front of the committee, we were hearing from the final submitters; final not because they were the last people who wanted to, but final because the government's time allocation motion, its closure motion, the McGuinty muzzle motion, as some wits have referred to it, prevented any further people from appearing. But it was remarkable that in those very final moments we began to hear from some people who had some remarkable things to say about some of the commentary that had taken place up until that time, in terms of identifying some of the groups and their motives for supporting Bill 107 and questioning the ability of those groups to hold themselves out as spokespeople for the human rights advocacy community.

So here it is. Look, I won't be supporting the bill. I've read the government amendments. There are a few more that are going to be given to us in short order, and I'll be speaking to that in just a minute. I won't be supporting the bill. I'm loath to move amendments to a bill that I don't support regardless, because I fundamentally disagree with the proposition. But at the request of and on behalf of concerned parties, interested parties, parties who will continue in their struggle for human rights in this province, I will be moving a number of motions and supporting them when it comes to voting for them. But I want to make it very clear that by moving them I am in no way endorsing the fundamental changes to human rights enforcement that Bill 107 contains, which takes me to some new amendments that are going to be introduced but this morning.

I should indicate that there are, quite frankly, blind people who know what the NDP amendments are going to be because they were consulted in the course of preparing them. So the amendments that are being moved by the NDP today will come as no surprise to them. But it raises once again just the ironies that have repeated themselves during the course of this committee's brief process. Here it is, a committee about human rights,

about discrimination, and the government's going to come up with amendments this morning—look, I appreciate that they initiated the Braille process promptly; I'm conceding that and I'm making that very clear—but the government is going to be introducing amendments today that weren't part of their package that they had ready for yesterday—to their credit—that aren't going to be available, for instance, amongst others, to blind people, because they're not going to be available in a format such that blind people can read and comprehend them. And that is just so sad. It's tragic and it's shameful.

Again, it's not as if it should be exclusive to this committee. No blind person should have to give notice or make an appointment to come to Queen's Park so that arrangements can be made for some sort of opportunity for them to read material. No deaf person should ever have to make an appointment to come to Queen's Park so that arrangements can be made so they can listen to the proceedings here. Of all the places to which access should be guaranteed, this is it, it seems to me: the people's place, their Parliament. And again, the reason why the Braille is not going to be available is because of the time allocation motion. I don't criticize the staff. The staff with the Ministry of AG who were parties to the preparation of these, as I understand it, and I believe the information, moved promptly to get it translated into Braille. Of course, it wasn't the case last week when Mr. Rae wanted a copy of the materials submitted by the Attorney General.

I want to thank Sibylle Filion, who's legislative counsel, for an incredible amount of work in putting together the amendments that we'll be presenting. Again, she did that in short order and worked, I'm sure, late into her night doing that.

#### 1010

I want to thank the people who care about human rights in the province of Ontario. Mr. Zimmer is here with an impressive entourage. Neither Ms. Elliott nor I have one, but that's okay. We're not alone; we've got the people of Ontario with us. That's 13 million. I believe that.

This is not the end of the story for me and the New Democrats. We believe that there's an important, critical role for a public prosecutor. I use that phrase because it best describes, in my view, in a way that people understand, the role that an adequately resourced and staffed Human Rights Commission performs in the prosecution of human rights complaints.

I apologize, especially to hard-working front-line staff at the Human Rights Commission, their managers and, indeed, previous commissioners, because they have been slandered, defamed and libelled during the course of these hearings. Notwithstanding all-party support in this committee of a motion to invite those staff here so that they could respond to some of the outrageous statements that were made about them—not about the underfunding, but that were made about them—they've been denied the opportunity to come here and respond to scurrilous insinuations and statements.

I appreciate this opportunity to make these preliminary comments, Chair.

**The Chair:** Ms. Elliott?

**Mrs. Christine Elliott (Whitby–Ajax):** Before we get started on the clause-by-clause review of Bill 107, I would just like to state for the record—although I don't think there's any doubt about it—my profound disagreement with the bill both in terms of how it has been handled procedurally and its substantive content.

In my view, with respect to the way it has been handled procedurally, I find the McGuinty muzzle motion to be offensive in the lack of respect that it has shown not only to the members of the committee but, most particularly, to all of the people who, in good faith, relied upon the government to be true to their word and to allow them to present and to make their views known with respect to Bill 107. The fact that that was not honoured I think is just a profound betrayal of all of those people.

With respect to the substantive content: Again, I don't agree with the model that has been established by Bill 107. I think there could have been something that could have been done. Perhaps a compromise could have been reached, but there's no point in even talking about that now because that has all been lost. It really is—and one presenter has indicated—a disaster waiting to happen. I agree. However, in the interest of hopefully making it somewhat less so, I have, on behalf of the Progressive Conservative Party, also filed some amendments for consideration by this committee in the hope and on behalf of those people who are going to have to continue with this, again, not because I agree with the bill—and I am going to be voting against it—but only in the interest of helping out to whatever degree the bill can be helped. So I think that's important to state, that I do not support this bill. I am only presenting these amendments so that hopefully there can be some changes that will be somewhat helpful. But at the end of the day, I have profound disagreement with how this bill has been proceeded with. I think that's all.

**The Chair:** Any further comments?

**Mr. Kormos:** Yes. I would be remiss if I didn't thank my own staff and the NDP research staff as well as the Ministry of the Attorney General staff, who have been as helpful as they can be in view of the circumstances. That has been a little, bright light in an otherwise gloomy exercise and process.

**The Chair:** If there are no further comments, we'll recess for five minutes.

*The committee recessed from 1015 to 1040.*

**The Chair:** The committee is called back to order. We'll start with the first NDP motion, A1. I believe that all parties have it.

**Mr. Kormos:** I move that the bill be amended by adding the following section:

“0.1 Part I of the Human Rights Code is amended by adding the following section:

““Right to hearing

““8.1 Every person who files an application with the tribunal under this act has a right to a hearing on the

merits of the application to be held within one year of the date of the filing of the application.”

Of course, this motion is not in order. Therefore, I seek unanimous consent for it to be deemed in order so that it can be voted upon.

**The Chair:** The motion is not out of order, so we’re going to have to proceed. Is there any debate?

**Mr. Kormos:** Yes. The government talked a big game about expediting applications by victims of human rights discrimination pursuant to the code by virtue of the passage of this bill. This gives effect to that by guaranteeing that there will be in fact a hearing on the merits within one year. We heard a whole lot of vilification of the existing commission and the lengthy delays before it now. The rationale for this bill was that it would overcome the delays. This puts it in writing.

A recorded vote, please.

**The Chair:** All those in favour?

### Ayes

Elliott, Kormos.

### Nays

Orazietti, Ramal, Van Bommel, Zimmer.

**The Chair:** That’s lost.

Next is a PC motion, B1. Ms. Elliott.

**Mrs. Elliott:** I move that the bill be amended by adding the following section:

“0.1 The Human Rights Code is amended by adding the following section:

“Applicant’s right to publicly funded full, effective legal counsel

“9.1(1) Everyone who makes an application with the tribunal in accordance with this act, or who has a genuine intention to make an application has the right throughout the application and at all related proceedings to full, effective legal support and representation in the form of independent legal counsel at public expense.

“No eligibility criteria

“(2) The right referred to in subsection (1) shall not be subject to any means test or other qualification or eligibility criteria based on the applicant’s or potential applicant’s financial resources.

“Application to tribunal

“(3) Notwithstanding any other provision of this act, an applicant or potential applicant may apply ex parte to the tribunal for an order requiring the Attorney General to pay for any legal services provided pursuant to this provision within a reasonable time.”

1050

This has been moved in order to—

**The Chair:** Mrs. Elliott, I’ve been advised that this motion is out of order, as it requires—

**Mr. Kormos:** On a point of order, Mr. Chair: I seek unanimous consent for this motion to be deemed in order so that it can be voted upon.

**Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot):** I want to hear why the Chair thinks it’s out of order.

**The Chair:** This motion can only be moved by a minister, so this is out of order. The motion, in 9.1, would require legal counsel at public expense. That’s the reason, I’m being told, that it’s out of order. So this motion is out of order.

**Mrs. Elliott:** I don’t understand. Can you explain that to me?

**Mr. Kormos:** On a point of order, Mr. Chair: The bill itself and the government’s amendments, which are included in the amendment package, talk about the funding of a legal services centre. We may have to wait until that motion is moved and passed by the government, and this may then have to be an amendment to that motion. So we can do it the easy way or the hard way. I’d suggest that the easy way is for it to be deemed in order; otherwise it’ll simply be moved after the government’s motion to establish this legal support centre.

**The Chair:** Thank you, Mr. Kormos and Ms. Elliott.

I’m going to read from standing order 56: “Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor, and shall be proposed only by a minister of the crown.” So that’s the reason this motion is out of order.

We’re going to move on. There are no more motions in section 0.1. Is there any further debate on section 0.1?

**Mr. Kormos:** There is no section 0.1.

*Interjection.*

**The Chair:** Right. Okay, we’ll move on to section 2.

*Interjection.*

**The Chair:** Is there any debate on section 1?

**Mr. Kormos:** This is critical. This is the beginning of the abolition of the Human Rights Commission as we know it as a public advocate for human rights. I’m opposing it and I will be calling for a recorded vote.

**The Chair:** All those in favour?

Opposed?

### Nays

Elliott, Kormos.

**The Chair:** That’s lost.

We’re moving on to section 2: government motion 1.

**Mr. David Zimmer (Willowdale):** I move that clause 14(3)(b) of the act, as set out in section 2 of the bill, be amended by striking out “specified in the approval” and substituting “specified in the designation.”

**The Chair:** Any debate?

**Mr. Kormos:** I should indicate that the ministry has been very considerate in giving us explanatory notes for its various amendments. There isn’t a commentary with respect to this amendment—if you could very briefly give us an explanation for it. The government moved its amendment to section 2, and we’re talking about that

amendment now. I'm asking for an explanation for the amendment, sir.

**Mr. Zimmer:** Mr. Chair, I'm going to move for a five-minute recess.

**Mr. Kormos:** Chair, that's not an appropriate motion. We've got a time allocation motion here. This committee is required to perform its work. The government forced that time allocation motion on us. Let's proceed with our work in accordance with that time allocation motion.

**The Chair:** We'll be having—

*Interjections.*

**The Chair:** Okay. Do we have agreement for a five-minute recess?

**Mr. Kormos:** No.

**The Chair:** So we'll have a vote. All those in favour?

**Mr. Kormos:** No, no. A motion to recess is not in order. We've got a time allocation motion that requires us to sit and do it clause-by-clause in a very restricted period of time.

**The Chair:** That's in order. All those in favour?

**Mr. Kormos:** A recorded vote.

#### Ayes

McMeekin, Oraziotti, Ramal, Van Bommel, Zimmer.

#### Nays

Elliott, Kormos.

**The Chair:** We'll have a five-minute recess.

*The committee recessed from 1055 to 1103.*

**The Chair:** The committee is called back to order. I believe Mr. Zimmer had the floor when we recessed.

**Mr. Zimmer:** We were on government motion number 1. I read that in and I moved it.

**The Chair:** Yes. All those in favour?

**Mr. Kormos:** No, no, Chair.

**The Chair:** Any debate?

**Mr. Kormos:** We've got to debate these things before we call for a vote.

**The Chair:** Yes, Mr. Kormos?

**Mr. Kormos:** Once again, I appreciate the Ministry of AG's co-operation in giving us a summary of the sections of the bill. Unfortunately, most of the amendments that it's moving do not have commentary. This helps expedite things. I needed an explanation for this particular amendment, because it eliminates "approval" and substitutes "designation." Just a brief explanation. It probably isn't a contentious amendment.

**Mr. Zimmer:** I'm going to have one of the ministry staff—

**Mr. Kormos:** Please. Thank you.

**Ms. Juliet Robin:** The change is intended to make it consistent with the previous paragraphs that refer to "designation."

**Mr. Kormos:** Previous paragraphs—designation of a program? Can you refer me to the part that the consistency is acquired with? That's a poor sentence on my part.

**Ms. Robin:** The bill provides that the commission makes a designation. In Bill 107, it referred to an approval. The motion to amend is to make it consistent with the commission making a designation.

**Mr. Kormos:** Okay. Thank you kindly. That's not contentious, Chair.

**The Chair:** Any further debate? Seeing none, all those in favour? Opposed? Carried.

Government motion number 2.

**Mr. Zimmer:** I move that subsections 14(4) and (5) of the act, as set out in section 2 of the bill, be struck out and the following substituted:

"Inquiries initiated by commission

"(4) The commission may, on its own initiative, inquire into one or more programs to determine whether the programs are special programs for the purposes of subsection (1).

"End of inquiry

"(5) At the conclusion of an inquiry under subsection (4), the commission may designate as a special program any of the programs under inquiry if, in its opinion, the programs meet the requirements of subsection (1)."

**Mr. Kormos:** Again, I have to ask—I can't see the difference between subsection (5) as contained in the bill and subsection (5) as amended. Can you help me with that? Am I overlooking something here?

**Ms. Robin:** The amendment replaces the word "review" with the word "inquiry" in both subsection (4) and subsection (5).

**Mr. Kormos:** Okay. And what's the purpose in distinguishing between "review" and "inquiry"?

**Ms. Robin:** It's to be consistent with the commission's inquiry powers that are under the code.

**Mr. Kormos:** That's fair enough.

**The Chair:** Thank you.

All those in favour? That's carried.

Government motion number 3.

**Mr. Zimmer:** I move that subsection 14(6) of the act, as set out in section 2 of the bill, be amended by striking out "subsection (2) or (5)" and substituting "subsection (3) or (5)."

**The Chair:** Mr. Zimmer, I'm sorry. I'm going to have to interrupt.

*Interjection.*

**The Chair:** The next motion is 2a. It's an NDP motion.

**Mr. Kormos:** It's unnumbered.

**The Clerk of the Committee (Ms. Anne Stokes):** It's unnumbered. Section 2 of the bill, section 14 of the act.

**Mr. Kormos:** However, in terms of rational ordering, if the government is moving its government motion number 3, which also amends section 2 of the bill, and my motion is deleting section 2, it might be smarter—I would ask your advice—to put the government motion first and then my motion subsequent to that.

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

**Mr. Kormos:** It would make more sense.

**The Chair:** Mr. Zimmer, you may continue with government motion number 3.

**Mr. Zimmer:** I've read it.

**The Chair:** You've read it, yes. Any debate?

1110

**Mr. Kormos:** Chair, one of the problems is because of the huge volume and the fact that not everybody has had a chance to review these thoroughly, and the clerks are certainly at a disadvantage because they've had this thrust upon them.

**The Chair:** Thank you, Mr. Kormos. Any further debate?

**Mr. Kormos:** Yes. Once again, please, Mr. Zimmer or your staff, just a brief explanation.

**Ms. Robin:** It's to correct a drafting error in Bill 107 because the designation is actually made in subsection (3), not subsection (2).

**Mr. Kormos:** Errors happen.

**The Chair:** All those in favour? It's carried.  
Government motion number 4.

**Mr. Zimmer:** I move that section 14 of the act, as amended by section 2 of the bill, be amended by adding the following subsection:

"Renewal of designation

"(6.1) If an application for renewal of a designation of a program as a special program is made to the commission before its expiry under subsection (6), the commission may,

"(a) renew the designation if, in its opinion, the program continues to meet the requirements of subsection (1); or

"(b) renew the designation on the condition that the program make such modifications as are specified in the designation in order to meet the requirements of subsection (1)."

**The Chair:** Any debate? Seeing none, all those in favour? It's carried.

Government motion 5.

**Mr. Zimmer:** I move that subsection 14(7) of the act, as set out in section 2 of the bill, be struck out and the following substituted:

"Effect of designation, etc.

"(7) In a proceeding,

"(a) evidence that a program has been designated as a special program under this section is proof, in the absence of evidence to the contrary, that the program is a special program for the purposes of subsection (1); and

"(b) evidence that the commission has considered and refused to designate a program as a special program under this section is proof, in the absence of evidence to the contrary, that the program is not a special program for the purposes of subsection (1)."

**The Chair:** Any debate? Seeing none, all those in favour? It's carried.

Now we are at the NDP motion.

**Mr. Kormos:** I decline to move it.

**The Chair:** That's fine. That's withdrawn.

Any further debate on section 2? Oh, my mistake. We're still in section 2, so government motion number 6.

**Mr. Zimmer:** I move that section 14 of the act, as amended by section 2 of the bill, be amended by adding the following subsection:

"Tribunal finding

"(9) For the purposes of a proceeding before the tribunal, the tribunal may make a finding that a program meets the requirements of a special program under subsection (1), even though the program has not been designated as a special program by the commission under this section, subject to clause (7)(b)."

**The Chair:** Any debate? It's carried.

Shall section 2, as amended, carry?

**Mr. Kormos:** One moment; we've got to debate it.

**The Chair:** Mr. Kormos.

**Mr. Kormos:** New Democrats will be opposing section 2, as amended. This, again, is the restructuring, if you will, of the commission, and the restriction of its role to a very modest function, and it will be modest, because the funding of even that broader educational and investigative role is dependent upon funding. New Democrats are voting against section 2, as amended.

**The Chair:** Thank you, Mr. Kormos. Any further debate?

**Mr. Kormos:** A recorded vote, please.

#### Ayes

McMeekin, Oraziotti, Ramal, Van Bommel, Zimmer.

#### Nays

Elliott, Kormos.

**The Chair:** Section 2 is carried.

Is there any debate on sections 3 and 4?

**Mr. Kormos:** No debate on this.

**The Chair:** No debate? Shall sections 3 and 4 carry?  
Carried.

Section 5, government motion 7.

**Mr. Zimmer:** I move that section 27 of the act, as set out in section 5 of the bill, be amended by adding the following subsections:

"Appointment

"(2.1) Every person appointed to the commission shall have knowledge, experience or training with respect to human rights law and issues.

"Criteria

"(2.2) In the appointment of persons to the commission under subsection (2), the importance of reflecting, in the composition of the commission as a whole, the diversity of Ontario's population shall be recognized."

**The Chair:** Thank you, Mr. Zimmer. I apologize, but we should have gone to NDP motion 6A.

**Mr. Kormos:** But my motion changes subsection 27(2); yours adds subsection (2.1). Depending upon whether the government motion succeeds, with respect, I may not even move mine.

**The Chair:** Would you like to postpone that?

**Mr. Kormos:** Yes, I'll defer it until after we consider this. The government motion that the commission reflect diversity is valuable and creates a context in which my motion becomes more relevant. I'm going to support this motion on the part of the government. I want to make it clear that New Democrats support government motion 7, and I expect you'll show the same courtesy when it comes to NDP motion 6A.

**The Chair:** Any further debate? It's carried.

**Mr. Kormos:** Chair, may I move my motion now? It's been identified as 6A.

**The Chair:** Go ahead, Mr. Kormos.

**Mr. Kormos:** I move that subsection 27(2) of the act, as set out in section 5 of the bill, be struck out and the following substituted:

"Composition

"(2) The commission shall be composed of such persons, being not fewer than seven, as are appointed by the Lieutenant Governor in Council, on the recommendation of the commission appointment advisory committee."

Let me speak to that very briefly. I'm pleased to see the government understand, I think somewhat naturally, the need for the commission to reflect the diversity of Ontario's population. I understand as well that appointments by a Lieutenant Governor in Council are a means by which people are appointed to these bodies. (1) The NDP motion requires this commission to consist of at least seven people, (2) on the recommendation of the commission appointment advisory committee. The government recently in Bill 14—and Mr. Zimmer stewarded it through the Legislature—attempted to enhance the justice of the peace appointment process, to depoliticize it. My concern is that at the end of the day, it still allows for political hacks to be appointed as justices of the peace based on partisan considerations.

1120

But this amendment requires Lieutenant-Governor-in-Council appointments—because what's the Lieutenant Governor in Council? That's the cabinet, right? That's where the Attorney General basically says, "These are my picks." The recommendation of the commission appointment advisory committee is an important function to determine that there indeed be some safeguards. Is partisanship going to happen? I mean, let's face it—

**The Chair:** Mr. Kormos, I've been advised that this motion should be deferred. There has to be the appointment of an advisory committee, and that's not done right now, as I'm told. There has to be an advisory committee established. Can we postpone this until later and go on to the government—

**Mr. Kormos:** I hear you. I suggest to you that implicit in the motion is the existence and the creation of a commission appointment advisory committee. But I'm in your hands.

**The Chair:** Thank you, Mr. Kormos. I think it would be better to defer it. We're on to government motion number 8.

**Mr. Zimmer:** I move that subsection 27(7) of the act, as set out in section 5 of the bill, be struck out and the following substituted:

"Employees

"(7) The commission may appoint such employees as it considers necessary for the proper conduct of its affairs and the employees shall be appointed under the Public Service Act.

"Evidence obtained in performance of duties

"(7.1) A member of the commission shall not be required to give testimony in a civil suit or any proceeding as to information obtained in the performance of duties under this act.

"Same, employees

"(7.2) An employee of the commission shall not be required to give testimony in a civil suit or any proceeding other than a proceeding under this act as to information obtained in the performance of duties under this act."

**The Chair:** Any debate? Seeing none, shall government motion number 8 carry? Carried.

Government motion number 9.

**Mr. Zimmer:** I move that subsection 27(8) of the act, as set out in section 5 of the bill, be amended by striking out "to any other member of the commission" and substituting "to any member of the Anti-Racism Secretariat, the Disability Rights Secretariat or an advisory group or to any other member of the commission."

**The Chair:** Any debate? Seeing none, that's carried.

Now government motion number 10.

**Mr. Zimmer:** I move that section 27 of the act, as set out in section 5 of the bill, be amended by adding the following subsection:

"Divisions

"(9) The commission may authorize any function of the commission to be performed by a division of the commission composed of at least three members of the commission."

**The Chair:** Any debate? It's carried.

Does at least one member of each of the parties have a new, full package? Do you have a full package, Mr. Zimmer?

**Mr. McMeekin:** Does the whole package include those that came in this morning?

**The Chair:** Yes.

**Mr. Kormos:** The NDP amendments that came in this morning and the government amendments that came in this morning—oh, and the Conservative ones. Okay.

**The Chair:** Mr. Kormos, motion 10A.

**Mr. Kormos:** That's interesting. I need your advice and counsel. I was advised by the Chair to defer—and I respect that—motion 6A. Here I'm creating a new section, 27.1, and in 6A purported to amend section 27, as compared to 27.1. My amendment in 6A was anticipatory, of course, of the amendment that I'm moving in 10A. I suggested that, by virtue of reference to the Commission Appointments Advisory Committee, there would have to be a Commission Appointments Advisory Committee. You understand what I'm saying, sir? I'm in your hands. I'm then put into the difficulty of not being able to move an amendment—because you're going to be calling for debate and a vote on section 5, as amended. Am I

permitted then, by virtue of—because I'm still amending section 5. I want to just make this clear. So I'm not going to be barred. You're not going to tell me—this isn't a sucker shot, right? You're not going to lure me, trick me into—

**Mr. McMeekin:** She doesn't lure you.

**Mr. Kormos:** No, I'm talking to Mr. Dhillon, the Chair. You're not tricking me, are you? All right.

**Mr. McMeekin:** On a point of order, Chair: Can I assume that the new package we just had handed out now contains all the amendments from all parties?

**The Clerk of the Committee:** I have one more. We haven't had a chance to copy it.

**Mr. McMeekin:** I can do away with the previous package?

**The Clerk of the Committee:** The previous package can be disposed of.

**The Chair:** Mr. Kormos?

**Mr. Kormos:** I move that the act, as amended by section 5 of the bill, be further amended by adding the following section:

“Commission Appointments Advisory Committee

“27.1(1) A committee known as the Commission Appointments Advisory Committee in English and as Comité consultatif sur les nominations à la commission in French is established.

“Composition

“(2) The committee is composed of,

“(a) two commissioners, selected by the commissioners;

“(b) three lawyers, one appointed by the Law Society of Upper Canada, one by the Canadian Bar Association—Ontario and one by the County and District Law Presidents' Association;

“(c) six persons who are neither judges nor lawyers, two appointed by each of the political parties that have at least eight elected representatives sitting in the Legislative Assembly.

“Term of office

“(3) The members hold office for three-year terms and may be reappointed.

“Chair

“(4) The members of the committee shall select a chair from among themselves who shall sit as chair for a three-year term and may be reappointed.

“Function

“(5) The function of the committee is to make recommendations to the Lieutenant Governor in Council for the appointment of members of the commission.

“Manner of operating

“(6) The committee shall perform its function in the following manner:

“1. When a vacancy in the commission occurs and the Lieutenant Governor in Council asks the committee to make a recommendation, it shall advertise the vacancy and review all applications.

“2. For every commission vacancy with respect to which a recommendation is requested, the committee shall give the Lieutenant Governor in Council a ranked

list of at least two candidates whom it recommends, with brief supporting reasons.

“3. The committee shall conduct the advertising and review process in accordance with criteria established by the committee, including assessment of the professional excellence, community awareness and personal characteristics of candidates and recognition of the desirability of reflecting the diversity of Ontario society in commission appointments.

“4. The committee may make recommendations from among candidates interviewed within the preceding year, if there is not enough time for a fresh advertising and review process.

“Rejection of list

“(7) The Lieutenant Governor in Council may reject the committee's recommendations and require it to provide a fresh list.

“Annual report

“(8) The committee shall submit to the Attorney General an annual report of its activities.

“Tabling

“(9) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the assembly.”

If I may, very briefly, Chair: I think it's a pretty substantial amendment, which is also self-explanatory, and it's perhaps a breath of fresh air because it makes sure that candidates for the commission undergo a screening process; it ensures that there is commission participation in the selection, and that's always a valuable thing because they bring the commission culture to the screening process; it ensures that there are lawyers there from the three primary bodies advocating for and representing lawyers in the province to provide a legal perspective; and it also ensures that there is all-party participation in the selection of the advisory committee. What a novel proposition. What a democratic proposal. What a unique way of instilling public confidence in a commission that may have had the confidence of the public in it eroded to some extent by this very bill. I'm asking for support for this motion.

1130

**The Chair:** Any further debate? Seeing none—

**Mr. Kormos:** A recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

McMeekin, Ramal, Van Bommel, Zimmer.

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

We should go back to 6A. Mr. Zimmer has withdrawn—

**Mr. Kormos:** I decline to move motion 6A. Here we go: the opposition parties co-operate, and what does the government respond?

**The Chair:** 10B: NDP motion?

**Mr. Kormos:** I move that section 29 of the act, as set out in section 5 of the bill, be amended by striking out “promote the elimination of systemic discriminatory practices” in the portion before clause (a) and substituting “promote the elimination of discriminatory practices.”

This responds to the point made by participant after participant that you can’t isolate individual discrimination from systemic discrimination, that the two are inherently integrated, that you can’t somehow cut the world in half in terms of victims of discrimination. I appreciate that it may be offensive to the government because it speaks to the whole public nature of this as compared to the private nature. But discrimination isn’t just a private thing. It’s a very public thing. And discrimination doesn’t just involve the person discriminated against; it involves the discriminators and a societal structure and systems that permit discrimination to take place.

This is a very important amendment in terms of understanding that you can’t isolate discrimination against the person versus systemic discrimination. I’m asking for all-party support.

**The Chair:** Any further debate? Seeing none—

**Mr. Kormos:** A recorded vote, please.

#### Ayes

Elliott, Kormos.

#### Nays

McMeekin, Oraziotti, Ramal, Van Bommel, Zimmer.

**The Chair:** That’s lost.

Government motion number 11.

**Mr. Zimmer:** I move that the portion of section 29 before clause (a), as set out in section 5 of the bill, be struck out and the following substituted:

“Functions of commission

“29 The functions of the commission are to promote and advance respect for human rights in Ontario, to protect human rights in Ontario and, recognizing that it is in the public interest to do so and that it is the commission’s duty to protect the public interest, to identify and promote the elimination of discriminatory practices and, more specifically,”

**The Chair:** Any further debate? Seeing none, all those in favour? Opposed? It’s carried.

Government motion number 12.

**Mr. Zimmer:** I move that subclause 29(b)(i) of the act, as set out in section 5 of the bill, be struck out and the following substituted:

“(i) promote awareness and understanding of, respect for and compliance with this act, and”.

**The Chair:** Any debate? Seeing none, all those in favour? Opposed? That’s carried.

Government motion number 13.

**Mr. Zimmer:** I move that clause 29(c) of the act, as set out in section 5 of the bill, be amended by striking out “research into discriminatory practices that infringe rights under part I” and substituting “research into discriminatory practices”.

**The Chair:** Any debate? All those in favour? That’s carried.

Government motion number 14.

**Mr. Zimmer:** I move that clause 29(e) of the act, as set out in section 5 of the bill, be struck out and the following substituted:

“(e) to initiate reviews and inquiries into incidents of tension or conflict, or conditions that lead or may lead to incidents of tension or conflict, in a community, institution, industry or sector of the economy, and to make recommendations, and encourage and coordinate plans, programs and activities, to reduce or prevent such incidents or sources of tension or conflict;”

**Mr. Kormos:** I understand what the government is trying to do with this amendment in the context of funding, the existing commission or shell of that commission that will exist after the bill. My first response to this proposal—and I’m talking about funding: Caledonia.

Your section—I’m going to support it—requires the commission to become actively involved in Caledonia, a horrible dispute that has scarred that community and remains unresolved after the expenditure, as you folks well know, of millions and millions and millions of dollars.

“The functions of the commission are to”—the commission is required to do these things. This expands the role of the commission in a way that I agree with, but what are the realities going to be around funding? The commission is underfunded today, sir.

I’m going to support this amendment, because once this bill is proclaimed, we’re going to be rising in the House in question period saying that this government had better fund this commission so it can perform this very role, for instance, with respect to the tragic, unresolved conflict in Caledonia.

**The Chair:** Any further debate? Seeing none, all those in favour? That’s carried.

Government motion number 15.

**Mr. Zimmer:** I move that clause 29(g) of the act, as set out in section 5 of the bill, be amended by striking out “to approve” at the beginning and substituting “to designate”.

**The Chair:** Any debate? Seeing none, all those in favour? That’s carried.

Government motion number 16.

**Mr. Zimmer:** I move that section 29 of the act, as set out in section 5 of the bill, be amended by adding the following clause:

“(g.1) to approve policies under section 29.1;”

**The Chair:** Mr. Kormos?

**Mr. Kormos:** We don’t have a 29.1 yet. With respect, Mr. Zimmer, this should be deferred until after you move your motion creating 29.1.

**The Chair:** This will be deferred.

NDP motion 16A: Mr. Kormos.

**Mr. Kormos:** I move that section 29 of the act, as set out in section 5 of the bill, be amended by adding the following clause:

“(h.1) to monitor compliance with orders made by the tribunal under part IV;”

That’s self-explanatory. It makes it clear that the commission has that as a specific obligation.

**The Chair:** Any debate? Seeing none—

**Mr. Kormos:** A recorded vote, please.

### Ayes

Elliott, Kormos.

### Nays

McMeekin, Oraziotti, Ramal, Van Bommel, Zimmer.

**The Chair:** It’s lost.

Government motion number 17.

**Mr. Zimmer:** I move that clause 29(i) of the act, as set out in section 5 of the bill, be struck out and the following substituted:

“(i) to report to the people of Ontario on the state of human rights in Ontario and on its affairs;”

**The Chair:** Any debate? Mr. Kormos.

**Mr. Kormos:** One of the interesting things is that the government was heralding, as if somehow it was new, an annual report by the commission/tribunal. The Human Rights Commission produces an annual report now in any event. Remember when Mr. Bryant was here—do you remember that, Mr. Zimmer? Mr. Bryant was here and you had the trumpets blaring and you had the cheerleaders with the pom-poms about the proposed amendments. He was talking about this, somehow implying that for the first time the commission will be making an annual report. It does now. “To report to the people of Ontario on the state of human rights in Ontario and on its affairs.” Do you know what? Victims of discrimination wanted to report to this committee their victimization in terms of human rights, and your closure motion slammed the door in their face.

I’ll support the amendment.

1140

**The Chair:** Any further debate? Seeing none, all those in favour? Carried.

Government motion number 18.

**Mr. Zimmer:** I move that part III of the act, as set out in section 5 of the bill, be amended by adding the following section:

“Commission documents

“29.1 The commission may approve policies prepared and published by the commission to provide guidance in the application of parts I and II.”

**The Chair:** Any debate? Seeing none, all those in favour? Opposed? It’s carried.

Government motion number 19.

**Mr. Zimmer:** We go back to 16 now.

**The Chair:** Yes. Government motion number 16.

**Mr. Zimmer:** I move that section 29 of the act, as set out in section 5 of the bill, be amended by adding the following clause:

“(g.1) to approve policies under section 29.1;”

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

We’re on to government motion number 19.

**Mr. Zimmer:** I move that part III of the act, as set out in section 5 of the bill, be amended by adding the following sections:

“Inquiries

“29.2(1) The commission may conduct an inquiry under this section for the purpose of carrying out its functions under this act if the commission believes it is in the public interest to do so.

“Conduct of inquiry

“(2) An inquiry may be conducted under this section by any person who is appointed by the commission to carry out inquiries under this section.

“Production of certificate

“(3) A person conducting an inquiry under this section shall produce proof of their appointment upon request.

“Entry

“(4) A person conducting an inquiry under this section may, without warrant, enter any lands or any building, structure or premises where the person has reason to believe there may be documents, things or information relevant to the inquiry.

“Time of entry

“(5) The power to enter a place under subsection (4) may be exercised only during the place’s regular business hours or, if it does not have regular business hours, during daylight hours.

“Dwellings

“(6) A person conducting an inquiry under this section shall not enter into a place or part of a place that is a dwelling without the consent of the occupant.

“Powers on inquiry

“(7) A person conducting an inquiry may,

“(a) request the production for inspection and examination of documents or things that are or may be relevant to the inquiry;

“(b) upon giving a receipt for it, remove from a place documents produced in response to a request under clause (a) for the purpose of making copies or extracts;

“(c) question a person on matters that are or may be relevant to the inquiry, subject to the person’s right to have counsel or a personal representative present during such questioning and exclude from the questioning any person who may be adverse in interest to the inquiry;

“(d) use any data storage, processing or retrieval device or system used in carrying on business in the place in order to produce a document in readable form;

“(e) take measurements or record by any means the physical dimensions of a place;

“(f) take photographs, video recordings or other visual or audio recordings of the interior or exterior of a place; and

“(g) require that a place or part thereof not be disturbed for a reasonable period of time for the purposes of carrying out an examination, inquiry or test.

“Written demand

“(8) A demand that a document or thing be produced must be in writing and must include a statement of the nature of the document or thing required.

“Assistance

“(9) A person conducting an inquiry may be accompanied by any person who has special, expert or professional knowledge and who may be of assistance in carrying out the inquiry.

“Use of force prohibited

“(10) A person conducting an inquiry shall not use force to enter and search premises under this section.

“Obligation to produce and assist

“(11) A person who is requested to produce a document or thing under clause (7)(a) shall produce it and shall, on request by the person conducting the inquiry, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce a document in readable form.

“Return of removed things

“(12) A person conducting an inquiry who removes any document or thing from a place under clause (7)(b) shall,

“(a) make it available to the person from whom it was removed, on request, at a time and place convenient for both that person and the person conducting the inquiry; and

“(b) return it to the person from whom it was removed within a reasonable time.

“Admissibility of copies

“(13) A copy of a document certified by a person conducting an inquiry to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

“Obstruction

“(14) No person shall obstruct or interfere with a person conducting an inquiry under this section.

“Search warrant

“29.3(1) The commission may authorize a person to apply to a justice of the peace for a warrant to enter a place and conduct a search of the place if,

“(a) a person conducting an inquiry under section 29.2 has been denied entry to any place or asked to leave a place before concluding a search;

“(b) a person conducting an inquiry under section 29.2 made a request for documents or things and the request was refused; or

“(c) an inquiry under section 29.2 is otherwise obstructed or prevented.

“Same

“(2) Upon application by a person authorized under subsection (1) to do so, a justice of the peace may issue a warrant under this section if he or she is satisfied on information under oath or affirmation that the warrant is

necessary for the purposes of carrying out the inquiry under section 29.2.

“Powers

“(3) A warrant obtained under subsection (2) may authorize a person named in the warrant, upon producing proof of his or her appointment,

“(a) to enter any place specified in the warrant, including a dwelling; and

“(b) to do any of the things specified in the warrant.

“Conditions on search warrant

“(4) A warrant obtained under subsection (2) shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances.

“Time of execution

“(5) An entry under a warrant issued under this section shall be made at such reasonable times as may be specified in the warrant.

“Expiry of warrant

“(6) A warrant issued under this section shall name a date of expiry, which shall be no later than 15 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 15 days, upon application without notice by the person named in the warrant.

“Use of force

“(7) The person authorized to execute the warrant may call upon police officers for assistance in executing the warrant and the person may use whatever force is reasonably necessary to execute the warrant.

“Obstruction prohibited

“(8) No person shall obstruct or hinder a person in the execution of a warrant issued under this section.

“Application

“(9) Subsections 29.2(11), (12) and (13) apply with necessary modifications to an inquiry carried out pursuant to a warrant issued under this section.

“Evidence used in tribunal proceedings

“29.4 Despite any other act, evidence obtained on an inquiry under section 29.2 or 29.3 may be received into evidence in a proceeding before the tribunal.”

**The Chair:** Ms. Elliott?

**Mrs. Elliott:** The problem I see with this amendment—and my concerns have been reflected by many witnesses—is that it assumes you can neatly draw the distinction between a systemic and an individual complaint. While it’s very detailed in terms of the conduct of the inquiry, if you look at the initial statement, “The commission may conduct an inquiry under this section ... if the commission believes it is in the public interest to do so”—how will the commission know if it is in the public interest to do so if it doesn’t have any knowledge of what the individual complaints are? We’ve heard that there’ll be some informal kind of system whereby they’ll receive reports and so on, but it still assumes that you can neatly separate them, and we’ve heard from many, many witnesses that that can’t happen. That’s my biggest concern with this amendment.

**The Chair:** Mr. Kormos?

1150

**Mr. Kormos:** Ms. Elliott's point is well made. That's the whole point, quite frankly. It's in the public interest for the commission to investigate any valid complaint of discrimination under the Human Rights Code. That's the point we've been trying to make and, more importantly, the point a whole lot of folks across the province have been trying to make. This amendment illustrates the complexity of an investigative role that, in the private system you propose, can never be performed by the complainant privately, notwithstanding the best-made plans of mice and men, as in a legal support clinic.

Let me speak to a couple of other parts of the amendment. I'm sorry, but—well, I shouldn't apologize. I find warrantless searches offensive and contrary to a long-held tradition, whether they're of dwellings—because I can see that you require warrants for searching dwellings—or of any other place. In situations like the licensed sector, there is implicit in the licensing that an inspector will have the right of entry, right? I regard human rights violations to be very serious matters. I also regard possession of stolen goods, possession of illegal firearms, murder—name the Criminal Code offence you want—to be very serious crimes too. Yet we require police officers to obtain warrants to search places in each and every one of those circumstances. I will not support warrantless searches. It's simply unjustifiable.

That takes us to page 3 of your amendment. This morning I was in here—because this isn't one of the amendments you produced this morning; this is one you had delivered yesterday. Granted, it was early in the morning, but with respect to 29.3, under “Search warrant,” I wrote “stupid.” Look what you've done. Read 29.3, with respect. You can get a warrant if a person has been denied entry to any place or asked to leave the place, you can get a warrant if a person made a request for documents or things and the request was refused, or you can get a warrant if an inquiry was obstructed. Well, have you never heard of paper shredders? Do you not see the scenario? The commission inspector goes knocking on the door: “Mr. Dhillon, I want to see your employment records with respect to employee A, B or C whose human rights complaint we are investigating.” You tell the inspector to go pound salt, then he goes to a JP to get a warrant. Just what do you think guilty people do with evidence if they have been tipped off to the fact that somebody wants it? There's an absurdity here, isn't there, Mr. Zimmer? Why would we permit people to get search warrants only after they've tipped off the subject of a human rights investigation that they're the subject of a human rights investigation? That's nuts. If only, when I practised criminal law, that were the standard. All of my clients would have been innocent. Honest, I tried, Mr. Zimmer. This morning, I read the amendment over and over and over again, and I tried to be helpful. As you know, I don't want to be unduly critical.

*Laughter.*

**Mr. Kormos:** No, I'm serious. I looked for some sort of rationale for this type of standard for obtaining a

search warrant. I get it: “Knock, knock, knock. We think this is a marijuana grow-opposition and that you guys are bikers and that you've probably got a whole lot of automatic rifles in here too, along with some Bryant pit bulls. Oh, but you're not going to let us in? Well, we'll be back with a warrant. Just watch.” Come on. That's not how you conduct serious investigations, sir, and these are serious matters.

I find warrantless searches inherently offensive, unless we're talking about licensed bodies that, by virtue of being licensed, are subject to inspections, for instance, by Ministry of Labour inspectors etc. But I find the irrationality of 29.3 to be just—maybe your experience with bad guys is better than mine. Maybe you know bad guys who do co-operate with inspectors, or people who discriminate who do co-operate with commission investigators. I've never met that person yet. Maybe I'm just travelling in the wrong circles.

With respect, I would be pleased, Chair, to consent to this motion being returned with that portion around 29.3—I know I'm going to lose the warrantless search argument. But on 29.3, that you've got to give notice to the person about whom you're going to get a search warrant before you can get the search warrant, is just too absurd. I'll consent to this motion being returned if you want, to eliminate the notice portion to a suspected offender of the Human Rights Code. I'd be pleased to do that.

**The Chair:** Any further debate? Seeing none, all those in favour?

**Mr. Kormos:** Recorded vote.

**Ayes**

McMeekin, Oraziotti, Ramal, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** It's carried.

**Mr. Kormos:** I can hear the hum of paper shredders already.

**The Chair:** NDP motion, 19A.

**Mr. Kormos:** I move that subsections 30(2) and (3) of the act, as set out in section 5 of the bill, be struck out and the following substituted:

“Composition

“(2) The Anti-Racism Secretariat shall be composed of such persons as may be appointed by the Lieutenant Governor in Council, on the recommendation of the Anti-Racism Secretariat Appointments Advisory Committee.”

Here I'm being presumptuous. I suspect this should be deferred unless and until we get to the Anti-Racism Secretariat Appointments Advisory Committee. Am I okay on that, Ms. Stokes?

**The Chair:** That's stood down. We'll move to government motion 20.

**Mr. Kormos:** Thank you. I was jumping the gun.

**Mr. Zimmer:** I move that subsection 30(2) of the act, as set out in section 5 of the bill, be amended by striking out “by the minister” and substituting “by the Lieutenant Governor in Council”.

**The Chair:** Any debate? Seeing none, all those in favour? Opposed? That’s carried.

Government motion 21.

**Mr. Zimmer:** I move that subsection 30(3) of the act, as set out in section 5 of the bill, be amended by striking out “The minister” at the beginning and substituting “The Lieutenant Governor in Council”.

**Mr. Kormos:** As with the previous one, please, folks, this doesn’t in any way sanitize the process or improve it. We’re still talking about political calls here. The Lieutenant Governor in Council is not Mr. Bartleman—for whom all of us have the highest regard—making decisions. The Lieutenant Governor in Council is the cabinet. That’s the long and short of it.

**The Chair:** Any further debate? All those in favour? Opposed? It’s carried.

NDP motion 21A.

**Mr. Kormos:** I move that section 30 of the act, as set out in section 5 of the bill, be amended by adding the following subsection:

“Staff

“(3.1) The Anti-Racism Secretariat may employ such persons as is necessary to the efficient operation of the secretariat and the salary, remuneration, terms and conditions of employments shall be established by the Lieutenant Governor in Council.”

**1200**

Very briefly, New Democrats have serious concerns about burying an Anti-Racism Secretariat in this new shell of a commission. We don’t think that puts anti-racism on a very elevated level in terms of prioritization, never mind funding. That secretariat is going to have to share what we feel will be an inadequate envelope when it comes to funding; similarly with the disability secretariat. We have always believed that. There should be a restoration in Ontario of the Anti-Racism Secretariat. We have some serious problems going on with respect to racism. End of story. The area of discrimination, which includes a number of areas of discrimination within the scope of the commission—racism in and of itself warrants a stand-alone secretariat, not a virtual secretariat buried in the commission. This, however, attempts to ensure that the secretariat at least has the capacity to require adequate levels of resources and funding.

**The Chair:** Any further debate?

**Mr. Kormos:** A recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

Orazietti, McMeekin, Ramal, Van Bommel, Zimmer.

**The Chair:** That’s lost.

NDP motion 21B.

**Mr. Kormos:** I move that subsection 30(4) of the act, as set out in section 5 of the bill, be amended by striking out “and” at the end of clause (b), adding “and” at the end of clause (c) and adding the following clause:

“(d) perform the functions assigned to it under this or any other act.”

Again, that very much speaks for itself. I’m calling for a recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

Orazietti, McMeekin, Ramal, Van Bommel, Zimmer.

**The Chair:** That’s lost.

Government motion 22.

**Mr. Zimmer:** I move that subsection 30(4) of the act, as set out in section 5 of the bill, be amended by,

(a) striking out “make recommendations” in clause (a) and substituting “make recommendations to the commission”; and

(b) striking out “or prescribed by regulation” at the end of clause (c).

**The Chair:** Any debate? Seeing none, all those in favour? That’s carried.

NDP motion 22A.

**Mr. Kormos:** I move that section 5 of the bill be amended by adding the following section to the act:

“Anti-Racism Secretariat Appointment Advisory Committee

“30.1(1) A committee known as the Anti-Racism Secretariat Appointment Advisory Committee in English and as Comité consultatif sur les nominations au Secrétariat antiracisme in French is established.

“Composition

“(2) The committee is composed of,

“(a) two commissioners, selected by the commissioners;

“(b) three lawyers, one appointed by the Law Society of Upper Canada, one by the Canadian Bar Association—Ontario and one by the County and District Law Presidents’ Association;

“(c) six persons who are neither judges nor lawyers, two appointed by each of the political parties that have at least eight elected representatives sitting in the Legislative Assembly.

“Term of office

“(3) The members hold office for three-year terms and may be reappointed.

“Chair

“(4) The members of the committee shall select a chair from among themselves who shall sit as chair for a three-year term and may be reappointed.

“Function

“(5) The function of the committee is to make recommendations to the Lieutenant Governor in Council for the appointment of members of the Anti-Racism Secretariat.

“Manner of operating

“(6) The committee shall perform its function in the following manner:

“1. When a vacancy in the Anti-Racism Secretariat occurs and the Lieutenant Governor in Council asks the committee to make a recommendation, it shall advertise the vacancy and review all applications.

“2. For every vacancy in the Anti-Racism Secretariat with respect to which a recommendation is requested, the committee shall give the Lieutenant Governor in Council a ranked list of at least two candidates whom it recommends, with brief supporting reasons.

“3. The committee shall conduct the advertising and review process in accordance with criteria established by the committee, including assessment of the professional excellence, community awareness and personal characteristics of candidates and recognition of the desirability of reflecting the diversity of Ontario society in Anti-Racism Secretariat appointments.

“4. The committee may make recommendations from among candidates interviewed within the preceding year, if there is not enough time for a fresh advertising and review process.

“Rejection of list

“(7) The Lieutenant Governor in Council may reject the committee’s recommendations and require it to provide a fresh list.

“Annual report

“(8) The committee shall submit to the Attorney General an annual report of its activities.

“Tabling

“(9) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the assembly.”

This speaks for itself. It’s the parallel of what I proposed with respect to the appointments committee for the commission.

A recorded vote, please.

### Ayes

Elliott, Kormos.

### Nays

McMeekin, Oraziotti, Ramal, Van Bommel, Zimmer.

**The Chair:** It’s lost.

NDP motion 19A.

**Mr. Kormos:** I can indicate clearly that that motion is now moot, a done deal.

**The Chair:** We are now at NDP motion number 22B.

**Mr. Kormos:** I move that section 5 of the bill be amended by adding the following section to the act:

“Referral of complaints

“30.2 If the commission receives a complaint in which allegations of discrimination based on racism or a related ground are made, the commission may refer the complaint to the Anti-Racism Secretariat.

“Investigation of complaints

“30.3(1) Subject to section 30.4, the Anti-Racism Secretariat shall investigate a complaint and may endeavour to effect a settlement.

“Investigation

“(2) An investigation by the Anti-Racism Secretariat may be made by a member or employee of the secretariat who is authorized by the secretariat for the purpose.

“Powers on investigation

“(3) A person authorized to investigate a complaint may,

“(a) enter any place, other than a place that is being used as a dwelling, at any reasonable time, for the purpose of investigating the complaint;

“(b) request the production for inspection and examination of documents or things that are or may be relevant to the investigation;

“(c) upon giving a receipt therefor, remove from a place documents produced in response to a request under clause (b) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced or furnished them; and

“(d) question a person on matters that are or may be relevant to the complaint subject to the person’s right to have counsel or a personal representative present during such questioning, and may exclude from the questioning any person who may be adverse in interest to the complainant.

“Entry into dwellings

“(4) A person investigating a complaint shall not enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under subsection (8).

“Denial of entry

“(5) Subject to subsection (4), if a person who is or may be a party to a complaint denies entry to any place, or instructs the person investigating to leave the place, or impedes or prevents an investigation therein, the Anti-Racism Secretariat may refer the matter to the tribunal or may authorize an employee or member to apply to a justice of the peace for a warrant to enter under subsection (8).

“Refusal to produce

“(6) If a person refuses to comply with a request for production of documents or things, the Anti-Racism Secretariat may refer the matter to the tribunal, or may authorize an employee or member to apply to a justice of the peace for a search warrant under subsection (7).

“Warrant for search

“(7) Where a justice of the peace is satisfied on evidence upon oath or affirmation that there are in a place documents that there is reasonable ground to believe will afford evidence relevant to the complaint, he or she may issue a warrant in the prescribed form authorizing a person named in the warrant to search a place for any

such documents, and to remove them for the purposes of making copies thereof or extracts therefrom, and the documents shall be returned promptly to the place from which they were removed.

“Warrant for entry

“(8) Where a justice of the peace is satisfied by evidence upon oath or affirmation that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered to investigate a complaint, he or she may issue a warrant in the prescribed form authorizing such entry by a person named in the warrant.

“Execution of warrant

“(9) A warrant issued under subsection (7) or (8) shall be executed at reasonable times as specified in the warrant.

“Expiration of warrant

“(10) Every warrant shall name a date on which it expires, which shall be a date not later than 15 days after it is issued.

“Obstruction

“(11) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede an investigation under this act.

“Idem

“(12) Subsection (11) is not contravened by a refusal to comply with a request for the production of documents or things made under clause (3)(b).

“Admissibility of copies

“(13) Copies of, or extracts from, documents removed from premises under clause (3)(c) or subsection (7) certified as being true copies of the originals by the person who made them, are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents of which they are copies or extracts.

“Decision to not deal with complaint

“30.4(1) Where it appears to the Anti-Racism Secretariat that,

“(a) the complaint is one that could or should be more appropriately dealt with under an act other than this act;

“(b) the subject-matter of the complaint is trivial, frivolous, vexatious or made in bad faith;

“(c) the complaint is not within the jurisdiction of the Anti-Racism Secretariat; or

“(d) the facts upon which the complaint is based occurred more than six months before the complaint was filed, unless the Anti-Racism Secretariat is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay,

“the Anti-Racism Secretariat may, in its discretion, decide to not deal with the complaint.

Very quickly, we’ve tried to parallel the government’s legislation, including avoiding the government saying, “Well, we won’t vote for that because you require warrants to search non-dwellings.” I’ve sacrificed my concern about that to avoid giving the government an excuse to oppose the amendment. We’ve settled a search warrant procedure that doesn’t require notice to the person being searched that you’re going to get a search

warrant. That’s pretty traditional search warrant procedure.

**1210**

**The Chair:** Mr. Kormos, are you aware that you’re only part way through the motion?

**Mr. Kormos:** Well, that’s all I’m going to read in.

**The Chair:** You won’t be reading any further?

**Mr. Kormos:** That’s all I’m reading in.

**The Chair:** That’s fine. Go ahead.

**Mr. Kormos:** We’ve provided for a stature for the Anti-Racism Secretariat that gives it a function other than being merely a virtual secretariat. We contemplate the development of expertise within the Anti-Racism Secretariat. I think that could serve us well. I’ve already indicated that we don’t agree with your broad proposition, but I put to you that this is a valid way of giving the Anti-Racism Secretariat stature so it’s something other than a name above a door. Those are my comments.

**The Chair:** Any other debate?

**Mr. Kormos:** Recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

McMeekin, Oraziotti, Ramal, Zimmer.

**The Chair:** That’s defeated.

**Mr. Kormos:** I’m going to decline to move 22C.

**The Chair:** 22C is withdrawn.

**Mr. Kormos:** No, it hasn’t been withdrawn. I simply have declined to move it. You can only withdraw something after you enter it. It doesn’t exist.

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

Government motion number 23.

**Mr. Zimmer:** I move that subsection 31(2) of the act, as set out in section 5 of the bill, be amended by striking out “by the minister” and substituting “by the Lieutenant Governor in Council”.

**The Chair:** Any debate? That’s carried.

Government motion 24.

**Mr. Zimmer:** I move that subsection 31(3) of the act, as set out in section 5 of the bill, be amended by striking out “The minister” at the beginning and substituting “The Lieutenant Governor in Council”.

**The Chair:** That’s carried.

NDP motion?

**Mr. Kormos:** I move that section 31 of the act, as set out in section 5 of the bill, be amended by adding the following subsection:

“Staff

“(3.1) The Disability Rights Secretariat may employ such persons as is necessary to the efficient operation of the secretariat and the salary, remuneration, terms and conditions of employments shall be established by the Lieutenant Governor in Council.”

It's the same rationale for that proposal as there was for the parallel proposal on behalf of the Anti-Racism Secretariat. Here's an opportunity for the government to demonstrate that it's flexible. While it may not agree with that proposition when it comes to anti-racism, it certainly does when it comes to disabilities.

**The Chair:** Any further debate?

**Mr. Kormos:** A recorded vote, please.

#### Ayes

Elliott, Kormos.

#### Nays

McMeekin, Oraziotti, Ramal, Zimmer.

**The Chair:** It's defeated.

Government motion number 25.

**Mr. Zimmer:** I move that subsection 31(4) of the act, as set out in section 5 of the bill, be amended by,

(a) striking out "make recommendations" in clause (a) and substituting "make recommendations to the commission"; and

(b) striking out "or prescribed by regulation" at the end of clause (c).

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

NDP motion?

**Mr. Kormos:** I move that subsection 31(4) of the act, as set out in section 5 of the bill, be amended by striking out "and" at the end of clause (b), adding "and" at the end of clause (c) and adding the following clause:

"(d) perform the functions assigned to it under this or any other act."

**The Chair:** Any debate? Seeing none—

**Mr. Kormos:** Carried.

**The Chair:** —all those in favour?

**Mr. Kormos:** Say no.

**Mr. Zimmer:** No.

**The Chair:** Opposed? Lost.

NDP motion?

**Mr. Kormos:** Chair, on a point of order: Mr. Zimmer did say no, which then prompted a count. I'm not being critical, but can we get some uniformity? I'm saying "carried" to try to expedite matters here, which is the way, as you know, we vote in the chamber. It's a proper vote. If somebody says no, that means you need a show of hands; it's basically a counted vote, as compared to a recorded vote, which has to be specifically requested. Mr. Zimmer will not miss a vote. Just use whatever method you want.

**Mr. McMeekin:** Mr. Chair, you asked for nay votes, right?

**The Chair:** Yes.

**Mr. Kormos:** But he said no. You see, then you have a counted vote.

**The Chair:** Moving on to NDP motion number 25B.

**Mr. Kormos:** I move that section 5 of the bill be amended by adding the following section to the act:

"Disability Rights Secretariat Appointment Advisory Committee

"31.0.1(1) A committee known as the Disability Rights Secretariat Appointment Advisory Committee in English and as Comité consultatif sur les nominations au secrétariat aux droits des personnes handicapées in French is established.

"Composition

"(2) The committee is composed of,

"(a) two commissioners, selected by the commissioners;

"(b) three lawyers, one appointed by the Law Society of Upper Canada, one by the Canadian Bar Association—Ontario and one by the County and District Law Presidents' Association;

"(c) six persons who are neither judges nor lawyers, two appointed by each of the political parties that have at least eight elected representatives sitting in the Legislative Assembly.

"Term of office

"(3) The members hold office for three-year terms and may be reappointed.

"Chair

"(4) The members of the committee shall select a chair from among themselves who shall sit as chair for a three-year term and may be reappointed.

"Function

"(5) The function of the committee is to make recommendations to the Lieutenant Governor in Council for the appointment of members of the Disability Rights Secretariat.

"Manner of operating

"(6) The committee shall perform its function in the following manner:

"1. When a vacancy in the Disability Rights Secretariat occurs and the Lieutenant Governor in Council asks the committee to make a recommendation, it shall advertise the vacancy and review all applications.

"2. For every vacancy in the Disability Rights Secretariat with respect to which a recommendation is requested, the committee shall give the Lieutenant Governor in Council a ranked list of at least two candidates whom it recommends, with brief supporting reasons.

"3. The committee shall conduct the advertising and review process in accordance with criteria established by the committee, including assessment of the professional excellence, community awareness and personal characteristics of candidates and recognition of the desirability of reflecting the diversity of Ontario society in Disability Rights Secretariat appointments.

"4. The committee may make recommendations from among candidates interviewed within the preceding year, if there is not enough time for a fresh advertising and review process.

"Rejection of list

"(7) The Lieutenant Governor in Council may reject the committee's recommendations and require it to provide a fresh list.

"Annual report

“(8) The committee shall submit to the Attorney General an annual report of its activities.

“Tabling

“(9) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the assembly.”

This is the parallel of previous amendments with respect to the commission and the Anti-Racism Secretariat.

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

**Mr. Kormos:** A recorded vote, please.

### Ayes

Elliott, Kormos.

### Nays

McMeekin, Oraziotti, Van Bommel, Zimmer.

**The Chair:** It's lost.

Motion 25C.

1220

**Mr. Kormos:** I move that section 5 of the bill be amended by adding the following sections to the act:

“Referral of complaints

“31.0.2 If the commission receives a complaint in which allegations of discrimination based on disability are made, the commission may refer the complaint to the Disability Rights Secretariat.

“Investigation of complaints

“31.0.3 (1) Subject to section 31.0.4, the Disability Rights Secretariat shall investigate a complaint and may endeavour to effect a settlement.

“Investigation

“(2) An investigation by the Disability Rights Secretariat may be made by a member or employee of the secretariat who is authorized by the secretariat for the purpose.

“Powers on investigation

“(3) A person authorized to investigate a complaint may,

“(a) enter any place, other than a place that is being used as a dwelling, at any reasonable time, for the purpose of investigating the complaint;

“(b) request the production for inspection and examination of documents or things that are or may be relevant to the investigation;

“(c) upon giving a receipt therefor, remove from a place documents produced in response to a request under clause (b) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced or furnished them; and

“(d) question a person on matters that are or may be relevant to the complaint subject to the person's right to have counsel or a personal representative present during such questioning, and may exclude from the questioning any person who may be adverse in interest to the complainant.

“Entry into dwellings

“(4) A person investigating a complaint shall not enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under subsection (8).

“Denial of entry

“(5) Subject to subsection (4), if a person who is or may be a party to a complaint denies entry to any place, or instructs the person investigating to leave the place, or impedes or prevents an investigation therein, the disability rights secretariat may refer the matter to the tribunal or may authorize an employee or member to apply to a justice of the peace for a warrant to enter under subsection (8).

“Refusal to produce

“(6) If a person refuses to comply with a request for production of documents or things, the Disability Rights Secretariat may refer the matter to the tribunal, or may authorize an employee or member to apply to a justice of the peace for a search warrant under subsection (7).

“Warrant for search

“(7) Where a justice of the peace is satisfied on evidence upon oath or affirmation that there are in a place documents that there is reasonable ground to believe will afford evidence relevant to the complaint, he or she may issue a warrant in the prescribed form authorizing a person named in the warrant to search a place for any such documents, and to remove them for the purposes of making copies thereof or extracts therefrom, and the documents shall be returned promptly to the place from which they were removed.

“Warrant for entry

“(8) Where a justice of the peace is satisfied by evidence upon oath or affirmation that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered to investigate a complaint, he or she may issue a warrant in the prescribed form authorizing such entry by a person named in the warrant.

“Execution of warrant

“(9) A warrant issued under subsection (7) or (8) shall be executed at reasonable times as specified in the warrant.

“Expiration of warrant

“(10) Every warrant shall name a date on which it expires, which shall be a date not later than 15 days after it is issued.

“Obstruction

“(11) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede an investigation under this act.

“Idem

“(12) Subsection (11) is not contravened by a refusal to comply with a request for the production of documents or things made under clause (3)(b).

“Admissibility of copies

“(13) Copies of, or extracts from, documents removed from premises under clause (3)(c) or subsection (7) certified as being true copies of the originals by the person who made them, are admissible in evidence to the same

extent as, and have the same evidentiary value as, the documents of which they are copies or extracts.

“Decision to not deal with complaint

“31.0.4(1) Where it appears to the Disability Rights Secretariat that,

“(a) the complaint is one that could or should be more appropriately dealt with under an act other than this act;

“(b) the subject matter of the complaint is trivial, frivolous, vexatious or made in bad faith;

“(c) the complaint is not within the jurisdiction of the Disability Rights Secretariat; or

“(d) the facts upon which the complaint is based occurred more than six months before the complaint was filed, unless the Disability Rights Secretariat is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay,

“the Disability Rights Secretariat may, in its discretion, decide to not deal with the complaint.”

That is the whole amendment.

**The Chair:** Any debate?

**Mr. Kormos:** Again, this is the parallel of the government’s own legislation in terms of the commission function. It utilized much of the same language so as not to give the government a reason—a valid reason—to oppose it. It gives the Disability Rights Secretariat a function, where there could be expertise—because if you’re going to put the Disability Rights Secretariat and the Anti-Racism Secretariat in the commission, then have them do something. I say have them cultivate and nurture expertise in those two very specific areas of discrimination: discrimination around disabilities and discrimination around racism. Why else would you even have them there in the commission? Make them functional rather than pure lip service. That’s what this amendment purports to do.

**The Chair:** Thank you, Mr. Kormos. Any other debate?

**Mr. Kormos:** Recorded vote, please.

#### Ayes

Elliott, Kormos.

#### Nays

McMeekin, Oraziotti, Van Bommel, Zimmer.

**The Chair:** It’s lost. Number 25D.

**Mr. Kormos:** I move that section 31.1 of the act, as set out in section 5 of the bill, be struck out and the following substituted:

“Advisory groups

“31.1(1) The chief commissioner may establish such advisory groups as he or she considers appropriate to advise the commission about the elimination of discrimination.

“Appointment

“(2) The chief commissioner shall select persons for appointment to an advisory group based on their training, experience and knowledgeability in the particular subject matter about which the advisory group is to provide advice.

“Remuneration

“(3) A person appointed to an advisory group shall receive such remuneration and allowance for expenses as is specified in the appointment.

“Public consultation

“(4) An advisory group shall consult with the public in such circumstances and manner as may be prescribed by regulation.”

I think that’s pretty self-explanatory.

**The Chair:** Any debate?

**Mr. Kormos:** Recorded vote, please.

#### Ayes

Elliott, Kormos.

#### Nays

McMeekin, Oraziotti, Van Bommel, Zimmer.

**The Chair:** It’s lost.

Government motion number 26.

**Mr. Zimmer:** I move that section 31.2 of the act, as set out in section 5 of the bill, be struck out and the following substituted:

“31.2(1) Every year, the commission shall prepare an annual report on the affairs of the commission that occurred during the 12-month period ending on March 31 of each year.

“Report to Speaker

“(2) The commission shall submit the report to the Speaker of the Assembly no later than on June 30 in each year, who shall cause the report to be laid before the assembly if it is in session or, if not, at the next session.

“Copy to minister

“(3) The commission shall give a copy of the report to the minister at least 30 days before it is submitted to the Speaker under subsection (2).

“Other reports

“31.3 In addition to the annual report, the commission may make any other reports respecting the state of human rights in Ontario and the affairs of the commission as it considers appropriate, and may present such reports to the public or any other person it considers appropriate.”

**The Chair:** Any debate? Seeing none, it’s carried.

Is there any further debate on section 5?

**Mr. Kormos:** Yes. We oppose section 5. Let’s understand what section 5 does. Section 5 repeals part III of the Ontario Human Rights Code. It’s what guts the commission. I’m going to try to rectify that with my next amendment, if it’s in order; I think it is, because it’s consequential. Section 5—this is it, this is the critical vote right here and now. It shows what side you’re on.

New Democrats will be voting against section 5 for that very reason.

**The Chair:** All those in favour of section 5?

**Mr. Kormos:** A recorded vote.

#### Ayes

McMeekin, Oraziotti, Van Bommel, Zimmer.

#### Nays

Elliott, Kormos.

**The Chair:** It's carried.

Section 6?

**Mr. Kormos:** What about 26A?

**The Chair:** Yes, creating a section 5.1. Mr. Kormos, 26A.

**Mr. Kormos:** Thank you kindly. You know what I'm going to do? Because my amendment is identical to the amendment of Ms. Elliott, I will decline to move my amendment and let Ms. Elliott read an amendment that is five pages long.

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

It's almost 12:30, so we're going to break and meet back here again at 3:30 this afternoon, as I know members have commitments.

*The committee recessed from 1228 to 1540.*

**The Chair:** Welcome back to the committee. We are going to resume clause-by-clause consideration of Bill 107.

I believe we left off at PC motion 26B. We have also distributed an additional PC motion, page 51D. I just want to make sure all parties have that. If that's all in order, we can start with Ms. Elliott, 26B.

**Mrs. Elliott:** I move that the bill be amended by adding the following section:

"5.1 The act is amended by adding the following part:

"Part III.1

"Complaints and investigations by commission

"Complaints

"31.3(1) Where a person believes that a right of the person under this act has been infringed, the person may file with the commission a complaint in a form approved by the commission.

"Same

"(2) The commission may initiate a complaint by itself or at the request of any person.

"Combining of complaints

"(3) Where two or more complaints,

"(a) bring into question a practice of infringement engaged in by the same person; or

"(b) have questions of law or fact in common,

"the commission may combine the complaints and deal with them in the same proceeding.

"Application under part IV

"(4) Nothing in this part affects the right of a person or the commission to make an application under part IV.

"Investigation of complaints

"31.4(1) Subject to section 31.5, the commission shall investigate a complaint and may endeavour to effect a settlement.

"Investigation

"(2) An investigation by the commission may be made by a member or employee of the commission who is authorized by the commission for the purpose.

"Powers on investigation

"(3) A person authorized to investigate a complaint may,

"(a) enter any place, other than a place that is being used as a dwelling, at any reasonable time, for the purpose of investigating the complaint;

"(b) request the production for inspection and examination of documents or things that are or may be relevant to the investigation;

"(c) upon giving a receipt therefor, remove from a place documents produced in response to a request under clause (b) for the purpose of making copies thereof or extracts therefrom and shall promptly return them to the person who produced or furnished them; and

"(d) question a person on matters that are or may be relevant to the complaint subject to the person's right to have counsel or a personal representative present during such questioning, and may exclude from the questioning any person who may be adverse in interest to the complainant.

"Entry into dwellings

"(4) A person investigating a complaint shall not enter a place that is being used as a dwelling without the consent of the occupier except under the authority of a warrant issued under subsection (8).

"Denial of entry

"(5) Subject to subsection (4), if a person who is or may be a party to a complaint denies entry to any place, or instructs the person investigating to leave the place, or impedes or prevents an investigation therein, the commission may refer the matter to the tribunal or may authorize an employee or member to apply to a justice of the peace for a warrant to enter under subsection (8).

"Refusal to produce

"(6) If a person refuses to comply with a request for production of documents or things, the commission may refer the matter to the tribunal, or may authorize an employee or member to apply to a justice of the peace for a search warrant under subsection (7).

"Warrant for search

"(7) Where a justice of the peace is satisfied on evidence upon oath or affirmation that there are in a place documents that there is reasonable ground to believe will afford evidence relevant to the complaint, he or she may issue a warrant in the prescribed form authorizing a person named in the warrant to search a place for any such documents, and to remove them for the purposes of making copies thereof or extracts therefrom, and the documents shall be returned promptly to the place from which they were removed.

"Warrant for entry

“(8) Where a justice of the peace is satisfied by evidence upon oath or affirmation that there is reasonable ground to believe it is necessary that a place being used as a dwelling or to which entry has been denied be entered to investigate a complaint, he or she may issue a warrant in the prescribed form authorizing such entry by a person named in the warrant.

“Execution of warrant

“(9) A warrant issued under subsection (7) or (8) shall be executed at reasonable times as specified in the warrant.

“Expiration of warrant

“(10) Every warrant shall name a date on which it expires, which shall be a date not later than 15 days after it is issued.

“Obstruction

“(11) No person shall hinder, obstruct or interfere with a person in the execution of a warrant or otherwise impede an investigation under this act.

“Same

“(12) Subsection (11) is not contravened by a refusal to comply with a request for the production of documents or things made under clause (3)(b).

“Admissibility of copies

“(13) Copies of, or extracts from, documents removed from premises under clause (3)(c) or subsection (7) certified as being true copies of the originals by the person who made them, are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents of which they are copies or extracts.

“Decision to not deal with complaint

“31.5(1) Where it appears to the commission that,

“(a) the complaint is one that could or should be more appropriately dealt with under an act other than this act;

“(b) the subject matter of the complaint is trivial, frivolous, vexatious or made in bad faith;

“(c) the complaint is not within the jurisdiction of the commission; or

“(d) the facts upon which the complaint is based occurred more than one year before the complaint was filed, unless the commission is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay,

“the commission may, in its discretion, decide to not deal with the complaint.

“Notice of decision and reasons

“(2) Where the commission decides to not deal with a complaint, it shall advise the complainant in writing of the decision and the reasons therefor and of the procedure under section 31.8 for having the decision reconsidered.

“Withdrawal of complaint

“31.6 A complainant may withdraw a complaint at any time by giving written notice of the withdrawal to the commission.

“Referred to tribunal

“31.7(1) Where the commission does not effect a settlement of the complaint and it appears to the commission that the procedure is appropriate and the evi-

dence warrants an inquiry, the commission may refer the subject matter of the complaint to the tribunal.

“Mandatory referral to tribunal

“(2) The commission shall refer the subject matter of a complaint to the tribunal if,

“(a) the case depends partly or wholly on an assessment of the credibility of any person, unless the commission has decided not to deal with the complaint under clause 31.5(1)(b); or

“(b) the complainant and any persons complained against consent to having the matter referred to the tribunal.

“Notice of decision not to refer to tribunal

“(3) Where the commission decides to not refer the subject matter of a complaint to the tribunal, it shall advise the complainant and the person complained against in writing of the decision and the reasons therefor and inform the complainant of the procedure under section 31.8 for having the decision reconsidered.

“Reconsideration

“31.8(1) Within a period of 15 days of the date of mailing the decision and reasons therefor mentioned in subsection 31.5(2) or 31.7(3), or such longer period as the commission may for special reasons allow, a complainant may request the commission to reconsider its decision by filing an application for reconsideration containing a concise statement of the material facts upon which the application is based.

“Notice of application

“(2) Upon receipt of an application for reconsideration, the commission shall as soon as is practicable notify the person complained against of the application and afford the person an opportunity to submit written evidence and to make written submissions with respect thereto within such time as the commission specifies.

“Three commissioners to reconsider

“(3) Three members of the commission shall review the written evidence and submissions and shall reconsider the decision.

“Member not to be appointed

“(4) A member of the commission reconsidering a decision must not have taken part in any investigation or consideration of the subject matter of the inquiry before the reconsideration.

“Decision

“(5) Every decision of the commission on reconsideration together with the reasons therefor shall be recorded in writing and promptly communicated to the complainant and the person complained against and the decision shall be final.

“Application of part IV

“31.9(1) Subject to subsection (2), part IV, with necessary modifications, applies to a proceeding under this part.

“Commission to represent complainant

“(2) Where the commission refers a complaint to the tribunal under this part, the parties to the proceeding before the tribunal are,

“(a) the commission, which shall have the carriage of the complaint;

“(b) the complainant;

“(c) any person who the commission alleges has infringed the right;

“(d) any person appearing to the tribunal to have infringed the right;

“(e) where the complaint is of alleged conduct constituting harassment under subsection 2(2) or 5(2) or of alleged conduct under section 7, any person who, in the opinion of the tribunal, knew or was in possession of facts from which the person ought reasonably to have known of the conduct and who had authority to penalize or prevent the conduct.”

Mr. Chair, this amendment has been introduced to deal with the concerns expressed by many people that the commission can't deal with issues in a vacuum. It's important to allow the commission to receive complaints directly so it will have the information it needs in order to initiate investigations into systemic discrimination.

**The Chair:** Thank you very much. Further debate?

**Mr. Kormos:** The amendment introduces or incorporates some of the Quebec model in that it doesn't—and I'm not an advocate of the Quebec model. I believe that the prosecution of human rights complaints is in the public interest and should be done by a commission on behalf of the public. But here is a modest proposal that allows a victim who believes that she or he requires more than what is going to be available to her or him through the support centre, especially in the area of investigation, to call upon the commission to conduct the investigation and the prosecution. That's incredibly important. I invite the parliamentary assistant or his staff to show us where the private complainant is going to be able, for instance, to get search warrants to obtain evidence.

1550

It's obvious. You've got a continuum: You've got people who discriminate inadvertently—and I trust and presume that it's those types of cases among the almost 50% of cases resolved currently by the commission through mediation and other dispute resolution methods—all the way to people who are outright mean-spirited, self-serving discriminators, whether it's with respect to housing and accommodations, with respect to employment etc.

And you've got complainants that will range from the very wealthy, although very rarely, because let's face it, when you pull up in front of Holt Renfrew in the S600 and you're from Rosedale—I don't spend a lot of time at Holt's, but the doorman rushes out to open the rear door of the Mercedes Benz and welcomes you into the high-priced fragrance section at the front door. Can rich people be victims of discrimination? Of course they can. But by and large, people who are victims of discrimination tend to be at the other end of the scale. They're not going to be hiring their own counsel. They're not going to be hiring their own investigators. This provides an option. It also keeps the commission in the investigation and prosecution business, and I think that's very

important. If the commission is going to deal with systemic discrimination—and this goes back to our argument earlier that you can't isolate individual discrimination from systemic; one is the other and the other is the other. The commission has to stay in that business, and the commission's ability to identify systemic discrimination very much depends upon it being involved in the investigation of individuals' complaints. You notice I didn't say “individual” complaints, I said “individuals”: persons' complaints.

I think this amendment provides a balance within the context of the government proposal and is as good as you're going to get within the government proposal.

**The Chair:** Any further debate?

**Mr. Kormos:** One moment. I'm not wrapping up yet.

I endorse the spirit, the tone and the thrust, the direction of the amendment. As I say, it's not my preference, but it's an effort on the part of the opposition to engage in some compromise. Well, it is. As I indicated at the outset, we're not necessarily in agreement with all the things we're proposing by way of our amendments today, but we understand that there's a community out there that's going to have to live with the results of Bill 107.

Is the next government going to change 107? However much I'd like to say yes, you and I both know that there's strong competition within a government about what gets on the order paper and what gets done during a government's four-year term. So one is going to be hard-pressed to say, “Don't worry, because the next government will automatically change this.” It isn't quite that easy. These things don't happen every day. They don't happen every year.

This quasi-constitutional legislation, as Keith Norton explained yesterday, is not revisited on a regular basis. A series of commissioners have called upon a series of governments to do a series of things. This amendment makes this bill a better bill. I will be supporting it on behalf of New Democrats.

**The Chair:** Any further debate? Seeing none—

**Mr. Kormos:** A recorded vote, please.

#### Ayes

Elliott, Kormos.

#### Nays

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

**The Chair:** It's lost.

Next is NDP motion 26C.

**Mr. Kormos:** If I may, should that be deferred until we deal with the creation of a Tribunal Appointment Advisory Committee? Are we in that same scenario, Madam Clerk?

**The Chair:** That will be deferred.

Government motion 27.

**Mr. Zimmer:** I move that subsection 32(1) of the act, as set out in section 6 of the bill, be struck out and the following substituted:

“Tribunal

“32(1) The tribunal known as the Human Rights Tribunal of Ontario in English and Tribunal des droits de la personne de l’Ontario in French is continued.

“Composition

“(1.1) The tribunal shall be composed of such members as are appointed by the Lieutenant Governor in Council in accordance with the selection process described in subsection (1.2).

“Selection process

“(1.2) The selection process for the appointment of members of the tribunal shall be a competitive process and the criteria to be applied in assessing candidates shall include the following:

“1. Experience, knowledge or training with respect to human rights law and issues.

“2. Aptitude for impartial adjudication.

“3. Aptitude for applying the alternative adjudicative practices and procedures that may be set out in the tribunal rules.”

**The Chair:** Any debate?

**Mr. Kormos:** If I may once again, because we don’t have—oh yes, we do: “ensures that the adjudicators of the tribunal have expertise in human rights.” Am I jumping ahead here? No. Thank you.

**The Chair:** Any further debate? Seeing none, all those in favour? Opposed? It’s carried.

Government motion number 28.

**Mr. Zimmer:** I move that section 32 of the act, as set out in section 6 of the bill, be amended by adding the following subsections:

“Alternate chair

“(4.1) The Lieutenant Governor in Council shall designate one of the vice-chairs to be the alternate chair.

“Same

“(4.2) If the chair is unable to act, the alternate chair shall perform the duties of the chair and, for this purpose, has all the powers of the chair.”

**The Chair:** Debate? Seeing none, all those in favour? Carried.

Government motion 29.

**Mr. Zimmer:** I move that subsection 32(5) of the act, as set out in section 6 of the bill, be struck out and the following substituted:

“Employees

“(5) The tribunal may appoint such employees as it considers necessary for the proper conduct of its affairs and the employees shall be appointed under the Public Service Act.”

**The Chair:** Debate? Seeing none, all those in favour? Opposed? Carried.

NDP motion 29A.

**Mr. Kormos:** I’m going to decline to move that, sir.

**The Chair:** NDP motion 29B.

**Mr. Kormos:** I move that the act, as amended by section 6, be further amended by adding the following section:

“Tribunal Appointment Advisory Committee

“32.1(1) A committee known as the Tribunal Appointment Advisory Committee in English and as Comité consultatif sur les nominations au Tribunal in French is established.

“Composition

“(2) The committee is composed of,

“(a) two tribunal members, selected by the tribunal members;

“(b) three lawyers, one appointed by the Law Society of Upper Canada, one by the Canadian Bar Association—Ontario and one by the County and District Law Presidents’ Association;

“(c) six persons who are neither judges nor lawyers, two appointed by each of the political parties that have at least eight elected representatives sitting in the Legislative Assembly.

“Term of office

“(3) The members hold office for three-year terms and may be reappointed.

“Chair

“(4) The members of the committee shall select a chair from among themselves who shall sit as chair for a three-year term and may be reappointed.

“Function

“(5) The function of the committee is to make recommendations to the Lieutenant Governor in Council for the appointment of members of the commission.

“Manner of operating

“(6) The committee shall perform its function in the following manner:

“1. When a vacancy occurs in the tribunal and the Lieutenant Governor in Council asks the committee to make a recommendation, it shall advertise the vacancy and review all applications.

“2. For every tribunal vacancy with respect to which a recommendation is requested, the committee shall give the Lieutenant Governor in Council a ranked list of at least two candidates whom it recommends, with brief supporting reasons.

“3. The committee shall conduct the advertising and review process in accordance with criteria established by the committee, including assessment of the professional excellence, community awareness and personal characteristics of candidates and recognition of the desirability of reflecting the diversity of Ontario society in tribunal appointments.

“4. The committee may make recommendations from among candidates interviewed within the preceding year, if there is not enough time for a fresh advertising and review process.

“Rejection of list

“(7) The Lieutenant Governor in Council may reject the committee’s recommendations and require it to provide a fresh list.

“Annual report

“(8) The committee shall submit to the Attorney General an annual report of its activities.

“Tabling

“(9) The Attorney General shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the assembly.”

1600

**The Chair:** Debate?

**Mr. Kormos:** Thank you, sir. This again is consistent with similar amendments that have been proposed. It provides a fair, multi-partisan and neutral way of appointing tribunal members. It is yet another safeguard ensuring these appointees are not mere political hacks.

**The Chair:** Any further debate?

**Mr. Kormos:** Recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

**The Chair:** It's lost.

Motion 26C.

**Mr. Kormos:** I decline to move that in that it was mooted by the last vote.

**The Chair:** Motion 29C?

**Mr. Kormos:** I move that section 34 of the act, as set out in section 6 of the bill, be amended by adding the following subsection:

“Public consultation

“(1.1) Before adopting a rule under this section, the tribunal shall,

“(a) post a draft copy of the rule on a website for a period of one month;

“(b) advertise in a paper of general circulation throughout the province that the rule is posted on the website and inviting interested persons to make written submissions relating to the rule to the tribunal before the end of the month;

“(c) ensure that the advertisement referred to in clause (b) appears in the paper daily for a period of at least two weeks starting on the first day the draft copy of the rule is posted on the website; and

“(d) consider any submissions received before adopting the rule.”

It's an incredibly important amendment. I'm grateful to the community for proposing this one. When you look at the incredible power that the tribunal has to determine its own process, including overriding each and every section of the SPPA, and when you look, as we will in short order, at the government's incredible amendment to section 6, which creates section 37.1 with the “in its opinion” phrase, it's critical that there be an opportunity for the public to comment on the rules that are being adopted by the tribunal for its process.

**The Chair:** Further debate?

**Mr. Kormos:** A recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

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

Motion 29D.

**Mrs. Elliott:** I move that clause 34(2)(a) of the Human Rights Code, as set out in section 6 of the bill, be struck out.

**The Chair:** Further debate?

**Mr. Kormos:** Let's understand exactly what this does, because it's a valid proposition. Clause (2)(a): The rules may provide “that the tribunal is not required to hold a hearing...” It's important that it's being made clear by opposition members that the government can't have it both ways. It can't say “direct access” and then say, “But there may not be any access.” The “direct access” title phrase is a total misnomer. People are being misled by it. I support this proposition.

**The Chair:** Any further debate?

**Mr. Kormos:** A recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

**The Chair:** It's lost.

Motion 29E.

**Mr. Kormos:** I move that section 34 of the act, as set out in section 6 of the bill, be amended by adding the following subsection:

“No investigatory powers

“(2.1) The tribunal shall not adopt a rule intended to give the tribunal power to conduct an investigation into the subject matter of an application made under this part.”

That's why the Human Rights Commission/Tribunal consists of two bodies: a commission and a tribunal. The commission investigates and prosecutes; the tribunal adjudicates. We heard from the chair of the tribunal. If we're talking about the tribunal setting up rules that give it an inquisitorial role, you then have undermined the neutrality, in my view, of the tribunal. It's very un-Canadian as well.

**The Chair:** Thank you, Mr. Kormos. Any debate?

**Mr. Kormos:** A recorded vote, please.

**Ayes**

Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** It's lost.

Mr. Kormos: 29F.

**Mr. Kormos:** I move that section 34 of the act, as set out in section 6 of the bill, be amended by adding the following subsection:

“Statutory Powers Procedure Act

“(4.1) The rules shall not be inconsistent with the Statutory Powers Procedure Act.”

Nothing could be more clear-cut. If the government wants to amend the SPPA, then say so. If the government thinks the Statutory Powers Procedure Act is no longer current, doesn't permit justice, then let's amend the SPPA. But don't permit, as you are doing, the tribunal to exempt itself from every single section without the legislative oversight of the SPPA. This is what happens when you gut the commission and you end up with a tribunal that you want to be all things and in fact it becomes neither fish nor fowl. It was very peculiar. You've got a tribunal that may well adopt an inquisitorial function. You've got a tribunal that may well, in that course of adopting an inquisitorial function, perform an investigative role. Wait till we get to the amendments to sections 37, 38 and 39 of the act that are coming from the government soon—some pretty outrageous stuff. I ask for support for this amendment.

**The Chair:** Any further debate?

**Mr. Kormos:** A recorded vote, please.

**Ayes**

Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** Lost.

Government motion 30.

**Mr. Zimmer:** I move that section 34 of the act, as set out in section 6 of the bill, be struck out.

**The Chair:** All those in favour? Opposed? Carried.

Mr. Kormos?

**Mr. Kormos:** I move that clauses 35(1)(a) and (b) of the act, as set out in section 6 of the bill, be struck out and the following substituted:

“(a) within two years after the incident to which the application relates; or

“(b) if there was a series of related incidents, within two years after the last incident in the series.”

What could be clearer? The assembly passed a major overhaul to the Limitations Act and there was agreement on that. The effort was to create consistency so you didn't have a hodgepodge of limitation dates. It was basically the two-year and six-year proposal. The two-year was the fundamental limitation period proposal. You've got a government amendment coming up that recognizes that the proposal in the bill with respect to limitations is flawed and would expand the limitation period to one year. They're tacitly acknowledging that the period proposed in the bill is inappropriate. What possible argument could be made against the two-year rule when the limitation period for all other actions in the province of Ontario is indeed two years?

**1610**

Now, one could argue that in criminal and quasi-criminal charges, even provincial offences, there are limitation periods for lesser offences in terms of when the charge can be laid, but for serious offences under the Criminal Code there is no limitation period whatsoever. A charge can be laid five years, 10 years, 15 years, 20 years after the act. Is somebody going to suggest here and now that discrimination isn't serious, such that there shouldn't at least be a two-year limitation period? We heard the arguments, and we would have heard far more had people been allowed to come to this committee, about all the sorts of things that can intervene in a person's life before they take the step of actually making a complaint, going to the commission or, in the case of your gutting of the commission, to a tribunal. It seems to me that the tribunal officer can determine if the period of time that has lapsed impacts on, for instance, the quality of the evidence that it's going to hear. It's entirely open to them to say, “Such a considerable period of time has passed, even within the two-year limitation period”—you're not barred from bringing this complaint to the tribunal, but it causes the tribunal, for instance, to doubt the accuracy of some of the evidence. The tribunal is perfectly entitled to do that.

In the interest of consistency and fairness to victims of human rights discrimination, I propose acceptance of this.

**The Vice-Chair (Mrs. Maria Van Bommel):** Any further debate? I'll call the question.

**Mr. Kormos:** A recorded vote, please.

**Ayes**

Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Zimmer.

**The Vice-Chair:** That motion is lost.

We move on to PC motion 30B.

**Mrs. Elliott:** I move that clauses 35(1)(a) and (b) of the Human Rights Code, as set out in section 6 of the bill, be struck out and the following substituted:

“(a) within one year after the incident to which the application relates; or

“(b) if there was a series of related incidents, within one year after the last incident in the series.”

We would submit that an extension to one year would be appropriate under the circumstances.

**The Vice-Chair:** Any further debate? I’ll call the question. All those in favour? Opposed? The motion is lost.

Government motion 31.

**Mr. Zimmer:** I move that clauses 35(1)(a) and (b) of the act, as set out in section 6 of the bill, be struck out and the following substituted:

“(a) within 12 months after the incident to which the application relates; or

“(b) if there was a series of incidents, within 12 months after the last incident in the series.”

**The Vice-Chair:** The motion is out of order. It has already been discussed in the earlier motion, 30B; they’re similar motions.

We move to motion 32, a government motion.

**Mr. Zimmer:** I move that section 35 of the act, as set out in section 6 of the bill, be amended by adding the following subsections:

“Application on behalf of another

“(4.1) A person or organization, other than the commission, may apply on behalf of another person to the tribunal for an order under section 42 if the other person,

“(a) would have been entitled to bring an application under subsection (1); and

“(b) consents to the application.

“Participation in proceedings

“(4.2) If a person or organization makes an application on behalf of another person, the person or organization may participate in the proceeding in accordance with the tribunal rules.

“Consent form

“(4.3) A consent under clause (4.1)(b) shall be in a form specified in the tribunal rules.

“Time of application

“(4.4) An application under subsection (4.1) shall be made within the time period required for making an application under subsection (1).

“Application

“(4.5) Subsections (2) and (3) apply to an application made under subsection (4.1).

“Withdrawal of application

“(4.6) An application under subsection (4.1) may be withdrawn by the person on behalf of whom the application is made in accordance with the tribunal rules.”

**The Vice-Chair:** Debate? All those in favour? That’s carried.

I’ve been advised by the clerk that because of a slight change in language—

*Interjection.*

**The Vice-Chair:** They are not identical, as I identified them. In clause (b), the PC motion says “series of related incidents.” The government motion says “series of inci-

dents.” So I’m going to ask the standing committee for unanimous consent to return to government motion 31 for consideration.

**Mr. Kormos:** Chair, on a point of order: With respect, the Chair has made a ruling. The Chair is functus with respect to that matter. One cannot appeal the Chair. The Chair has exhausted its role with respect to a particular motion or amendment once it has ruled it out of order. I don’t fault the Chair for seeking unanimous consent, although I question whether it’s appropriate for a Chair. I simply don’t know; I’m not being critical—

**The Vice-Chair:** I’m actually investigating it as well.

**Mr. Kormos:** I’m not being critical of you for doing that. I appreciate what you’re trying to do and I have the highest regard for you. But in my view, the Chair is functus with respect to the matter. Look, I didn’t change the rules. The rules prevent us from challenging the Chair; we have to abide by a Chair’s ruling. The Chair has made its ruling. It’s over. The bill’s got to go to committee of the whole anyway.

**Mr. Zimmer:** The 30B, which was the opposition motion, says “if there was a series of related incidents.” Government motion 31 says “if there was a series of incidents.” The difference is that our motion refers to “incidents” and the opposition motion refers to “related incidents.” That is a substantive difference, Madam Chair. I submit, in view of that, that it’s quite in order, for your ruling, if you go back to 31.

**Mr. Kormos:** Chair, to that point, you can’t appeal the Chair’s ruling. However, Mr. Zimmer—what time is it right now?

**The Vice-Chair:** Twenty after 4.

**Mr. Kormos:** I’m very conscious of our 5 o’clock deadline. What I would give unanimous consent to would be for Mrs. Elliott to present her motion again, slightly reworded, and I would invite the government to support it. Is that not a fair compromise, sir? I’m sure Mrs. Elliott will word her amendment as the government wishes. I would give unanimous consent to her reading the amendment onto the record, in your language, such that we could support it.

**The Vice-Chair:** Mr. Zimmer?

**Mr. Zimmer:** Madam Chair, this is a substantial point. I’m going to ask for about a three-minute adjournment to clarify my thinking on this.

**Mr. Kormos:** Talk to me for a minute.

**The Vice-Chair:** We will have a three-minute recess.

*The committee recessed from 1620 to 1625.*

**The Vice-Chair:** I call the standing committee back to order.

**Mr. Kormos:** Madam Chair, in the spirit of co-operation that I’ve maintained throughout this process, I seek unanimous consent to allow Mrs. Elliott to move yet another motion amending section 6, specifically clauses 35(1)(a) and (b) of the Human Rights Code.

**The Vice-Chair:** I’ll call the question: unanimous consent? Agreed. You have unanimous consent.

**Mrs. Elliott:** I move that clauses 35(1)(a) and (b) of Human Rights Code, as set out in section 6 of the bill, be struck out and the following substituted:

“(a) within one year after the incident to which the application relates; or

“(b) if there was a series of incidents, within one year after the last incident in the series.”

**The Vice-Chair:** Discussion?

**Mr. Kormos:** This obviously wasn't my preferred choice. I very much wanted it to be a two-year limitation period so there would be consistency with the Limitations Act and some weight given to submissions made to the committee. I acknowledge that the government had a motion in the same language, so if I'm going to support a motion that grants only a one-year limitation period rather than the two-year, which I believe is fairer—I appreciate Mrs. Elliott has approached this somewhat conservatively, and I understand—I'd far sooner support Mrs. Elliott's amendment than the amendment put by the government lest there somehow be an effort to say, “Oh, but the government acquiesced to opposition amendments.” Mr. Zimmer, please. I engaged in some of the most egregious pettifoggery in an effort to get to where we are today. It had nothing to do with the government agreeing to one of the opposition's amendments.

**The Vice-Chair:** Any further debate? I'll call the question. All those in favour of PC motion 30b? Carried. Thank you for your indulgence.

We'll move on to motion 33, a government motion.

**Mr. Zimmer:** I think it's 32.

**The Vice-Chair:** We already did 32. We did it before I went back.

**Mr. Zimmer:** Oh, yes.

**The Vice-Chair:** That's my fault, Mr. Zimmer. I've caused the confusion here.

**Mr. Zimmer:** So we're on 33 now?

**The Vice-Chair:** We're moving on to government motion 33, if you would.

**Mr. Zimmer:** I move that subsection 35(5) of the act, as set out in section 6 of the bill, be amended by,

(a) striking out “has not been finally determined” in clause (a) and substituting “has not been finally determined or withdrawn”; and

(b) adding “or the matter has been settled” at the end of clause (b).

**The Vice-Chair:** Debate? I'm going to call the vote. All those in favour? Opposed? The motion carries.

We move on to NDP motion 33A.

**Mr. Kormos:** I move that subsections 35(5) and (6) of the act, as set out in section 6 of the bill, be struck out.

Subsection 35(5), of course, (a) and (b)—this is very peculiar stuff, because you can't take a human rights complaint, standing alone, to the civil courts. In other words, you can't seek damages in the civil courts for a violation of one's rights under the code. You can—and this bill preserves the right to—request damages for a breach of one's human rights if the breach is attached to another claim, a tort claim.

If the government is proceeding with this omnipotent tribunal model, including the power to make its own rules, it seems to me that barring a claim because a court has ruled—because you understand what we run the risk of. If a civil action has ruled that you can collect damages for unjust dismissal—I suppose that's a good example—but “we won't add damages for breach of your rights under the code because we don't believe your code rights have been breached,” that's a determination of that issue by a court. The argument is that the tribunal has exclusive jurisdiction over code complaints unless that complaint, of course, is attached as secondary to a tort. And if your argument for doing that is that the tribunal has expertise, why are you going to let a court, which you say doesn't have necessarily the expertise in human rights issues, effectively state that a cause of action is not validated and then use that as a reason to bar the person access to the tribunal? It seems the tribunal should have the authority at the end of the day to determine whether or not there has been a violation of the Human Rights Code by virtue of discrimination against a particular party. And the way to resolve that, of course, is to delete subsections 35(5) and (6).

**The Chair:** Any further debate?

**Mr. Kormos:** A recorded vote, please.

#### Ayes

Elliott, Kormos.

#### Nays

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

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

Page 33B.

**Mr. Kormos:** I move that section 35 of the act, as set out in section 6 of the bill, be amended by adding the following subsections:

“Application by organization

“(7) An organization representing a group of persons identified by a prohibited ground of discrimination may make an application to the tribunal under this section if,

“(a) the organization has a genuine interest in the complaint; and

“(b) requiring members of the group to make an individual application would likely result in undue hardship.

“Application

“(8) Subsections (1) to (6) apply with necessary modifications to an application made by an organization under subsection (7).”

I think, with respect, this is just good policy, a good approach. Unfortunately, we didn't get to hear submissions made by members of communities who are more comfortable working through an organization than they are as individuals. We received a submission—that that's the problem—on behalf of transgender communities,

amongst others, that talk very specifically to that issue. Why shouldn't we let an organization that advocates for, that speaks for, that has as its members a community of people with some commonality—why in the world wouldn't we permit that organization to bring the complaint? If we have a metro Toronto tenants' organization and it can establish that its members are discriminated against in a way that violates the code, why shouldn't the metro Toronto tenants' association be able to bring the grievance? We're starting to make some headway. The government, in Bill 103, the police oversight, acquiesced to the call for third-party complaints to be made. This isn't even that. This is merely seeing that organizations have a right to make a complaint. I think it opens up the process, and surely we want to make the process as open as possible and ensure that people have access. It's about access. Organizational complaints are one of the ways of giving access to people who wouldn't feel comfortable, capable—especially when you don't have the commission performing that advocacy role—who don't feel comfortable, capable for any number of good reasons; reasons, to be fair, that you and I may not understand because, as middle-class people, we fare reasonably well. We haven't walked some of the paths that other people, our neighbours, sisters and brothers, have walked, and this is a specific request from them.

1630

**The Chair:** Ms. Elliott?

**Mrs. Elliott:** I would certainly support this amendment for the same reasons that Mr. Kormos has indicated, that if we accept the proposition that a third party can make an application on behalf of an individual who for whatever reason doesn't feel comfortable bringing it forward themselves, then there's no reason why a group cannot advocate in the same way.

**The Chair:** Thank you. Any further debate? None.

**Mr. Kormos:** Recorded vote, please.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

**The Chair:** That's lost. 33C.

**Mr. Kormos:** I move that subsection 36(1) of the act, as set out in section 6 of the bill, be struck out and the following substituted:

“Application for commission:

“36(1) The commission may apply to the tribunal for an order under section 43 if the commission is of the opinion that it would be in the public interest to do so.”

The existing 36(1) creates a complex process of hoops that the commission has to jump through. This simply restates the obvious. If the commission is of the view that

it's in the public interest, let her rip; let's let the commission do its job.

**The Chair:** Thank you.

**Mr. Kormos:** Recorded vote, please.

**Ayes**

Kormos.

**Nays**

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

**The Chair:** That's lost. 33D.

**Mrs. Elliott:** I move that clauses 36(1)(a) and (b) of the Human Rights Code, as set out in section 6 of the bill, be struck out and the following substituted:

“(a) there are infringements of rights under part I that the commission has not been able to adequately address under part III;

“(b) an order under section 43 could address the infringements; and”

This is to address the issue, as previously mentioned, of the rights of a complainant to bring a matter before the commission rather than going before the tribunal so that it would not be only systemic issues that would be addressed but could also be individual issues.

**The Chair:** Thank you, Ms. Elliott. Any further debate? Seeing none, all those in favour? Opposed? Lost. Number 34.

**Mr. Zimmer:** I move that clauses 36(1)(a), (b) and (c) of the act, as set out in section 6 of the bill, be struck out and the following substituted:

“(a) it is in the public interest to make an application; and

“(b) an order under section 43 could provide an appropriate remedy.”

**The Chair:** Any debate? Seeing none. All those in favour? Opposed? Carried.

Number 35.

**Mr. Zimmer:** I move that section 36 of the act, as set out in section 6 of the bill, be amended by adding the following subsection:

“(4) If a person or organization makes an application under section 35 and the commission makes an application under this section in respect of the same matter, the two applications shall be dealt with together in the same proceeding unless the tribunal determines otherwise.”

**The Chair:** Any debate? All those in favour? Opposed? Carried.

Number 36.

**Mr. Zimmer:** I move that part IV of the act, as set out in section 6 of the bill, be amended by adding the following sections:

“36.1 The parties to an application under section 35 or 36 are the following:

“1. In the case of an application under subsection 35(1), the person who made the application.

“2. In the case of an application under subsection 35(4.1), the person on behalf of whom the application is made.

“3. In the case of an application under section 36, the commission.

“4. Any person against whom an order is sought in the application.

“5. Any other person or the commission, if they are added as a party by the tribunal.

“Intervention by commission

“36.2(1) The commission may intervene in an application under section 35 on such terms as the tribunal may determine having regard to the role and mandate of the commission under this act.

“Intervention as a party

“(2) The commission may intervene as a party to an application under section 35 if the person or organization who made the application consents to the intervention as a party.

“Disclosure of information to commission

“36.3 Despite anything in the Freedom of Information and Protection of Privacy Act, at the request of the commission, the tribunal shall disclose to the commission copies of applications and responses filed with the tribunal and may disclose to the commission other documents in its custody or in its control.”

**The Chair:** Mrs. Elliott?

**Mrs. Elliott:** I just have a question of Mr. Zimmer, or perhaps of counsel. With respect to 36.2(1), “Intervention by commission,” is it that the commission may intervene as a party as of right?

**Mr. Zimmer:** Counsel?

**Ms. Robin:** Under 36.2(1)?

**Mrs. Elliott:** Yes.

**Ms. Robin:** The commission may intervene on such terms as the tribunal may determine.

**Mrs. Elliott:** So it’s going to be subject to the tribunal to determine the limit, whether or not the commission—

**Ms. Robin:** The tribunal cannot limit the commission from intervening; it can set the terms of its intervention.

**Mr. Kormos:** Chair, with respect, I’m going to read this very carefully: “The commission may intervene”—so it’s discretionary on the part of the commission; in other words, the commission decides whether or not it will intervene—“in an application under section 35 on such terms as the tribunal may determine having regard to the role and mandate of the commission under the act.” So the tribunal determines the role and mandate in the process of creating the terms under which the commission can intervene.

That means the tribunal has the power to say, “The commission will be entitled to engage in a watching brief of the proceedings.” It could, because we don’t think the commission’s role or mandate in this instance would permit it to intervene in an activist role. Or the commission may intervene to the extent of explaining policy or procedure. And I hear you. Your argument is that it

doesn’t permit the tribunal to bar the commission, should the commission choose, but the latitude is so broad that it could affect—I mean, at the end of the day, the commission’s participation could be minimal. Less than modest: “on such terms as the tribunal may determine....”

I hear what you’re saying is the intent of the amendment, but I’m not sure the language of the amendment takes us to that end or that destination. That’s what causes Mrs. Elliott concern, and I share her concern: “on such terms as the tribunal may determine....” It just seems to me that there could be—once again, Mr. Zimmer, I’ll say to you, because I hear counsel and I trust their commentary in terms of the intention. If you want to hold this and get some language in there that is more reflective of what we hear to be the intention of the government, we’d be more than pleased to have this introduced later. And I tell you—no fooling around—we’ll make sure the amendment is included in the vote at some point before we retire today.

**Mr. Zimmer:** Thank you, but let me just say in response that the section reads, “36.2(1) The commission may intervene in an application under section 35 on such terms as the tribunal may determine....” With the greatest respect, Mr. Kormos, you read, “as the tribunal may determine,” and you stopped. But there’s additional language: “having regard to the role and mandate of the commission under this act.”

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**Mr. Kormos:** Exactly. I didn’t disregard that. I read the whole section: “on such terms as the tribunal may determine....” The determination of the tribunal is the tribunal determining the role and mandate of the commission under this act as well.

I put to you that a position we would far prefer is that the commission have the right to intervene on such terms as the commission deems appropriate. If it’s with respect to the role and mandate of the commission, isn’t the commission better capable of determining its role and mandate? And if the commission has ownership of its role and mandate, then it should be able to say, “We are intervening on these terms.” Do you understand what I’m saying? If the commission has ownership of its terms and mandate—if the commission and the tribunal are separate entities, if the commission isn’t subject to the authority of the tribunal—then the commission should be capable of interpreting its role and mandate and the commission should be setting the terms.

We’re going to deal with subsection (2) in terms of consent in just a minute, but I put that to you. I hear what you’re saying, but I’m saying to you that it’s not very clear at all. I don’t pretend to be an expert at darned near anything, but I’ve read a couple of pieces of legislation in my lifetime, and the language here concerns me because it’s not clear at all.

You say that “regard to the role and mandate of the commission” is somehow independent of the tribunal’s determination of it, but I’m saying no. It clearly is the—

*Interruption.*

**Mr. Kormos:** I suspect that's a 30-minute bell, and we don't have to go there for a while yet.

Do you understand what I'm saying, sir? I have great concern about the language here. I think it's problematic. I submit that, hearing what the government's intent is and having no quarrel with the stated intent, but suggesting that if the commission has a significant role, it's the commission that determines the manner in which it intervenes, because the commission has ownership of the determination of its rule and mandate. We agree with that; you've said that the tribunal may refer to policy papers by the commission and so on, so the commission is clearly designed, in your view, to have an inherent capacity to determine what it becomes, subject to the legislative limits.

I'm not going to move you at all, am I? Just shake your head if I'm not, and I'll move on to the next argument. Just go like this, Mr. Zimmer, and I'll move on to the next argument.

All right. Let's talk about subsection (2). I'm moving on to the next argument. "The commission may intervene as a party ... if the person or organization who made the application consents to the intervention..." If the commission is going to be responsible for the oversight of identification and prosecution of systemic discrimination, why are we letting a party effectively veto the commission's intervention? You've already indicated earlier that you can have two separate awards. If there's commission participation with an individual, the tribunal can order one thing for the individual and one thing for the commission—am I accurate in that interpretation? You're not saying that the party has to accept the commission's—for instance, if the tribunal orders, vis-à-vis the commission's intervention, that a policy has to be changed in the city of Toronto—I don't want to pick on the city of Toronto, but here we are—but also that a victim of discrimination deserves a remedy in addition to that, it's my understanding that the tribunal can do that. So why, then, would you bar—you are prohibiting, or inhibiting, rather, the capacity of the commission to perform the role that you state you want it to have, and that is in terms of addressing systemic discrimination. And we've already discussed, over and over again, that you can't talk about individual discrimination without inherently talking about systemic discrimination.

Look, I leave it at that. I'll be voting against this, Chair. But I also invite you to please, if you're interested at all in cleaning this up a little bit—we'll guarantee that it gets voted on before this committee retires today.

**The Chair:** Mrs. Elliott.

**Mrs. Elliott:** In the interest of saving time so we can move on to other things, I would just like to echo Mr. Kormos's concerns and indicate that if the commission is to have a real and meaningful role as we move forward, it's really important that it not be subject to the discretion of the tribunal in deciding whether it can intervene in a proceeding or not.

**The Chair:** Thank you. Any further debate?

**Mr. Kormos:** Recorded vote.

## Ayes

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

## Nays

Elliott, Kormos.

**The Chair:** It's carried.

Motion 37.

**Mr. Zimmer:** I move that sections 37, 38 and 39 of the act, as set out in section 6 of the bill, be struck out and the following substituted:

"Powers of tribunal

"37. The tribunal has the jurisdiction to exercise the powers conferred on it by or under this act and to determine all questions of fact or law that arise in any application before it.

"Disposition of applications

"37.1 The tribunal shall dispose of applications made under this part by adopting the procedures and practices provided for in its rules or otherwise available to the tribunal which, in its opinion, offer the best opportunity for a fair, just and expeditious resolution of the merits of the applications.

"Interpretation of part and rules

"37.2 This part and the tribunal rules shall be liberally construed to permit the tribunal to adopt practices and procedures, including alternatives to traditional adjudicative or adversarial procedures that, in the opinion of the tribunal, will facilitate fair, just and expeditious resolutions of the merits of the matters before it.

"Statutory Powers Procedure Act

"38(1) The provisions of the Statutory Powers Procedure Act apply to a proceeding before the tribunal unless they conflict with a provision of this act, the regulations or the tribunal rules.

"Conflict

"(2) Despite section 32 of the Statutory Powers Procedure Act, this act, the regulations and the tribunal rules prevail over the provisions of that act with which they conflict.

"Tribunal rules

"39(1) The tribunal may make rules governing the practice and procedure before it.

"Required practices and procedures

"(2) The rules shall ensure that the following requirements are met with respect to any proceeding before the tribunal:

"1. An application that is within the jurisdiction of the tribunal shall not be finally disposed of without affording the parties an opportunity to make oral submissions in accordance with the rules.

"2. An application may not be finally disposed of without written reasons.

"Same

"(3) Without limiting the generality of subsection (1), the tribunal rules may,

“(a) provide for and require the use of hearings or of practices and procedures that are provided for under the Statutory Powers Procedure Act or that are alternatives to traditional adjudicative or adversarial procedures;

“(b) authorize the tribunal to,

“(i) define or narrow the issues required to dispose of an application and limit the evidence and submissions of the parties on such issues, and

“(ii) determine the order in which the issues and evidence in a proceeding will be presented;

“(c) authorize the tribunal to conduct examinations in chief or cross-examinations of a witness;

“(d) prescribe the stages of its processes at which preliminary, procedural or interlocutory matters will be determined;

“(e) authorize the tribunal to make or cause to be made such examinations of records and such other inquiries as it considers necessary in the circumstances;

“(f) authorize the tribunal to require a party to a proceeding or another person to,

“(i) produce any document, information or thing and provide such assistance as is reasonably necessary, including using any data storage, processing or retrieval device or system, to produce the information in any form,

“(ii) provide a statement or oral or affidavit evidence, or

“(iii) in the case of a party to the proceeding, adduce evidence or produce witnesses who are reasonably within the party’s control; and

“(g) govern any matter prescribed by the regulations.

“General or particular

“(4) The rules may be of general or particular application.

“Consistency

“(5) The rules shall be consistent with this part.

“Not a regulation

“(6) The rules made under this section are not regulations for the purposes of the Regulations Act.

“Public consultations

“(7) The tribunal shall hold public consultations before making a rule under this section.

“Failure to comply with rules

“(8) Failure on the part of the tribunal to comply with the practices and procedures required by the rules or the exercise of a discretion under the rules by the tribunal in a particular manner is not a ground for setting aside a decision of the tribunal on an application for judicial review or any other form of relief, unless the failure or the exercise of a discretion caused a substantial wrong which affected the final disposition of the matter.

“Adverse inference

“(9) The tribunal may draw an adverse inference from the failure of a party to comply, in whole or in part, with an order of the tribunal for the party to do anything under a rule made under clause (3)(f).”

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**The Chair:** Mr. Kormos?

**Mr. Kormos:** This is shocking stuff. Let’s start with 37.1: “The tribunal shall dispose of applications ... by

adopting the procedures and practices provided for in its rules or otherwise available to the tribunal which, in its opinion”—its opinion; no objective standard—“offer the best opportunity for a fair, just and expeditious resolution.”

This is outrageous stuff in a British common law country, with centuries of jurisprudence, that the tribunal, “in its opinion”—there’s no opportunity for a party to argue that the rules used didn’t offer the best opportunity for a “fair, just and expeditious resolution,” because it’s all about the opinion of the tribunal. There’s no recourse for the victim of a process that is objectively unfair, unjust and not expeditious. Wow.

Moving on to section 39: “authorize the tribunal to conduct examinations in chief or cross-examinations of a witness.” Just how comfortable is either a complainant or a respondent, the subject matter of a complaint, supposed to feel with the tribunal, the court, entering the fray, getting engaged in the exchange?

And then, aha, buried in page 3: authorize the tribunal to call upon a party to “provide a statement or oral or”—oops—“affidavit evidence.” We talked about that during the brief, brief periods in which there was public access, didn’t we? There could even be a hearing based on affidavit evidence, or statements. Since you have another description of oral evidence, clearly you don’t mean an oral statement even. You’re talking about a written statement that isn’t an affidavit, that is unsworn. You’re giving the tribunal the power to receive unsworn evidence. At least an affidavit is sworn evidence. You clearly can’t mean an oral statement, because you say “oral evidence,” and then you say “a statement.” That means it’s written, friends, and it means it’s unsworn, because you also talk about an affidavit, which is sworn. That is shocking.

“(6) The rules made under this section are not regulations for the purposes of the Regulations Act.”

That means that there’s no governmental oversight whatsoever. That tribunal runs helter-skelter. Wow.

“(8) Failure ... of the tribunal to comply with” its own rules—the extraordinary rules that it can make—“is not a ground for setting aside a decision of the tribunal ... unless the failure or the exercise of a discretion caused a substantial wrong which affected the final disposition of the matter.

This is unheard-of. This is outrageous. This is like courts in totalitarian countries, literally the kangaroo trials that we expect from tinpot dictatorships or some of the worst totalitarian regimes, and we condemn and mock them for doing it. The government is abdicating all of its responsibility here. Oh, you’ll speed up the process all right; it will be greased up like a pig. It will be speeded up: “You provide a written statement, you provide a written statement, and we’ll make a decision. If you don’t like it, too bad, so sad, because those are the rules.” Because the tribunal—catch this: “The rules may be of general or particular application.” The tribunal doesn’t even have to abide by its own rules. “Particular application”: That means it can make new rules every time it

has a new case before it, doesn't it? The rules may be "of general"—which means they apply to all cases—or "of particular" application. You talk about the difficulty complainants have now? When you've got a tribunal, how is a tribunal going to deal with what they see as a nuisance complainant? "Oh, we'll fix that nuisance complainant. We'll set up a little rule structure just for him or her and they'll be out of here in a New York minute, out of our hair and no more bother." The old Pontius Pilate trick. I'm amazed.

I thought nothing could amaze me anymore. The Toronto exhibition doesn't amaze me anymore; the locks in the seaway don't amaze me anymore; Desperate Housewives doesn't amaze me anymore. I'm sorry. The plot-lines are just too similar. I thought I couldn't be amazed anymore, but this truly amazes me. Look, I would report myself to the law society if I voted for this. I'd report myself. I'd beg the law society to discipline me if, as a lawyer, I supported this.

**The Chair:** Mrs. Elliott?

**Mrs. Elliott:** We're dealing with some very serious and fundamental principles here. It's whether the rules of natural justice that should be applying to hearings as enunciated in the Statutory Powers Procedure Act are going to apply. Despite the series of material that we have in this amendment, the basic fact is that the rules of natural justice are not going to be adhered to, at least as enunciated in the SPPA. That really is a serious concern. Mr. Anand, who was also a proponent of this legislation, agreed that the SPPA should apply to this. So I think when you start getting into some of the issues about accepting unsworn testimony and allowing the hearer of the application to be also asking questions and getting into that sort of inquisitorial mode, it's getting into pretty dangerous territory. I can't support this amendment either.

**Mr. Kormos:** Recorded vote, please.

#### Ayes

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

#### Nays

Elliott, Kormos.

**The Chair:** Carried.

PC motion 37A.

**Mrs. Elliott:** I move that section 37 of the Human Rights Code, as set out in section 6 of the bill, be struck out and the following substituted:

"Hearing within one year

"37(1) The tribunal shall hold a hearing in respect of every application made under section 35 within one year of the date on which the application was made.

"Jurisdiction

"(2) The tribunal has jurisdiction to exercise the powers conferred on it by or under this act and to deter-

mine all questions of fact or law that arise in any application before it."

The purpose of this is really just to give effect to the government's stated intentions to have a faster, more effective process.

**The Chair:** Any debate? Seeing none, all those in favour? Opposed? That's lost.

NDP motion 37B.

**Mr. Kormos:** I move that section 37 of the act, as set out in section 6 of the bill, be amended by adding the following subsection:

"Right to refuse mediation

"(4) If the tribunal offers mediation as method of resolving a dispute between parties in accordance with its rules, the parties shall have the right to refuse the mediation and to proceed to a hearing by the tribunal."

I know this conflicts with some of the participants who called for mandatory mediation. The problem is, we've got mandatory mediation now in our civil courts and it's mediation that has as its motivation court efficiency. Do you understand what I'm saying? It's designed to reduce the court load. You end up with a lot of muscle mediation going on, where people are encouraged to resolve their dispute because to not do so would mean years and years and years waiting; it would mean thousands and thousands and thousands of dollars litigating. Those are pretty persuasive arguments, but they don't necessarily result in justice.

This has been a long-time concern about mediation, for instance, in spousal abuse cases in the family courts, and the same application would apply to sexual harassment by a boss, for instance, by a person in authority, because parties may be sufficiently fearful of the perceived or real power of the other party that mediation would be an unfair process to submit them to.

It seems to me that the commission that you're dismantling does a pretty good job with mediation as it is, as compared to letting a tribunal—because that's what you've suggested and that's what's been proposed by the chief of the tribunal. When the chief of the tribunal was here, you heard the phrase "highly evaluative mediation," didn't you? That's what some—

**The Chair:** Mr. Kormos, it's 5 o'clock and I have to read this note to the committee members.

**Mr. Kormos:** Is it 5 o'clock already?

**The Chair:** It's now 5 p.m. Pursuant to the order of the House dated November 22, 2006, all debate will cease and all motions which have not yet been moved shall be deemed to have been moved.

I will now put every question necessary to dispose of all remaining sections of the bill and any amendments thereto.

The order of the House also authorizes the committee to meet beyond the normal hour of adjournment until completion of clause-by-clause consideration. Any division required shall be deferred until all remaining questions have been put and taken in succession, with one 20-minute waiting period allowed pursuant to standing order 127(a).

*Interjection.*

**The Chair:** Yes, there's an error in the date. The order of the House is dated November 21, 2006.

**Mr. Kormos:** Chair, if I may, what about our vote in the House?

**The Chair:** Yes, I think we should break now.

**Mr. Kormos:** But I'm questioning whether, when we've got a time allocation motion—

**The Chair:** The vote in the House—

*Interjection.*

**Mr. Kormos:** I have no interest in voting in the House.

**The Chair:** We'll break now and come back after the vote.

**Mr. Kormos:** Chair, we can't have certainty; you can't say a specific time. I'm going to be coming here promptly after the vote. Let's not play games in terms of starting before each caucus is represented.

**The Chair:** I request all members to be here immediately after the vote. Thank you very much.

*The committee recessed from 1703 to 1719.*

**The Chair:** Welcome back. We left off at NDP motion 37B. All those in favour?

**Mr. Kormos:** One moment. This 37B is part of the post-5 o'clock regime?

**The Chair:** Yes.

**Mr. Kormos:** Because it hadn't been moved—we had voted on 36, correct?

**The Chair:** It was 37A, the PC motion.

**Mr. Kormos:** No, 37A is the one-year limitation period. We voted on that a long time ago.

*Interjections.*

**Mr. Kormos:** Okay. So 37A had been moved by Mrs. Elliott and we had voted on it—

**The Chair:** Yes.

**Mr. Kormos:** So now we're into the non-movement, deemed-to-be-moved 37B. Thank you. A recorded vote on 37B please.

**The Chair:** All votes that have been requested to be recorded will be deferred to the end, so we'll defer 37B. Now 37C.

**Mr. Kormos:** Recorded vote.

**The Chair:** NDP motion 37D.

**Mr. Kormos:** Recorded vote.

**The Chair:** Government motion 38.

**Mr. Kormos:** Recorded vote.

**The Chair:** If you're going to request a recorded vote for all of them, Mr. Kormos—

**Mr. Kormos:** No. There will be some that I won't require a recorded vote for; there just happen to be a number in a row here that—

**The Chair:** NDP motion 38A.

**Mr. Kormos:** Recorded vote.

**The Chair:** Government motion 39.

**Mr. Kormos:** Recorded vote.

**The Chair:** NDP motion 39B.

**Mr. Kormos:** Recorded vote.

**The Chair:** PC motion 39C.

**Mrs. Elliott:** Recorded vote.

**The Chair:** NDP motion 39D.

**Mr. Kormos:** Recorded vote.

**The Chair:** Government motion 40: No recorded vote? All those in favour? Opposed? It's carried.

Government motion 41: All those in favour? Opposed? Carried.

Government motion 42: All those in favour? Opposed? Carried.

PC motion number 42A.

**Mrs. Elliott:** Recorded vote.

**The Chair:** A recorded vote.

NDP motion 42B.

**Mr. Kormos:** A recorded vote, please.

**The Chair:** NDP motion 42C.

**Mr. Kormos:** A recorded vote, please.

**The Chair:** NDP motion 42D.

**Mr. Kormos:** Recorded vote.

**The Chair:** Government motion 43: All those in favour? Opposed? Carried.

NDP motion 43A.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** Government motion 44: All those in favour? Opposed? Carried.

NDP motion 44A.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** NDP motion 44B.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** NDP motion 44C.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** Government motion 45.

**Mr. Kormos:** A recorded vote, please.

**The Chair:** NDP motion 45A.

**Mr. Kormos:** A recorded vote, please.

**The Chair:** Government motion 46: All those in favour? Opposed? Carried.

Government motion 47.

**Mr. Kormos:** Recorded vote.

**The Chair:** Government motion 48.

**Mr. Kormos:** Chair, slow down a little bit or else they'll all be recorded votes. Let me just take a glance at them as we're going through.

**The Chair:** Government motion 48: All those in favour? Opposed? Carried.

Was 47 a recorded vote?

**Mr. Kormos:** Yes, sir.

**The Chair:** Government motion 49: All those in favour? Opposed? Carried.

We'll defer the section 6, as amended, vote.

New section 6.1: NDP motion 49A.

**Mr. Kormos:** Recorded vote.

**The Chair:** Government motion 50: All those in favour? It's carried.

We're on to section 7, government motion 51.

**Mr. Kormos:** Mr. McGrath, we're going to have a 20-minute adjournment in around three minutes.

**Mr. Zimmer:** Just a second. Slow down for a second.

**Mr. Kormos:** It's the old observation about never wanting to see sausage or legislation made; they're both unattractive processes.

**Mr. Zimmer:** On a point of order, what are we doing with 6.1, as amended?

**The Chair:** Because there's a recorded vote, we'll be deferring that.

**Mr. Zimmer:** Thank you.

**The Chair:** Section 7, government motion 51: All those in favour? Carried.

Shall section 7, as amended, carry?

**Mr. Kormos:** Recorded vote.

**The Chair:** I've been advised that PC motion 51A is out of order.

**Mr. Kormos:** One moment, Chair. All motions are deemed to be moved. How then can the orderliness, if they're not read into the record, be determined? Orderliness is a matter of public record. With respect, the clerk clearly has an opinion about it, but if it's not read into the record, it's difficult for people—because you can't do a point of order on a bill until it's read in, right? When I've had amendments that they said were out of order: "Oh, no, wait. Wait until I move the amendment, then you can make a point of order." So it's deemed to have been moved but not read into the record. It creates a problem. It seems to me that then it's for the government to defeat it.

**The Chair:** Would you like this to be read into the record, Mr. Kormos?

**Mr. Kormos:** You can't read it into the record. It's deemed to have been moved.

**The Chair:** Yes, you can.

**Mr. Kormos:** What do you mean, "Yes, you can"? We have a time allocation motion. Then I want them all read into the record. They're deemed to have been moved. They're moved already.

**The Chair:** On the request of—

**Mr. Kormos:** On the request of the mover? Mrs. Elliott is not requesting that it be read into the record.

**The Chair:** On the request of any member it can be—

**Mr. Kormos:** No member has requested that it be read into the record, so there we go. Deemed to have been moved—okay, let's dealt with 51B. And a recorded vote on 51A, of course.

**The Chair:** NDP motion 51B.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** PC motion 51D.

**Mr. Kormos:** What about 51C, sir? Is this a redundant one?

**The Chair:** Motion 51C?

**Mr. Kormos:** Yes, an NDP motion.

**The Chair:** NDP motion 51C.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** PC motion 51—

**Mr. Zimmer:** Hold it. Just slow down for a second. Motion 51C is deferred for a recorded vote, is that right?

**The Chair:** Yes.

PC motion 51D.

**Mrs. Elliott:** Recorded vote, please.

**The Chair:** Government motion 52: All those in favour? It's carried.

Government motion 53: All those in favour? It carries.

Government motion 54: Carried.

**Mr. Kormos:** Motion 54A: Recorded vote, please.

**The Chair:** Section 9, PC motion 54B:

**Mrs. Elliott:** Recorded vote, please.

**The Chair:** Government motion 55: All those in favour? It's carried.

Government motion 56.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** PC motion 56A.

**Mrs. Elliott:** Recorded vote, please.

**The Chair:** Government motion 57: All those in favour? It's carried.

NDP motion 57A.

**Mr. Kormos:** Recorded vote, please, sir.

**The Chair:** Government motion 58: All those in favour? Carried.

NDP motion 58A.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** NDP motion 58B.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** Government motion 59: All those in favour? Carried.

Government motion 59A: All those in favour? Carried.

Government motion 60: All those in favour? Carried.

**The Chair:** Shall section 11, as amended, carry?

**Mr. Kormos:** Recorded vote, please.

**The Chair:** Government motion 61: All those in favour? Carried.

NDP motion 61A.

**Mr. Kormos:** Recorded vote, please.

**The Chair:** Shall section 13 carry?

**Mr. Kormos:** Recorded vote, please.

I'm requesting 20 minutes as per the time allocation motion, please. We're only allowed one 20-minute recess. If it's a problem, then somebody propose an alternative. I didn't write the time allocation.

**The Chair:** I have 5:31 on my clock. We'll meet back here at 5:51. Thank you very much.

*The committee recessed from 1731 to 1751.*

**The Chair:** Welcome back, folks.

**Mr. Kormos:** It's always a pleasure.

**The Chair:** We'll resume the clause-by-clause consideration of Bill 107.

Motion 37B: A recorded vote was requested.

### Ayes

Elliott, Kormos.

### Nays

Balkissoon, Berardinetti, Oraziotti, Van Bommel, Zimmer.

**The Chair:** NDP motion 37C.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** It's lost.  
NDP motion 37D.**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** Government motion 38.**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** It's carried.  
NDP motion 38A.**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** That's defeated.  
Government motion 39.**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Carried.  
NDP motion 39B.**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** the motion is lost.  
PC motion 39C.**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** The motion is lost.  
NPD motion 39D.**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** That's lost.  
PC motion 42A.**Ayes**

Elliott, Kormos.

**Nays**

Berardinetti, Balkissoon, Orazietti, Van Bommel, Zimmer.

**The Chair:** NDP motion 42B.**Ayes**

Elliott, Kormos.

**Nays**

Berardinetti, Balkissoon, Orazietti, Van Bommel, Zimmer.

**The Chair:** That's lost.  
NDP motion 42C.**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** That's lost.  
NDP motion 42D.**Ayes**

Elliott, Kormos.

**Nays**

Berardinetti, Balkissoon, Orazietti, Van Bommel, Zimmer.

**The Chair:** That's lost.  
NDP motion 43A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** That's lost.  
NDP motion 44A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** Lost.  
NDP motion 44B.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** That's lost.  
NDP motion 44C.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** That's lost.  
Government motion 45.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** That's carried.  
NDP motion 45A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** That's lost.  
Government motion 47.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** That's carried.  
Shall section 6, as amended, carry? All those in  
favour?

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** That's carried.  
**1800**  
Thank you for your patience, folks. NDP motion 49A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** Shall section 7, as amended, carry?

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** Opposed? It's carried.  
PC motion 51A: That's out of order.  
NDP motion 51B.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel,  
Zimmer.

**The Chair:** PC motion 51C.

*Interjection.*

**The Chair:** Sorry about that. My apologies. This was crossed out.

*Interjection.*

**The Chair:** I'm advised that 51C is out of order.

PC motion 51D: All those in favour?

**Mr. Kormos:** Just a minute, Chair. This is the problem with ruling things out of order during the course of a vote. During the course of a vote is the worst possible time to rule things out of order. My motion, 51C, moves that section 46.1 of the act, as set out in section 8 of the bill, be struck out.

**The Chair:** I've been advised that that's been voted on and carried.

**Mr. Kormos:** Okay. Section 46.1 has been voted on and carried.

**The Chair:** It's identical to government motion 52, which has already carried.

**Mr. Kormos:** Okay, that's better.

**The Chair:** PC motion 51D.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** Lost.  
NDP motion 54A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** That's lost.  
Shall section 8, as amended, carry?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** That's carried.  
Section 9: PC motion 54B.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** That's lost.  
Government motion 56.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** That's carried.  
Shall section 9, as amended, carry?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Section 10: PC motion 56A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** Lost.  
NDP motion 57A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** It's lost.  
NDP motion 58A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** Lost.  
NDP motion 58B.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** Lost.

Shall section 10, as amended, carry?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Shall section 11, as amended, carry? Carried.

Section 12: NDP motion 61A.

**Ayes**

Elliott, Kormos.

**Nays**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**The Chair:** Shall section 12, as amended, carry?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Lost.

Shall section 13 carry?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Carried.

Shall the title of the bill carry?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Carried.

Shall Bill 107, as amended, carry?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Carried.

Shall I report the bill, as amended, to the House?

**Mr. Kormos:** Recorded vote.

**Ayes**

Balkissoon, Berardinetti, Orazietti, Van Bommel, Zimmer.

**Nays**

Elliott, Kormos.

**The Chair:** Carried.

Thank you very much, folks. That concludes our business for Bill 107. I'd like to thank staff and all sides for their co-operation, and the ministry and the folks who came out for these hearings. That concludes the hearings for Bill 107.

*The committee adjourned at 1808.*



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