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Monday 11 April 2005

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Lundi 11 avril 2005

Standing committee on social policy

Accessibility for Ontarians with Disabilities Act, 2005

Comité permanent de la politique sociale

Loi de 2005 sur l'accessibilité pour les personnes handicapées de l'Ontario

Chair: Mario G. Racco
Clerk: Anne Stokes

Président : Mario G. Racco
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON SOCIAL POLICY

COMITÉ PERMANENT DE LA POLITIQUE SOCIALE

Monday 11 April 2005

Lundi 11 avril 2005

The committee met at 1535 in room 151.

ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005

LOI DE 2005 SUR L'ACCESSIBILITÉ POUR LES PERSONNES HANDICAPÉES DE L'ONTARIO

Consideration of Bill 118, An Act respecting the development, implementation and enforcement of standards relating to accessibility with respect to goods, services, facilities, employment, accommodation, buildings and all other things specified in the Act for persons with disabilities / Projet de loi 118, Loi traitant de l'élaboration, de la mise en oeuvre et de l'application de normes concernant l'accessibilité pour les personnes handicapées en ce qui concerne les biens, les services, les installations, l'emploi, le logement, les bâtiments et toutes les autres choses qu'elle précise.

The Chair (Mr. Mario G. Racco): Good afternoon and welcome to the meeting of the standing committee on social policy in consideration of Bill 118, the Accessibility for Ontarians with Disabilities Act.

Once again, I would like to point out several features that we hope help to improve accessibility for those who are participating in and attending meetings regarding Bill 118. In addition to our French-language interpretation, we will be providing, at each of our meetings, closed captioning, sign language interpreters, and two support services attendants, who will be coming shortly, to provide assistance to anyone who wishes it. They will please identify themselves for the audience.

The meeting today will be broadcast on the parliamentary channel, available on cable TV tomorrow at 10 a.m., and it will be rebroadcast on Friday, April 15. Also, the Webcast broadcast of this meeting will be available tomorrow at the same time as the television broadcast on the Legislative Assembly Web site at www.ontla.on.ca.

Members please note that a package of additional amendments tabled by the government party last week has been distributed with page numbers in the upper right-hand corner to assist you in placing them in your existing packages in the proper order.

We will now resume our clause-by-clause consideration of Bill 118. We left off at the last meeting considering amendments to section 18. The next motion, in order, is the official opposition motion to amend subsection 18(1) on page 49 in your package. Mr. Jackson, you will proceed whenever you're ready.

Mr. Cameron Jackson (Burlington): What page?

The Chair: Page 49.

Mr. Khalil Ramal (London–Fanshawe): I guess, before we move to Mr. Jackson—page 50.

The Chair: I will double-check with the clerk, but my records indicate that 49 was not finalized.

Ms. Kathleen O. Wynne (Don Valley West): I believe it was withdrawn.

Mr. Rosario Marchese (Trinity–Spadina): I think we dealt with my motion, which was on the issue of inspectors.

The Chair: So we need a motion to address 49.

Mr. Marchese: I think we're now on page 49, because we dealt with my motion on 48, not his.

The Chair: That's exactly what I asked. I don't understand what the confusion is.

Mr. Marchese: There is some confusion.

The Chair: I made it very clear that we're dealing with page 49 and that the floor goes to Mr. Jackson. When he is ready, he will put a motion, and if there are any comments, I will be happy to hear from anyone.

Mr. Marchese: I'm with the Chair.

The Chair: I'm happy to hear that, Rosario.

Mr. Jackson: I move that subsection 18(1) of the bill be struck out and the following substituted:

"Inspectors

"18.(1) Within a prescribed time after the first accessibility standard is established under section 6, the minister shall appoint inspectors for the purposes of this act."

Briefly, I have put on the record my concern about "one or more," and that is only used in the context that any future government will be compliant with the law if it appoints one inspector. I find it hard to believe that we'll try to manage this process for the entire province without making a commitment to a significant number of inspectors, and "within a reasonable time," which is contained in the government motion, I don't think is as strong as "within a prescribed time," which means it would find its way into the regulations and the public would know about it.

We've had several groups come before the committee expressing concern and expectations for the government to move forward in the past, and they have not happened, so in my view, legislation that says "within a reasonable

time" is far too subjective and open-ended, but "a prescribed time" to have the inspectors appointed tightens the language and gets us moving in a more timely fashion.

1540

Those are my comments. I would hope that the members will support this friendly amendment.

Mr. Marchese: I support this motion because it's similar to mine, which was on page 48. The only difference is that I was saying we should hire the inspectors before the first accessibility standard, and the reason for that is that at least we will guarantee that inspectors will be hired before the first accessibility standard is done. Mr. Jackson's motion is that "within a prescribed time after the first accessibility standard is established," inspectors should be hired.

Since my motion failed, I now agree with Mr. Jackson's motion as a second-best alternative to deal with this issue, because this motion speaks about "inspectors," unlike the government motion that we are going to be dealing with later which says "one or more"—and I will speak to that when they introduce it.

I think this is part of what many groups demanded from us and expect in the manner of the government, so I will be supporting this motion.

Mr. Ramal: We spoke about this issue for a long time last week, and I'd repeat what we said. I believe the government is going to propose an amendment to this section to replace "may appoint" with "shall appoint." We talk about "a reasonable time" only to give the minister flexibility to appoint the inspector after they have appointed the standards committee.

I have no further comments.

The Chair: Any further debate? If there is none, I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Fonseca, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry. We move to page 50.

Mr. Ramal: I move that subsection 18(1) of the bill be struck out and the following substituted:

"Inspectors

"18.(1) The deputy minister shall appoint one or more inspectors for the purpose of this act and the regulations within a reasonable time after the first accessibility standard is established under section 6."

The Chair: Any further debate?

Mr. Jackson: I would move an amendment to delete "one or more" from this amendment. I've stated ad nauseam that I can't imagine us running the whole province with just one inspector.

The Chair: Can we deal with the amendment to the amendment, please?

Mr. Marchese: I'll just stick to the amendment for now, and then I'll speak to the main motion in a second.

It's very clear both to Mr. Jackson and myself, and it's probably clear to the government as well, what this motion means. "The deputy minister shall appoint one or more inspectors"—they know exactly what this says. If they hire one inspector, it means that they are in conformance with this motion. If they do not hire more than one inspector, that's OK. The way it's written, that's what this motion says. It is my sense that the government members understand this. If they don't, we have a problemo on our hands. If they do understand it, I'm not sure why they would accept it as a good motion, in all fairness.

Having one inspector to do this big job simply is unacceptable, and it's not what people told us during the hearings. I think this amendment is very, very appropriate, and all I can do is appeal to the members for reasonable judgment on this.

The Chair: Mr. Ramal, and then Ms. Wynne.

Mr. Ramal: We talked about this issue several times, and I'll repeat it again. "One or more" doesn't mean we're not going to use other inspectors from different agencies to inspect all the sectors. As you know, since we got elected as a government, we've hired more than 200 inspectors in both the Ministry of Labour and the Ministry of Agriculture and Food. So we can use all of these inspectors to serve our goal to assist us to strengthen Bill 118 and monitor the sectors to comply with this bill.

Ms. Wynne: I just want to make the point that throughout the hearings what we heard about this section was that people wanted to be sure that the government was going to hire inspectors. So the word "may" changing to "shall" was what people were really looking for. This motion leaves some flexibility for the deputy minister to appoint inspectors as they're needed, but it demands that there be inspectors appointed, and that is what delegates asked us to do.

Mr. Marchese: I just want to refute the arguments by both members who have just spoken. As to the latter, it is true that they went from "may" to "shall," but the language says "appoint one or more." If they wanted the language of "appoint as needed," they would have accepted the language of the amendment, which was, "shall appoint inspectors." That would appropriately deal with the comments Ms. Wynne has just made to the effect of "appoint as needed." So while I agree with the terminology change of "may" to "shall," if they really mean what they say, they should accept the friendly amendment; otherwise, they don't mean what they say.

To the parliamentary assistant, he says that it doesn't mean that other inspectors will not be used. This motion doesn't speak to that. This motion is very specific, but as it relates to other inspectors, he would know—and if he doesn't, it worries me; it worries me if they don't know—that all the inspectors we use in every other

sector are overburdened with the work they're doing and overused in terms of the work they are doing at the moment. So when they claim that other inspectors can be used, I don't think it's a fair comment to make, given the fact that we don't have enough inspectors at the moment and the ones we do have are overburdened with the work they're doing. Third, they're not being trained or have the training to be able to do this particular job, and this motion doesn't speak to that at all.

Their responses to this amendment are feeble and inadequate. They know it.

Mr. Jackson: I have a further concern, and it will surface when the government moves its motion on page 51, and that is, without explanation, the moving from a minister to a deputy minister. It's my understanding that the disability community has a minister with a secretariat but they do not have a deputy minister. So my question would be, in which ministry will we find a deputy minister responsible for the disability file? Do you follow, Mr. Ramal? Do you understand that I'm getting at?

The secretariat does not have a deputy minister running it. They have assistant deputy ministers, but they don't have a full-blown deputy; that only is reserved for front-line ministries. So I'm a little concerned, because future governments can decide maybe that's the issue here, but in the original legislation that I tabled we envisaged a permanent ministerial commitment to have the secretariat, and therefore the minister was responsible; in other words that minister with that secretariat. If that minister moves around, the responsibility still goes with them. My worry here is that we're starting this off by not having the responsibility go with the minister, but an ADM or a deputy minister who is assigned to that responsibility.

Unless I'm missing something here—and I don't think I am—I'd like to know why we've switched from minister to deputy minister, when the disability community does not have a deputy minister. I mean, it's possible you could transfer this whole thing over to income support in Comsoc or you could move it to children's services. That would be my concern.

The Chair: I would ask everyone to stay on the amendment to the amendment, please. If we can do this, we can get through the issue on 51 and so on.

Mr. Jackson: I apologize. You're right, I should have—

The Chair: No problem. You've made your comments. That's fair.

Any further debate on the amendment to the amendment? If there is none, I will now put the question: Shall the amendment to the amendment carry?

Ayes

Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment to the amendment does not carry.

We still have the original amendment, 18(1), from the government side. I heard some comments. I'll go back to Mr. Marchese for additional comments.

1550

Mr. Marchese: Forget the comments on this motion. My amendment speaks of, "The minister shall appoint inspectors before the first accessibility standard." Mr. Jackson's motion had language that said "within a prescribed time after the first accessibility standard is established," then inspectors would be hired. What they've got by way of language is "within a reasonable time."

Mr. Jackson: After.

Mr. Marchese: And then "after," which I already debated. There's no point in repeating it.

The problem of "reasonable time" is that it has no limits. It's not boxed in; it's not prescribed. "Reasonable time" could be anything, and in government, as you know because you've been around for a while, "reasonable time" could be—we haven't sent this issue to committee in six months, then all of a sudden we send it, and that's within "reasonable time." If they had introduced it a year later, they would have said, "That's within a reasonable time." You know what I'm getting at.

The problem with "reasonable time" is that it's got an elastic kind of time frame, so you could just stretch that elastic as long as you want. You understand "reasonable time," right? That's why Marchese was supporting his own motion. That's why, in part, I was supporting Mr. Jackson's motion, because it had "prescribed time" connected to the hiring of these inspectors, and that's why I'm opposed to this language. It simply says the government may or may not hire them today, maybe not tomorrow, but sometime, whatever is "reasonable" as defined by the Liberal government of the day.

I'm opposed to this wording. I'm opposed to the language. I just don't like it.

The Chair: Is there any further debate?

Mr. Jackson: I'd ask a question. This is the first time this surfaces. In the next amendment, you ask to specifically change the wording. But you are striking out the minister's responsibility to pick inspectors and putting in the deputy minister. Could we get an answer to that? Because I am quite confident that my statements are accurate in terms of the legal intent here.

Mr. Ramal: Mr. Jackson, can we wait until we move to page 51 and then we can deal with it?

Mr. Jackson: No. This is a very serious issue. Do you know what? The Chair might rule out—since you've already referred to the responsibility of the deputy minister and deleted the minister, one might reasonably argue that, in conforming to the legal points, once we've done that, item 51 is unnecessary.

Ms. Wynne: Mr. Chair—

The Chair: It's up to you if you wish to answer or not. There's also staff here.

Ms. Wynne: I'd just like to make a brief statement in response—and I'm sure Mr. Jackson knows this. What this would ensure is that the inspectors would be civil servants and so would not be political appointments in that sense. They'd be civil servants.

Mr. Ramal: To satisfy Mr. Jackson, we can ask ministry staff to ask the technical—

The Chair: Yes. Would you please take a seat and answer the question.

Mr. Ramal: Through you, Mr. Chair, to Mr. Jackson: I wonder if Mr. Jackson is going to combine 50 and 51 in order to get both answers from ministry staff.

Mr. Jackson: There will be no need to repeat the question.

The Chair: Staff, did you hear the question? Do you wish Mr. Jackson to repeat the question?

Ms. Katherine Hewson: Yes, please.

The Chair: Would you please, Mr. Jackson? The lady there would like to hear your question.

Mr. Jackson: Do want me to repeat it?

Ms. Hewson: Just the question, if you would.

Mr. Jackson: All right. When you drafted the original Bill 118 and sent it out, you had in your original bill, and I'm looking at it, "The minister may appoint inspectors for the purposes of this act." The only thing we heard, from the ODA Committee and others, was, "Don't change it, except to appoint them earlier, and make sure it's mandatory." That's what we heard. We never heard anybody say that we shouldn't have the minister holding on to responsibility here.

Some of us are concerned, and I'm sure the ODA Committee is concerned, that we're taking the responsibility away from the minister and putting it in the hands of a deputy minister. In this instance, the secretariat is not managed by a deputy minister; it has ADMs, unless things have changed.

Ms. Hewson: The rationale for the change is that it is intended that inspectors could be civil servants and therefore it is more appropriate for a deputy minister to appoint, given that they would be appointments from the Ontario public service.

In respect to the question regarding who is responsible in the ministry, ultimately, for the accessibility directorate, there is a deputy minister who is responsible. At present, it's the Deputy Minister of Citizenship.

Mr. Jackson: Precisely, and if disability issues get moved to another ministry, we're going to have a different deputy referenced here, as opposed to—I think we really want the minister to continue to maintain the commitment. It was envisaged by your draftspersons in your consultation process, with ODAC support. Now, all of a sudden, we're changing it at the 11th hour. I'm just having real difficulty with that.

Ms. Hewson: Maybe I could also draw your attention to the definition of "minister" under this bill, which is, "the Minister of Citizenship and Immigration or whatever other member of the executive council to whom the administration of this act is assigned under the Executive Council Act," so the deputy minister would be the deputy minister under that minister.

Mr. Jackson: I understand that, but I kind of like tying it to a minister specifically. This minister is a very active minister. She has a lot of things on her plate, as you well know, and the point is, tying it to the minister's responsibility is what we've done. But I sense that the Liberals have their marching orders and I'm wasting my time.

The Chair: Mr. Jackson, thank you for your comments. Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Marchese.

The Chair: The motion carries.

Page 51; Mr. Ramal.

Mr. Ramal: I move that subsection 18(2) of the bill be amended by striking out "The minister" at the beginning and substituting "The deputy minister."

I think the same analogy applies as in motion 50, for the same reason, because the deputy ministers are civil servants. This amendment has been brought to give them more flexibility to deal with an inspector, in order to strengthen the bill and make it more flexible.

The Chair: Is there any further debate? There is none. I will now put the question. Shall the motion carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion carries.

We have dealt with section 18. Therefore, I will take a vote. Shall 18, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal,Wynne.

The Chair: Section 18 carries.

We'll go to section 19. There is no change. Shall section 19 carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Section 19 carries.

Section 20: There is an amendment.

Mr. Ramal: I move that subsection 20(1) of the bill be amended by striking out "or" at the end of clause (a) and substituting "and".

The Chair: Any comments?

Mr. Ramal: The technical amendment clarifies that a justice of the peace could issue a search warrant if he or she feels the need for it if people are not complying with the bill. It's to give the bill more flexibility, and also the current wording in the bill would only require the justice of the peace to be satisfied by one condition instead of both. That's why we came up with this amendment, in order to match the technicalities and not to interfere with the justice of the peace.

1600

The Chair: Is there any further debate?

Mr. Marchese: I agree with the government on this. They were smart to have seen that problem.

The Chair: Any other comments? I will now put the question. Shall the motion carry?

Ayes

Fonseca, Leal, Marchese, Parsons, Ramal, Wynne.

The Chair: The amendment carries.

That is the only amendment, so I will take a vote on section 20. Shall section 20, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Wynne.

The Chair: Section 20 carries.

Section 21, page 53; Mr. Ramal.

Mr. Ramal: I move that subsection 21(5) of the bill be struck out and the following substituted:

"Failure to comply with previous order

"(5) If a person or organization fails to comply with an order made under subsection (3) or (4) within the time specified in the order and no appeal of the order is made within the time specified in subsection 27(1), a director may, subject to subsection (6), make an order requiring the person or organization to pay an administrative penalty in accordance with the regulations."

I think this motion is clear, to specify that the director can now penalize organizations or people who are not going to comply with the regulations in the bill.

The Chair: Any further debate?

Mr. Marchese: A question to the parliamentary assistant or anyone else: Is there a reason why, if there's a failure to comply, you wouldn't use the words "a director shall"? What's your logic?

Mr. Ramal: The ministry staff know the wording better than I. Maybe they wish to—

The Chair: Would staff answer, please?

Ms. Hewson: It's regular language that is used, because in some cases the director might not make an order. For example, there may be some discussion with the person against whom the order is made. So this leaves it open for some alternative—

Mr. Marchese: And that's regular language that we generally use in a lot of these? So in these cases, there would be a lot of discretion that can be part of this. They may charge or they may not, and that's the way we want to leave it, basically, is that it? Because we don't really want to force them to pay a penalty, do we?

Ms. Hewson: In most cases, we probably do want to force them to pay a penalty, but there may be some circumstances in which it may not be appropriate.

Mr. Marchese: And we want to be nice, don't we?

The Chair: Of course. Mr. Jackson.

Mr. Jackson: It strikes me a bit odd, if I'm reading this section correctly, and I believe I am. You have all this work going into inspecting a property. A report is done, an order is given, and then there's non-compliance with that order, so people go back in. Then there's an appeal. The person then appeals. Inspectors go back in. The state puts up the money to have an appeal procedure. Then at the end of all this, there's still non-compliance, and they come to this magical clause in the legislation that says, "You know, at the end of all this, they may actually charge you a fine." I'm not being overly sensitive when people say, "You didn't have any teeth," but are we going to gum these people to death for not being compliant? I really think—

Mr. Marchese: They do the appeal and make their arguments, but even beyond that, we have to be nice to them.

Mr. Jackson: I think you send a stronger message that at the end of all this process, there is going to be a fine. Sure, there are always extenuating circumstances. Frankly, I'm still deeply offended by that judge in St. Catharines who subverted the current law of this province and said, "Do you know what? There are lots of other disabled parking spots out there. This man's fine shouldn't be at the legal limit, as prescribed by the province of Ontario. We'll knock it back all we want." Honestly, I really think the disability community has expected that at the end of the day, non-compliance will result in a fine.

Let's be mindful that the reason a person is in an appeal position is because a disabled person was wronged by the failure to comply. They have complained, which means it has been brought to the state's attention, and still nothing is happening. In a small community, where this is the only service in that community for anybody, let alone the disabled, these are serious matters.

It doesn't look like the government is going to strengthen this section. We're not saying there is a penalty, in the first instance, of non-compliance. We're saying, "After you've been in non-compliance and you've exhausted your appeals, we've had enough. There is going to be a penalty." I've stated it. I just think it's a little too soft.

Mr. Jeff Leal (Peterborough): As I recall, there were a couple of presentations made. One was made by Ms. Maxwell, who is executive director of the Canadian Federation of Independent Business, plus a group of individuals—I'm starting to learn the geography of Toronto—and it's the Yonge Street or Bloor Street business corridor, either one of those.

Mr. Marchese: Yorkville.

The Chair: Which is Bloor, I would think.

Mr. Leal: Thanks. If I recall correctly, one of the things they expressed to us was the need for increased clarity with regard to responsibilities for both people and businesses. It seems to me that this amendment adds to that clarity and identifies the legal obligations of both individuals and those businesses from this Bill 118. In fact, Mr. Jackson makes a point, that in many small communities across Ontario—Havelock, for example, in my riding—there may be one or two small businesses, and Ms. Maxwell certainly represents that group. I think that in this particular case, by adding clarity, it would be helpful to those communities where there are small businesses. I think this is a reasonable amendment from that basis.

Ms. Wynne: I just want to clarify my understanding of why we're putting this amendment forward, and that is to clarify the time. One of the things we heard in the hearings was that people wanted more clarity and a tightening or clarifying of time frames. This amendment specifies a time. You have to look at the amendment under section 27 that we're putting forward, which is on page 63, to recognize that what we're saying is that an order can be appealed "by filing a notice of appeal with the tribunal within 15 days after the day the order is made." So we're specifying a time period in which this is to happen. That is the purpose of the amendment.

The amendment we've put forward, Mr. Jackson, refers to subsection 27(1) of the bill. We're putting forward an amendment, on page 63 of your motions, which would specify a time period of 15 days, in which time a notice of appeal has to be filed after the day the order is made. That's actually the intention of this amendment. I don't know if staff would like to clarify the difference between an administrative penalty and any other kind of penalty. Could we have that clarified?

Ms. Hewson: Maybe that is something that would be helpful. This section is saying that the director may make an order requiring someone to pay an administrative penalty. You'll see more information in the regulation-making section about administrative penalties. But I think it is important to point out as well that that is in addition or different than the offence provision which already exists, which is section 38, which specifies that, "A person is guilty of an offence who,

"(b) fails to comply with any order made by a director or tribunal under this act."

1610

So that is an offence, and that's different than through the administrative penalty that the director has discretion over.

Ms. Wynne: So this is a procedural or administrative issue, as opposed to an offence on a standard?

Ms. Hewson: That's correct, and this bill includes both.

Ms. Wynne: OK. Thank you.

Mr. Marchese: Just a very quick comment. What we do remember is that under the previous bill in 2001, the enforcement provision around the fine provision was never proclaimed, so they couldn't levy any fines.

I appreciate that we didn't do that in the last bill, but this language around "may" is just as weak, because it's like not doing anything. So you've got an enforcement provision that never gets proclaimed, and in this particular instance you do have a provision that says a director "may." Even after an appeal, they may decide not to charge them a penalty fee. It's just as weak as not proclaiming any enforcement provision, is my argument around this language of "may," in spite of what the other members have spoken to generally about this section.

The Chair: Is there any further debate? If there is none, I will now put the question. Shall the motion carry?

Ayes

Fonseca, Parsons, Ramal, Wynne.

Nays

Marchese.

The Chair: The motion carries.

The next one is page 54; Mr. Jackson.

Mr. Jackson: I move that clause 21(7)(b) of the bill be amended by striking out "and" at the end of subclause (i) and adding the following subclause:

"(i.1) inform the person or organization of what must be done in order to satisfy the order, and"

The Chair: Any comments, Mr. Jackson?

Mr. Jackson: No.

The Chair: Any debate? Mr. Ramal, and Mr. Marchese after.

Mr. Ramal: We have no problem accepting this motion if Mr. Jackson is willing to change "satisfy" to "comply" because we believe "comply" meshes with all the language being used in the bill.

Mr. Marchese: How would that read?

Mr. Jackson: "Comply with."

The Chair: It would change the word "satisfy" to the word "comply."

Mr. Jackson: Mr. Chairman, I'll reread it into the record.

I would move that the amendment read:

"(i.1) inform the person or organization of what must be done in order to comply with the order, and"

The Chair: So basically there's only one motion, what you just read on the floor, and the word "comply" is in it. Therefore, Mr. Marchese or anyone, do you have any debate?

Mr. Marchese: I'm happy that the government has accepted this amendment. We're making some real progress. We're near the end of it and, boy, are we doing well, eh, Mr. Jackson? The committee seems very happy with that. I think the addition of the word "comply" instead of "satisfy" is a much better term. I agree with the parliamentary assistant; I think it's great.

The Chair: Is there any further debate on the motion? I will now put the question.

Ayes

Arnott, Fonseca, Jackson, Marchese, Parsons, Ramal, Wynne.

The Chair: Everybody supports this amendment.

The next one is page 54a; Mr. Ramal.

Mr. Ramal: I move that clause 21(7)(c) of the bill be amended by striking out "and specify the time for giving notice of appeal" at the end and substituting "within 15 days after the day the order is made."

This amendment, just to set the timetable for appeals, complies with the bill. We've been talking about it for a long time. So this one is a motion to set the timetable—

The Chair: Mr. Ramal, I'm sorry. Are you on page 54A? I think you are on 55. We need to deal with 54a—

Mr. Ramal: I'm sorry.

The Chair: It's not on our agenda.

Mr. Ramal: So we don't have to deal with it because we've already accepted the motion—

The Chair: So there is no 54a. We are on 55. You're right. Continue, Mr. Ramal.

Mr. Ramal: This amendment talks about setting up the timetable for appeals and compliance. It's been asked many times that we set a timetable, and we set it here: 15 days. I think it's very clear. This motion, this amendment is to clarify all the debate that has been said for a long time.

The Chair: Any comments? I will put the question. Shall the motion carry?

Ayes

Fonseca, Jackson, Marchese, Parsons, Ramal, Wynne.

The Chair: Everybody supports it. The motion carries.

Therefore, we'll take a vote on section 21. Shall section 21, as amended, carry?

Ayes

Fonseca, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. The motion carries.

We'll go to section 22. There is one amendment, 55a.

Mr. Ramal: I don't have it.

The Chair: I will provide you with a page, Mr. Ramal.

Mr. Ramal: I move that subsection 22(2) of the bill be amended by adding the following clause:

"(a.i) of the steps that the person or organization must take in order to comply with the order;"

There is more specification in this amendment, to specify the steps and the timetable that should be taken in order to comply with the order.

The Chair: If there are no comments, I will now put the question. Shall the motion carry?

Ayes

Fonseca, Jackson, Leal, Marchese, Parsons, Ramal, Wynne.

The Chair: Unanimous again. Thank you.

Now we will take a vote on this section. Shall section 22, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. The section carries.

Section 23.

Mr. Ramal: I move that subsection 23(1) of the bill be amended by striking out "and no appeal of the order is made within the time specified in the order" and substituting "and no appeal of the order is made within the time specified in subsection 27(1)."

We're still dealing with the same issue in order to clarify the steps that should be taken in appeal and compliance.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Jackson, Leal, Marchese, Parsons, Ramal, Wynne.

The Chair: Supported by all.

Next is page 57.

Mr. Ramal: I move that subsection 23(4) of the bill be amended by striking out "within the time specified in the order" and substituting "within the time specified in subsection 27(1)".

For the same reason, we amended this section.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Jackson, Leal, Marchese, Parsons, Ramal, Wynne.

The Chair: Supported by all.

We will take a vote on section 23. Shall section 23, as amended, carry?

Ayes

Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. The section carries.

Section 24: There is no adjustment. I'll take a vote. Shall section 24 carry?

Ayes

Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None.

Section 25: Page 58.

1620

Mr. Ramal: I move that section 25 of the bill be struck out, and the following substituted:

"Order received, etc.

"25. Within a reasonable time after making an order under section 21, a director may review the order and vary or rescind it."

This amendment is to qualify the job and the power of the director in order to make a decision in this issue. I believe it must be done within a reasonable time, as specified in the bill. The director is in charge of the implementation of the bill, and also to monitor the steps going forward to achieve implementation of Bill 118.

The Chair: Is there any further debate?

Mr. Marchese: Just to remind the parliamentary assistant that during the hearings, many deputants spoke to the use of the word "may" here. I certainly did, and many others did as well. All I want to tell him is that enforcement is weakened by the use of the word "may," or, put differently, enforcement is not strengthened by the use of the word "may." You either have enforcement, which makes sense, and then you enforce it by language that says "a director shall review the order and vary or rescind it," or it means nothing. The addition of "within a reasonable time" doesn't change the weakness of the word "may." So the problem with "within a reasonable time," which I argued earlier, is that it has an elastic terminology which means nothing in government and is of no use to me, and the word "may" means that we may or may not have any review of this at all.

Obviously, I'm not going to be able to convince him because this amendment is in the form that it is here, but I'm certainly opposed to "may," and many deputants were as well. I point that out for the record so that the Liberal members remember that.

Mr. Ramal: To clarify what Mr. Marchese said, we say "may" because we don't want different sectors—different sectors vary—and different requirements, and every sector has its own conditions. That's why we've been saying "may" instead of "shall," and if the ministry staff have any further comment on it, I would like them to comment.

Mr. Jackson: I read something a little different into this. We have a section of this bill which speaks to the issue that the minister can exempt whole groups and classes of individuals from coverage. We now have a section which talks about an order; and an order, as we understand it, is an order made under the act for compliance, to change something to make it more accessible. In this specific one, we are now talking about a director who may, by order, vary or revoke an order. So now you've got a civil servant who is modifying an order that's already been done, and they "may" be able to do it.

I find the whole section awkward because if there are going to be exemptions, then somebody had better be honest and up-front and say, "These are the exemptions." I'd be very disappointed to see us create a system where we aren't going to talk about exemptions. We're going to make groups go through this whole process and then, at the end of the process, say, "OK, there's an order. You're not in compliance? Do you know what? Don't worry about it. Our director can vary your order and we can modify it. And don't even worry about that, because we could even revoke it," according to this section. I'm having a bit of a hard time with that, because this is the escape clause, where the director can undo something that flows from regulations that were negotiated with the disability community. The minister, in her wisdom, is able to say, "Those people in the Bloor business section who have restaurants four steps down are completely exempt." That's essentially the kind of exemption she's going to be making. At the end of all that, we still have the means by which you can vary or revoke an order, so it doesn't really speak to it tightly.

I hear what Mr. Marchese said about "may" and "shall." Frankly, I don't want it to say "shall" because it says, "They shall revoke an order." I don't want orders to be revoked. You've taken up that much of the bureaucrats' time, all the inspectors at city hall, you've negotiated, you've hired a lawyer, you've been in there, you've fought it, you've done an appeal, and then at the end of all that, within a reasonable time after making an order under section 20, a director, meaning the civil servant, may review the order and vary or rescind it.

Obviously we're not going to get this changed, but I have no illusions. This is the second major clause you can drive a truck through, and I'm not terribly thrilled about those things, and certainly not after people who are well-intentioned come to the table and work for a year to get an order varied, and at the end of the day the director can pick up the phone and say, "Do you know what? These people aren't really a hardship case. According to the legislation, you have the right to review it, vary it or rescind it." That's it. It doesn't say who reviews the work of the director. It just says they have omnipotent power to do it.

I've certainly commented enough, Mr. Chairman. Thank you for giving me that time.

Mr. Marchese: I just want to thank Mr. Jackson for his comments. I think he's perfectly correct. I was speaking to subsection 21(3) in terms of a compliance order, reporting of requirements. I'm speaking to a whole different section, I think, which is not before us. I should have commented on it earlier. It would be, just to correct myself, 21(3),

"If a director concludes that a person or organization has contravened section 14 or 17, the director may, by order, require the person or organization to do any or all of the following:

"1. File an accessibility report...."

My comments fit more properly there and not where I just made the arguments. I want to correct myself and speak against a section that we've already gone through and agreed to.

The Chair: No problem. Thank you for the clarification.

Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Leal, Parsons, Ramal, Wynne.

Nays

Jackson, Marchese.

The Chair: The motion carries.

Now we'll take care of the motion on the section. Shall section 25, as amended, carry?

Ayes

Leal, Parsons, Ramal, Wynne.

The Chair: The section carries.

We go to section 26, pages 59 and 59a.

Mr. Marchese: I move that section 26 of the bill be struck out and the following substituted:

"Tribunal

"26. (1) There is hereby established a tribunal to be known as the Accessibility Appeals Tribunal in English and Tribunal d'appel en matière d'accessibilité in French.

"Composition

"(2) The tribunal shall be composed of such members as may be appointed by the Lieutenant Governor in Council.

"Chair, vice-chair

"(3) The Lieutenant Governor in Council shall appoint a chair and may appoint one or more vice-chairs of the tribunal from among the members of the tribunal.

"Remuneration

"(4) The members of the tribunal shall be paid such allowances and expenses as are fixed by the Lieutenant Governor in Council.

"Employees

"(5) Such employees as are considered necessary for the proper conduct of the tribunal may be appointed under the Public Service Act.

"Rules

"(6) The tribunal may make rules regulating its practice and procedure and generally for the conduct and management of its affairs and such rules are not regulations within the meaning of the Regulations Act.

"Panels

"(7) The chair of the tribunal may appoint panels composed of one or more members of the tribunal to hold hearings in the place of the full tribunal wherever the tribunal is required to hold a hearing under this act and, where a panel holds a hearing, the panel has all the powers and duties, except the power referred to in subsection (6), given to the tribunal under this act.

1630

"Powers and duties

"(8) The tribunal may exercise such powers and shall perform such duties as are conferred or imposed upon it by or under this act."

The section simply replaces the current provisions that allow for multiple tribunals at some point in the indefinite future with a single tribunal to be established immediately. We think this is more effective and many of the deputants called for this as well. It's better than what the government is proposing, in my view.

The Chair: Any further debate on the amendment?

Mr. Jackson: I just want to reinforce that I too came away from the public hearings quite convinced that this was essential, so I will be supporting Mr. Marchese's motion. I have a similar one, but mine isn't as fulsome as Mr. Marchese's, so I will definitely yield to his better wordsmithing and tell him that I will support it for the same reasons.

Mr. Ramal: I believe that setting up another tribunal will duplicate the services and add more expense. Also, I would say that people with disabilities are already covered under the discrimination legislation and also under the Human Rights Code. So we are protecting them, and they have the right and ability to complain and send their complaint to the Human Rights Commission.

Plus, we believe the duplication in terms of a new tribunal would be a waste of time and effort and also a waste of money. If we can focus our efforts on one tribunal in order to achieve our goal, then settling complaints will be a lot better. Also, the director would not be the person who would be appearing before the tribunal to defend the case.

The Chair: Any further debate? If there is none, I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion does not carry.

I'll move to page 60, section 26. Mr. Jackson, it's your section.

Mr. Jackson: I move that section 26 of the bill be struck out and the following substituted:

"Tribunal

"26. (1) Within a prescribed time after the first accessibility standard is established under section 6, the Lieutenant Governor in Council shall,

"(a) establish a tribunal to be known as the Ontario Disability Accessibility Tribunal in English and Tribunal en matière d'accessibilité pour personnes handicapées in French; or

"(b) designate a tribunal with expertise in matters relating to accessibility for persons with disabilities to act as the tribunal for the purposes of this act.

"Composition

"(2) If a new tribunal is established under clause (1)(a), the composition of the tribunal and the procedures and practices of the tribunal shall comply with the requirements prescribed by regulation.

"Powers and duties

"(3) The tribunal may exercise such powers and shall perform such duties as are conferred or imposed upon it by or under this act."

In tabling this motion, I will reiterate what Mr. Marchese said. We have no real assurances about the size and magnitude of this tribunal. To make matters worse, we're led to believe that there could be multiple tribunals. To me, that's awkward because it speaks to two issues that are of concern to me: One is by definition the part-time nature of its work and, second, the lack of continuity that can occur between the various sectors.

One of the first revelations for me years ago as a minister was how poorly sensitized people in responsibilities were, whether it was at the municipal level, the college level, the hospital level or so on. It never left me that the more you can reinforce the skill set of people in quasi-judicial authority, the better off the people who are seeking to have their lives changed for the better, which is the whole purpose of doing this bill.

Continuity is very important to that. It's bad enough that we don't have continuity in governments, we don't have continuity in ministers and, Lord knows, we don't even have continuity in the professional civil service. At least we have an opportunity here, in setting up the tribunals, to ensure that there's some degree of consistency. I'm tired of hearing this idea that "We're behind on our tribunals because we're down to four members, and it's going to take us eight months to train the next new people," etc.

I'm not a big fan of multiple tribunals, because they end up being part-time, and somebody who's off doing very important work in their life has to say, "You know what? I can't make it." "Yes, but you're our expert on transit. You are the best person in our province." "Sorry, it's a part-time appointment. Find somebody else."

I'm reinforcing what's said. The Conservative Party amendments are less detailed, and I would rather have accepted Mr. Marchese's. I was a little disappointed—not disappointed. It's more fair to say that I was a little confused at the parliamentary assistant's response to this, saying that one tribunal will be too much work. Please help me understand why we don't want to make a commitment to a single tribunal that will deal with these expeditiously.

Mr. Ramal: At the present time, as you know, Mr. Jackson, we have so many tribunals in areas like employment, law, the building code, transportation etc. You can see in our amendment on page 61 that we're going to move a motion to amend that section in order to allow the creation of a tribunal after we establish the standards. Before that, I think it would be premature to move on and do it. We can leave it in the hands of the tribunals which already exist in many different areas. That's what I mean.

The Chair: I want to recognize Ms. Wynne if it's to do with the question. Otherwise, I'll go back to Mr. Jackson.

Ms. Wynne: It's to do with the amendment

The Chair: Let me deal with Mr. Jackson, and then I'll come back to you.

Mr. Jackson: Mine varies slightly from the previous one: "within a prescribed time after the first accessibility standard is established" is essentially the point you made.

Mr. Ramal: That's correct.

Mr. Jackson: I guess what I'm trying to get at is that we don't want multiple tribunals, which currently exist in this legislation; we feel that there should be one. It's almost like having multiple human rights commissions.

You go to one commission, you have a specialty in that area and they deal with your ruling. That's kind of what we were trying to achieve here. This is after the work of the standards committee is completed, people aren't happy with the consensus and the government's regulations, and they want to appeal them. That's why I think it should be one august body that is very capable to handle the work.

Ms. Wynne: I just want to be clear what we're talking about here, because it's my understanding that under section 26, the appeal that we're talking about is an appeal of a compliance order. So someone is under an order to comply and can appeal that order to a tribunal. It's not about accessibility for individuals. That's not the kind of appeal we're talking about. Can I get some clarification about that, that those individual appeals could still go to the Human Rights Commission?

Ms. Hewson: You're correct, Ms. Wynne. These are appeals on whether a regulation or standard has been complied with or a report has been made.

Ms. Wynne: So it would be the person under the order—

The Chair: Excuse me—

Mr. Marchese: If I could encourage people to speak clearly into the mike. I can't hear very well.

The Chair: I would ask that you repeat what you answered, and then I'll go back to you, Ms. Wynne.

Ms. Hewson: I beg your pardon. Yes, Ms. Wynne is quite right that these are appeals from an order of the director.

1640

Ms. Wynne: So it's the organization or the person who has been ordered to comply who would be appealing to the tribunal; it's not someone appealing the accessibility of a building or a service.

Ms. Hewson: That's correct.

Ms. Wynne: So then, by being as clear as possible with standards, we're trying to cut down the number of appeals of this nature that there would be. There is still recourse for individuals who feel that accessibility is not adequate, with the Human Rights Commission. Is that correct?

Ms. Hewson: That is correct.

Ms. Wynne: OK. Thank you. That's the reason I won't be supporting this amendment.

Mr. Jackson: I was aware of what you just said; I'm just finding it difficult that we need multiple tribunals to deal with people who don't want to comply.

Mr. Marchese: Ask that question.

Mr. Jackson: Again, we're dealing with a section—I think it's wrong to have seven or eight or nine different

tribunal boards that you can go to. It's as bad today as when you say, "Which judge did I get in Family Court? I'll know exactly how well my client is going to do trying to get custody of her children." This is administratively sloppy, because you've got two or three different—

Ms. Wynne maybe didn't understand the point I was trying to make. It's not that the disability community will be lining up to have an appeal; this is people who don't want to comply with the legislation. I get that. I'm saying the Ombudsman doesn't have two or three different departments that operate separate from each other. That was my point. I don't think the disability community is well served that you can shuffle off an appeal from the private sector or the government or whoever is appealing to any number of tribunals. Frankly, some people might be very, very interested in the goings-on in these tribunals and want to know, and the only way they're going to track them is if there is one that has the expertise to handle it.

Why do you envisage having multiple—because that's the big, substantive difference here: You say "one or more tribunals," whereas both Mr. Marchese and I and the ODA Committee said that there should be one appeal mechanism and not multiple opportunities with various appeal groups that you can go after. That goes on all the time. People say, "I don't want to go to that one; I'd rather go to this one, because their last three rulings were pretty soft on the private sector. I don't want to go to that one. Stay away from that one, whose chair is so and so, because they've had some tough rulings." That's what I'm trying to avoid here.

Ms. Hewson: I guess the point I could perhaps make is that it would not be the person against whom the order is made who would have the decision about what tribunal to go to; it would be the government that would designate the tribunal. So it's not really a question of shopping the forum, which is I think what you might be suggesting.

Mr. Jackson: But the government would have multiple choices, you envisage in this wording.

Ms. Hewson: The wording would allow the government to choose from among many tribunals.

Mr. Jackson: I'm not comfortable with that at all, frankly, especially since—it's on the record that the government is going to be taking forward in this process to say, "You're not in compliance. Your GO trains are not accessible." Now they can choose not have GO trains included. After they get a bad ruling or in their opinion it costs too much money, they can say, "Sorry, we're going to amend that." Then you've got a tribunal they can go before and they get to pick which tribunal they want to take their appeal to. I don't know; I just think we should be keeping it simple, streamlined, professionally staffed, a full-time commitment, and compensate them for their work. Those are measures of quality control.

Mr. Marchese: I'm not quite clear yet. Obviously this is something that is driven by the civil servants, I am assuming. I'm not clear why we want to give the minister the flexibility to be able to direct any matter to a variety of different tribunals versus one. It isn't yet clear to me why we want to do that. If you could just parse that down a little bit, the opposition against one tribunal versus the option to have the ability to send it to many tribunals. I'm not clear why. I haven't heard the logic behind it—or maybe the government, I don't know; I thought it was a civil servant kind of idea.

The Chair: Would Mr. Ramal want to answer?

Mr. Ramal: As we mentioned, so many different tribunals already exist. If there's no need to establish one, why do we have to establish it? That's why the minister or the ministry or the director is in charge of directing the appeal, so he chooses which one fits and is suitable to direct the appeal to. That's why. It's going to give the flexibility.

The Chair: Before I go back to you, Mr. Marchese, I'd like to—

Ms. Wynne: Just very briefly, there's an issue of expertise as well. If we're talking about a tribunal that would look at the building code or transportation, I would like to think we would have people with some expertise and some experience on that tribunal. I think that makes it a more efficient process.

Mr. Marchese: I guess that's why we are arguing for a single tribunal that presumably would have the expertise to deal with this bill and all of its components. I assume that this tribunal that could be set up would have that expertise to deal with this, rather than other tribunals that may or may not have the expertise on this as it relates to this particular bill and people with disabilities. We're trying to particularize the tribunal to people with disabilities rather than sending it to other tribunals that may have expertise in the field, no doubt, but I have more confidence in setting up a tribunal as it relates to this bill.

The Chair: Is there any further debate? If there is none, I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

We go to page 61; Mr. Ramal, please.

Mr. Ramal: I move that subsection 26(1) of the bill be struck out and the following substituted:

"Designation of tribunals

"26. (1) The Lieutenant Governor in Council shall, by regulation, designate one or more tribunals for the purposes of this act and of the regulations within a reasonable time after the first accessibility standard is established under section 6."

I think that's why we've been debating for the last 15 or 20 minutes, talking about the implementation, enforcement of this bill. If we have to re-establish the standards for accessibility, we can go and establish a new tribunal to deal with the issue after the standard is established

within a reasonable time. That's what we've been talking about for the last 15 or 20 minutes.

The Chair: Is there any debate? Mr. Marchese and Mr. Jackson?

Mr. Marchese: Just to repeat some of the arguments around the language "within a reasonable time," the government members already have enough experience, those who are new, to know that "within a reasonable time" is a very flexible term. It doesn't have any time connected to it because "reasonable" is prescribed by government, which could be anywhere from zero to four years or zero to eight. It could be or it may never be. It might not even be proclaimed.

I'm not clear why the government doesn't want to find language that prescribes a time. Why not "within a prescribed time" language rather than "within a reasonable time"? Why would you not put in language that makes us feel something will happen, for example?

Mr. Jackson: What's significant in this amendment—I'm not sure the government members even get it: We're now going to allow the tribunal to sit and question the regulations. I can't believe I'm seeing this. When I read these over on the weekend to get ready for today, I'm sorry, I didn't catch it because I should read the two together. You've got a standards committee that's been working for five years to create a standard. You then have a ruling. The ruling is imposed on a group of people. Then we create multiple tribunals for the private sector. I keep using the private sector, but people who don't want to comply, we force them to come out and comply.

1650

The tribunal has the standards, and now we're throwing in the regulations. First of all, this is the first time I've ever seen that. We can now have maybe an independent tribunal—the tribunal would sit and hear from the private sector, saying, "Do you know what? Not only do I not like your standard, I don't like the regs."

The disability community came into this debate saying, "We want to make sure those regs are on the Web site. We can analyze them. We can have input before they become the law and they're gazetted and sent to every library and law office in the province."

I don't know why you're throwing in the words "and of the regulations within a reasonable time." I can understand that the purpose of a tribunal is because somebody is not happy with the standards you've imposed. Now we're saying we can put the regs on the table. Well, I thought the regs were our domain. We're politicians. We were elected. When you're the government, you take them forward to cabinet. The cabinet committee, with some of your own backbenchers sitting on it, is going to say, "Those are the regs we're going to impose on the public of Ontario. Those are the regs that are backed up in this legislation we're working on today. Those are the regulations that the public can rely upon to guide them through changing Ontario to become closer to barrier-free."

Now we're going to throw in those very regs. They're going to be the subject of the private sector. They'll say, "Not only do I not like your plan and the standards; I don't like the regs."

I'm not going to support this. I've never quite seen giving a statutory tribunal the right to review your regs. Hell, we don't even give that to the energy board. I just don't believe I'm seeing it, but that's fine. I'm sure lawyers in your ministry had a purpose to this, but it's beyond me.

Ms. Wynne: I need to hear from staff. Could I just have clarification as to the meaning of this, for the purpose of this act and the regulations—that section of this amendment?

Ms. Hewson: I think I'd ask David Lillico to respond.

Mr. David Lillico: The tribunal does not have power to change or to not apply the standards. The standard is a type of regulation. It's set out in section 6, which the committee looked at earlier. It has the power to interpret them. So there wouldn't be a power in the tribunal. The tribunal's functions are set out in the appeal section, which is coming up next. We haven't discussed it yet. It's in section 27.

As was mentioned earlier, the tribunal listens to appeals from orders, but it doesn't have the power to change the regulations—

Ms. Wynne: Or the standards.

Mr. Lillico: —or the standards or any other kind of regulation.

Ms. Wynne: I just want to be clear that this amendment does not in fact give the designated tribunal the authority to change or do away with a regulation or a standard. OK, thank you.

Mr. Jackson: However, my legal training tells me it doesn't prevent the person who wants to change an order from appealing on those grounds. Don't forget you're dealing with an appellant, quasi-judicial tribunal panel. The grounds on which you argue become the turf on which you fight, and we've introduced the regulations into this. Otherwise, I don't see any purpose why we've added that word here. Now that it's on the table, that means you can debate it.

I agree with you, Ms. Wynne, that it doesn't mean the tribunal will have the power to change it, but those compelling arguments spill over to the one I was so exercised about 20 minutes ago that says now the director can look at that and say, "Yup, do you know what? That reg is pretty nasty. It's really hurting the private sector. They don't like this one at all." So now they can vary the—but they've heard the legal arguments before the tribunal. Why are we wasting the tribunal's time with this? I'm not arguing with you that the tribunal won't have—it says they will do the hearing on those issues. Those are the grounds upon which the public debates. I've never quite seen it before. It doesn't exist in other legislation. I know you're quite familiar with the Education Act and the areas in which the labour unions are allowed to argue their points. The act allows them certain latitudes, and there are some things you say just can't be on the table. I guess now we can put the regs on.

I didn't think we were going to let anybody go out and argue our regs. But anyway, we'll leave it at that.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Jackson, Marchese.

The Chair: The motion carries.

The next one is 61a; Mr. Ramal.

Mr. Ramal: I move that section 26 of the bill be amended by adding the following subsection:

"Powers and duties

"(3) A tribunal designated under subsection (1) may exercise such powers and shall perform such duties as are conferred or imposed upon it by or under this act."

The Chair: Any further debate?

Mr. Jackson: So because we passed 26(1), we can confer or impose upon the tribunal the ability to examine the regulations.

Mr. Ramal: That makes sense. I guess it goes hand in hand with the previous section.

The Chair: Any other questions or comments? I will now put the question. Shall the motion carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. The motion carries.

We will deal with section 26. Shall section 26, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. It carries.

Section 27: Mr. Marchese, page 62.

Mr. Marchese: I move that subsection 27(1) of the bill be amended by striking out "that is the subject of an order" and substituting "that is the subject of or otherwise affected by an order".

This amendment makes it possible for people other than those who are affected by an order to do an appeal. If an individual feels that a standard is not being met and that their concerns are being ignored, they will be able to appeal to the tribunal. My amendment makes it more expansive and allows many more people other than that person who is affected by it to have a chance to say, "I'm affected by it too." This speaks to something that many deputants spoke to as well, and I think it reflects their concerns a little more closely than what is before us.

The Chair: Is there any further debate?

Mr. Jackson: I was listening carefully. Is my colleague suggesting that persons—isn't it the same effect that you're giving standing to a group or class of persons who are affected by—

Mr. Marchese: Is it the same, you're saying? Wouldn't it be the same?

Mr. Jackson: Yes.

Mr. Marchese: I'm not sure it is the same; "that is the subject of an order" means only those people affected by it, right?

Mr. Jackson: I interpret that, Rosario, to mean—again, to keep it simple in my mind. The private sector has been told, "You have to do this." They go to the tribunal and appeal. There are two known methods involved here: You can give standing to the other party, as we started doing in environmental cases, so you can participate in the dialogue and so on; or you can let them have a parallel appeal. I'm trying to understand what gets achieved here in legal terms. I know that the government is probably going to strike it down, but before they do, I want to understand the pith and substance of it, which I believe says—what?—that you could have both the private sector, who have to be compliant, before the tribunal, and you could also have a class of disabled persons who are affected by it come forward and appeal it. Am I understanding you correctly?

1700

Mr. Marchese: I'm not sure how to define it other than the way I did, and I'm not sure whether that makes any sense, in terms of how I'm explaining it versus what you're trying to get at. This has to do not just with a company; we're talking about individuals who are affected by it in a corporation. This limits it only to those people who are affected by it which includes individuals and a corporation. My point is that people with disabilities would otherwise be affected by it, even though they may not be in that sector or that employ. This allows other people to say, "I have a stake in this as well."

Mr. Jackson: Legislative counsel isn't jumping in to rule on this, but I think you might find that it's impossible to do that unless you come at it differently legally. It is impossible to have both parties go and duke it out in the tribunal. That's not what is envisaged here. The party required to spend the money and be compliant can appeal. Let me use simple language: Those people who went before the standards development committee and said, "This is what we want," and didn't get everything they wanted, then say, "You know what? I'm going to take that and appeal it to the tribunal." That's not the purpose of the tribunal.

If you're going to put this in, the only known way that I'm aware of, in the way government operates legally, is to say, "We'll give a class of persons standing," or "You may apply to have standing before the tribunal for the purposes of input so you can impact the decision." That works. I don't mean to be critical. First, you have to embrace the principle: Do you believe an appellate mechanism should have both parties there? The second prin-

ciple is, what is the simplest, most effective way to follow the Statutory Powers Procedure Act to allow it to happen? I'm asking, is this doable legally? It's saying that both parties can now go forward and say, "I want to appeal it," and I think it's not a ruling that would work. I'm not the active lawyer in the room, but—

The Chair: Well, you're raising some questions, and that's fine. Mr. Marchese, I go back to you: You're fine?

Mr. Marchese: Yes, in my limited knowledge of law. Is there any legal opinion?

The Chair: Would staff want to—

Mr. Ramal: I agree. What's being proposed by Mr. Marchese, having two people appeal on the same issue, would be very confusing. Also, if you need clarification from the legal department, we're more than happy.

Mr. Marchese: That would be helpful.

Mr. Jackson: To be helpful, it might be worthwhile to stand down this section to give Mr. Marchese an opportunity to look at whether he wishes to approach the notion of standing so it is required to be covered in the regs. Personally, I think this is out of order because it's impossible, by definition, because the act doesn't say that both parties get to appeal. It's the person who's the subject of the order, and that person is a single corporate entity or a group of people. It's not the disability community.

Mr. Marchese: Is that the legal understanding of that section? I would be happy to hear—

The Chair: Procedurally, the motion in front of us is correct. I guess it's up to the committee to decide if they wish to go further. I don't believe there's any technical—

Mr. Marchese: All I'm asking, Mr. Chair, is for a legal explanation.

The Chair: I would like to hear if you have an opinion, since you are legal counsel.

Ms. Sibylle Filion: I'm afraid my role here in committee is to give advice on the interpretation of statutes and not to act as legal counsel to the committee. I'd feel uncomfortable going beyond that right here in committee.

The Chair: That's fine. I thank you for that.

I believe there is a motion on the floor. Unless I hear otherwise, I will now put the question. Shall the motion carry?

Ayes

Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion does not carry.

We go to page 63.

Mr. Ramal: I move that subsection 27(1) of the bill be struck out and the following substituted:

"Appeals to tribunal

"27(1) A person or organization that is the subject of an order made by a director under section 21, 25 or subsection 33(8) may appeal the order by filing a notice of appeal with the tribunal within 15 days after the day the order is made.

"Notice of appeal

"(1.1) A notice of appeal shall be in a form approved by the tribunal and shall contain the information required by the tribunal."

It's another mechanism to set out standards and clarification on how to file the appeal, the direction that should be taken and also the time frame that should be allowed to file an appeal in this situation.

The Chair: Any debate on the motion?

Mr. Jackson: Do you envisage the tribunals being in camera? Do you consider them to be closed to the public?

Mr. Ramal: Mr. Jackson, I don't know. It's not mentioned here whether they're in camera or private. I have no further information about this issue.

The Chair: Any further debate? If there's none, I will now put the question. Shall the motion carry?

Ayes

Fonseca, Jackson, Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. The motion carries.

Mr. Marchese; page 64.

Mr. Marchese: I move that subsection 27(3) of the bill be struck out and the following substituted:

"Hearing

"(3) The tribunal shall hold a hearing with respect to an appeal under subsection (1) unless a party satisfies the tribunal that the matter may be decided based on written submissions alone."

Under the current act, the tribunal by default takes written submissions and meets in camera. It only meets in public if the case is made that it needs to. This would reverse the onus so that the tribunal meets in public and only goes in camera if the need arises. In my humble view, this will allow for more transparency and scrutiny. I'm proposing the opposite of what they are suggesting in their amendment. For a government that is quite happy to talk all the time about transparency and openness and blah, blah, blah, my motion would help them.

The Chair: Is there any debate on the motion?

Mr. Ramal: I think this amendment will slow the process and also cost additional money. He assumes it's going to be a few appeals. I don't know how we assume that before starting to do anything. We'll leave it for the future to decide whether we have few or more.

Mr. Marchese: Sorry, I didn't hear him very well. Did he say this would slow down the process first of all?

The Chair: That's one of the comments.

Mr. Marchese: And that it would cost more money?

The Chair: That's another comment.

Mr. Marchese: I see. So the idea of having the tribunal meet in public is costly and would slow it down.

The Chair: Is there any further debate?

Ms. Wynne: I just want to be clear that what we're trying to do in this bill, which hasn't been done in previous legislation, is to put some teeth in place, to get standards implemented, to get changes made. So when Mr. Ramal makes the comment that we're trying not to put administrative processes in place that will actually slow down the changes in the community—because that's what this bill is about; that's what previous legislation has not been about. That's our purpose in having the option to have an oral hearing. For example, with the Statutory Powers Procedure Act, the written hearing is the default position, but there is the possibility in this piece to have an oral hearing if that's deemed to be necessary. But our goal is to get the standards in place and to get them implemented.

1710

Mr. Marchese: I just don't understand it, quite frankly. Subsection 27(3) says, "The tribunal shall hold a written hearing with respect to an appeal under subsection (1) unless a party satisfies the tribunal that there is good reason to hear oral submissions." I can't for the life of me understand why we couldn't have meetings in public and why that would be more costly and why that would slow down the process. I just don't understand how they could justify it. I think that people with disabilities would want a public meeting. They don't think it would slow it down. I don't see why it's more costly. I don't know why they're opposed to this greater scrutiny and transparency. It makes no sense.

The Chair: Is there any further debate?

Mr. Ramal: If he wants more clarification, staff of the ministry can answer.

The Chair: That's always available. If there are any questions for staff, I'm sure people will indicate that. I didn't hear that.

Ms. Wynne: Chair, I have a question. I'd like to hear on the public/private issue. Mr. Marchese is making assumptions about what is going to be in public and what is going to be private. Could I hear from staff what the assumption is?

The Chair: Would staff clarify that question, please.

Mr. Lillico: This issue is addressed in terms of written hearing in subsection 9(1.1) of the Statutory Powers Procedure Act, which will apply to these proceedings. It says, "In a written hearing, members of the public are entitled to reasonable access to the documents submitted." So they are available; that's not just to parties—

Mr. Marchese: Section 9 where again?

Mr. Lillico: It's not in this; it's in another statute that was referred to earlier, the Statutory Powers Procedure Act. The procedures in that act will be applicable here in these hearings. It provides for members of the public to have access to the documents submitted in a written hearing.

Mr. Marchese: I don't understand that.

The Chair: The floor is yours, Ms. Wynne.

Ms. Wynne: Yes, since I asked the question. The public-versus-private piece is a red herring in this. We're actually looking for a process that's going to allow the tribunal to make its decision quickly so that whatever changes have to be made or not need to happen.

The Chair: Mr. Marchese has a question, and then I'll go to Mr. Jackson.

Mr. Marchese: I'm puzzled by the arguments of red herrings and other fish. All I'm saying is, "The tribunal shall hold a hearing with respect to appeal under subsection (1)"—publicly—"unless a party satisfies the tribunal that the matter may be decided based on written submissions alone." Sorry if I'm going too fast. I'm just repeating the same stuff.

I don't know. I just think a hearing in public is good. The tribunal should do it in public, and that's a good thing. I just don't see how it slows it down.

Mr. Jackson: We are trying to get at the issue of transparency. I asked the question earlier if it is possible for the hearings to be held in public. Obviously the response to that is that that's not envisaged in this legislation.

I understand the Statutory Powers Procedure Act, but I also am aware that if I represent a disability group, I have to make an application, either through the tribunal or through the freedom-of-information office, and now I'm expected to come up with hundreds of dollars. We are on record as making a very simple request of one minister and we're told it's going to be $2,000 or $3,000 to get the photocopying of the material. If you're treating a member of Parliament with that kind of price tag, what's it going to cost the public? We should be careful not to misconstrue that we have a public system that says that if files are sealed, you have reasonable access. Reasonable access can mean, "You can have it, but it's going to cost you a couple of thousand bucks for us to photocopy it and ship it to you and so on."

Mr. Marchese's point and mine as well is very simple: You should have a process that allows for the public to participate as witnesses or observers. We've discussed the issue of standing. We're not there at this point. We're simply asking for a process so that the tribunal meets in a transparent fashion. That's what I thought the intent was. This intent shifts it from saying that all hearings will be a written submission and they may choose to do an oral. Mr. Marchese has reversed the paradigm and is suggesting that they be oral and that you may occasionally wish to allow it to be in writing.

I think the disability community thought they'd have reasonable access to the information during the process, as opposed to after a tribunal has ruled, and subsequent to what we passed a few moments ago, the director can even rescind that.

Obviously, this is going to fail, but I'd like to support it because I support the principle that's being advocated here on behalf of the ODA Committee.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion does not carry.

Shall section 27, as amended, carry? All those in favour?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. The section carries.

Section 28, page 65; Mr. Ramal.

Mr. Ramal: I move that section 28 of the bill be struck out and the following substituted:

"Mediation

"28. The tribunal may attempt to effect a settlement of all or part of the matters that are the subject of an appeal by mediation if,

"(a) the parties consent to the mediation; and

"(b) the tribunal considers that it is in the public interest to do so."

It's basically talking about the role of the tribunal and mediation in this matter. Mediation will take place if there is consent from the parties. We believe this will strengthen the public interest and also that all the appeals and mediations are accepted by all the parties who participate in this mechanism.

The Chair: Can I recognize Mr. Jackson and then come back to you, Mr. Leal?

Mr. Leal: Mr. Jackson's arm was up first.

Mr. Jackson: My point is very simple. The current legislation, as drafted by the ministry and tabled by the minister in the House, says that with the consent of both parties mediation can occur. What the government has stated here is that the tribunal, however, must consider that it's in the public interest to do it. That is a limiting clause. That reduces the amount of mediation. It's put in there as a means for a second level to determine if it's eligible. Do you understand what I'm saying? In your original bill, the state and the tribunal are not affected because it says that both parties have to agree. That principle exists. This now introduces the notion that it has to pass the subjective test by the tribunal that it must be in the public interest. In other words, it's a veto power. I'm not sure it's critical, but it was a lot simpler that if both parties agree to mediation, then they can proceed.

Mr. Leal: I do think this amendment is somewhat critical. I remember that some stakeholders did come forward and expressed concern that the way the mediation provision was outlined in the act could potentially be used by organizations to implement accessibility standards that were lower than what were originally established by the standards committee. I thought that did raise concern about stakeholders. I believe this amendment now gets rid of that situation from occurring. From my perspective, anyway, it is a critical amendment

1720

Mr. Jackson: Mr. Leal, it clearly is backwards in your mind. I just want to take a moment for you to better understand it. If I use your words and your concern, organizations want to make sure that they do not find themselves mediating—and in your definition, mediation has the potential to lower a standard. The act of mediation can never occur under your original legislation because both parties have to agree to it. As long as the disability community says, "Wait a minute. That's not what we wanted. We're not going to mediation," you go and appeal to the tribunal. However, they can override the mutual agreement, which is the protection—both parties. This is a principle that is strongly upheld in family law, adoption—the list goes on—the whole issue, that mutual agreement issue.

It now says, "Well, we want you to mediate this. You must come to the table and mediate because we think it's in the public interest." You have the independent tribunal passing a judgment that one of the parties doesn't want to mediate. According to this, they can override that and say, "I'm sorry, we're dragging you in. You're going to mediate." Are you getting it now?

Interjection.

Mr. Jackson: That is exactly what the effect is here. I thought the government's motion was very sound. It takes the judgment away from the tribunal to say, "You know what? We're not wasting our time with this. You guys go mediate this." That's fine, if both parties agree. But if one party says no—I'm sorry?

Mr. Ramal: It can go back to arbitration. It's simple.

Mr. Jackson: You're putting one party behind the eight ball. If you've never negotiated—it's awkward.

Mr. Marchese: I have a question of legal counsel. Can (b) override (a)?

Ms. Filion: The two go together.

Mr. Marchese: They go hand in hand?

Ms. Filion: They go hand in hand, yes.

Mr. Marchese: I understood Mr. Jackson to suggest differently.

Ms. Filion: I think Mr. Jackson was saying that you can't have (a) without (b), so (b) is necessary.

Mr. Jackson: What that means is that both parties can agree to the mediation, but if the tribunal doesn't want it to happen, they'll stop it.

Mr. Marchese: What are we trying to accomplish here again?

Mr. Ramal: To protect the public interest.

Mr. Marchese: I see.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Jackson, Marchese.

The Chair: The motion carries.

Shall section 28, as amended, carry? Those in favour?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. The section carries.

The next section is a motion by the PCs, on page 66. Before the motion, I would like to make some comments.

Standing order 75(b) allows the Chair of a committee to "take such reasonable steps as he or she considers necessary to facilitate the committee's consideration and disposition of multiple amendments." Basically, as the Chair, I have the power to make a decision about whether this motion should be addressed as one or separated. You will note that the next motion before you has been drafted as a new part to the bill, made up of several new sections. Parliamentary practice is to move debate and vote on new sections to bills separately. In this circumstance, I will allow the new sections to be moved and debated as a unit to facilitate the committee's understanding of the concept intended in the new part. Of course, members have the choice of splitting the motion into sections. I will ask Mr. Jackson to move it as one, but if you choose, we'll break it down as you choose—or any other members, for that matter.

Mr. Jackson: Thank you, Mr. Chairman, for accommodating moving through this fairly quickly. It is a long-winded change, so bear with me, please.

I move that the bill be amended by adding the following new part:

"Part VI.1

"Duties of the government of Ontario

"Application

"28.1 The duties and obligations imposed on the government of Ontario in this part apply in addition to any duties and obligations imposed on the government of Ontario in the accessibility standards made under this act.

"Conflict

"28.2 If there is a conflict between a provision in this part and a provision in an accessibility standard, the provision in this part prevails.

"Government goods and services

"28.3 In deciding to purchase goods or services through the procurement process for the use of itself, its employees or the public, the government of Ontario shall have regard to the accessibility for persons with disabilities to the goods or services.

"Government Internet sites

"28.4 The government of Ontario shall provide its Internet sites in a format that is accessible to persons with disabilities, unless it is not technically feasible to do so.

"Government publications

"28.5 Within a reasonable time after receiving a request by or on behalf of a person with disabilities, the government of Ontario shall make an Ontario government publication available in a format that is accessible to the person, unless it is not technically feasible to do so.

"Government employees

"28.6(1) The government of Ontario shall accommodate the accessibility needs of its employees in accordance with the Human Rights Code to the extent that the needs relate to their employment.

"Applicants for employment

"(2) The government of Ontario shall accommodate the accessibility needs of persons with disabilities who apply for a position as a government employee and whom the government invites to participate in the selection process for employment to the extent that the needs relate to the selection process.

"Training

"(3) The government of Ontario shall ensure that its employees who have managerial or supervisory functions receive training in fulfilling the government's obligations under this section.

"Information

"(4) The government of Ontario shall inform its employees of the rights and obligations of the government and its employees under this section.

"Government-funded capital programs

"28.7(1) If a project relates to an existing or proposed building, structure or premises for which the Building Code Act, 1992 and the regulations made under it establish a level of accessibility for persons with disabilities, the project shall meet or exceed that level in order to be eligible to receive funding under a government-funded capital program.

"Same, other projects

"(2) If a project is not a project described in subsection (1) or if the projects in a class of projects are not projects described in that subsection, the government of Ontario may include requirements to provide accessibility for persons with disabilities as part of the eligibility criteria for the project or the class of projects, as the case may be, to receive funding under a government-funded capital program.

"Ministry accessibility plans

"28.8(1) Each ministry shall,

"(a) prepare an accessibility plan as part of its annual planning process; and

"(b) consult with the Accessibility Directorate of Ontario in preparing the plan.

"Contents

"(2) The accessibility plan shall address the identification, removal and prevention of barriers to persons with disabilities in the acts and regulations administered by the ministry and in the ministry's policies, programs, practices and services and set out a timetable for the removal of these barriers.

"Same

"(3) The accessibility plan shall include,

"(a) a report on the measures the ministry has taken to identify, remove and prevent barriers to persons with disabilities;

"(b) the measures in place to ensure that the ministry assesses its proposals for acts, regulations, policies, programs, practices and services to determine their effect on accessibility for persons with disabilities;

"(c) a list of the acts, regulations, policies, programs, practices and services that the ministry will review in the coming year in order to identify barriers to persons with disabilities;

"(d) the measures that the ministry intends to take in the coming year to identify, remove and prevent barriers to persons with disabilities; and

"(e) all other information that the regulations prescribe for the purpose of the plan.

"Availability to the public

"(4) A ministry shall make its accessibility plan available to the public.

"Interpretation

"28.9 A reference in this part to an employee of the government of Ontario shall be deemed to be a reference to a public servant, as defined in section 1 of the Public Service Act."

1730

The Chair: Do you want to make any comments?

Mr. Jackson: It's very self-explanatory. In the government's new legislation, municipalities are required to continue the process of keeping access committees and reporting annually on the progress they're making. It speaks to the issue of the interaction between the public and the disability community and that level of government. Most of these sections, which were contained in the previous ODA, are not carrying over into this new bill. As such, I feel that the government of Ontario should maintain its leadership, primarily in terms of employment equity and in terms of accommodation for its public service.

I also believe that public money should not go into buildings that are by definition currently inaccessible because they are older buildings. That is also covered here. I would also hate to see that piece abandoned from the previous legislation. I don't think the government has a hard time with that. I just believe we'd be well served to ensure that every ministry continues to do the work of making it more accessible, and it doesn't necessarily need the full 20 years in which to do that.

Mr. Ramal: I think this amendment is unnecessary. All the provisions from the ODA, 2001, that relate to government publications and the government Internet site wouldn't be repealed. It will be maintained and it will be used to apply in the regulations and enforcement.

Also, the accessibility planning provisions of the ODA, 2001, would continue in currently obligated sectors until the standards are developed and accessibility reporting requirements are implemented, if Bill 118 passes.

So there's no need for it. We're still going to use it; it's not going to be repealed. The whole content will still remain there. You can go to the government Web site and see it. I think there's no need for changes at the present time.

The Chair: Any comment? If there is none—

Mr. Marchese: I support the amendment. I'm ready to vote.

Ms. Wynne: I just want to make a comment. My understanding is that if we get a standard set in this area, it will actually be higher than what's provided for in this amendment. My concern is that Mr. Jackson is suggesting that the lower standard should stay in place. This piece is lifted directly from the ODA, 2001, and we're trying to put a more rigorous standard in place.

Mr. Jackson: On the contrary. This one says it's the highest standard, which is compliance with the Human Rights Code and which will not be required under the negotiated standards or the exemptions. This doesn't give the minister the right to exempt whole parts of the government. I won't argue with Mr. Ramal that parts of this will stay in place until the government gets its standards, and then it jettisons them. But in the intervening period we must continue to hold to the higher standard than the negotiated standard, and that's the one in accordance with the Human Rights Code as it relates to employment.

I understand that one of the first ones may be employment, but we may not accommodate to the level of the Human Rights Code. For those of us who read the chief commissioner's extensive comments in this area, this is going to be an expensive undertaking. Now, are we going to impose on the entire province? Highly unlikely. But clearly the government, as an employer, has the right, as I've stated in this legislation and the previous legislation, to at least work toward that.

There was a time when we had something akin to employment equity brought in, as I recall, by a Liberal government that dealt with this area. It was difficult and it wasn't achieving the sort of success it might have, but the bottom line is that nowhere else does it refer to this in any statute or any legislation, and it will no longer be in the new legislation.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendments do not carry.

We'll move to the next section, section 29. Mr. Jackson, you are next, but I find this motion to be out of order—

Mr. Jackson: Yes.

The Chair: So you agree?

Mr. Jackson: Yes. You're uncomfortable with the wording. We don't want you to be uncomfortable.

The Chair: And I thank you for being so kind.

I'll move to the next one. Again, it's you, Mr. Jackson; page 68, please.

Mr. Jackson: Actually, I have subsection 29(1), which I tabled.

Ms. Filion: No. Subsection 29(3) will come first.

The Chair: And then we'll do—all right.

I move that subsection 29(3) of the bill be struck out and the following substituted:

"Members

"(3) Two thirds of the members of the committee shall be persons with disabilities."

I have spoken to this issue before. The municipal accessibility advisory committees are actually retained in the legislation, which is very good and very appropriate. However, we heard all sorts of problems associated with the fact that the penalty provisions were not enforced, and as a result, over 60% of the municipalities are not really being compliant with this section. Part of that is the fact that a minority of individuals on these committees are persons with disabilities, and that was not the intent. It was to give the disability community a direct voice at city hall to impact and give their advice and counsel to committees comprised of municipal public servants and other interested parties. I'm asking that we formalize the membership to go from a majority to two thirds, because clearly there has been non-compliance by municipalities in ensuring that a majority of these people who participate would be persons with disabilities.

Mr. Marchese: I have a question. Cam, you're saying that if it were two thirds, compliance by the municipality would be easier than if you have just a majority? That simple thing would make it so that municipalities would comply?

Mr. Jackson: One of the challenges was that the municipality would appoint employees at city hall who were disabled. They had every right to be there, one would hope, but their voting patterns were such that they would vote down any proposals that would advance the changing of the terms that the committee might be reviewing at that time, a library expansion or—that's really what we're getting at.

1740

Mr. Marchese: On the other hand, Cam, we've heard reports from people where they have given advice to a municipality and the municipality doesn't take that advice. It has nothing to do with a majority or two thirds; it was because the municipality just didn't want to do anything.

Mr. Jackson: We have other amendments that strengthen that. But you're right; that was part of the concerns they had. At this point, I want to make sure that an absolute majority of the persons on those committees would be representing the disability community, and that's not necessarily the case across the province.

The Chair: Any debate? If there's none, I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

Mr. Jackson, page 69, please.

Mr. Jackson: I move that section 29 of the bill be amended by adding the following subsection:

"Remuneration

"(3.1) The council shall pay the members of the committee a reasonable compensation and reimburse reasonable expenses of the committee members."

I have spoken to this issue. We found that one of the instruments being used by some municipalities to subvert the process was to call meetings when there was no HandyVan service or support services for the individuals. This left an awful feeling in people's minds. We just don't want to participate in anything that allows the good work of these accessibility advisory committees to be frustrated, so reasonable compensation for individuals, whether it's interpretive service or whatever, should be included. Perhaps then the councils might take them a little more seriously and attempt to get more done during the course of a meeting, if they had modest reimbursement, which councils do quite regularly for committees of adjustment and other matters.

Mr. Marchese: I support the motion on the basis that a whole lot of people, yes, volunteer because they want to, but many of the people who volunteer are individuals who have a lot of financial problems. So when we ask them, there ought to be some obligation on the part of the government to say, "We've got to help out," because it does involve a great deal of time. People with disabilities put in a great deal of time to be able to change things that affect their lives. "A reasonable compensation": Obviously, Mr. Jackson isn't stating what that should be, but anything would be very helpful to them. I support it.

Mr. Leal: I have a question for Mr. Jackson. In your legislation, the ODA 2001, did you flow money to municipalities to pay for compensation for members to sit on the committees?

Mr. Jackson: No; in fact, quite the opposite. The municipalities felt it was reasonable. We were spending most of our money to get the infrastructure in place and to put together the regs and to support the Ontario access committee that was setting the standards for the municipalities.

Let's just put it this way: For the 60% of municipalities who today are in non-compliance, if the minister had approved the penalty I put in the legislation, they'd have all paid a $50,000 fine. My point, and the reason I came up with $50,000 and why I negotiated that with the two civil servants who are before us today, was that between $50,000 or making the committee work, I think it's better to make the committee work.

There's still no penalty in this, except after the entire process is over. I still fundamentally believe that if we're going to have municipal access committees, there has to be a penalty for those municipalities that have been

flagrant with the legislation and said, "We really don't need to do this." We've had some that have refused even to meet. In fairness, Mr. Leal, you came from Peterborough council, which takes this seriously. You've worked well with the community, and you know it works. But unfortunately, we've heard from a lot of communities where it isn't working. I don't want to single people out, but there are a couple of people who serve on municipal access advisory committees in the room with us today, and they're very frustrated by the failure of municipalities to take this seriously.

As to the issue of remuneration, if you can pay someone to sit on a committee of adjustment to look at two neighbours' argument over where a fence should be, I think it's only fair that you say to someone who gives up a day a month to assist a city or town to be more accessible and to give advice on a capital expansion in your park—I mean, you've served on these committees, Mr. Leal; you know how you can benefit from that. The principle is that if you don't get them at the table and participating, the city won't get the benefit of it. We were hearing that they could call a meeting at a time when it was frustrating: "I couldn't get my attendant care assistant to come with me to city hall during those times." There are too many instruments to frustrate the process.

Your government willingly embraces the principle that municipal access councils should exist. We're simply saying that we've learned over the last three years that there are some things we can do to make sure that the interests of the individual disabled persons serving on them are protected and the law is upheld. That's really all I'm trying to do here, is strengthen it, and these are the comments we received from our public hearings.

Mr. Leal: Just quickly, on a private note, Mr. Jackson, I would like it if you could provide me with those municipalities that scheduled meetings that were not convenient for disabled people. I'd be very interested.

Mr. Jackson: Those were deputations. I don't want to name communities in case I'm wrong, but we received a lot of written reports from groups, from individuals who were on committees, and they were very frustrated by it.

The Chair: Any further debate?

Ms. Wynne: I just want to make the point that for us to be downloading costs on to municipalities would be a very difficult thing to do, and that's essentially what this would be. There's nothing to stop municipalities from establishing that relationship with their committees, but I don't think we want to be in a position of downloading those costs.

The Chair: Any further debate? I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion does not carry.

Next, page 70; Mr. Jackson.

Mr. Jackson: I move that subsection 29(4) of the bill be amended by striking out "and" at the end of clause (b) and by adding the following clause:

"(b.1) advise the council on whether buildings that the municipality owns or occupies or is considering purchasing, leasing or constructing are designed so as to remove and prevent any barriers that would prevent persons with disabilities from accessing the building; and".

It's self-explanatory.

The Chair: Any debate on the motion? If there is none, I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

Mr. Jackson, page 71, please.

Mr. Jackson: I move that section 29 of the bill be amended by adding the following subsection:

"Response to committee advice

"(5.1) If the committee gives the council advice or makes recommendations that the council decides not to follow or adopt, the council shall provide the committee with written reasons for not doing so and shall make its reasons and the committee's advice or recommendations available to the public in the prescribed manner."

The Chair: Any debate on the motion?

Mr. Jackson: Again I'm trying to follow along with what communities had indicated. I use the example of the access committee in my community of Burlington, which had the publicly funded hospital doing an expansion, with provincial dollars, and they didn't know the committee had looked at the plans and said, "We want a handicapped-accessible washroom in the main lobby." That recommendation was given. City hall issued the building permit. Joseph Brant Memorial Hospital, in its brand new $10-million expansion, does not have an accessible washroom on the ground floor in that area. The answer was to take the sign down and move the sign. Frankly, these are the kinds of—it may be small to the people around this table, but this was huge, particularly for the MS Society, which was quite upset with the fact that this accessibility issue had been identified and nobody seemed to care.

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We heard this. I'm sure Mr. Leal will remember some of the public meetings where the issue of not taking any advice was raised. This serves to strengthen the government's commitment to continue with municipal accessibility advisory committees.

Mr. Leal: Can I ask the clerk a question? I haven't seen it, but I'm sure it's in circulation somewhere. When

Bill 118 went out—usually there's a response from AMO. Has there been any official response from AMO on this particular bill?

The Clerk of the Committee (Ms. Anne Stokes): I would have to check the list—

Mr. Leal: Could you check that for me? My experience is that on any major legislation in the province—and this is a major piece of legislation—AMO usually provides an extensive critique, particularly since this government, unlike others, has reached a memorandum of understanding about when major legislative initiatives come forward. If somebody could provide that for me, I'd appreciate it.

The Chair: The clerk will.

Ms. Wynne: What I see happening here is Mr. Jackson trying to fix things that were wrong with Bill 125 and trying to constrain and fix what happened within the municipalities. We've introduced a new piece of legislation, so the municipalities will get together and there will be standards set across the municipal sector. I don't see the need for this kind of constriction within the municipality section, because we've introduced a new piece of legislation. I think the tweaking that might have been necessary to Bill 125 is rendered moot because we've got a new process in place.

Mr. Marchese: I thought the amendment was a good one, and I'm not quite sure whether Ms. Wynne's remarks are accurate, necessarily. I think this problem is likely to continue, as it did before. This amendment says, "If the committee gives the council advice or makes recommendations that the council decides not to follow or adopt, the council shall provide the committee with written reasons...."

We heard a lot of complaints about this. It's likely to go on. Some might have used a different argument, i.e., that this is going to download more problems on to the municipality. It might, and indeed it could be costly. But that's not why we wouldn't want to do this. It's similar to the previous motion, which I supported, which had to do with remuneration for people to sit on those committees. Yes, it might be downloading a cost to the cities, but if it's for that reason, we'd want to fund this area very adequately so that people can do that. We can't say we don't want to download a certain issue because it would be a cost to the municipality, that to do the right thing is not right because cities would have to pick up the cost.

Cities will have to pick up the cost in many areas for which the government is not going to fund them. A lot of this will be downloaded to them no matter what. They're not going to like it and, by the way, they'll come back. This could provide an argument to the city that says, "We can't do this for the following reasons," and it could be because of cost. The written argument might give the city a tool to be able to say, "It's for these reasons we can't do it. The ministry has passed a bill downloading a certain cost, and we can't do it. It's too expensive."

In my view, this is a way out for some communities to be able to defend themselves when and if they argue they can't do it because they don't have enough money. I think it's a reasonable thing to do from whatever point of view you look at. So I support this motion.

Mr. Leal: I struggle with this because my experience perhaps is a little different than a lot of others'. Once the standards were in place in my community, we always complied with those standards because we had a very active committee that said—

Mr. Marchese: Yeah.

Mr. Leal: I listened carefully to you—that for the advancement of the disabled community, this was the appropriate and logical and right thing to do. I happen to think that once the standard is in place, there's an obligation on municipalities to live up to the standard and move the agenda forward. I would make the argument, and I made the argument as a city councillor in my community, that it's good for business to do this. It's good for the community to do this and you advance the agenda of disabled people.

Maybe I'm still an idealist. I keep that with me at all times, that this is how this legislation is going to unfold in Ontario.

Mr. Marchese: I just don't understand that argument.

Mr. Leal: Well, I don't understand your argument either.

Mr. Marchese: I understand, Mr. Leal, that every time you guys had to do something, you did the right thing. That's great. You're saying that what you did was wonderful, and I agree.

Mr. Leal: I said it was appropriate.

Mr. Marchese: Whatever you did—

The Chair: Order.

Mr. Marchese: I'm just trying to praise you indirectly.

Mr. Leal: OK.

Mr. Marchese: If the city did something with respect to whatever law was there and you did the right thing, that's great. What we heard was that some cities didn't do that and that recommendations were made and dismissed. That was the point. In spite of what you say, there may be some people who won't do it. So for those who don't see the benefits as you and your municipality do, we're arguing that if they don't want to do something, they should just give reasons for it.

The Chair: Thank you. Everybody has his own view. I think we heard each other. Mr. Jackson, you're next.

Mr. Jackson: I appreciate that Mr. Leal is struggling with this a bit, and I put on the record that I thought that Peterborough did a good job. When I did my consultations there, there was clear evidence that the municipality was already working in this area.

My concern is this—and maybe I can answer your previous question at the same time. Pretty well every council in the province passed the ODAC resolution calling to make Ontario completely barrier-free in accordance with the ODA—virtually everyone. Without exception every municipality I went to and said, "What are you prepared to do?" said, "Nothing. We're not prepared to do anything unless you pay for it all." That was AMO's position. Now, there is no letter dated from six

months ago or from the tabling of this bill with AMO's position. That was one of my first questions. I wanted to know, "Where does AMO stand on this?" AMO has had informal discussions. They've had a warm response. There's nothing on the record from AMO.

I'll set that aside. It's disheartening when councils in 2000 and 2001 passed the ODAC resolution and then, once we had the ODA, flawed as it might have been, it set out clearly the responsibilities of municipalities to do certain things and there was a whole bunch of them that didn't do them. That's all I'm trying to do.

I think if you're going to say in legislation, which the Liberals are doing, and you're putting this in perpetuity, that there shall always be access monitoring in municipalities from now until forever—there's no closure on this—when you've stated that, I would suspect you want it to work. And what defines whether it works?

The first thing that defines a relationship is whether or not you have the right to be told why you said no. For marriage, an employer, any of those relationships, that's required. The relationship that I as a public official and you as both formerly municipally and now had was, if you're going to ask these people to give you input, I think you at least owe them an answer to say, "This is why we're not doing it." That's all I'm asking here. I think that upset people more than whether or not they got compensated or whether people cancelled six meetings in a row. It's when they finally did resolve something and then nothing happened. I think that hurt them.

That's all I'm trying to fix here, Mr. Leal. If you're the one Liberal who sees that, I'd be pleased to have you join me as this goes down in flames.

The Chair: Any further debate? I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: That motion does not carry.

Mr. Jackson, page 72, please.

Mr. Jackson: I move that section 29 of the bill be amended by adding the following subsection:

"If no committee established

"(9) If the council of a municipality that has a population of less than 10,000 has not established an accessibility advisory committee, the council shall consult annually with the public, and in particular with persons with disabilities, in accordance with the regulations, on the matters referred to in subsection (5) and on developing strategies for removing and preventing barriers to persons with disabilities in the municipality."

The Chair: Any debate? None. I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion does not carry.

Shall section 29, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None.

Section 29, as amended, carries.

Because it's 6 o'clock, we end today's meeting. We'll resume tomorrow at—

Mr. Jackson: I'm sorry, Mr. Chairman. Legislative counsel and the clerk failed to remind everyone that I have two other amendments on 29.1—

The Chair: For this section?

Mr. Jackson: Yes. I'm sorry.

Ms. Filion: Mr. Jackson, 29.1 is the section that follows 29. It's a different section.

Mr. Jackson: So we still have 29.1 to do.

Ms. Filion: Yes.

The Chair: Is that the only one, Cam?

Mr. Jackson: I've got three, but I can lump them all together.

The Chair: We'll do that tomorrow.

Same time tomorrow. Thank you.

The committee adjourned at 1803.

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